



Seattle
Office of Immigrant and
Refugee Affairs
Cuc Vu, Director

Submitted via email to: USCISPolicyManual@uscis.dhs.gov

December 14, 2020

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
20 Massachusetts Avenue, N.W.
Washington, D.C. 20529

Re: Revisions to Policy Manual: Civics Educational Requirement for Naturalization

To Whom It May Concern:

The City of Seattle Office of Immigrant Refugee Affairs (OIRA) opposes the revisions, announced by U.S. Citizenship and Immigration Services (USCIS) on November 13, 2020, to the USCIS Policy Manual at Volume 12, Part E, Chapter 2, English and Civics Testing, regarding the educational requirements in Civics and History for individuals applying for naturalization.

USCIS has not demonstrated any compelling reason to expand the civics examination or to make the expanded body of questions more complex and politically motivated. These revisions would create an unnecessary burden for individuals applying for naturalization. They will require client advocates and civics educators to spend significantly more time preparing their clients for the exam, and USCIS adjudicators will need additional interview time to administer the exam. These impacts are significant and will cause USCIS's already significant backlog to increase even longer.

USCIS has not adequately explained the need for the revisions, nor has it gone through the appropriate notice and comment process required by the Administrative Procedure Act (APA). The revisions to the Policy Manual do not acknowledge, much less justify, the negative impacts that the revisions would impose on applicants, service providers, and to USCIS itself.

The City of Seattle is a Welcoming City with a commitment to protect the rights of immigrants and refugees, who are integral parts of our families and communities. Seattle has made great efforts to protect our immigrant and refugee workers and residents. Such efforts include

executive orders¹, resolutions², and ordinances³ to ensure immigrants feel welcome and safe in the city. The City has also funded social programs to help income-eligible residents with what we consider to be basic needs. In 2012, the City created the Office of Immigrant and Refugee Affairs (OIRA) to improve the lives of Seattle’s immigrant and refugee families. The City of Seattle, through OIRA, funds and coordinates the Expanded Legal Defense Network (ELDN) that provides removal defense to low-income residents of Seattle and King County, Washington. OIRA also funds and facilitates two distinct naturalization assistance programs focused on serving low- and middle-income lawful permanent residents (LPRs) by helping them improve their English, prepare for the citizenship interview, and obtain a Form N-648 disability waiver, if needed.

As a Welcoming City that respects and upholds the American value of welcoming immigrants, the City of Seattle and OIRA strongly urge USCIS to abandon its revisions to the Policy Manual that will be in effect for any N-400 application filed on or after December 1, 2020. The existing requirements for naturalization, including the civics exam, are already stringent, and these changes represent the Trump administration’s final effort to make it even harder for LPRs, especially those with limited formal education, to achieve the dream of U.S. citizenship.

I. USCIS did not follow required APA procedures in making changes to the Policy Manual that have the rule and effect of law.

The revisions to the Policy Manual substantially change a key eligibility requirement for individuals applying for U.S. citizenship. The revisions would *require* USCIS adjudicators to impose a higher standard on applicants taking the civics exam. All of these revisions meaningfully increase the difficulty of the civics test:

- Increased number (28% more) of possible questions,
- Increased number (100% + more) of questions proctored,
- Increasingly complex vocabulary and rephrasing used in the questions, and
- Debatable, politically motivated answers to some of the specific questions.

USCIS should have used the rulemaking process to invite input on the likely impact of these revisions. These revisions will cause more applicants to fail the civics test, and an unknown number of applicants will be discouraged from seeking naturalization, in large part due to the increased difficulty of the exam. If agency actions directly result in a portion of the LPR population losing access to the benefit of naturalization, the action is binding on the public and

¹ See http://murray.seattle.gov/wp-content/uploads/2016/11/Executive-Order-2016-08_Welcoming-City.pdf

² See <http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=&s3=&s2=&s4=Ordinance+121063&Sect4=AND&l=200&Sect2=THESON&Sect3=PLURON&Sect5=RESNY&Sect6=HITOFF&d=RESF&p=1&u=%2F~public%2Fresny.htm&r=7&f=G>

³ See <http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?d=CBOR&s1=114436.cbn.&Sect6=HITOFF&l=20&p=1&u=/~public/cbor2.htm&r=1&f=G>

has the force and effect of law. Policies that are not merely interpretations of existing rules⁴, but rather having the effect of law, are required to undergo notice-and-comment rulemaking under the APA.⁵

The revisions to the Policy Manual do not seek to resolve an emergent situation, and USCIS should not have rushed a process that changes the law for those applying for naturalization. USCIS chose to make these changes via revisions to the Policy Manual. Given the impact and enforceability of these changes, this process does not comply with agency obligations under the Administrative Procedure Act.

