



March 13, 2023

Samantha Deshommes, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, Maryland 20746

Re: U.S. Citizenship and Immigration Services Fee Schedule, DHS Docket No. USCIS-2021-0010; RIN 1615-AC68

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Dear Chief Deshommes,

The National Partnership for New Americans (“NPNA”) submits this comment on rule, U.S. Citizenship and Immigration Services (“USCIS”) Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, DHS Docket No. USCIS-2021-0010, proposed on January 4, 2023.¹ NPNA has a series of concerns related to how this rule, if implemented in its current iteration, will limit access to citizenship, permanent residency, and other immigration benefits.

NPNA is a national multiethnic, multiracial coalition of 61 immigrant and refugee organizations across 40 states, that works together with its members to advance immigrant equity and inclusion policies; build and expand capacities around immigration legal services and inclusion programming; and drive campaigns that strengthen democracy through increased civic participation.

Since its founding in 2012, NPNA has advocated for affordability for immigration benefits, including successfully advocating USCIS for policies on fee waivers and reduced fees for naturalization applications. Over the last several years, we have submitted several public comments recommending the maintenance and expansion of fee waivers, and warning that proposed fee increases will reduce immigrants’ ability to obtain immigration benefits based on class and a lack of disposable income.² NPNA has also made several recommendations on how to reduce administrative barriers that unnecessarily burden USCIS staff and the adjudication process.³ As a coalition that mostly consists of organizations that offer direct legal services to low-income communities, we know firsthand that even the smallest increases to immigration application fees can have the effect of limiting a family’s ability to afford those applications.

USCIS should not only preserve but expand access that low-income and working class immigrants have to naturalization and immigration benefits for which they are eligible. The

¹ See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements (“USCIS Fee Schedule”), 88 Fed. Reg. 402 (proposed January 4, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-01-04/pdf/2022-27066.pdf>.

² See Public Comment from the National Partnership for New Americans to U.S. Citizenship and Immigration Services (November 17, 2018), <https://drive.google.com/file/d/0B6fpyBrzxIP2dkExNUU4ZWF2dXhDTS1kOWxremNIN2pDS040/view?usp=sharing&resourcekey=0-Vp7byyqVB55HWSv0zwBvIQ>; Public Comment from the National Partnership for New Americans to U.S. Citizenship and Immigration Services (May 6, 2019), <https://drive.google.com/file/d/1h8r9Zpg1YICdBVF-P7ifNBhAYpBZoT97/view?usp=sharing>; Public Comment from the National Partnership for New Americans to U.S. Citizenship and Immigration Services (July 3, 2019), https://drive.google.com/file/d/10Om-U4G4PdmleHuKr8kq_iWuq7Vq3hJa/view?usp=sharing; Public Comment from the National Partnership for New Americans to U.S. Citizenship and Immigration Services (December 29, 2019), <https://drive.google.com/file/d/1SefcFceJ8-cYUahhhtmLjsq7Pi6S8Z6e/view?usp=sharing>.

³ See Letter from the National Partnership of New Americans to Secretary Alejandro Mayorkas, Secretary of Department of Homeland Security (March 16, 2021), <https://drive.google.com/file/d/1t39cDgF6B5qCG3ugxtmq5rmOKmUIUmXj/view>.

agency should do this by reducing inefficiencies before proceeding with fee increases, expanding fee waiver eligibility, considering revenue gained through premium processing in its calculations, increasing instead of decreasing transparency and public input in any future fee changes, not disadvantaging low-income applicants in its payment options, and formally withdrawing the 2020 fee schedule rule and severing it from this proposed rule.

I. Several of the Proposed Rule’s Fee Increases Will Effectively Limit Access to Citizenship, Permanent Residency, and Other Immigration Benefits

NPNA has deep concerns that the fee increases proposed for naturalization, permanent residency, employment authorization, waiving grounds of inadmissibility, and other immigration benefits will price out low-income and working class immigrants, having the effect of delaying or preventing individuals and families from obtaining the immigration relief for which they are eligible, even with the proposed expansion of fee exemptions.

For several years, NPNA has advocated for reducing administrative barriers that not only make it more difficult for immigrants to access benefits, but also task USCIS staff with unnecessary administrative burdens when adjudicating applications. These burdens include unnecessary social media vetting, longer forms, interviews, biometrics requirements, and Requests for Evidence, all of which USCIS identifies in this proposed rule as causes or likely causes for inefficiencies.⁴ We recommend that shorter forms and eliminating other inefficiencies come before fee increases, not the other way around. NPNA has also prioritized successful advocacy for Congressional funding to improve USCIS’ financial standing, including funding for USCIS backlog reduction efforts. While we advocate for administrative and Congressional tools to reduce backlogs, we also recognize how inefficiencies and self-inflicted harms by USCIS have contributed to those backlogs, and strongly urge the agency to eliminate those inefficiencies before proceeding with fee increases.⁵

We credit USCIS for shifting away from the beneficiary-pays model used in the 2020 fee schedule rule and instead using a balance between the beneficiary-pays model and the ability-to-pay model, and acknowledges the delicate balance that USCIS seeks to strike in this proposed rule.⁶ We also credit USCIS for acknowledging NPNA and collective advocacy during previous proposed rules and public comment periods, and for citing Executive Order 14012: Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans (“E.O. 14012”) as a policy reason for keeping certain proposed fee

⁴ See USCIS Fee Schedule, 88 Fed. Reg. 428, 455.

