Seattle
Office of Immigrant and
Refugee Affairs
Cuc Vu, Director

May 4, 2019

Submitted via email

OMB USCIS Desk Officer
dhsdeskofficer@omb.eop.gov

Re: Agency USCIS, OMB Control Number 1615-0116 - Public Comment Opposing Changes to Fee Waiver Eligibility Criteria, Agency Information Collection Activities: Revision of a Currently Approved Collection: Request for Fee Waiver FR Doc. 2019-06657 Filed 4-4-19; 84 FR 13687, 13687-13688

Dear Desk Officer:

The City of Seattle ("the City") submits this comment in response to the proposed revision of a currently approved collection published by the Department of Homeland Security (DHS) and the United States Citizenship and Immigration Services (USCIS) in their Agency Information Collection Notice published on April 5, 2019 and to address the responses by USCIS to comments previously submitted in response to their Notice of Proposed Rule Making (NPRM) published on September 28, 2018.

The City of Seattle continues to strongly oppose the proposed rule to modify Form I-912, Request for Fee Waiver.

The City of Seattle created the Office of Immigrant and Refugee Affairs (OIRA) in 2012 to improve the lives of Seattle's immigrant and refugee families. The City of Seattle, through its Office of Immigrant and Refugee Affairs, funds and coordinates two naturalization programs called the New Citizen Campaign (NCC) and the New Citizen Program (NCP) to help an estimated 75,000 Seattle-area legal permanent residents ("LPR") become U.S. citizens. Since its inception in 1997, NCP has served over 19,000 people, provided naturalization assistance to over 12,300 LPRs, successfully naturalized 9,500 LPRs, and provided over 90,000 hours of citizenship instruction. NCC works with community partners to co-host events called citizenship clinics and workshops all over Seattle that have to date served 1,701 LPRs.

Form I-912 allows individuals with financial need to apply for certain immigration benefits without a filing fee. Fee waivers aid the most vulnerable immigrants, including refugees, asylees, unaccompanied minors, and victims of trafficking. For LPRs eligible to naturalize, it affords those unable to pay the $725 filing fee the opportunity to achieve the dream of U.S. citizenship. The proposed modification for Form I-912 would

make it significantly more difficult for the City's constituents and program participants to prove eligibility for the fee waiver.

Additionally, the "USCIS Responses to Public Comments Received on the 60-Day Federal Register Notice, 'Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions,' 83 FR 49120"[1] did not adequately address any of the concerns expressed in OIRA's initial public comment.

I. **The proposed rule change would cause inefficiency and overwhelm the limited resources of applicants, advocates and USCIS. And USCIS has not adequately addressed the burden that the proposed rule change would create for low-income lawful permanent residents attempting to become U.S. citizens.**

A significant portion of OIRA's initial comment focused on the harm the proposed fee waiver changes would cause Seattle residents and specifically the participants of our two City of Seattle naturalization programs. In fact, a significant portion of comments to the initial public response period addressed the concern that a change to the fee waiver would meaningfully harm applicants for immigration benefits. Yet, the USCIS response belittles these significant concerns by stating, "USCIS does not believe the changes are an excessive burden on respondents" (Comment Response 1).

What makes this worse is that USCIS notes that while Paperwork Reduction Act (PRA) Federal Register Notices "do not rise to the level of notice and comment rule making, they do provide public notice and demonstrate that commenters' concerns have been considered" (Comment Response 3). By brushing aside and failing to respond to the unnecessary burden associated with this changed fee waiver process, USCIS demonstrates that it has indeed not at all considered commenters' concerns.