II. The expanded exam will greatly increase the burden on applicants, USCIS, and service providers.

The changes to the civics exam will cost additional time, resources, and effort for applicants, but also for USCIS and legal services providers and civics educators. OIRA's two naturalization assistance programs, the New Citizen Campaign (NCC) and the New Citizen Program (NCP), serve close to 2,000 clients each year. In response to the revisions to the civics exam, several staff members employed by NCP organizations expressed concern about how both their staff and clients will bear the increased burden.

Applicants will need to study a set of 128 questions instead of 100, and many of the 128 questions will be more complex in their vocabulary and phrasing as compared to the 100 questions on the current (revised in 2008) exam. Applicants will need more time to prepare for the test. A greater number of applicants will be unable to prepare on their own, and to be successful, will need to enroll in a class focused on civics exam preparation, assuming a suitable class is available in their community. Even with increased preparation, more applicants will fail the test at their first interview and will need to return for a second interview to try again, requiring more time away from work and family obligations.

The revisions are causing concern among applicants preparing for the naturalization exam and their legal advocates. An advocate working at an NCP agency discussed her clients' worries about the new exam:

*Clients have come to us in distress, they already feel overwhelmed about embarking on the daunting process of becoming a U.S. citizen. **There is so much already for them to study and prepare, our clients already feel so much stress throughout this process, and now this is one more unnecessary added challenge causing them more stress.** And, for what purpose? Does passing the new version of the civics test really demonstrate more of an understanding/mastery of U.S. civics than the passing the previous version of the test?*

⁴ Administrative Procedures Act, 5 U.S.C. 553(b)(A).

⁵ *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92 (2015), citing *Chrysler v. Brown*, 441 U.S. 281, 302-303 (1979)

Due to confusion over the USCIS announcement and its effective date, advocates must also dispel misinformation circulating among would-be naturalization applicants:

We have also seen a lot of confusion among our clients about the new civics test. Many clients heard about this test but have some misinformation about who will take the new version of the test. We had one client who[se] interview is in mid-December call us nearly crying because she thought after a year of studying the 100 civics questions that she now suddenly needed to learn 128 new questions. We were able to reassure her that she will take the old version of the test, but I worry about individuals who do not have an agency/attorney to help give them correct information on this.

A Department of Justice (DOJ)-accredited representative who provides both legal assistance and citizenship classes related the following about the increased stress the expanded exam will cause:

*A lot of clients have PTSD and/or trauma, [and] adding more questions isn't going to help those folks... **It made a pretty traumatic experience worse, longer, and more difficult.***

USCIS adjudicators will need more interview time to administer the expanded exam. Instead of asking 10 questions and stopping when the applicants has answered six correctly, the new exam requires adjudicators to ask all 20 questions instead of stopping when the applicant has answered 12 correctly. The additional time needed to administer the new exam means fewer interviews can be conducted in the same amount of time, further extending the significant backlogs the agency has faced for several years. And by the Office of the Citizenship and Immigration Services Ombudsman's own admission this backlog has reached an all-time high, as by December 21, 2019, USCIS's pending N-400 applications were 184 percent higher than that same number at the end of FY 2009.⁶ Decreasing the naturalization backlog should be USCIS's goal, rather than increasing an already egregious delay that notably also disenfranchises Americans.⁷

Additionally, more applicants will fail the exam at the first interview, requiring USCIS to schedule and conduct more second interviews, which again increases the wait time for those awaiting their naturalization interviews. Some will also fail at their second attempt, and if they decide to reapply in the future, they will have to pay another hefty filing fee. Increasing the exam failure rate by making the test longer and more complex should not be USCIS's goal, and USCIS has not justified why such changes are called for.⁸

⁶ *Annual Report 2020*, Office of the Citizenship and Immigration Services Ombudsman, June 30, 2020, https://www.dhs.gov/sites/default/files/publications/20_0630_cisomb-2020-annual-report-to-congress.pdf.

⁷ *Citizenship applicants caught in backlog distraught over inability to vote this year: 'I feel like my voice is not going to count'*, Washington Post, (Aug. 31, 2020), https://www.washingtonpost.com/politics/citizenship-applicants-caught-in-backlog-distraught-over-inability-to-vote-this-year-i-feel-like-my-voice-is-not-going-to-count/2020/08/31/b77271ca-e932-11ea-970a-64c73a1c2392_story.html .