⁵ See Letter from the National Partnership of New Americans to Secretary Alejandro Mayorkas, Secretary of Department of Homeland Security (March 16, 2021), <https://drive.google.com/file/d/1t39cDgF6B5qCG3ugxtmq5rmQKmUIUmXj/view> (for a listing of NPNA’s recommendations to remove barriers and reduce USCIS inefficiencies, several of which have not been fully implemented).

⁶ See USCIS Fee Schedule, 88 Fed. Reg. 425.

increases lower than what it would otherwise have been.⁷ Other changes in this proposed rule, such as the codification of current fee waivers and the expansion of fee exemptions for humanitarian-based applicants are positive steps and we credit USCIS for proposing them.

However, we also know that a \$35 increase to naturalization (Form N-400), a \$1,595 increase for a person applying for permanent residence and interim benefits (Forms I-485, I-765, and I-131), a \$155 increase for someone applying for employment authorization (Form I-765), a \$515 increase for someone seeking to remove conditions on residence (Form I-751), and a \$390 increase to waive grounds of inadmissibility based on unlawful presence (Form I-601A), among other proposed increases, will simply price out low-income and working class communities from benefits for which they are eligible. This is especially true if USCIS does not accompany these increases with an expansion of fee waiver eligibility.

The price of the citizenship application and the inability of prospective applicants to afford it has consistently been cited by social studies as a top reason why lawful permanent residents do not apply for naturalization, despite their eligibility.⁸ The \$35 increase to the N-400 will exacerbate this financial barrier, overwhelmingly impacting those with the lowest and middle-income of the approximately 9,240,000 permanent residents who are potentially eligible for citizenship.⁹ This increase to the N-400 will be even higher for elderly applicants who do not need to provide biometrics for their application, as they will have to pay \$120 more under this proposed rule than what they currently pay. For applicants who are submitting their N-400 with a Form I-942, Request for Reduced Fee, the proposed rule, to USCIS' credit, will reduce the fee from \$405 to \$380 (including biometrics). However, for elderly applicants who do not need to submit biometrics with a citizenship application, the cost for a N-400 and I-942 will be increased from \$320 to \$380; a \$60 increase. For those seeking a certificate of citizenship (Forms 600 and 600K), the fee would increase by \$215. For those requesting an appeal or a hearing on a naturalization application denial (Form N-336), the fee would also be increased under this proposed rule by \$130.¹⁰ While some of these fee increases may appear nominal, they will have the effect of reducing access to citizenship for low-income and working class people. USCIS

⁷ See USCIS Fee Schedule, 88 Fed. Reg. 425.

⁸ Gonzalez-Barrera, et. al, "The Path Not Taken: Two-Thirds of Legal Mexican Immigrants are not U.S. Citizens," Pew Research Center, February 4, 2013, [https://www.pewresearch.org/hispanic/2013/02/04/iv-reasons-for-not-naturalizing-2/#:~:text=According%20to%20the%20Pew%20Hispanic,or%20administrative%20barriers%20\(18%25\)](https://www.pewresearch.org/hispanic/2013/02/04/iv-reasons-for-not-naturalizing-2/#:~:text=According%20to%20the%20Pew%20Hispanic,or%20administrative%20barriers%20(18%25);); National Immigration Forum and the New Americans Campaign, "The Road to Naturalization: Addressing the Barriers to U.S. Citizenship," September 16, 2016, <https://www.newamericascampaign.org/wp-content/uploads/2017/05/The-Road-to-Naturalization.pdf>; Hainmueller, Jens, et. al, "A Randomized Controlled Design Reveals Barriers to Citizenship for Low-Income Immigrants," Proceedings of the National Academy of Sciences of the United States of America, January 16, 2018, <https://www.pnas.org/doi/abs/10.1073/pnas.1714254115>.

⁹ Baker, Bryan and Sarah Miller, "Estimates of the Lawful Permanent Resident Population in the United States and the Subpopulation Eligible to Naturalize: 2022," Department of Homeland Security, September 2022, https://www.dhs.gov/sites/default/files/2022-10/2022_0920_plcy_lawful_permentent_resident_population_estimate_2022_0.pdf.

