DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 106, 204, 212, 214, 240, 244, 245, 245a, 264 and 274a

[CIS No. 2687–21; DHS Docket No. USCIS 2021–0010]

RIN 1615–AC68

U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) proposes to adjust certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). USCIS conducted a comprehensive biennial fee review and determined that its costs have increased considerably since its previous fee adjustment due to expanded humanitarian programs, higher demand, increased processing times, and a need for more USCIS employees. USCIS cannot maintain adequate service levels with the effects of the budget cuts and its current level of spending without lasting impacts on operations. DHS proposes to adjust USCIS fees, add new fees for certain benefit requests, establish distinct fees for petitions for nonimmigrant workers, and limit the number of beneficiaries on certain forms. DHS is also proposing additional fee exemptions for certain humanitarian categories and changes to certain other immigration benefit request requirements. If DHS does not adjust USCIS fees it will not have the resources it needs to provide adequate service to applicants and petitioners or be able to keep pace with incoming benefit request workload, and USCIS processing times and backlogs will not improve. DHS intends for this rulemaking to provide the funding required for USCIS to improve service levels.

DATES: Written comments must be submitted on this proposed rule on or before March 6, 2023. The electronic Federal Docket Management System will accept comments before midnight eastern time at the end of that day.

Listening session date: DHS will hold virtual public listening sessions during which the public may speak directly to USCIS on the questions raised in this proposed rule. A session will be held on January 11, 2023 at 2:00 p.m. ET.

Listening sessions registration date: For an opportunity to provide oral comments during the virtual public listening sessions, you must register before the listening session in question. For registration instructions, see the Public Participation section below.

ADDRESSES: You may submit comments on the entirety of this proposed rule package, identified by DHS Docket No. USCIS–2021–0010, through the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the website instructions for submitting comments. Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. Due to Coronavirus Disease (COVID–19), USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using *https://www.regulations.gov,* please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (202) 658–9621 for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Carol Cribbs, Deputy Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

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List of Acronyms and Abbreviations

AAPA Afghan Allies Protection Act of 2009
ABC Activity-Based Costing
ACWIA American Competitiveness and Workforce Improvement Act
AFM Adjudicator's Field Manual
APEC U.S. Asia-Pacific Economic Cooperation
ASC Application Support Center
ASVVP Administrative Site Visit and Verification Program
BLS Bureau of Labor Statistics
CAA Cuban Adjustment Act
CBP U.S. Customs and Border Protection
CEQ Council on Environmental Quality
CFO Chief Financial Officer
CFO Act Chief Financial Officers Act of 1990
CNMI Commonwealth of the Northern Mariana Islands
COVID Coronavirus Disease
CPI Consumer Price Index
CPI–U Consumer Price Index for All Urban Consumers
CPR Conditional Permanent Residents
CRA Congressional Review Act
DACA Deferred Action for Childhood Arrivals
DCL Dedicated Commuter Lane
DHS Department of Homeland Security
DoD Department of Defense
DOJ Department of Justice
DOL Department of Labor
DOS Department of State
EAD Employment Authorization Document
EB–5 Employment-Based Immigrant Visa, Fifth Preference
EIN Employer Identification Number
E.O. Executive Order
EOIR Executive Office for Immigration Review
FBI Federal Bureau of Investigation
FDNS Fraud Detection and National Security Directorate
FOIA Freedom of Information Act
FPG Federal Poverty Guidelines
FY Fiscal Year
GAO U.S. Government Accountability Office
GE General Expenses
GPO Government Publishing Office
HHS U.S. Department of Health and Human Services
HRIFA Haitian Refugee Immigration Fairness Act
IEFA Immigration Examinations Fee Account
ILRC *Immigrant Legal Resource Center* v. *Wolf*
INA Immigration and Nationality Act of 1952
INS Immigration and Naturalization Service
IOAA Independent Offices Appropriations Act
IPO Immigrant Investor Program Office
IRFA Initial Regulatory Flexibility Analysis
IRIS Immigration Records and Identity Services
ISAF International Security Assistance Force
LPR Lawful Permanent Resident
NACARA Nicaraguan Adjustment and Central American Relief Act
NAFTA North American Free Trade Agreement
NAICS North American Industry Classification System
NATO North Atlantic Treaty Organization
NCE New Commercial Enterprise
NEPA National Environmental Policy Act
NPRM Notice of Proposed Rulemaking
NRC National Records Center
NWIRP *Northwest Immigration Rights Project* v. *United States Citizenship and Immigration Services*
OAW Operation Allies Welcome
OIG DHS Office of Inspector General
OMB Office of Management and Budget
OP Operating Plan
OPQ Office of Performance and Quality
OPT Optional Practical Training
PRA Paperwork Reduction Act
PRC Permanent Resident Card
RAIO Refugee, Asylum, and International Operations Directorate
RAP Resource Allocation Plan
RFA Regulatory Flexibility Act
RFE Request for Evidence

RIA Regulatory Impact Analysis
SAM Staffing Allocation Model
SAVE Systematic Alien Verification for Entitlements
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
SCOPS Service Center Operations
SEA Small Entity Analysis
SEVP Student and Exchange Visitor Program
SIJ Special Immigrant Juvenile
SOFA Status of Forces Agreement
STEM OPT Science, Technology, Engineering, and Mathematics Optional Practical Training
TEA Targeted Employment Area
TECRO Taipei Economic and Cultural Representative Office
TPS Temporary Protected Status
TVPRA William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UMRA Unfunded Mandates Reform Act
USCIS U.S. Citizenship and Immigration Services
USMCA U.S. Mexico-Canada Agreement
VAWA Violence Against Women Act
VPC Volume Projection Committee

I. Public Participation

DHS invites you to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments providing the most assistance to DHS will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports the recommended change.

Instructions: All submissions should include the agency name and DHS Docket No. USCIS–2021–0010 for this rulemaking. Providing comments is entirely voluntary. Regardless of how you submit your comment, DHS will post all submissions, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov* and will include any personal information you provide. Because the information you submit will be publicly available, you should consider limiting the amount of personal information in your submission. DHS may withhold information provided in comments from public viewing if it determines that such information is offensive or may affect the privacy of an individual. For additional information, please read the Privacy Act notice available through the link in the footer of *https://www.regulations.gov.*

Registration for listening session: To register and receive information on how to attend the virtual public listening sessions, please go to: *https://www.uscis.gov/outreach/upcoming-national-engagements.*

Docket: For access to the docket, go to *https://www.regulations.gov* and enter this rulemaking's eDocket number: USCIS–2021–0010. The docket includes additional documents that support the analysis contained in this proposed rule to determine the specific fees that are proposed. These documents include:

- Fiscal Year (FY) 2022/2023 Immigration Examinations Fee Account (IEFA) Fee Review Supporting Documentation (supporting documentation);
- FY 2022/2023 IEFA Fee Schedule Documentation (fee schedule documentation);
- FY 2022/2023 IEFA Fee Review Model Documentation (model documentation);
- FY 2022/2023 Fee Review Regulatory Impact Analysis (RIA); and
- FY 2022/2023 Fee Review Small Entity Analysis (SEA).