Doubling down on this lack of concern for the burden that will face alien applicants seeking a fee waiver, USCIS further assumes that a person would not apply for public assistance solely to qualify for a fee waiver. This assumes that USCIS policy and information collection do not affect the decisions of immigrants seeking benefits. Yet, in practice, we have seen clearly that USCIS policy and even leaked policy updates and proposed rule changes affect the decisions of immigrant applicants. The prime example of this is the decision by many immigrant and refugee families to drop out of public assistance programs over fears of becoming a public charge after the draft version of the 2017 White House executive order pertaining to public charge leaked in February 2017. OIRA received reports from both immigrants living within Seattle and staff from immigrant-serving non-governmental organizations that immigrants themselves started

[1] U.S. Citizenship and Immigration Services, Federal Register, Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver, Docket ID: USCIS 2010-008, "USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice," April 5, 2019, https://www.regulations.gov/document?D=USCIS-2010-0008-1243.

refusing local and federal benefits that they qualify for and also requested case managers to disenroll them from social programs that they are eligible for. This trend has been widely documented by media outlets.[2] [3]

Similarly, families who may not be able to easily demonstrate low-income for an income-based fee waiver may choose to obtain benefits to demonstrate to USCIS their eligibility for a benefits-based fee waiver. OIRA's initial public comment demonstrates clearly the difficulty applicants and legal advocacy agencies have in successfully applying for fee waivers based on income. This difficulty may motivate some applicants to retain or apply for public benefits for which they are eligible to demonstrate financial need and inability to pay USCIS filing fees. Immigration policy affects the everyday decisions of immigrants and refugees. Assuming otherwise demonstrates a huge gap or a willful disregard in USCIS' understanding of its customers.

II. The documents necessary for an I-912 based on income or hardship are challenging, if not impossible, for certain applicants to obtain, despite USCIS assertions the process is easy.

USCIS makes baseless assumptions about the availability of proof of income documentation in the response to public comments for the previous 60-day comment period. They state that "applicants who receive a means tested benefit should have income documentation readily available" (Comment Response 7). This statement is false in two ways. First, there are many circumstances in which immigrants and refugees would receive means-tested public assistance without any earned income whatsoever, meaning they would have no proof of income. Recently resettled refugees fall into this category, among many others. The assumption that someone who receives a means-tested benefit should have proof of other income is unsupported.

An example we provided in our first public comment, which USCIS failed to respond to, considers an applicant who is currently unemployed and therefore has no proof of current income. She may qualify for public benefits by providing a job termination letter or other proof to the benefits-granting agency. After her unemployment claim has passed, she may still qualify for public assistance based on her original income documentation because she has still not gained employment and therefore has no earned income. Benefits-granting agencies understand these circumstances and, in many cases, continue to grant assistance. This individual would not have proof of current income, or lack thereof, aside from documentation showing her receipt of public assistance.

Second, while some applicants may have income documentation readily available, this documentation does not necessarily meet the current or proposed requirements of Form I-912 eligibility. Currently, a filed income tax return is insufficient evidence for filing Form I-912 because more recent income documentation,

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[2] Shapiro, Nina, "As Trump considers penalties, Seattle-area immigrants turn down public benefits they're entitled to claim," Seattle Times, August 12, 2018, https://www.seattletimes.com/seattle-news/legal-immigrants-in-seattle-area-alarmed-over-possible-penalties-for-using-benefits/.

[3] Baumgaertner, Emily , "Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services," New York Times, March 6, 2018, https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html.

such as pay stubs, are needed to cover the gap between the previous year's income and the current immigration filing. Past practice has shown that a tax transcript or W-2s are insufficient proof of even taxable income and do not necessarily meet the evidentiary requirement to show household income for purposes of fee waiver eligibility. In rejecting these fee waiver applications for insufficient proof, USCIS has offered the rationale that neither tax transcripts nor W-2s officially show a family's taxable income the way tax returns do.

The USCIS responses to the initial comment period state that tax transcripts are the preferred alternative to the most recent year's tax return for proof of income. This is ironic in that it has been USCIS practice to *not* accept transcripts in support of the Form I-912, the Affidavit of Support or as evidence of having filed taxes to establish good moral character for naturalization eligibility. It is also ironic in that an applicant would usually have no reason to obtain tax transcripts and would need to order these. While an applicant may be able to view tax transcripts online, this requires the following proof according the Internal Revenue Service (IRS): "access to your email account; your personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan; and a mobile phone with your name on the account."[4] Anyone who has worked with low-income populations knows that access to an individual mobile phone account or email address, much less other financial accounts, can be out of reach.