¹⁰ See USCIS Fee Schedule, 88 Fed. Reg. 486-89.

should be reducing the price of citizenship, not decreasing it, and is missing an opportunity to do so in this proposed rule.

USCIS cites its longstanding policy of promoting citizenship and immigrant integration and E.O. 14012 as reasons for maintaining the fee for citizenship applications relatively low (compared to other proposed fee increases) and maintaining the reduced fee citizenship application process.¹¹ However, “unbundling” the application for adjustment of status (I-485) from its interim benefits (I-765 and I-131) and exorbitantly increasing the fees for immigrants who are applying for permanent residence, employment authorization and a travel document by as much as \$1,595, is a backdoor or indirect way of reducing access to citizenship by potentially limiting the pool of permanent residents who will ultimately become eligible for naturalization. While NPNA strongly supports the expansion of fee exemptions for humanitarian-based applicants in this proposed rule, it is concerned that the fee increases for adjustment of status and interim benefit applications will reduce access to permanent residency for family-based applicants, and thus, in the long run, undermine the objectives of promoting citizenship and implementing E.O. 14012.

The “unbundling” of the I-485 from its interim benefits will have a particularly harmful impact on families who are applying for those benefits together, whom NPNA legal services providers routinely serve as an entire family. This could force families to make an incredibly difficult decision to either exclude certain family members from applying with the entire family or delay or prevent the entire family from applying. Relatedly, USCIS is proposing to eliminate the \$750 fee for I-485 applicants who are under 14 years old and increase it along with the fees of other adjustment of status applicants; doubling the fee for youth under 14 years old. USCIS reasons that this higher fee, which cannot be waived, is consistent with its other proposed decisions to “unbundle” and to include biometrics in the primary application, and states that only five to six percent of I-485 applicants paid the \$750 fee.¹² However, this means that applicants under 14 years old will be paying more for less benefits. And raising the fee will dissuade youth from applying in the first place.

Other proposed fee increases to Forms I-765, I-751, and I-601A do not strike a healthy balance between the competing beneficiary-pays and ability-to-pay models, and undermine the objectives, cited in the proposed rule, of immigrant integration, implementing E.O. 14012, reducing barriers, and promoting accessibility to immigration benefits.¹³

For these reasons, NPNA requests that USCIS not proceed with such high increases to applications related to citizenship; permanent residency and interim benefits, including by keeping permanent residency and its interim benefits “bundled;” employment authorization; removing conditions on residence; and waiving grounds of inadmissibility based on unlawful

¹¹ See USCIS Fee Schedule, 88 Fed. Reg. 488.

¹² See USCIS Fee Schedule, 88 Fed. Reg. 494.

¹³ See USCIS Fee Schedule, 88 Fed. Reg. 425.

presence. We urge the agency to pursue cost-saving measures and reduce inefficiencies before increasing fees that will ultimately limit access for low-income and working class immigrants.

If USCIS is to proceed with any of these specific fee increases, then it should balance these increases with a significant expansion of fee waiver eligibility.

II. USCIS is Missing an Opportunity to Achieve Some of the Proposed Rule's Underlying Policy Goals by Failing to Expand Fee Waiver Eligibility

Federal law allows for fee waivers “based on an inability to pay.”¹⁴ The proposed regulation seeks to codify the current USCIS policy of allowing fee waivers for certain immigration application fees for individuals who are unable to pay by showing that (1) they are receiving a means-tested benefit; (2) they have an annual household income at or less than 150% of the Federal Poverty Guidelines (“FPG”), as defined by the U.S. Department of Health and Human Services (“HHS”); or (3) they are experiencing extreme financial hardship. However, the proposed rule’s preamble is more clear than the proposed regulatory text towards the objective of reinforcing fee waiver eligibility. Fee waiver eligibility based on the three separate bases above should be incorporated into the proposed regulatory text.

A. USCIS Should Adopt the U.S. Department of Housing and Urban Development's Measure of Median Family Income to Determine “Low Income” as the Income-Based Ground of Eligibility for Fee Waivers

While NPNA recognizes the essential role that current fee waivers have played in facilitating access to immigration benefits, and submitted four public comments in support of maintaining current fee waivers when the previous administration proposed restricting eligibility, we also support expanding fee waiver eligibility. NPNA specifically recommends expanding eligibility by changing the income-based measure for determining an applicant’s “inability to pay” from HHS’ FPG to the U.S. Department of Housing and Urban Development’s (HUD) use of median family income to determine “low income.”¹⁵

Utilizing the HUD approach, by county or state, is more realistic and equitable in determining who has an “inability to pay,” by considering how an individual’s geographic location largely impacts their cost of living, whether they live in real poverty, and, ultimately, their ability to afford an immigration benefit. It is a legal fiction to say that some people living in New York

¹⁴ See 8 C.F.R. § 103.7(c).