You may review these documents on the electronic docket. The software [1] used to compute the immigration benefit request [2] fees and biometric fees [3] is a commercial product licensed to USCIS that may be accessed on-site, by appointment, by calling 240–721–6080.[4]

FAQ: To provide maximum transparency and clarity to the public on this proposed rule, DHS has provided a list of frequently asked questions and answers (FAQ) that summarize the content and context of this rule in an easily readable and understandable summary fashion. We have placed the FAQ in the eDocket USCIS–2021–0010, as well as on the USCIS website at *https://www.uscis.gov/proposed-fee-rule-faqs.*

II. Executive Summary

DHS proposes to adjust the USCIS fee schedule, which specifies the fee amount charged for each immigration and naturalization benefit request.[5] DHS last adjusted the fee schedule on December 23, 2016, by a weighted average increase of 21 percent. *See* 81 FR 73292 (Oct. 24, 2016) (final rule) (FY 2016/2017 fee rule). USCIS budget and revenue estimates at the time indicated there would be an average annual deficit of $560 million without adjusting fees. DHS issued a final rule to adjust the USCIS fee schedule on August 3, 2020, by a weighted average of 20 percent, reflecting the results of the FY 2019/2020 USCIS fee review. *See* 85 FR 46788 (2020 fee rule). DHS estimated an average annual USCIS deficit of $1,035.9 million. The rule was scheduled to become effective on October 2, 2020. However, that rule was preliminarily enjoined, and USCIS has not implemented the fees set out in the 2020 fee rule.[6] In this rule, DHS proposes to replace the 2020 fee rule in its entirety by revising the regulatory changes codified by the enjoined 2020 fee rule. Certain changes in the 2020 fee rule are proposed to be retained by being republished.

USCIS is primarily funded by fees charged to applicants and petitioners for immigration and naturalization benefit requests. Fees collected from individuals and entities filing immigration benefit requests are deposited into the Immigration Examinations Fee Account (IEFA). These fee collections fund the cost of fairly and efficiently adjudicating immigration benefit requests, including those provided without charge to refugee, asylum, and certain other applicants or petitioners. The focus of this fee review is the fees that DHS has established and is authorized by INA section 286(m), 8 U.S.C 1356(m), to establish or change, collect, and deposit into the IEFA, which comprised approximately 96 percent of USCIS' total FY 2021 enacted spending authority; this fee review does not focus on fees that USCIS is required to collect but cannot change. This rule also proposes to revise the genealogy program fees established under INA section 286(t), 8 U.S.C. 1356(t), and those funds are also deposited into the IEFA. Premium processing funds

[1] USCIS uses commercially available activity-based costing (ABC) software, CostPerform, to create financial models as described in the supporting documentation.

[2] Benefit request means any application, petition, motion, appeal, or other request relating to an immigration or naturalization benefit, whether such request is filed on a paper form or submitted in an electronic format, provided such request is submitted in a manner prescribed by DHS for such purpose. *See* 8 CFR 1.2.

[3] DHS uses the terms biometric fees, biometric services fees, and biometric fee synonymously in this rule to describe the cost and process for capturing, storing, or using biometrics.

[4] This proposed rule describes key inputs to the ABC model (for example, budget, workload forecasts, staffing, and completion rates), both here and in the supporting documentation.

[5] For the purposes of this rulemaking, DHS is including all requests funded from the IEFA in the term ''benefit request'' or ''immigration benefit request'' although the form or request may not technically relate to an immigration or naturalization benefit. For example, Deferred Action for Childhood Arrivals (DACA) is solely an exercise of prosecutorial discretion by DHS, is not an immigration benefit, and is called a ''benefit request'' solely for purposes of this rule. Likewise, a request for genealogy records is not a request for an immigration benefit. For historic receipts and completion information, *see* USCIS immigration and citizenship data available at *https://www.uscis.gov/tools/reports-studies/immigration-forms-data.*

[6] *Immigrant Legal Res. Ctr.* v. *Wolf,* 491 F. Supp. 3d 520 (N.D. Cal. 2020) (*ILRC*); *Nw. Immigrant Rights Project* v. *USCIS,* 496 F. Supp. 3d 31 (D.D.C. 2020) (*NWIRP*).

established under INA section 286(u), 8 U.S.C. 1356(u) are also IEFA fees, but premium processing fees are not proposed to be changed in this rule.

In accordance with the requirements and principles of the Chief Financial Officers Act of 1990 (CFO Act), codified at 31 U.S.C. 901–03, and Office of Management and Budget (OMB) Circular A–25, USCIS conducts biennial reviews of the non-statutory fees deposited into the IEFA. Following such reviews, DHS proposes fee adjustments, if necessary, to ensure that USCIS fees recover the full cost of operating USCIS as authorized by INA section 286(m), 8 U.S.C. 1356(m). USCIS has completed a fee review for the FY 2022/2023 biennial period. The primary objective of any IEFA fee review is to determine whether current immigration and naturalization benefit fees will generate sufficient revenue to fund the anticipated operating costs associated with administering the nation's legal immigration system. The results indicate that current fee levels are insufficient to recover the full cost of operations funded by the IEFA. Therefore, DHS proposes to adjust USCIS fees.

In addition to the requirements of the CFO Act, there are other important reasons for conducting the FY 2022/2023 fee review. The fee review:

- Allows for an assessment of USCIS policy changes, staffing levels, costs, and revenue and other assessments. USCIS evaluates operational requirements and makes informed decisions concerning program scaling, resource planning, and staffing allocations; and
- Provides those served by USCIS with an opportunity to submit comments on the effect of fee changes.

USCIS calculates its fees to recover the full cost of operations funded by the IEFA. These costs do not include limited appropriations provided by Congress. If USCIS continues to operate at current fee levels, it would experience an average annual shortfall (the amount by which expenses exceed revenue) of $1,868.2 million. This projected shortfall poses a risk of degrading USCIS operations funded by the IEFA.

Although this fee schedule represents a 40-percent overall weighted average increase to ensure full cost recovery, more than a million immigration benefit requestors each year would see no increase or a decrease in costs because their benefit requests have no fee, are fee exempt, or are fee waived.[7] In FY 2022/2023, USCIS estimates approximately 8 million annual average receipts for workload with fees. Of those, USCIS estimates approximately 7 million may pay fees. DHS proposes to maintain the current fee waiver policy which was established in 2011.[8]

The proposed fees would ensure that IEFA revenue covers USCIS' costs associated with adjudicating immigration benefit requests. The proposed fee schedule accounts for increased costs to adjudicate immigration benefit requests, detect and deter immigration fraud, and vet applicants, petitioners, and beneficiaries. See section V.A. of this preamble for a discussion of IEFA budget history and cost projections for this rulemaking. DHS also proposes to expand fee exemptions for certain applicants and petitioners for humanitarian benefits. Additionally, DHS proposes to establish distinct fees for different categories of petitions for nonimmigrant workers. DHS proposes to set a range of fees that vary by the nonimmigrant classification and to limit petitions for nonimmigrant workers to 25 named beneficiaries. DHS believes the proposed fees more accurately reflect the differing burdens of adjudication and will enable USCIS to adjudicate these petitions more effectively.

A. Summary of Economic Impacts

The fee adjustments, as well as changes to the forms and fee structures used by USCIS, would result in net costs, benefits, and transfer payments. For the 10-year period of analysis of the rule (FY 2023 through FY 2032), DHS estimates the annualized net costs to the public would be $532,379,138 discounted at 3- and 7-percent. Estimated total net costs over 10 years would be $4,541,302,033, discounted at 3-percent and $3,739,208,286 discounted at 7-percent.

The proposed changes in this rule would also provide several benefits to DHS and applicants/petitioners seeking immigration benefits. For the Government, the primary benefits include reduced administrative burdens and fee processing errors, increased efficiency in the adjudicative process, and the ability to better assess the cost of providing services, which allows for better aligned fees in future regulations. The primary benefits to the applicants/petitioners include the simplification of the fee payment process for some forms, elimination of the $30 returned check fee, USCIS' expansion of the electronic filing system to include more forms, and for many applicants, limited fee increases and additional fee exemptions to reduce fee burdens.