This means that whole segments of the population who would need to obtain tax transcripts in order to qualify for a fee waiver would be unable to do so immediately online. Those without the above information can have tax transcripts mailed in five to ten days to the mailing address *listed on the last tax return*. Applicants who have moved since then would experience an additional burden. None of this evinces the USCIS claim that this form of income documentation is "readily available." Additionally, the IRS has instituted a new tax transcript protocol to protect taxpayer data. This new transcript will include limited identifiable information for the taxpayer, including the last four digits of the social security number and the first four characters of the taxpayers' surname.[5] USCIS has not addressed whether this redacted tax transcript will be sufficient for use as evidence of an applicant's income without their full identifying information.

The USCIS response also states that W-2 forms would offer enough proof of a person's income for fee waiver eligibility (Response to Comment 8). And while W-2s are readily available to an individual tax payer after February of the next year, it does not mean that USCIS will accept this as proof of household income in practice or that the W-2s of an applicant's household members are "readily available." The USCIS summation that this will cause a "potential small burden increase" is a gross understatement and completely ignores the bulk of public comments by OIRA and others. Similar to tax returns, W-2s reflect an individual's earnings during the previous calendar year. If an individual, at the time they are applying for

[4] https://www.irs.gov/individuals/get-transcript

[5] https://www.irs.gov/individuals/about-the-new-tax-transcript-faqs

naturalization, is not earning as much as they did in the previous year, their W-2 paints an inaccurate picture of their economic need.

III. The proposed rule change would directly harm low-income immigrants.

USCIS continues to ignore the disproportionate harm this policy change would have on low-income immigrants. In the response to Comment 11, USCIS states that "providing the criteria in policy guidance for how an applicant may provide evidence of eligibility to have such fees waived is neither punishing nor discriminatory." However, based on our work with LPRs and based on comments from our community partners, the criteria as stated in NPRM will negatively impact immigrants with low incomes. Hence, the criteria as stated is both discriminatory and punishing to low-income immigrants. USCIS proceeds to then not respond to the discriminatory nature of this form change against low- and very low-income applicants. Instead their response to Comment 9 asserts that applicants who are unable to obtain a fee waiver for naturalization can instead simply renew their green card, ignoring the fact that someone unable to pay the $725 naturalization filing fee may be similarly unable to pay the $495 green card renewal filing fee.

In response to Comment 11, USCIS notes that prior to current policy, low-income applicants still filed for benefits and paid fees. This is a difficult statement to interpret but unhelpful no matter the interpretation. Prior to the introduction of USCIS Form I-912, applicants still had the opportunity to request that fees be waived, by demonstrating their inability to pay as stated in CFR 103.7(c)(2). Applicants requesting that fees be waived would still submit evidence of inability to pay, including proof of receiving means-tested benefits. Moreover, USCIS provides no evidence regarding rates of application filings among low-income applicants prior to Form I-912 and after.

Throughout its responses, USCIS promotes an unfounded claim that immigrants are taking advantage of the system through fee waiver filings. USCIS asserts in response to Comment 10 that families with income "considerably above the poverty level" are granted fee waivers. Evidence of this claim is not provided anywhere in USCIS's responses and is damaging in that those who are likely to suffer most under this proposed change are the very low-income families who do not have enough earned income to warrant tax filings or who have no earned income at all and therefore no documentation of financial hardship aside from their receipt of public benefits.

IV. The proposed rule change will reduce the number of low-income individuals applying for naturalization, and thereby decrease the positive effects of naturalization.

In addition to not clearly demonstrating why the current criteria for fee waivers is damaging to the agency, USCIS also fails to respond to the argument that providing fee waivers for naturalization applications leads to immense individual and community benefits, both economic and otherwise. Recent studies show the enormous contributions of naturalized U.S. citizens and the individual economic improvements immigrants experience when they naturalize. For example, if all eligible LPRs naturalized, it could add $2 billion in

annual tax revenue nationally.[6] Moreover, naturalized citizens are less likely to experience unemployment[7] and are more likely to buy homes, to invest in their local economies,[8] and to increase their earnings by eight to 11 percent.[9] By neglecting to respond to the positive outcomes for naturalized citizens, USCIS further promotes the ideology that immigrants are unfairly taking advantage of the fee waiver process.