¹⁵ See “Statement on FY 2023 Median Family Income Estimates and Income Limits,” U.S. Department of Housing and Urban Development, accessed March 4, 2023, <https://www.huduser.gov/portal/datasets/il/il23/Statement-on-FY-2023-Income-Limits.pdf>; “Income Limits,” Office of Policy Development and Research, U.S. Department of Housing and Urban Development, accessed March 4, 2023, <https://www.huduser.gov/portal/datasets/il.html>.

City, San Francisco, Washington, D.C., or many other of the most expensive parts of the country, who have an annual household income of \$28,000, or a family of four, with two children and an income of \$56,000 annually, are not living in poverty and would have an ability to afford increasing immigration application fees. However, both of these hypothetical scenarios include people - an individual with \$28,000 and a family of four with \$56,000 - with an income that is higher than 200% of FPG and who would thus, be ineligible for a fee waiver or a reduced fee application under current USCIS policy, which would be codified by this proposed rule. By utilizing HUD's median family income calculation in 2022 by state, which is less flexible and variable than calculating the median family income by county, a family of four with an annual household income of \$78,000 would be considered low-income in New York, while the same family would be considered low-income with an income of \$54,300 in Arkansas.¹⁶ By switching to HUD's measure of "low income" to determine "inability to pay," USCIS would be updating and modernizing its initial measure in a way that truly reflects how a person's location determines their quality of life and expenses. HUD's approach is simply more realistic in assessing poverty and accurately determining when someone has an "inability to pay."

The use of HUD's measure would also further equity and access to immigration benefits, which was cited by USCIS as a reason for why it expanded fee exemptions when it came to the conclusion that its proposed fee increases will "inequitably impact the ability of those who may be less able to afford the proposed fees to seek an immigration benefit for which they may be eligible."¹⁷ According to this proposed rule's rationale, the expansion of fee exemptions serves as an equitable counterbalance for humanitarian-based applicants who would otherwise face the proposed increased fees. It should follow, according to this logic, that expanding fee waiver eligibility serves as an equitable counterbalance for family-based applicants, who have not become eligible for the underlying benefit due to humanitarian relief obtained earlier and will have to face the proposed fee increases. Further, the capacity required by USCIS staff to adjudicate fee waivers could be supplanted by the capacity saved by this rule's proposal to exempt fees where USCIS staff was previously adjudicating fee waivers.

USCIS cites three reasons for maintaining its current measure of determining an "inability to pay" via income.¹⁸ The first one, ensuring a consistent national standard for income thresholds, is not a justification but instead a reason for questioning its use. As explained above, location determines cost of living and drastically alters individuals' and families' ability to afford

¹⁶ See "FY 2022 Income Limits Summary: Statewide Income Limits For New York," U.S. Department of Housing and Urban Development, accessed March 4, 2023, https://www.huduser.gov/portal/datasets/il/il2022/2022summary.odn?inputname=STTLT*3699999999%2BNew+York&selection_type=county&stname=New+York&statefp=36.0&year=2022; "FY 2022 Income Limits Summary: Statewide Income Limits For Arkansas," U.S. Department of Housing and Urban Development, accessed March 4, 2023, https://www.huduser.gov/portal/datasets/il/il2022/2022summary.odn?inputname=STTLT*0599999999%2BArkansas&selection_type=county&stname=Arkansas&statefp=05.0&year=2022.

¹⁷ See USCIS Fee Schedule, 88 Fed. Reg. 426.

¹⁸ See USCIS Fee Schedule, 88 Fed. Reg. 457.

immigration benefits. A person living in the most expensive city in the country with the same income as another person in a rural area where their annual income stretches much further are not in the same situation. Nor would their ability to pay for an immigration benefit be the same. USCIS' second reason, that its current measure promotes consistency between USCIS fee waiver eligibility and numerous other federal programs that utilize the FPG for eligibility purposes, is not persuasive. HUD's median family income measure is also consistent with HUD's federal programs and benefits. And applicants who benefit from such programs, and other federal programs and benefits that may be less consistent, could show their receipt of a means-tested benefit as a grounds of eligibility for a fee waiver based on this separate criteria. A significant number of applicants obtain a fee waiver in this manner. USCIS' third reason for maintaining its current measure, not causing confusion among USCIS staff and the general public, could be proactively addressed by trainings for USCIS staff as well as public education campaigns, informing prospective applicants of their potential eligibility, which should accompany this proposed rule regardless of which measure USCIS uses to determine inability to pay via income. The resources required for training and education around fee waiver eligibility would be worth the policy objectives of equity and promoting access to immigration benefits.