Fee increases and other changes in this proposed rule would result in annualized transfer payments from applicants/petitioners to USCIS of approximately $1,612,133,742 discounted at both 3-percent and 7-percent. The total 10-year transfer payments from applicants/petitioners to USCIS would be $13,751,827,819 at a 3-percent discount rate and $11,322,952,792 at a 7-percent discount rate.

Fee reductions and exemptions in this proposed rule would result in annualized transfer payments from USCIS to applicants/petitioners of approximately $116,372,429 discounted at both 3-percent and 7-percent. The total 10-year transfer payments from USCIS to applicants/petitioners would be $992,680,424 at a 3-percent discount rate and $817,351,244 at a 7-percent discount rate.

The annualized transfer payments from the Department of Defense (DoD) to USCIS would be approximately $222,145 at both 3- and 7-percent discount rates. The total 10-year transfer payments from DoD to USCIS would be $1,894,942 at a 3-percent discount rate and $1,560,254 at a 7-percent discount rate.

B. Summary of Proposed Provisions

This proposed rule includes the following proposals:

- Adjusting fees according to the schedule in Tables 1 and 26.
- Adding new fee exemptions for certain humanitarian programs and preserving the fee waiver requirements that are currently being followed.
- Removing fee exemptions that are based only on the age of the person submitting the request.

[7] USCIS uses a weighted average instead of a straight average because of the difference in volume by immigration benefit type and the resulting effect on fee revenue. The 40-percent weighted average increase is a change in the average fee for a form that currently requires a fee compared to the average proposed fee per form. The sum of the current fees, multiplied by the projected FY 2022/2023 fee-paying receipts for each immigration benefit type, divided by the total fee-paying receipts, is $518. The sum of the proposed fees, multiplied by the projected FY 2022/2023 receipts for each immigration benefit type, divided by the fee-paying receipts, is $725. There is a $207, or approximately 40-percent, difference between the two averages. These averages exclude fees that do not receive cost reallocation, such as the separate biometric services fee and the proposed genealogy fees.

[8] *See* Policy Memorandum, Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11–26, available at *https://www.uscis.gov/sites/default/files/document/memos/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf*) (last viewed March 23, 2022).

- Eliminating the $30 returned check fee.
- Incorporating biometrics costs into the main benefit fee and removing the separate biometric services fee.
- Requiring separate filing fees for Form I–485 and associated Form I–131 and Form I–765 filings.
- Establishing separate fees for Form I–129, Petition for Nonimmigrant Worker, by nonimmigrant classification.
- Revising the premium processing timeframe interpretation from calendar days to business days.
- Revising adoption-related requirements, including adding a Request for Action on Approved Form I–600A/I–600 (Form I–600A/I–600, Supplement 3), and associated fees.
- Revising regulations related to genealogy searches, including establishing a fee for Form G–1566, Request for Certificate of Non-Existence.
- Miscellaneous technical and procedural changes.
- Creating lower fees for forms filed online.

C. Summary of Current and Proposed Fees

Table 1 summarizes the current and proposed fees. In addition, the proposed fees and exemptions are incorporated into the draft version of USCIS Form G–1055 as part of the docket for this rulemaking. In some cases, the current or proposed fee may be the sum of several fees. For example, several immigration benefit requests require an additional biometric services fee under the current fee structure. The table includes rows with and without the additional biometric services fee added to the Current Fee(s) column. The Current Fee(s) column represents the current fees in effect rather than the enjoined fees from the 2020 fee rule.[9] Throughout this proposed rule, the phrase ''current fees'' refers to the fees in effect and not the enjoined fees. In this proposal, DHS would eliminate the additional biometric services fee in most cases by including the costs in the underlying immigration benefit request fee. As such, the Proposed Fees(s) column does not include an additional biometric services fee. Some other benefit requests are listed several times because in some cases DHS proposes distinct fees based on filing methods, online or paper. DHS proposes to require fees for Forms I–131 and I–765 when filed with Form I–485. As such, Table 1 includes rows that compare the current fee for Form I–485 to various combinations of the proposed fees for Forms I–485, I–131, and I–765. We grouped the fees into different categories, such as Citizenship and Nationality, Humanitarian, Family-Based, Employment-Based, and Other. We included immigration benefit requests without fees in a No Fees category. DHS proposes to codify these no fee immigration benefit requests. *See, e.g.,* proposed 8 CFR 106.2(a)(58) through (60).

[9] USCIS provides filing fee information on the All Forms page at *https://www.uscis.gov/forms/all-forms.* You can use the Fee Calculator to determine the exact filing and biometric services fees for any form processed at a USCIS Lockbox facility. *See* USCIS, Fee Calculator, *https://www.uscis.gov/feecalculator.* For a complete list of all USCIS fees, see Form G–1055, Fee Schedule, available from *https://www.uscis.gov/g-1055.*

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Table 1: Comparison of Current[10] and Proposed Fees					
	Immigration Benefit Request	Current Fee(s)	Proposed Fee(s)	Difference	
Citizenship and Naturalization					
N-4	Monthly Report on Naturalization Papers	No Fee	No Fee	N/A	N/A
N-300	Application to File Declaration of Intention	$270	$320	$50	19%
N-336	Request for Hearing on a Decision in Naturalization Proceedings - Online or Paper	$700	$830	$130	19%
N-400	Application for Naturalization - Online or Paper	$640	$760	$120	19%
N-400	Application for Naturalization - Online or Paper (with biometric services)	$725	$760	$35	5%
N-400	Application for Naturalization - Reduced Fee	$320	$380	$60	19%
N-400	Application for Naturalization - Reduced Fee (with biometric services)	$405	$380	-$25	-6%
N-470	Application to Preserve Residence for Naturalization Purposes	$355	$425	$70	20%
N-565	Application for Replacement Naturalization/Citizenship Document - Online or Paper	$555	$555	$0	0%
N-600	Application for Certificate of Citizenship - Online or Paper	$1,170	$1,385	$215	18%
N-600K	Application for Citizenship and Issuance of Certificate - Online or Paper	$1,170	$1,385	$215	18%
N-644	Application for Posthumous Citizenship	No Fee	No Fee	N/A	N/A
N-648	Medical Certification for Disability Exceptions	No Fee	No Fee	N/A	N/A
Humanitarian					
	Credible Fear	No Fee	No Fee	N/A	N/A
I-589	Application for Asylum and for Withholding of Removal	No Fee	No Fee	N/A	N/A
I-590	Registration for Classification as a Refugee	No Fee	No Fee	N/A	N/A
I-602	Application by Refugee for Waiver of Inadmissibility Grounds	No Fee	No Fee	N/A	N/A

[10] These are fees that USCIS is currently charging and not those codified by the 2020 fee rule.

Table 1: Comparison of Current[10] and Proposed Fees					
	Immigration Benefit Request	**Current Fee(s)**	**Proposed Fee(s)**	**Difference**	
I-687	Application for Status as a Temporary Resident Under Section 245A of the INA	$1,130	$1,240	$110	10%
I-687	Application for Status as a Temporary Resident Under Section 245A of the INA (with biometric services)	$1,215	$1,240	$25	2%
I-694	Notice of Appeal of Decision	$890	$1,155	$265	30%
I-698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	$1,670	$1,670	$0	0%
I-698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA) (with biometric services)	$1,755	$1,670	-$85	-5%
I-730	Refugee/Asylee Relative Petition	No Fee	No Fee	N/A	N/A
I-765V	Application for Employment Authorization for Abused Nonimmigrant Spouse	No Fee	No Fee	N/A	N/A
I-817	Application for Family Unity Benefits	$600	$875	$275	46%
I-817	Application for Family Unity Benefits (with biometric services)	$685	$875	$190	28%
I-821	Application for Temporary Protected Status - Online or Paper	$50	$50	$0	0%
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (for an individual adjudicated by DHS)	$285	$340	$55	19%
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (for an individual adjudicated by DHS) (with biometric services)	$370	$340	-$30	-8%
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (for a family adjudicated by DHS)	$570	$340	-$230	-40%
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (for a family adjudicated by DHS) (with biometric services for two people)	$740	$340	-$400	-54%