⁸ The current pass rate for the citizenship test is 91 percent. In Fiscal Year 2019, USCIS received 830,560 naturalization applications. If the pass rate had decreased by just 5 percent, down to 86 percent, it would have caused over more 40,000 denials in FY 2019.

Community-based organizations (CBOs) that help applicants prepare for the test will need to adjust their classes and their materials, with significant cost and effort. Students will need additional class time to prepare for a more challenging test, and the existing classes may need to be expanded in number of students enrolled per class, number of available classes, or both. Meeting the increased needs of students require hiring more teachers and/or increasing the salaries of existing teachers. A greater number of students will need to take additional classes or repeat sessions, and more students will need one-on-one assistance. Curricula and lesson plans that CBOs have developed and refined since the last changes to the exam in 2008 will need to be revised, and organizations will need to create and/or purchase new materials. CBOs, many already be struggling with extremely lean budgets, will expend significant effort to update their classes and will be forced to absorb the additional cost as well.

An advocate, who coordinates her agency's citizenship training program and supervises the paid and volunteer citizenship instructors, stated the following:

*The changes to the test are already caus[ing] a significant added workload to our citizenship team, particularly around our citizenship preparation classes...We have current citizenship students who will likely wait an additional year before they have their interviews, and may want to continue in our classes until then, but we will also have new students joining our classes who will need to prepare for the new civics test. **So we are looking at how to teach both versions of the test in all our classes for potentially the next 12 months.** Developing a plan like this...is very time-consuming. On top of this, there are no study materials available yet for the new civics test.*

***We have no idea when USCIS will publish study materials or when textbook publishe[rs] will issue update books.** Without these essential study materials for our classes, it is very difficult to start preparing our students or to make concrete plans for when/how to start preparing students for their civics tests. The longer the wait for such materials, the less time our students have to prepare, which creates anxiety for them and also puts them at a disadvantage. So we will have to consider at what point to start creating all of our own study materials for our students to prepare for this new test, which will be an additional workload for our team.*

One DOJ-accredited representative discussed the impact of the expanded exam in the context of providing citizenship training via online video conferencing due to social distancing guidelines. With some applicants having their applications submitted prior to December 1, 2020, and others submitted after, students are effectively on two different tracks. Offering a civics class to a group of students preparing for two different tests is more challenging when the group is not able to meet in person.

***It makes it super hard for our classes especially because we aren't in person.** We can't divide the class into groups where one person teaches the old questions and the another teaches the new over [online video conferencing platform] Zoom. In person, it could be done, but it would still be difficult logistically.*

In developing and approving the expanded civics exam, USCIS did not fully account for the significant burden and cost to be borne by clients and the nonprofit organizations that serve them. USCIS has not offered a plan or strategy for how its own services will avoid being dragged down and further delayed due to the increased workload likely to result from the expanded exam.

III. The expanded exam will increase the naturalization denial rate and discourage would-be applicants from even starting the process.

USCIS designed the expanded exam to be more challenging than the current one, and as a result, tens of thousands of applicants who cannot pass will be prevented from naturalizing each year.⁹ The number of questions asked during the exam would be expanded from as few as six (if the applicants answers all six correctly) to 20, of which 12 answers must be correct. In addition, many of the questions require more in-depth responses, i.e. asking applicants to name five of the original 13 states instead of the current three.

Some questions have been rewritten with more advanced language that may be difficult for applicants with limited English proficiency to understand. Even if an applicant understands the question's subject matter, its complex wording would require a higher level of English comprehension than would otherwise be tested during the English portion of the naturalization exam.

If the citizenship test pass rate for Fiscal Year 2019 were to decrease just 5%, from 91% to 86%, this would result in more than 400,000 applicants to be denied over a ten-year period. This impact will primarily affect applicants who are disabled, low income, limited English proficient, and/or who lack formal education. These applicants will be further discouraged in their attempts to fully integrate into their local communities and the U.S. as a whole.

If more applicants are denied citizenship due to failing the civics test, information of this will spread quickly within immigrant communities. A more intimidating exam will discourage many potential citizens, including those fully capable of passing the test, from applying for naturalization. This will suppress application rates for years to come. If the changes to the Policy Manual are finalized, USCIS would be deterring many individuals, including long-term permanent residents, from taking the final step towards full membership in American society and civic life. This is the antithesis of welcoming new citizens and recognizing the benefit they bring to our country.

⁹ Id.