B. USCIS Should Alternatively Increase the FPG Threshold for the Income-Based Ground of Eligibility for Fee Waivers

Alternatively, if USCIS ultimately rejects HUD's more realistic approach, the agency can still expand eligibility by increasing the HHS FPG threshold to qualify for a fee waiver. USCIS should do this by increasing the threshold for eligibility to at or below 300% of FPG, at least. This would allow, for example, an individual with a household annual income of \$33,000 and a family of four and with an income of \$69,000 to be eligible for fee waivers.¹⁹ NPNA has heard from its network of legal services providers that in the communities they serve, a majority of the people who do not ultimately apply for an immigration benefit, do not do so because they cannot afford it and their income is between 200% and 300% of FPG, and thus, they do not qualify for fee waivers.

Increasing the FPG threshold would, as would HUD's median family income measure, more accurately reflect poverty in the United States and address current realities such as, 63% of Americans are living paycheck to paycheck; over one-third of U.S. families that work full-time all year do not make enough to cover a basic family budget; and that over half of Black and Latinx families cannot afford basic needs, compared to 25% of white families and 23% of Asian

¹⁹ See "2022 Poverty Guidelines: 48 Contiguous States (all states except Alaska and Hawaii)," Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, accessed March 4, 2023, <https://aspe.hhs.gov/sites/default/files/documents/4b515876c4674466423975826ac57583/Guidelines-2022.pdf>.

and Pacific Islander families.²⁰ What those families can rely on in terms of generational wealth is also affected by long standing racial and ethnic inequality, as Black and Latinx households own only 15-20% of the net wealth that white households own, with this wealth gap widening.²¹ This affects individuals' and families' ability to pay for higher immigration fees, especially as the nation continues to recover from the COVID-19 pandemic. For example, in 2020, 46.7% of unemployed white households could not come up with \$400 in an emergency, compared to 65.2% of unemployed Black households.²² The lack of availability of fee waivers has a racially disparate impact, and this proposed rule will exacerbate this impact through its fee increases and failure to expand eligibility for fee waivers.

There are people in the United States who are not receiving means-tested benefits, are not at or below the current threshold of 200% of FPG, and whose struggles to survive are quite routine and would not qualify under the proposed rule's criteria and examples for "financial hardship." These individuals are excluded from fee waivers as a matter of policy because they make a little more than 200% of FPG, despite their economic struggles and bonafide "inability to pay" for current immigration fees, let alone the proposed fee increases for citizenship, adjustment of status, and other applications. USCIS can address this failure through the proposed fee schedule rule, and is missing a historic opportunity to do so.

C. USCIS Should Preserve the Ability to Apply for a Fee Waiver Without a Form I-912

USCIS should preserve the ability of applicants to request a fee waiver without submitting Form I-912. This would align more closely with the legal standard of "inability to pay." Removing this ability would most likely disproportionately impact *pro se* applicants and those with limited English skills. In the proposed rule, USCIS states that only one percent of applicants requesting a fee waiver do so without submitting Form I-912, and thus the administrative burden of removing this possibility would be minimal. While the proposed fee schedule rule reasons that many of the applications within that one percent receive Requests for Evidence ("RFE"), RFEs are more ideal than outright denials. Maintaining this ability would be more consistent with the proposed rule's

²⁰ See Dickler, Jessica, "63% of Americans are Living Paycheck to Paycheck — Including Nearly Half of Six-Figure Earners," CNBC, October 24, 2022,

<https://www.cnbc.com/2022/10/24/more-americans-live-paycheck-to-paycheck-as-inflation-outpaces-income.html>;

Joshi, Pamela, "Families' Job Characteristics and Economic Self-Sufficiency: Differences by Income, Race-Ethnicity, and Nativity," diversitydatakids.org, Institute for Child, Youth and Family Policy at the Heller School for Social Policy and Management at Brandeis University, August 31, 2022,

<https://www.diversitydatakids.org/research-library/journal-article/families-job-characteristics-and-economic-self-sufficiency>.

²¹ See Aladangady, Aditya and Akila Forde, "Wealth Inequality and the Racial Wealth Gap," Board of Governors of the Federal Reserve System, October 22, 2021, <https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.html>.

²² See Weller, Christian E. and Richard Figuera, "Wealth Matters: The Black-White Wealth Gap Before and During the Pandemic," Center for American Progress, July 28, 2021, <https://www.americanprogress.org/article/wealth-matters-black-white-wealth-gap-pandemic/>.

objective of further implementing E.O. 14012 and facilitating access to immigration benefits.²³ RFEs could be accompanied by information related to Form I-912. RFEs in this situation could even be used by USCIS as a means of proactively addressing potential confusion related to a decision to change to HUD's median family income measure or expand the current HHS FPG measure.

D. The Proposed Rule Should be Accompanied by a Campaign Aimed at Public Education Around Fee Waiver Eligibility

As a coalition that has led campaigns encouraging eligible permanent residents to apply for citizenship, NPNA knows that a lack of knowledge around fee waiver eligibility and around even the existence of fee waivers as a possibility for low-income individuals, represents a barrier for those who are interested in applying for immigration benefits. Regardless of what USCIS ultimately decides on the question of expanding fee waiver eligibility, it should accompany its proposed fee schedule rule with public education efforts aimed at prospective applicants with clear, culturally sensitive, and multilingual information on fee waivers and the grounds for eligibility. This effort can include, but should not be limited to tactics used in the Interagency Strategy for Promoting Naturalization that came out of E.O. 14012.