Table 1: Comparison of Current[10] and Proposed Fees					
	Immigration Benefit Request	**Current Fee(s)**	**Proposed Fee(s)**	**Difference**	
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (for a family adjudicated by Executive Office for Immigration Review)	$165	$165	$0	0%
I-914	Application for T Nonimmigrant Status	No Fee	No Fee	N/A	N/A
I-914A	Application for Family Member of T-1 Recipient	No Fee	No Fee	N/A	N/A
I-918	Petition for U Nonimmigrant Status	No Fee	No Fee	N/A	N/A
I-918A	Petition for Qualifying Family Member of U-1 Recipient	No Fee	No Fee	N/A	N/A
I-918B	U Nonimmigrant Status Certification	No Fee	No Fee	N/A	N/A
I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	$230	$270	$40	17%
	Reasonable Fear	No Fee	No Fee	N/A	N/A
Family-Based					
I-129F	Petition for Alien Fiancé(e)	$535	$720	$185	35%
I-130	Petition for Alien Relative - Online	$535	$710	$175	33%
I-130	Petition for Alien Relative - Paper	$535	$820	$285	53%
I-600	Petition to Classify Orphan as an Immediate Relative	$775	$920	$145	19%
I-600	Petition to Classify Orphan as an Immediate Relative (with biometric services for one adult)	$860	$920	$60	7%
I-600A	Application for Advance Processing of an Orphan Petition	$775	$920	$145	19%
I-600A	Application for Advance Processing of an Orphan Petition (with biometric services for one adult)	$860	$920	$60	7%
I-600A/I-600 Supp. 3	Request for Action on Approved Form I-600A/I-600	N/A	$455	N/A	N/A
I-601A	Application for Provisional Unlawful Presence Waiver	$630	$1,105	$475	75%
I-601A	Application for Provisional Unlawful Presence Waiver (with biometric services)	$715	$1,105	$390	55%
I-751	Petition to Remove Conditions on Residence	$595	$1,195	$600	101%
I-751	Petition to Remove Conditions on Residence (with biometric services)	$680	$1,195	$515	76%

Table 1: Comparison of Current[10] and Proposed Fees					
Immigration Benefit Request		Current Fee(s)	Proposed Fee(s)	Difference	
I-800	Petition to Classify Convention Adoptee as an Immediate Relative	$775	$920	$145	19%
I-800A	Application for Determination of Suitability to Adopt a Child from a Convention Country	$775	$920	$145	19%
I-800A	Application for Determination of Suitability to Adopt a Child from a Convention Country (with biometric services)	$860	$920	$60	7%
I-800A Supp. 3	Request for Action on Approved Form I-800A	$385	$455	$70	18%
I-800A Supp. 3	Request for Action on Approved Form I-800A (with biometric services)	$470	$455	-$15	-3%
Employment-Based					
	Asylum Program Fee	N/A	$600	N/A	N/A
	H-1B Pre-Registration Fee	$10	$215	$205	2050%
I-129	Petition for a Nonimmigrant Worker: H-1 Classifications	$460	$780	$320	70%
I-129	H-2A Petition - Named Beneficiaries	$460	$1,090	$630	137%
I-129	H-2B Petition - Named Beneficiaries	$460	$1,080	$620	135%
I-129	Petition for L Nonimmigrant Worker	$460	$1,385	$925	201%
I-129	Petition for O Nonimmigrant Worker	$460	$1,055	$595	129%
I-129CW, and I-129	Petition for a CNMI-Only Nonimmigrant Transitional Worker; Application for Nonimmigrant Worker: E and TN Classifications; and Petition for Nonimmigrant Worker: H-3, P, Q, or R Classification	$460	$1,015	$555	121%
I-129CW, and I-129	Petition for a CNMI Nonimmigrant Worker (with biometric services fee)	$545	$1,055	$595	129%
I-129	H-2A Petition - Unnamed Beneficiaries	$460	$530	$70	15%
I-129	H-2B Petition - Unnamed Beneficiaries	$460	$580	$120	26%
I-140	Immigrant Petition for Alien Worker	$700	$715	$15	2%
I-526	Immigrant Petition by Standalone Investor	$3,675	$11,160	$7,485	204%

Table 1: Comparison of Current[10] and Proposed Fees					
	Immigration Benefit Request	**Current Fee(s)**	**Proposed Fee(s)**	**Difference**	
I-526E	Immigrant Petition by Regional Center Investor	$3,675	$11,160	$7,485	204%
I-765	Application for Employment Authorization - Online	$410	$555	$145	35%
I-765	Application for Employment Authorization - Paper	$410	$650	$240	59%
I-765	Application for Employment Authorization - Online (with biometric services)	$495	$650	$240	59%
I-765	Application for Employment Authorization - Paper (with biometric services)	$495	$650	$155	31%
I-829	Petition by Investor to Remove Conditions on Permanent Resident Status	$3,750	$9,525	$5,775	154%
I-829	Petition by Investor to Remove Conditions on Permanent Resident Status (with biometric services)	$3,835	$9,525	$5,690	148%
I-907	Request for Premium Processing Service when filing: Form I-129 requesting E-1, E-2, E-3, H-1B, H-3, L (including blanket L-1), O, P, Q, or TN nonimmigrant classification; or Form I-140 requesting EB-1, EB-2, or EB-3 immigrant visa classification	$2,500	$2,500	$0	0%
I-907	Request for Premium Processing Service when filing Form I-129 requesting H-2B or R nonimmigrant classification	$1,500	$1,500	$0	0%
I-956	Application For Regional Center Designation	$17,795	$47,695	$29,900	168%
I-956G	Regional Center Annual Statement	$3,035	$4,470	$1,435	47%
Other					
I-90	Application to Replace Permanent Resident Card - Online	$455	$455	$0	0%
I-90	Application to Replace Permanent Resident Card - Paper	$455	$465	$10	2%
I-90	Application to Replace Permanent Resident Card - Online (with biometric services)	$540	$455	-$85	-16%

Table 1: Comparison of Current[10] and Proposed Fees					
	Immigration Benefit Request	**Current Fee(s)**	**Proposed Fee(s)**	**Difference**	
I-90	Application to Replace Permanent Resident Card - Paper (with biometric services)	$540	$465	-$75	-14%
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$445	$680	$235	53%
I-131	Application for Travel Document	$575	$630	$55	10%
I-131	Application for Travel Document (with biometric services)	$660	$630	-$30	-5%
I-131	I-131 Refugee Travel Document for an individual age 16 or older	$135	$165	$30	22%
I-131	I-131 Refugee Travel Document for an individual age 16 or older (with biometric services)	$220	$165	-$55	-25%
I-131	I-131 Refugee Travel Document for a child under the age of 16	$105	$135	$30	29%
I-131	I-131 Refugee Travel Document for a child under the age of 16 (with biometric services)	$190	$135	-$55	-29%
I-131A	Application for Carrier Documentation	$575	$575	$0	0%
I-191	Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	$930	$930	$0	0%
I-192	Application for Advance Permission to Enter as Nonimmigrant (filed with USCIS)	$930	$1,100	$170	18%
I-192	Application for Advance Permission to Enter as Nonimmigrant (filed with CBP)	$585	$1,100	$515	88%
I-193	Application for Waiver of Passport and/or Visa	$585	$695	$110	19%
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	$930	$1,395	$465	50%
I-290B	Notice of Appeal or Motion	$675	$800	$125	19%
I-360	Petition for Amerasian Widow(er) or Special Immigrant	$435	$515	$80	18%
I-485	Application to Register Permanent Residence or Adjust Status	$1,140	$1,540	$400	35%