V. The proposed rule change would drain the resources of U.S. Department of Justice (DOJ)-recognized agencies.

USCIS does not address the increased burden for immigration advocates and DOJ-recognized agencies, except to note that advocates will now need to provide affidavits to victims of certain types of crime to replace the previous standard of providing proof of means-tested benefits, (see below for further discussion). In response to Comment 7, USCIS asserts that nonprofit community organizations would simply need to copy applicants' income tax returns instead of copying their public assistance letters. However, as outlined above, many low- and very-low income immigrants and refugees do not have income tax returns, other proof of income, or in some cases, any income aside from public benefits.

In these cases, a nonprofit agency may need to assist the applicant in filing income taxes, despite the fact that the applicant's income is so low they would not otherwise be required to file federal income taxes. Or they may need to assist the applicant in obtaining IRS tax transcripts, with the difficulty of that process outlined above. For those who have never earned taxable income, agencies would need to apply to obtain tax transcripts and W-2s in order to obtain proof from the IRS that the agency has no such documents on file for those individuals. Advocates may need to call in the client's family members to appointments to offer affidavits on behalf of the applicant or to provide their own W-2 forms or file taxes for these household members. In none of these cases is the process as easy as obtaining a copy of the person's proof of receiving public assistance. And it is unlikely that these additional efforts would be deemed sufficient to prove income eligibility for the fee waiver. Advocates would additionally need to collect proof of *current* income on behalf of all household members to submit with the application. All of this requires hours of additional work that is completely ignored in USCIS's consideration of this form change.

The resources needed to prepare income- or hardship-based fee waiver applications will overwhelm the limited resources of nonprofit agencies that help LPRs. Agency staff time could be more efficiently used to prepare applications and attend client interviews at USCIS than collecting IRS documentation on behalf of clients' household members. Collectively, the extra time expended per client will mean fewer clients served. As many grants to service providers are based on outputs and outcomes, serving fewer clients and performing fewer service activities may lead to reductions in outside funding. As funding decreases, agencies may be forced to lay off staff, further hampering their capacity to serve clients.

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[6] https://www.urban.org/research/publication/economic-impact-naturalization-immigrants-and-cities/view/full_report

[7] https://www.migrationpolicy.org/research/economic-value-citizenship

[8] http://publications.unidosus.org/handle/123456789/1123

[9] https://dornsife.usc.edu/csii/citizen-gain/

Staff layoffs make it harder for agencies to retain institutional knowledge and maintain DOJ recognition. DOJ accredited representatives must study immigration law and obtain practical work experience, often for several years, to attain this credential. They attend trainings to stay informed about changes to the law. Cuts to staffing are a waste of the finite resources spent on staff training and lead to a gutting of the knowledge base of an individual agency. All of this adds up to direct harm to dozens of Seattle-area nonprofit agencies serving low-income immigrants and refugees, and the USCIS response to initial comments fails to address this harm.

VI. Redetermining the income status of public benefits recipients is a waste of government resources.

USCIS does not respond to this proposal being a waste of government resources, but instead responds to the argument it would waste taxpayer dollars. They assure that the agency, including fee waiver adjudication, is funded by application filing fee income. The argument that USCIS does not waste taxpayer money misses the point that the proposal would waste government resources, including local agency resources and USCIS fee income.

First, USCIS's proposal to re-adjudicate an applicant's level of income after the local benefits-granting agency has already done this is wasteful and unnecessary. USCIS' response to Comment 5 states that the fee waiver "request is distinct from that of other benefits granting agencies," but does not give any reasoning as to why. The law governing fee waivers requires the person demonstrate their "inability to pay" (CFR 103.7(c)(2)). USCIS gives no argument to understand how a person's inability to pay for food, housing, or electricity is so distinct from their inability to pay for an immigration benefit.