III. USCIS Should Consider its Revenue Through Expanded Premium Processing as Part of This Proposed Rule in Order to Not Pass Costs of Inefficiencies onto Applicants

USCIS inefficiencies and self-inflicted harms should be considered as part of this proposed rule in order to not pass unnecessary costs onto prospective applicants who are not responsible for backlogs, processing delays, and the broader fiscal situation of the agency. Similarly, progress that has been made by the agency should also be considered. The Emergency Stopgap USCIS Stabilization Act, which allows USCIS to expand the use of premium processing, is an example of this progress and has resulted in over a billion dollars in revenue.²⁴ The Act prohibits premium processing by USCIS if its implementation adversely affects processing times for immigration benefits that are not designated for premium processing.²⁵ Unfortunately, USCIS has decided to not account for this revenue in the proposed rule.²⁶

The decision to not account for this revenue is one that will ultimately have the effect of passing on expenses, as a result of USCIS inefficiencies, onto prospective applicants who are not

²³ See USCIS Fee Schedule, 88 Fed. Reg. 458.

²⁴ See Public Law 116-159, §§ 4101, 4102, 134 Stat. 739 (Oct. 1, 2020); “Proposed Fee Rule Frequently Asked Questions,” U.S. Citizenship and Immigration Services, February 23, 2023, <https://www.uscis.gov/proposed-fee-rule-frequently-asked-questions>.

²⁵ See Public Law 116-159, § 4102(c).

²⁶ See USCIS Fee Schedule, 88 Fed. Reg. 419.

responsible for those inefficiencies. By not considering this revenue, it is ignoring a pool of funds that could be used to lower the fees on applications for citizenship, permanent residence, employment authorization, and other immigration benefits, and counteract the proposed increases that would most harm immigrants by limiting their access to those benefits. This passes the costs onto the applicants, and furthers a bifurcated model of obtaining immigration benefits. On one side of this model, those who can afford premium processing gets a fast-tracked route, while on the other side, low-income and working class immigrants are subject to application backlogs and processing delays, and when fee schedule reviews take place, they are further disadvantaged by having to bear the brunt of fee increases. This is not a fair nor sustainable model.

USCIS cites previous history and the attenuated nature of the revenue as its reasons for not including premium processing revenue as part of this proposed rule.²⁷ However, Congress' passage of the Emergency Stopgap USCIS Stabilization Act was a particularly unique moment in history and Congressional interaction with USCIS operations, and was part of an effort to avoid massive furloughs that would destabilize agency operations and ultimately have a disastrous impact on applicants and the broader public. And as USCIS states in the proposed rule, it will have a more clear vision of the revenue collected through premium processing in the near future.

For these reasons, NPNA requests that USCIS include revenue collected from premium processing as part of its calculations in this rule.

IV. USCIS Claims to Have Authority to Raise Fees Outside of the Notice of Public Rulemaking and the Public Comment Process is a Wrongful Decision and a Step Away from Transparency and Public Consultation

NPNA strongly opposes USCIS giving itself the authority to change immigration application fees outside of the notice of public rulemaking and public comment process pursuant to the Administrative Procedure Act (“APA”). NPNA has been vocal in opposing the previous administration’s four regulatory attempts to restrict fee waivers and its proposed fee increases through the public comment process, submitting our network-wide comment and driving individual and organizational comments.²⁸ NPNA coalition members, the Coalition for Humane

²⁷ See USCIS Fee Schedule, 88 Fed. Reg. 419-20.

²⁸ See Public Comment from the National Partnership for New Americans to U.S. Citizenship and Immigration Services (November 17, 2018), <https://drive.google.com/file/d/0B6fpyBrzxIP2dkExNUU4ZWF2dXhDTS1kOWxremNIN2pDS040/view?usp=sharing&resourcekey=0-Vp7byyqVB55HWSv0zwBvIQ>; Public Comment from the National Partnership for New Americans to U.S. Citizenship and Immigration Services (May 6, 2019), <https://drive.google.com/file/d/1h8r9Zpg1YICdBVE-P7ifNBhAYpBZoT97/view?usp=sharing>; Public Comment from the National Partnership for New Americans to U.S. Citizenship and Immigration Services (July 3, 2019), https://drive.google.com/file/d/10Om-U4G4PdmlHuKr8kq_jWuq7Vq3hJa/view?usp=sharing; Public Comment from the National Partnership for New Americans to U.S. Citizenship and Immigration Services (December 29, 2019), <https://drive.google.com/file/d/1SefcFceJ8-cYUahhhtmlLjsq7Pi6S8Z6e/view?usp=sharing>.