Table 1: Comparison of Current[10] and Proposed Fees					
	Immigration Benefit Request	**Current Fee(s)**	**Proposed Fee(s)**	**Difference**	
I-485	Application to Register Permanent Residence or Adjust Status (with biometric services)	$1,225	$1,540	$315	26%
I-485	Application to Register Permanent Residence or Adjust Status (under the age of 14 in certain conditions)	$750	$1,540	$790	105%
I-485	Forms I-485 and I-131 with biometric services	$1,225	$2,170	$945	77%
I-485	Forms I-485 and I-765 (filed on paper) with biometric services	$1,225	$2,190	$965	79%
I-485	Forms I-485, I-131, and I-765 (filed on paper) with biometric services	$1,225	$2,820	$1,595	130%
I-485A	Supplement A, Supplement A to Form I-485, Adjustment of Status Under Section 245(i)	$1,000	$1,000	$0	0%
I-539	Application to Extend/Change Nonimmigrant Status - Online	$370	$525	$155	42%
I-539	Application to Extend/Change Nonimmigrant Status - Paper	$370	$620	$250	68%
I-539	Application to Extend/Change Nonimmigrant Status - Online (with biometric services)	$455	$525	$70	15%
I-539	Application to Extend/Change Nonimmigrant Status - Paper (with biometric services)	$455	$620	$165	36%
I-601	Application for Waiver of Grounds of Inadmissibility	$930	$1,050	$120	13%
I-612	Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	$930	$1,100	$170	18%
I-690	Application for Waiver of Grounds of Inadmissibility	$715	$985	$270	38%
I-824	Application for Action on an Approved Application or Petition	$465	$675	$210	45%
I-905	Application for Authorization to Issue Certification for Health Care Workers	$230	$230	$0	0%
I-910	Application for Civil Surgeon Designation	$785	$1,230	$445	57%
I-941	Application for Entrepreneur Parole	$1,200	$1,200	$0	0%
I-941	Application for Entrepreneur Parole (with biometric services)	$1,285	$1,200	-$85	-7%

Table 1: Comparison of Current[10] and Proposed Fees					
Immigration Benefit Request		Current Fee(s)	Proposed Fee(s)	Difference	
	Biometric Services (in most cases)	$85	$0	-$85	-100%
	Biometric Services (TPS and EOIR only)	$85	$30	-$55	-65%
	USCIS Immigrant Fee	$220	$235	$15	7%
Genealogy and Records					
G-1041	Genealogy Index Search Request - Online	$65	$100	$35	54%
G-1041	Genealogy Index Search Request - Paper	$65	$120	$55	85%
G-1041A	Genealogy Records Request - Online	$65	$240	$175	269%
G-1041A	Genealogy Records Request - Paper	$65	$260	$195	300%
G-1041 and G-1041A	Genealogy Index Search Request and Records Request - Online (digital records)	$130	$100	-$30	-23%
G-1566	Certificate of Non-Existence	$0	$330	$330	N/A
No Fee					
I-134	Declaration of Financial Support	No Fee	No Fee	N/A	N/A
I-361	Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian	No Fee	No Fee	N/A	N/A
I-363	Request to Enforce Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian	No Fee	No Fee	N/A	N/A
I-407	Record of Abandonment of Lawful Permanent Resident Status	No Fee	No Fee	N/A	N/A
I-485J	Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j)	No Fee	No Fee	N/A	N/A
I-508	Request for Waiver of Certain Rights, Privileges, Exemptions, and Immunities	No Fee	No Fee	N/A	N/A
I-566	Interagency Record of Request – A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status	No Fee	No Fee	N/A	N/A
I-693	Report of Medical Examination and Vaccination Record	No Fee	No Fee	N/A	N/A

Table 1: Comparison of Current[10] and Proposed Fees					
	Immigration Benefit Request	Current Fee(s)	Proposed Fee(s)	Difference	
I-854	Inter-Agency Alien Witness and Informant Record	No Fee	No Fee	N/A	N/A
I-864	Affidavit of Support Under Section 213A of the INA	No Fee	No Fee	N/A	N/A
I-864A	Contract Between Sponsor and Household Member	No Fee	No Fee	N/A	N/A
I-864EZ	Affidavit of Support Under Section 213A of the INA	No Fee	No Fee	N/A	N/A
I-864W	Request for Exemption for Intending Immigrant's Affidavit of Support	No Fee	No Fee	N/A	N/A
I-865	Sponsor's Notice of Change of Address	No Fee	No Fee	N/A	N/A
I-912	Request for Fee Waiver	No Fee	No Fee	N/A	N/A
I-942	Request for Reduced Fee	No Fee	No Fee	N/A	N/A

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III. Basis for the Fee Review

A. Legal Authority and Guidance

DHS is issuing this proposed rule consistent with INA sec. 286(m), 8 U.S.C. 1356(m) (authorizing DHS to charge fees for adjudication and naturalization services at a level to ''ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants''),[11] and the CFO Act, 31 U.S.C. 901–03 (requiring each agency's Chief Financial Officer (CFO) to review, on a biennial basis, the fees imposed by the agency for services it provides, and to recommend changes to the agency's fees).

This proposed rule is also consistent with non-statutory guidance on fees, the budget process, and Federal accounting principles.[12] DHS uses OMB Circular A–25 as general policy guidance for determining user fees for immigration benefit requests, with exceptions as outlined in section III.B of this preamble. DHS also follows the annual guidance in OMB Circular A–11 if it requests appropriations to offset a portion of Immigration Examinations Fee Account (IEFA) costs.[13]

Finally, this rulemaking accounts for, and is consistent with, congressional appropriations for specific USCIS programs. FY 2021 appropriations for USCIS provided funding for the E-Verify employment eligibility verification program. Congress provided E-Verify with $117.8 million for operations and support. *See* Consolidated Appropriations Act, 2021, Pub. L. 116–260, div. F, tit. IV (Dec. 27, 2020). DHS provides this information only for comparison to the IEFA. E-Verify is not included in this fee review budget because, generally, appropriations, not fees, fund E-Verify. In addition, Congress appropriated $10 million for the Citizenship and Integration Grant Program. *Id.* Together, the total FY 2021 appropriations for USCIS are $127.8 million. For the last several years, USCIS has not had the authority to spend more than $10 million for citizenship grants. Until recently, grant program funding came from the IEFA fee revenue or a mix of appropriations and fee revenue.[14] Because Congress appropriated funds for grants in FY 2021, the $10 million budgeted for citizenship grants is not part of the FY 2022/2023 IEFA fee review budget.

B. Effect of FY 2022 Appropriations

In FY 2022, Congress provided USCIS additional appropriations for very specific purposes. *See* Consolidated Appropriations Act, 2022, Public Law 117–103 (Mar. 15, 2022) (''Pub. L. 117–103''). USCIS received approximately $389.5 million for E-Verify, application processing, backlog reduction, and the refugee program. *See id* at div. F, title IV. Of that amount, approximately $87.6

[11] The longstanding interpretation of DHS is that the ''including'' clause in section 286(m) does not constrain DHS's fee authority under the statute. The ''including'' clause offers only a non-exhaustive list of some of the costs that DHS may consider part of the full costs of providing adjudication and naturalization services. *See* 8 U.S.C. 1356(m); 84 FR 23930, 23932 n.1 (May 23, 2019); 81 FR 26903, 26906 n.10 (May 4, 2016).

