BEFORE THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, AND UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES

Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications	) [DHS Docket No.) USCIS 2018-0001]

Submitted via Federal eRulemaking Portal: http:// www.regulations.gov.

Whitman-Walker Health (WWH or Whitman-Walker) submits these comments in response to the Notice of Proposed Rulemaking (NPRM or Notice) "Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications," filed September 9, 2019, 84 Fed. Reg. 47148.

Whitman-Walker Health opposes the portion of the proposed rule removing regulatory requirements to adjudicate employment authorization applications within 30 days because it will have negative impacts on our clients by creating further delays and barriers to employment authorization, is counter to public policy, and the analysis in the NPRM is insufficient. Whitman-Walker is not opposed to the portion of the rule removing the provision requiring that the application for renewal must be received by USCIS 90 days prior to the expiration of the employment authorization.

EXPERTISE AND INTEREST OF WHITMAN-WALKER HEALTH

Whitman-Walker Health is a community-based, Federally Qualified Health Center (FQHC) offering primary medical care and HIV specialty care, community health services and legal services to residents of the greater Washington, DC metropolitan area. WWH has a special mission to the lesbian, gay, bisexual and transgender members of our community, as well as to all Washington-area residents of every gender and sexual orientation who are living with or otherwise affected by HIV. In calendar year 2018, more than 20,000 individuals received health

services from Whitman-Walker. Given our commitment to caring for everyone in the community and the demographics of the Washington, DC metropolitan area, a substantial number of our health care patients are foreign-born, and many of them have filed for various forms of immigration relief.

Since the mid-1980s, Whitman-Walker has had an in-house Legal Services Department. Because of our commitment to holistic health care, which includes addressing the legal and social determinants of health (and ill-health), for more than three decades our in-house Legal Services Department attorneys and legal advocates, with the assistance of hundreds of volunteer attorneys throughout the area, has provided information, counseling, and representation on a wide range of immigration-related services to WWH patients, to individuals living with HIV, and to foreign-born lesbian, gay, bisexual and transgender (LGBT) individuals and families. We have a robust immigration practice, particularly for LGBT individuals seeking asylum or other relief from removal under our immigration laws. Many of our clients come to the U.S. fleeing persecution in their countries of birth because of their sexual orientation or gender identity. Many of our clients seeking asylum are isolated and ostracized from family support systems and as a result are alienated and unable to access community and family supports due to experiences of homophobia and transphobia.

Although our patients and clients come from every income level, substantial numbers are lower-income. Because of the difficult circumstances in which they have come to the U.S. – for instance, fleeing persecution in their countries of birth – many if not most of our immigration clients and foreign-born health care patients have limited means, particularly until their employment authorization documents are received and they are able to make new lives for themselves and becoming fully contributing members of our society.

COMMENTS ON THE PROPOSED RULE

THE PROPOSED RULE WILL HARM OUR PATIENTS, CLIENTS, AND OUR ORGANIZATION

The changes in the proposed rule that eliminate the regulatory requirement that applications for employment authorizations be decided within 30 days will have major negative impacts on our clients by creating further delays and barriers to employment. It is extremely important for asylum applicants to receive employment authorization as expeditiously as possible. The cost to our clients and patients by delays in employment authorization are harmful beyond the lost wages. They limit access to health insurance and, therefore, limit access to health care – which not only threatens them personally but also jeopardizes the public health. They also perpetuate housing insecurity. They keep individuals whose cases are still being adjudicated from becoming contributing members of society, forcing them to continue to live in poverty and face the ill health resulting from the chronic stress attendant to these conditions.

The proposed rule will limit access to health insurance for asylum applicants, limiting their access to preventive healthcare services and increasing the risk of bankruptcy and poverty. Employment authorization documents provide access to employment and the potential for employer sponsored health insurance. Additionally, the statutory requirements of the Affordable Care Act (ACA) have been interpreted to limit access to the ACA exchanges to asylum applicants 180 days after submitting their application for asylum. (45 C.F.R. § 155.2; 77 FR 18310 (March 27, 2012)) The Centers for Medicare & Medicaid rely on the employment authorization document as proof of eligibility for enrolling in an exchange plan.[1]

[1] HealthCare.gov, Immigration documentation types, *accessible via* https://www.healthcare.gov/immigrants/documentation/

In addition to the proposed rule's negative impact on asylum seekers, the rule will negatively impact safety-net providers, including Whitman-Walker. As an FQHC, we are a community-based organization that provides services to all ages, regardless of their ability to pay. We use our valuable resources operating programs assisting our clients in navigating the public benefit and private insurance systems across Virginia, Maryland, and Washington, DC. Shifting patients to employer-sponsored insurance coverage, or coverage purchased on the exchanges created by the Affordable Care Act is essential to our fiscal sustainability and the good stewardship of our resources. Access to insurance on the ACA exchange is contingent on employment authorization documents. By increasing delays in employment authorizations, the proposed rule would limit access to healthcare; harming both asylum applicants and the organizations that serve them.