Second, the response to public comments asserts that fee waiver adjudication is funded by income from other application fees, and that applicants who pay fees should not pay higher fees to offset the costs of fee waiver-based applications. This again is part of the agency's underlying argument that immigrants who request fee waivers are leeching off those who pay filing fees. Yet the Department of Homeland Security (DHS) has little problem expending fee income on completely unrelated programming. DHS's recent budget proposal actually plans to divert filing fee revenue away from adjudication. The proposed DHS FY 19 budget identifies a transfer of $207.6 million from the Immigration Examination Fee Account (IEFA) to fund ICE enforcement initiatives "consistent with the Administration's Executive Orders," such as the border wall and increasing the number of detention beds.[10] This transfer of huge amounts of fee revenue does not illustrate USCIS's expressed concern for fee-paying applicants.

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[10] From the proposed budget (https://www.dhs.gov/sites/default/files/publications/DHS%20BIB%202019.pdf) providing the this context on the Immigration Examinations Fee Account (IEFA): "USCIS collects fees to recover the full cost of providing immigration adjudications and naturalization services. This includes the cost of investigatory work necessary to adjudicate applications and petitions, including work performed after an adjudication decision has been rendered by USCIS."

Third, USCIS does not address the increased resource burden of requiring each individual file their own I-912, where previously household members could file a single joint application to waive fees on some application types. In response to Comment 15, USCIS states that less than 10 percent of I-912 filings were for multiple members of the same household using the same form. While no year is cited for this rate, the USCIS response to Comment 4 cites that for FY 2017 the agency approved 588,723 fee waiver applications representing 86 percent of fee waiver filings. This tells us that the total I-912 filings for FY 2017 was 684,572. If we follow the statement that approximately 10 percent were filed using one form for multiple household members and using FY 2017 numbers, this means there would be at the very least an increase of 68,457 I-912s should this proposed rule be enacted. A 10 percent increase in adjudications is objectively a significant increase in the use of government resources. And the 10 percent increase assumes an average household size of two for those previously filing together on one fee waiver. If the average household size is three, the proposed change would create 136,914 more filings annually, and the increase in USCIS adjudication resources only goes up if the average household size is larger. USCIS does not address this increased resource burden of at least 10 percent more fee waiver adjudications through this proposed change.

VII. The USCIS responses to public comments address additional arguments inadequately or not at all.

First, USCIS does not offer any information as to why the "inability to pay" as the basis of demonstrating fee waiver eligibility from CFR 103.7(c)(2) must equate to income below 150 percent of the federal poverty guidelines. In several responses to comments, the agency asserts that fee waiver adjudication is uneven because some public benefits recipients earn above 150 percent of the poverty line, but does not address the fact that in many jurisdictions, earning 150 percent of the poverty guidelines would not allow a household to afford rent, food, and other basic survival needs. Last year, the National Low-Income Housing Coalition (NLIHC) released their annual Out of Reach report showing that federal minimum wage would not cover rent anywhere in the United States.[11]

More important to this discussion, it shows that nationally, a family would need to earn $22.10 an hour to afford a modest two-bedroom apartment. Assuming this rate applied to full-time work, annual earnings to afford a two-bedroom apartment would be $45,968.[12] For a family of four, this would be well above the USCIS fee waiver standard of $37,650 of 150 percent of the federal poverty guidelines. It is also above the threshold for a family of five. A family of five that is unable to afford a two-bedroom apartment can hardly be expected to come up with hundreds to thousands of dollars in USCIS filing fees. Leaders from the USCIS Seattle Field Office have used the high cost of living in the Seattle area as a reason for that office's chronic understaffing and hence that office's ongoing adjudication delays and backlogs. They have stated that the salary of USCIS officers is insufficient to meet the high cost of living in the area, and therefore the office

[11] https://www.cbsnews.com/news/minimum-wage-doesnt-cover-the-rent-anywhere-in-the-u-s/?fbclid=IwAR2eKx3fRzsvJHwZHaaob_Lj6FLjbvXu9gDI7IDeTpU0n7d2-knJf8rkpEg

[12] http://nlihc.org/oor

has difficulty hiring staff to adjudicate applications.[13] Surely, if USCIS officer salaries are not enough to afford living in a major metropolitan area, an applicant with earnings slightly above 150 percent of the poverty line living in a high-cost area should be justified in demonstrating their inability to pay with proof of means-tested benefits.