[12] *See* OMB Circular A–25, ''User Charges,'' 58 FR 38142, available at *https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf* (July 15, 1993) (revising Federal policy guidance regarding fees assessed by Federal agencies for Government services). *See also* Federal Accounting Standards Advisory Board Handbook, Version 17 (06/18), Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts, SFFAS 4, available at *http://files.fasab.gov/pdffiles/handbook_sffas_4.pdf* (generally describing cost accounting concepts and standards, and defining ''full cost'' to mean the sum of direct and indirect costs that contribute to the output, including the costs of supporting services provided by other segments and entities.); *id.* at 49–66 (July 31, 1995). *See also* OMB Circular A–11, Preparation, Submission, and Execution of the Budget, section 20.7(d), (g) (June 29, 2018), available at *https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf* (June 29, 2018). (providing guidance on the FY 2020 budget and instructions on budget execution, offsetting collections, and user fees).

[13] OMB Circulars A–25 and A–11 provide nonbinding internal executive branch direction for the development of fee schedules under the Independent Offices Appropriations Act, 1952 (IOAA) and appropriations requests, respectively. *See* 5 CFR 1310.1. Although DHS is not required to strictly adhere to these OMB circulars in setting USCIS fees, DHS understands they reflect best practices and used the activity-based costing (ABC) methodology supported in Circulars A–25 and A–11 to develop the proposed fee schedule.

[14] USCIS received $2.5 million for the immigrant integration grants program in FY 2013 (Pub. L. 113–6) and FY 2014 (Pub. L. 113–76). USCIS did not receive appropriations for the immigrant integration grants program in FY 2015, FY 2016, FY 2017, and FY 2018. Congress provided $10 million for citizenship and integration grants in FY 2019 (Pub. L. 116–6) and FY 2020 (Pub. L. 116–93).

million is available until the end of FY 2023. *Id.* These funds will be in a separate appropriated account. *Id.* USCIS will use $275 million to reduce USCIS application and petition backlogs and delays, support refugee admissions up to a ceiling of 125,000, and invest in enterprise infrastructure improvements such as case file management and video interviewing capabilities.[15] USCIS will use the remaining amount, approximately $114.5 million, to fund E-Verify. In addition, Congress provided $20 million for Federal Assistance for the Immigrant Citizenship and Integration Grants program. *Id.* This is $10 million more than in a typical year.[16] USCIS also received $193 million for Operation Allies Welcome (OAW). *See* Extending Government Funding and Delivering Emergency Assistance Act, 2022, Public Law 117–43 (Sept. 30, 2021) (''Pub. L. 117–43'') at div. C. title V, sec. 2501. In FY 2022, approximately $119.7 million is available for use in the Immigration Examinations Fee Account, which is a no-year account. The remaining OAW amount will be available in FY 2023 or until expended. In all of these cases, the laws provide that the funds are only to be used for the specified purposes, and DHS is not required to reduce any current IEFA fee.[17]

The FY 2022/2023 fee review budget that is the basis for this proposed rule excludes all appropriated funding, including the approximately $529.2 million provided so far in FY 2022. USCIS will use the appropriated funding for the purposes provided by Congress. The appropriations support several DHS priorities, for example, decreasing USCIS application processing times, reducing the backlog of requests already on hand and being adjudicated (and for which a fee may have already been paid). USCIS may also use the appropriations to expand refugee processing efforts, and support vulnerable Afghans, including those who worked alongside Americans in Afghanistan for the past two decades, as they safely resettle in the United States. These appropriations do not overlap with the fee review budget, which will fund immigration adjudication and naturalization services for future incoming receipts. The full costs of operating USCIS that are included in the fee model do not include separate line items budgeted directly for backlog reduction and OAW. Had the appropriation not been received, DHS and USCIS would have been required to use funds budgeted for other uses to fund the costs of OAW. While DHS and USCIS are very focused on reducing backlogs, our efforts to reduce the backlog did not include a significant shift of IEFA non-premium funds from normal operations to that effort. USCIS funded previous backlog reduction efforts with IEFA premium processing revenue and supplemental appropriations.[18] The backlog represents uncompleted work which USCIS already received, but did not complete, and the appropriated funds will assist in clearing that workload. In the absence of appropriations, USCIS may continue to fund backlog reduction efforts with premium processing revenue.

DHS received appropriations to fund some of the additional spending that USCIS will require for the refugee ceiling increase to 125,000 beginning in FY 2022, as described in section V.A.2.b.[19] This is a significant increase over recent years. The refugee admission ceiling was 62,500 for FY 2021 and 18,000 for FY 2020.[20] DHS is including this amount in its total costs to be recovered by the fees proposed in this rule because the appropriations in Public Law 117–103 will be used to cover the FY 2022 expenses for the refugee program, while this rule is unlikely to be effective until FY 2023. The approximately $87.6 million appropriated for application processing that is available until the end of FY 2023 may be insufficient to fund backlog reduction and refugee processing. For example, the President's budget request for FY 2023 included $765 million for increasing asylum caseloads, backlog reduction, and refugee processing.[21] While USCIS is committed to seeking Congressional appropriations for refugee processing costs in the future, USCIS cannot presume such appropriations, especially given the lack of appropriations in the past. If this fee rule does not account for the possibility of no Congressional funding in future years and Congress fails to fund the program, either the program cannot continue or USCIS will be forced to reallocate resources assigned to another part of the agency for this purpose. However, if USCIS is certain to receive additional appropriations to fund the FY 2023 refugee program at the time of the final rule, then USCIS may reduce the estimated budget requirements funded by IEFA fees accordingly in the final rule.

The FY 2022 appropriation laws also require additional services and impose reporting, processing, and monitoring requirements that will add costs for USCIS. *See, e.g.,* Public Law 117–43 at secs. 2502–2503. The reporting requirements of Public Law 117–43 are quarterly and extend through September 30, 2023, although the amounts appropriated are only available for fiscal year 2022. *Id* at secs. 2503(a) and 2506. DHS will fund these reporting costs with the appropriated funds for FY 2022 and thus has excluded most of them from this rule. *Id.* at secs. 2502–2503. Congress also added reporting requirements when it reauthorized and revised the Employment-Based Immigrant Visa, Fifth Preference (EB–5) authority. *See* Public Law 117–103, div. BB and section III.F of this preamble for more information. IEFA fees will fund

[15] This $275 million includes $250 million that USCIS received in an earlier continuing resolution. *See* Extending Government Funding and Delivering Emergency Assistance Act, 2022, Public Law 117–43 (Sept. 30, 2021) at div. A, sec. 132. USCIS received an additional $25 million in the Consolidated Appropriations Act, 2022, Public Law 117–103 (Mar. 15, 2022) at div. F, title IV.

[16] For example, Congress appropriated $10 million in FY 2021. See section III.A of this preamble for more information.

[17] Public Law 117–43, at section 132, states, ''That such amounts shall be in addition to any other funds made available for such purposes, and shall not be construed to require any reduction of any fee described in section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)):'' Likewise, Public Law 117–43, at section 2501, states ''That such amounts shall be in addition to any other amounts made available for such purposes and shall not be construed to require any reduction of any fee described in section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)).'' USCIS has a long history of funding citizenship and integration grants from IEFA revenue, appropriations, or a mix of both.

[18] The last time USCIS received appropriations for the backlog was in FY 2008. *See* Consolidated Appropriations Act, 2008, Public Law 110–161, Title IV (Dec. 26, 2007). USCIS received $20 million ''to address backlogs of security checks associated with pending applications and petitions.'' More recently, Congress authorized USCIS to use premium processing revenue to address the backlog. *See* Emergency Stopgap USCIS Stabilization Act, Public Law 116–159, Div. D, Title IV (Oct. 1, 2020).