Immigrant Rights and OneAmerica, were litigants in the federal litigation that resulted in a preliminary injunction on the 2020 fee schedule rule, after exhausting administrative remedies.²⁹

USCIS' proposal to change immigration application fees through the Consumer Price Index for All Urban Consumers (CPI-U) removes a significant USCIS practice of great public interest, adjusting fees, from transparency and input, despite the last several years showing us how critical that transparency and input is. In the hands of an administration that is more hostile to immigrants, the ability to increase fees through the CPI-U would be disastrous. The use of CPI-U to adjust fees would also create legal vulnerabilities, as the previous 2020 fee schedule rule was enjoined due to the United States District Court for the Northern District of California's reasoning that the rule was likely arbitrary and capricious and failed to comply with the APA.³⁰ The Court enjoined the 2020 fee schedule rule for failing to adequately explain its rationale in the notice of public rulemaking, whereas this current rule proposes to completely bypass the notice of public rulemaking and public comment process altogether in the future.³¹ USCIS should be working towards increasing public transparency and compliance with APA, not decreasing it. For these reasons, NPNA strongly urges USCIS to remove this provision (Section VIII, T. Adjusting Fees for Inflation) from the final rule.

V. The Modernization of How USCIS Receives Payments for Immigration Applicants Should Not Disadvantage Low-Income Applicants

NPNA welcomes the modernization of how applicants can submit their forms to USCIS but we are concerned that this rule lays the groundwork for unfairly disadvantaging applicants with low-income and little to no access to technology by giving USCIS the authority to require certain applicants to file online and also requiring applicants who file certain paper applications to pay more.

While the use of the internet, broadband, and smartphones has grown considerably in the last several decades, there are stark divides in access based on class and income. For example, 63% of U.S. adults with \$100,000 or more in household income have a smartphone, desktop or laptop computer, home broadband, and tablet computer.³² However, the percentage goes significantly down to 42% for those who have between \$30,000 to \$99,999 in household income, the category of people who would not be eligible for fee waivers under the criteria proposed by this rule. The

²⁹ See *ILRC v Wolf*, Case No. 20-cv-05883-JSW (N.D. Cal., Sept. 29, 2020), <https://nationofimmigrants.lexblogplatform.com/wp-content/uploads/sites/250/2020/10/NILRC-v.-Wolf-Order-Granting-Motion-for-Preliminary-Injunction.pdf>

³⁰ See *ILRC v Wolf*, Case No. 20-cv-05883-JSW, p. 20..

³¹ See *ILRC v Wolf*, Case No. 20-cv-05883-JSW, pp. 20-28.

³² Vogels, Emily, "Digital Divide Persists Even as Americans with Lower Incomes Make Gains in Tech Adoption," Pew Research Center, June 22, 2021, <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>.

percentage goes down even lower to 23% for those earning less than \$30,000.³³ Overall, roughly a quarter of adults with incomes of less than \$30,000 a year do not have a smartphone, 43% of adults with lower incomes do not have home broadband services, 41% lack a desktop or laptop computer, and almost 70% of adults do not have a tablet computer.³⁴

The category of people with less income, both those who qualify for fee waivers and those who do not qualify but still have limited income and limited access to the technology needed to submit applications online, are a significant number of the people who are served by the NPNA coalition of legal services providers. Through this service, our coalition knows that applicants who file paper applications are among the immigrants in most vulnerable situations, live in rural areas or areas with low internet coverage, and are many times getting legal services assistance from community-based organizations with insufficient information technology resources. Requiring these prospective applicants to apply online, or pay more for not doing so, would disproportionately burden those with low financial inclusion and thus undermine the objectives of E.O. 14012.

In justifying its decision to authorize USCIS to require that certain fees be paid online, the agency reasons that any one who can purchase a cashier's check or money order can also purchase a prepaid debit card, and that such prepaid debit cards are available at most convenience, pharmacy, department and grocery stores, or online, and that there's also libraries available to use the internet.³⁵ This rationale is concerning for several reasons.

First, prepaid debit cards have multiple kinds of hidden fees that make them more expensive for prospective applicants, including those with limited income and who are ineligible for fee waivers under this proposed rule. These hidden fees, for reasons like purchasing a card, reloading it, monthly service, purchase transactions, ATM withdrawal, inactivity, balance inquiry, and card cancellation, among others, are especially dangerous for those with limited financial literacy. These fees are a significant part of why prepaid debit cards have become predatory financial instruments that are used to evade consumer-protection laws in states that ban high-cost payday lending, and keep low-income users in a cycle of poverty, drawing the attention of regulators at the Consumer Financial Protection Bureau.³⁶ These hidden fees, and the need for prospective applicants to pay them to continue using the card, can represent the difference between someone applying for an immigration benefit or not. These predatory or financially risky instruments should not be the only way that an individual without a bank account or credit

³³ Ibid.