THE PROPOSED RULE IS COUNTER TO PUBLIC POLICY

This proposed rule is counter to the government's objectives of personal responsibility and fiscal sustainability. Employment authorizations allow for asylum applicants to begin to build self-reliance and to contribute to the communities where they live.

The proposed rule is detrimental to the Government's goals of reducing fraud, identity theft, and human trafficking. By increasing the wait times for employment authorizations, the government will increase the number of people who, in desperation, may resort to working with false documents, working without documents, or of being trafficked into exploitative labor situations.

Delaying employment authorizations will likely increase vulnerability to labor trafficking. This is particularly true for LGBT asylum applicants, who are especially vulnerable to all forms of trafficking because LGBT immigrants are often without support from family

networks, due to family rejection and societal animus. Many LGBT asylum applicants flee persecution in their country of origin, only to find themselves homeless in the United States after family members refuse to accept them. Prolonged joblessness exacerbates their dire circumstances and places them at extremely high risk of labor trafficking by predatory criminals. The timely processing and issuing of asylum-pending work authorization documents is a crucial step towards ensuring the safety and well-being of an already vulnerable population.

THE ANALYSIS OF THE PROPOSED RULE IS INSUFFICIENT

The OMB's regulatory guidance requires that proposed rules provide enough information for agencies and the public to determine the costs and benefits of proposed regulatory changes. (OMB, Circular A-4, 2003) The OMB recognizes that the distribution between those who pay the costs and receive the benefits is an essential part of the analysis required for proposed rules. The DHS' NPRM fails to fulfill these regulatory requirements to provide information on the distribution of costs and benefits by failing to estimate their own costs of complying with existing regulations.

DHS completed an analysis of the economic harms to immigrants and small businesses, but has not estimated their own costs. (84 Fed. Reg. 47149) Without determining the level of funding necessary to meet their regulatory and court-ordered adjudicatory deadlines, the public and the government do not have the information necessary to determine the costs or benefits of this proposed rule. Failing to consider the costs of complying with existing regulations and court orders is particularly callus as the majority of the costs; hundreds of millions of dollars of lost wages, decreased productivity, and tax losses, fall to asylum seekers, who are some of the most vulnerable and precarious members of our communities. (84 Fed. Reg. 47150)

The cost analysis in the NRPM demonstrates that changing the regulations to remove the 30-day processing requirements for employment authorizations for asylum applicants will result in immense harm to communities of asylum applicants and is detrimental to the Federal Treasury. Without additional information, we cannot analyze if the 30-day requirement is reasonably set to balance the immense harm to asylum applicants of delaying employment authorization and the identification checks that USCIS must undergo to issue the authorizations.

Additionally, we find DHS' arguments of necessity wholly unconvincing. The NPRM cites additional security requirements instituted since 9/11 as the cause of their need for additional processing times. (84 Fed. Reg. 47154) We find this unconvincing because USCIS has met its I-765 processing requirements for 99% of applicants for April, May, and June of 2019, during which they received applications equal to or above the elevated rates they cite as reason for the regulatory change.[2]

REMOVING THE 90-DAY EAD RENEWAL REQUIREMENT IS BENEFICIAL TO OUR PATIENTS

We support removing the duplicative and burdensome 90-day filing requirement for renewal of EAD for asylum applications. The proposed regulatory change brings the regulations in agreement with existing policies and reduces barriers to accessing employment for asylum applicants by instituting a less stringent regulatory scheme.

[2] United States Citizenship and Immigration Services (USCIS) I-765 - Application for Employment Authorization Eligibility Category: C08, Pending Asylum Initial Permission to Accept Employment Completions by Processing Time Buckets FY15 - FY19 (Through June 30, 2019) Aggregated by Fiscal Year and Month *available at* https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/nirp_v_uscis_defendants_july_2019_compliance_report.pdf

CONCLUSION

Thank you for this opportunity to submit comments. We would be happy to provide any additional information that might be helpful.

Respectfully submitted,

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