[19] *See* White House, ''Memorandum for the Secretary of State on Presidential Determination on Refugee Admissions for Fiscal Year 2022'' (Oct. 8, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/08/memorandum-for-the-secretary-of-state-on-presidential-determination-on-refugee-admissions-for-fiscal-year-2022/.*

[20] *See* White House, ''Memorandum for the Secretary of State on the Emergency Presidential Determination on Refugee Admissions for Fiscal Year 2021'' (May 3, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/03/memorandum-for-the-secretary-of-state-on-the-emergency-presidential-determination-on-refugee-admissions-for-fiscal-year-2021-2/; see* also Trump White House, ''Presidential Determination on Refugee Admissions for Fiscal Year 2020'' (Nov. 1, 2019), *https://trumpwhitehouse.archives.gov/presidential-actions/presidential-determination-refugee-admissions-fiscal-year-2020/.*

[21] *See* White House, *Budget of the United States, Fiscal Year 2023,* p. 20, *https://www.whitehouse.gov/wp-content/uploads/2022/03/budget_fy2023.pdf* (last visited April 20, 2022).

operational expenses as needed in FY 2022/2023, including the reporting requirements imposed by Public Law 117–43 and Public Law 117–103 that are not funded by appropriated funds. DHS describes the FY 2022/2023 fee review budget in section V.A. of this preamble.

C. Immigration Examinations Fee Account

USCIS manages three fee accounts:

- The IEFA (includes premium processing revenues),[22]
- The Fraud Prevention and Detection Account,[23] and
- The H–1B Nonimmigrant Petitioner Account.[24]

In 1988, Congress established the IEFA in the Treasury of the United States. *See* Public Law 100–459, sec. 209, 102 Stat. 2186 (Oct. 1, 1988) (codified as amended at INA sec. 286(m) and (n), 8 U.S.C. 1356(m) and (n)). Fees deposited into the IEFA fund the provision of immigration adjudication and naturalization services. In subsequent legislation, Congress directed that the IEFA fund the full costs of providing all such services, including services provided to immigrants at no charge. *See* Public Law 101–515, sec. 210(d)(1) and (2), 104 Stat. 2101, 2121 (Nov. 5, 1990). Consequently, the immigration benefit fees were increased to recover these additional costs. *See* 59 FR 30520 (June 14, 1994). The IEFA accounted for approximately 96 percent of total funding for USCIS in FY 2021 and is the focus of this proposed rule. IEFA non-premium funding represents 83 percent and IEFA premium funding represents 13 percent of USCIS FY 2021 total funding. The remaining USCIS funding comes from appropriations (approximately 3 percent) or other fee accounts (approximately 1 percent) in FY 2021. The Fraud Prevention and Detection Account and H–1B Nonimmigrant Petitioner Account are both funded by fees for which the dollar amount is set by statute.[25] DHS has no authority to adjust the fees for these accounts.

D. Full Cost Recovery

USCIS receives millions of requests each year for immigration benefits. These benefits are funded by DHS, generally, by charging fees for USCIS services. In recent years, however, and as fully explained in this rule preamble and its supporting documents, USCIS costs have surpassed the fees it collects.

As stated earlier, DHS publishes this proposed rule under the Immigration and Nationality Act (''INA''), which establishes the ''Immigration Examinations Fee Account'' (''IEFA'') for the receipt of fees it charges. INA section 286(m), 8 U.S.C. 1356(m). The INA allows DHS to set ''fees for providing adjudication and naturalization services . . . at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.'' *Id.* The INA further provides that ''[s]uch fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.'' *Id.*

DHS proposes this rule to address the projected deficits and unsustainable fiscal situation of USCIS that are explained in this proposal and in the supporting documentation in the docket. *See* section IX.A of this preamble; see also IEFA Non-Premium Carryover Projections in the supporting documentation included in the docket to this rulemaking. Carryover is unobligated or unexpended fee revenue accumulated from previous fiscal years. Because USCIS is primarily fee-funded, it must ensure that it maintains a carryover balance to continue operating, and INA section 286(m), 8 U.S.C. 1356(m) authorizes DHS to set fees at a level to recover ''the *full* costs'' of providing ''*all*'' ''adjudication and naturalization services,'' and ''the administration of the fees collected.'' (emphasis added.) This necessarily includes support costs such as physical overhead, information technology, management and oversight, human resources, national security vetting and investigations,[26] accounting and budgeting, and legal, for example. USCIS' current budget forecasts a deficit based on fully funding all of its operations, and DHS must make up that difference either by cutting costs, curtailing operations, or increasing revenue. DHS has examined USCIS recent budget history, service levels, and immigration trends to forecast its costs, revenue, and operational metrics in order to determine whether USCIS fees would generate sufficient revenue to fund anticipated operating costs. As explained in this rule and the supporting documents, USCIS costs are projected to be considerably higher than projected fee revenue should fees remain at their current levels. The primary cost driver responsible for this increase is payroll, including the need to hire additional staff due to an increase in the volume of applications that USCIS receives and the increase in time per adjudication for USCIS to process many applications, petitions, and requests. *See* section V.B. for a discussion of USCIS workload and the time to adjudicate applications, petitions, and requests. *See also* section IX.C for planned increases in efficiency. USCIS has already curtailed its own costs and implemented cost-cutting measures, and any further reductions would adversely affect the services USCIS provides to applicants including adjudications time and processes. *See* section V.A.2. and section IX.B. of this preamble.

Consistent with these authorities, sources, and needs, this proposed rule would ensure that USCIS recovers its full operating costs and maintains an adequate level of service in two ways:

First, where possible, the proposed rule would set fees at levels sufficient to cover the full cost of the corresponding services associated with fairly and efficiently adjudicating immigration benefit requests.

DHS generally follows OMB Circular A–25, which ''establishes federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources.'' OMB Circular A–25, section 1, 58 FR 38144. A primary objective of OMB Circular A–25 is to ensure that Federal agencies recover the full cost of providing specific services to users and associated costs. *See id.,* section 5. Full costs include, but are not limited to, an appropriate share of:

- Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;
- Management and supervisory costs; and

[22] INA sec. 286(m), (n), and (u); 8 U.S.C. 1356(m), (n), and (u).

[23] INA secs. 214(c)(12) and (13), 286(v); 8 U.S.C. 1184(c)(12) and (13), 1356(v).

[24] INA secs. 214(c)(9) and (11), 286(s); 8 U.S.C. 1184(c)(9) and (11), 1356(s).

[25] See the supporting documentation included in the docket of this rulemaking. There is additional information on these accounts in Appendix II—USCIS Funding and Account Structure.

[26] Congress recommended that DHS establish an organization ''responsible for developing, implementing, directing, and overseeing the joint USCIS-Immigration and Customs Enforcement (ICE) anti-fraud initiative and conducting law enforcement/background checks on every applicant, beneficiary, and petitioner prior to granting immigration benefits.'' *See,* Conference Report to accompany H.R. 4567 [Report 108–774], ''Making Appropriations for the Department of Homeland Security for the Fiscal Year Ending September 30, 2005,'' p. 74, available at *https://www.gpo.gov/fdsys/pkg/CRPT-108hrpt774/pdf/CRPT-108hrpt774.pdf.*

• Costs of enforcement, collection, research, establishment of standards, and regulation.