IV. Changes to both the exam content and administration are unnecessary and flawed.

USCIS proposed major revisions to both the *content* of the test and the *manner* in which the test will be administered. Neither type of change is justified, especially in light of the additional burden such changes will impose. A side-by-side comparison of the expanded exam with the current version shows that only 40 of the 100 original questions were retained in their current phrasing and content, while the rest (88 of 128 questions on the expanded exam) are either new questions (28) or rephrased in their wording (60). Learning 88 new or rephrased questions greatly increases the task for those who have been preparing for a test with the 100 existing questions.

Civics educators are concerned about the new or rephrased questions. Many are more difficult because of their use of abstract words, awkward grammatical structure, advanced vocabulary, or that they require answers containing specific phrases that are difficult to remember or restate. Some answers could be considered subjective or selective, and a few seem to be driven by the current administration's political agenda.

Some of the more problematic questions include:

Question: Why do U.S. representatives serve shorter terms than U.S. senators?

Answer: To more closely follow public opinion.

Question: What is the purpose of the 10th Amendment?

Answer: [That] powers not given to the federal government belong to the states or to the people.

Question: Who does a U.S. senator represent?

Answer: Citizens of their state (changed from "all the people" of the state)

Question: Who does a member of the House of Representatives represent?

Answer: Citizens in their (congressional) district (again changed from "all the people" in their district)

Further, USCIS has provided no explanation for why an applicant must submit to all 20 questions during the interview, even when they have correctly answered the 12 required to pass. Some advocates worry that adjudicators will consider the additional questions in evaluating the applicant's overall ability in English, even though this is not the intent of the civics exam. As stated above, it is also a waste of time that will needlessly extend the naturalization backlog.

The revisions leading to the 2008 (currently-used) version of the exam took place over a six-year period, with a great deal of input from subject matter experts.¹⁰ In the changes set to take effect on applications filed after December 1, 2020, USCIS has not provided sufficient justification for replacing previous content, adding new content, and rephrasing existing content. This process was conducted with minimal opportunity for stakeholder input and a smaller pilot program to evaluate the new exam, much of it conducted during the COVID-19 pandemic.¹¹ In addition, USCIS's announcement and implementation of the changes did not require such urgency. With the announcement made on November 13 of a December 1 deadline, agencies were given a period of two weeks, including the Thanksgiving holiday, to submit applications eligible for the old version of the exam. CBOs hoping to file nearly completed applications prior to December 1 had minimal time to do so. This lack of adequate notice further harms applicants and the CBOs who assist them.

If USCIS had adhered to the Administrative Procedure Act and provided a notice and comment period during which the public could address proposed changes, USCIS would have been asked, and compelled to answer, questions related to their methodology in designing the expanded exam and the justification for the changes.

V. Conclusion

The changes to the civics portion of the naturalization exam will soon make it more difficult for applicants, especially the elderly, limited English proficient, and those lacking formal education, to obtain U.S. citizenship. The changes are considerable in both substance and application and will demand significant additional efforts from applicants, legal service providers, citizenship instructors, and USCIS itself.

The revisions, made via changes to the USCIS Policy Manual, have not been subjected to sufficient analysis and scrutiny by either experts or the general public. By improperly avoiding the notice and comment requirement of the APA, USCIS has attempted to make yet another significant policy change without providing any meaningful justification of the change or the “problem” that necessitated it.

The revisions will cause more people to fail in their dream of achieving U.S. citizenship, while deterring many from even trying. The revisions will be costly to nonprofit organizations and USCIS itself. The expanded exam does not improve the naturalization process but instead

¹⁰ See Catholic Legal Immigration Network, Inc., *A More Perfect Union* 51-58 (2007) (providing a history of the test revision process that culminated with a new test in 2008), <https://cliniclegal.org/resources/citizenship-and-naturalization/more-perfect-union-national-citizenship-plan>.

¹¹ *U.S. Citizenship and Immigration Services, USCIS Announces New Naturalization Test, News Release* (Sept. 27, 2007). See also *Maria Sacchetti, Trump Officials Unveil New U.S. Citizenship Test, as Advocates Worry It Is Too Long, Difficult, and Politicized*, *Washington Post* (Nov. 13, 2020), https://www.washingtonpost.com/immigration/new-us-citizenship-test-trump/2020/11/13/2029723e-25e9-11eb-8672-c281c7a2c96e_story.html.

create even more hurdles for those seeking a sense of belonging, and full membership in, American society. **The Seattle Office of Immigrant and Refugee Affairs opposes these changes to the USCIS Policy Manual and urges USCIS to withdraw them promptly.**

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cuc Vu', with a long horizontal stroke extending to the right.

Cuc Vu, Director

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