USCIS itself also proposes that this standard of 150 percent of the federal poverty guidelines is insufficient to prove financial stability. The current standard for determining an intending immigrant would not become a public charge is an affidavit of support filed on behalf of the immigrant by someone earning at least 125 percent of the poverty guidelines. Yet in October 2018, USCIS proposed changing the public charge determination standards through another NPRM.[14] One of the altered criteria was to use an annual income of 250 percent or above the federal poverty level as a positive factor in someone's ability to avoid a public charge determination, while income below 125 percent of the line is a negative factor. USCIS maintains that a household below 125 percent of the poverty line is unable to prove financial soundness, but someone above 150 percent of the poverty level is too wealthy to warrant assistance in paying fees that can add up to thousands of dollars.

Second, some statements in the USCIS response to comments appear to purposefully bend the truth. For instance, in the response to Comment 12, they state, "USCIS did not propose to change any requirement for obtaining immigration benefits." It may be true that this form change does not alter the form or collection requirements for any benefit-granting forms. However, in practice, changing the fee waiver eligibility criteria does negatively affect an applicant's ability to obtain immigration benefits. The statement above is completely disingenuous and counter to the purported outcomes of this form change.

VIII. Proposed accommodations for victims such as VAWA, T Visas, U Visas, and SIJS in this updated proposed information collection revision are insufficient and nonsensical.

OIRA's previous comment did not address the potential ill effects of the proposed form change on Seattle's most vulnerable immigration benefits applicants. However, the USCIS response compels us to address this issue. First, the USCIS response proposes to burden advocates for VAWA and T and U visa recipients with more work to prove fee waiver eligibility. The agency asks these agencies to provide survivors with affidavits explaining the benefits they receive from said agencies. This is flawed in that many, if not most, agencies providing support for survivors rely on their client's receipt of public benefits to pay the costs of their shelter, food, or other necessities. Asking these agencies to provide affidavits that they administer the survivors' receipt of public assistance puts an additional time and resource burden on agencies by asking them to write a letter explaining the receipt of benefits that a letter from the public assistance agency could have done. If the agency does provide financial assistance or housing to survivors, they may not wish to disclose this information, given the vulnerable nature of housing survivors.

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[13] U.S. Citizenship and Immigration Services District 20 Quarterly Stakeholders Meeting, December 6, 2018, USCIS Seattle Field Office, 12500 Tukwila International Boulevard, Seattle, Washington 98168.

[14] Inadmissibility on Public Charge Grounds, Notice of Proposed Rulemaking, 83 Fed. Reg. 51114, DHS Docket No. USCIS-2010-0012.

This last point is amplified by USCIS's decision in Comment Response 20 that it is "unnecessary" to add information to form I-912 instructions about the legally mandated obligation to protect the safety and confidentiality of victims of violence, trafficking, and other crimes. An agency that assists survivors of crime or domestic violence that is not normally required to write affidavits surrounding an applicant's current economic situation would not be encouraged to provide this information for a form type that does not even specify the information will be protected for survivors of abuse, trafficking, and crime.

IX. In sum, the proposed rule creates massive inefficiency without any clear gain, and USCIS utterly fails to address the concerns of the public about this policy shift disguised as a form change.

The City of Seattle continues to strongly oppose the proposed rule to modify the Form I-912, Request for Fee Waiver.

The City of Seattle opposes the proposed changes to the Form I-912 because it would cause additional obstacles for individuals applying, and otherwise eligible for, immigration benefits. The rule change will not improve efficiency or reduce costs for the U.S. government, and will likely cause significant additional costs and extended processing delays. The upside for the government was not demonstrated in the initial proposed form change, nor in the USCIS response to the 1,198 comments filed to the Federal Register by community members and stakeholders.

More importantly, the rule change will directly harm low-income immigrants, including those elderly and disabled. Nonprofit organizations charged with assisting low-income immigrants will be overwhelmed by the additional time burden imposed by the rule change and may struggle to stay afloat. This rule change would cause irrevocable damage to the City of Seattle's New Citizen Campaign and New Citizen Program, our community partners, and the vulnerable clients we serve.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Meghan Kelly-Stallings at meghan.kelly-stallings@seattle.gov for comments or clarifications regarding this response.

Sincerely,

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