³⁴ Ibid.

³⁵ See USCIS Fee Schedule, 88 Fed. Reg. 483.

³⁶ Valentin, Joe, "The End of Cash: The Rise of Prepaid Cards, Their Potential, and Their Pitfalls," Center for American Progress, April 4, 2013, <https://www.americanprogress.org/article/the-end-of-cash-the-rise-of-prepaid-cards-their-potential-and-their-pitfalls>; Cowley, Stacy, "Prepaid Debit Cards Users Will Get New Federal Protections," New York Times, October 5, 2016, <https://www.nytimes.com/2016/10/05/business/prepaid-debit-cards-users-will-get-new-federal-protections.html>.

card can apply for an immigration benefit. Inversely, the need for someone to pay for an immigration benefit online should not be the reason why they become vulnerable to financial instruments that will further limit their financial inclusion.

Secondly, to suggest that people, who do not have a financial instrument to apply for an immigration benefit online and lack access to the internet, can instead obtain a prepaid card online is confounding. This argument fails to grasp the reality of those who lack bank accounts and have limited to no internet access.

Thirdly, while libraries play an enormous social good, they are drastically underutilized, with less than half of U.S. adults aged 16 and older (46%) having visited a library in the past 12 months.³⁷ USCIS should not be relying on this underutilized resource to counteract people's limited access to internet service. Doing so would be an imbalance and ultimately result in reducing access to immigration benefits based on a class, and subsequently, a digital divide.

For these reasons, NPNA requests that USCIS revise the proposed fee schedule rule by not giving the agency the ability to require online payment for certain immigration applications and by not having higher fees for paper applications.

VI. USCIS Should Formally Withdraw the 2020 Fee Schedule Rule and Sever it From the Remainder of the Currently Proposed Rule

While NPNA has a series of concerns related to this proposed rule, we also know that we cannot return to the 2020 fee schedule rule.³⁸ We request that USCIS formally withdraw the 2020 fee schedule rule, which was never implemented due to the preliminary injunction in *ILRC v Wolf*.³⁹ However, there was never a final judgment in the case, which has been stayed pending the results of this proposed rule. The currently proposed rule removes some of the worst elements of the 2020 rule, including some exorbitant fee increases, the introduction of a new fee for asylum applications, and the elimination of most fee waivers, and represents a considered policy judgment by USCIS that the elements of the 2020 rule are not desired and are inconsistent with federal immigration laws. However, in the possibility of litigation following finalization of the currently proposed rule, and the possibility that that litigation results in a court finding any portion of the rule unlawful, we should not return to the 2020 fee schedule rule.

³⁷ Horrigan, John, "Libraries at the Crossroads," Pew Research Center, September 15, 2015, <https://www.pewresearch.org/internet/2015/09/15/who-uses-libraries-and-what-they-do-at-their-libraries/>.

³⁸ See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements (CIS No. 2627-18; DHS Docket No. USCIS-2019-0010, Aug. 3, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-08-03/pdf/2020-16389.pdf>.

³⁹ See *ILRC v Wolf*, Case No. 20-cv-05883-JSW (N.D. Cal., Sept. 29, 2020), <https://nationofimmigrants.lexblogplatform.com/wp-content/uploads/sites/250/2020/10/NILRC-v.-Wolf-Order-Granting-Motion-for-Preliminary-Injunction.pdf>.

This is why NPNA is requesting that USCIS formally withdraw the 2020 fee schedule rule, so that in the above potential scenario, we would return to the 2016 fee schedule that is currently in effect. We also request that USCIS state that its withdrawal of the 2020 fee schedule rule is severable from the remainder of the currently proposed rule, so that any court decision invalidating any of the currently proposed rule does not place at risk USCIS' decision to withdraw the 2020 fee schedule rule.

VII. Conclusion

NPNA respectfully requests that USCIS not proceed with its proposed fee increases for citizenship, permanent residence and its interim benefits of employment authorization and travel document, employment authorization itself, removing conditions on residence, and waiving grounds of inadmissibility based on unlawful presence, among other increases that will limit access. The agency should reduce its inefficiencies before raising fees for low-income and working class immigrants. We also urge the agency to utilize its historic opportunity to expand fee waiver eligibility. USCIS should include revenue gained from premium processing as part of its calculation underlying this proposed rule. The agency should also revise the proposed fee schedule rule so that it does not move away from the notice of public rulemaking and comment process, pursuant to APA, and so that it does not disadvantage low-income applicants in its payment policies. And ultimately, NPNA requests that USCIS formally withdraw the 2020 fee schedule rule and sever it from the rest of the currently proposed rule.

Thank you for the opportunity to submit comments and for your consideration. If you have any questions, please contact me at at diego@partnershipfornewamericans.org.

Sincerely,

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