Id., section 6, 58 FR 38145. Second, this proposed rule would set fees at a level sufficient to fund overall requirements and general operations related to USCIS IEFA programs. The current and proposed IEFA fees fund programs that are not associated with specific statutory fees or funded by annual appropriations. The proposed fees would also recover the difference between the full cost of adjudicating benefit requests and the revenue generated when such requests are fee exempt, in whole or in part, when the fees for such requests are set at a level below full cost by statute or policy, and when fees are waived, consistent with past fee calculation methodology. As noted, Congress provided that USCIS may set fees for providing adjudication and naturalization services at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. *See* INA sec. 286(m), 8 U.S.C. 1356(m).[27] DHS has long interpreted this statutory fee-setting authority, including the authorization to collect ''full costs'' for providing ''adjudication and naturalization services,'' as granting DHS broad discretion to include costs other than OMB Circular A–25 generally provides. *See* OMB Circular A–25, section 6d(1); INA sec. 286(m), 8 U.S.C. 1356(m). *See, e.g.,* 66 FR 65811 at 65813 (Dec. 21, 2001) (responding to commenters opposed to the use of IEFA fees to pay expenses for unrelated services by stating that those costs must be recovered from the fees charged to other applicants for immigration and naturalization benefits.). In short, DHS may charge fees at a level that will ensure recovery of all direct and indirect costs associated with providing immigration adjudication and naturalization services.[28]

Consistent with the historical position and practice of DHS, this proposed rule would set fees at a level that ensures recovery of the full operating costs of USCIS, the component within DHS that provides almost all immigration adjudication and naturalization services. *See* Homeland Security Act of 2002, Public Law 107–296, sec. 451, 116 Stat. 2142 (Nov. 26, 2002) (6 U.S.C. 271). Congress has historically relied on the IEFA to support the vast majority of USCIS programs and operations conducted as part of adjudication and naturalization service delivery. This conclusion is supported by Congress' limited historical appropriations to USCIS. The agency typically receives only a small annual appropriation for specific uses. USCIS must use fee revenues, as a matter of both discretion and necessity, to fund all operations associated with activities that USCIS is charged by law to administer that are not funded by other means.

Certain functions, including the Systematic Alien Verification for Entitlements (SAVE) program [29] and the Office of Citizenship,[30] which USCIS has administered since DHS's inception, are integral parts of fulfilling USCIS' statutory responsibility to provide immigration adjudication and naturalization services. They are not associated with specific fees, but they may be, and are, funded by the IEFA. Similarly, when a filing fee for an immigration benefit request, such as Temporary Protected Status (TPS), is capped by statute and does not cover the cost of adjudicating these benefit requests, DHS may recover the difference with fees charged to other immigration benefit requests. *See* INA sec. 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B) (capping TPS registration fee at $50); 8 CFR 103.7(b)(1)(i)(NN); proposed 8 CFR 106.2(a)(48)(i). Also, when DHS exempts certain benefit requests from filing fees, such as applications or petitions from qualifying victims who assist law enforcement in the investigation or prosecution of human trafficking (T nonimmigrant status) or certain other crimes (U nonimmigrant status), USCIS recovers the cost of providing those fee-exempt or no-fee services through fees charged to other applicants and petitioners. *See, e.g.,* 8 CFR 103.7(b)(1)(i)(UU) and (VV) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(59) and (60).

OMB guidance gives agencies discretion to interpret when additional statutory requirements apply to user fees. *See* Circular A–25, section 4, 58 FR 38144. In that regard, in INA sec. 286(m), 8 U.S.C. 1356(m), Congress imposed on DHS an additional obligation—to recover the full cost of USCIS operations—over and above the advice in OMB Circular A–25 concerning the direct correlation or connection between costs and fees. Nevertheless, DHS follows OMB Circular A–25 to the extent possible while complying with Congress's directive, including directing that fees should be set to recover the costs of an agency's services in their entirety and that full costs are determined based upon the best available records of the agency. *See* OMB Circular A–25, section 6d(1). DHS applies the discretion provided in INA sec. 286(m), 8 U.S.C. 1356(m), to: (1) use activity-based costing (ABC) to establish a model for assigning costs to specific benefit requests in a manner reasonably consistent with OMB Circular A–25; (2) allocate costs for programs for which a fee is not charged or a law limits the fee amount, (3) distribute costs that are not attributed to, or driven by, specific adjudication and naturalization services; and (4) make additional adjustments to effectuate specific policy objectives.[31]

The ABC model distributes indirect costs. Indirect costs are not specifically identifiable with one output because they may contribute to several outputs. The ABC model uses a cause-and-effect relationship to distribute most indirect costs. *See* the supporting documentation included in this docket for information on direct and indirect costs. Costs that are not assigned to specific fee-paying immigration benefit requests are reallocated to other fee-paying immigration benefit requests outside the

[27] Congress has provided separate, but similar, authority for establishing USCIS genealogy program fees. *See* INA sec. 286(t), 8 U.S.C. 1356(t). The statute requires that genealogy program fees be deposited into the IEFA and that the fees for such research and information services may be set at a level that will ensure the recovery of the full costs of providing all such services. *Id.* The methodology for calculating the genealogy program fees is discussed in a separate section later in this preamble.

[28] Congress has not defined either term with any degree of specificity for purposes of paragraphs (m) and (n). *See, e.g., Barahona* v. *Napolitano,* No. 10–1574, 2011 WL 4840716, at **6–8 (S.D.N.Y. Oct. 11, 2011) (''While the term 'full costs' appears self-explanatory, section 286(m) contains both silence and ambiguity concerning the precise scope that 'full costs' entails in this context.'').

[29] USCIS funds the SAVE program by user fees and IEFA funds, as Congress has not provided any direct appropriated funds for the program since FY 2007. SAVE provides an ''immigration adjudication . . . service'' under INA sec. 286(m) and (n) to Federal, state, and local agencies that require immigration adjudication information in administering their benefits.

[30] The Homeland Security Act created the Office of Citizenship at the same time as several other mission-essential USCIS offices, such as those for legal, budget, and policy. Like those offices, the Office of Citizenship has always been considered an essential part of the ''adjudication and naturalization services'' USCIS provides under section 286(m) and (n) of the INA. As Congress recognized in creating the Office of Citizenship in section 451(f) of the Homeland Security Act (6 U.S.C. 271(f)), providing information to potential applicants for naturalization regarding the process of naturalization and related activities. is an integral part of providing ''such services''

[31] DHS may reasonably adjust fees based on value judgments and public policy reasons consistent with its statutory authority and where a rational basis for the methodology is propounded in the rulemaking. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983).

model in a spreadsheet. The fee schedule spreadsheet adjusts the model results to effectuate a desired result such as a lower fee to encourage or not discourage the filing of a specific benefit request. For example, the model determines the direct and indirect costs for refugee workload. The costs associated with processing workload without fees or where fees do not recover full cost must be reallocated outside the ABC model. USCIS reallocates these costs to fee-paying immigration benefit requests, either among the same request, among all fee-paying requests or among certain unrelated fee-paying requests. For example, the costs of Form I–485 filings that are fee-waived are shifted to the Form I–485 filings that pay the fee. All immigration benefit request fees that recover their full cost also recover the cost of workloads without fees, such as refugee workload. In this proposal, USCIS is allocating more asylum costs to Forms I–129 and I–140 than the forms would receive without additional intervention. The supporting documentation in the docket contains an in-depth explanation of the ABC model and DHS has included documentation for the fee schedule spreadsheet in the docket for public review. USCIS acknowledges that its ABC model and fee schedule are complex, but both are necessary to allocate the costs of an agency with the size and breadth of purpose as USCIS. DHS invites the public to request a demonstration of how the fee calculations are affected by the direct and indirect cost allocation, shifting costs from free immigration benefits to others, and capping certain fees at decided-upon levels.

Typically, Congressional appropriations and two other small fee accounts represent between 2–5 percent (combined) of USCIS' annual budget.[32] Each has statutory limits for both amounts and uses. Appropriations are typically limited to use for E-Verify employment status verification and the Citizenship and Integration grant program. Congress authorizes or requires USCIS to carry out seemingly non-adjudicatory functions and approves the DHS budget, knowing that USCIS must use IEFA funds to cover those expenses which Congress does not otherwise fund through appropriations and statutory fees. Therefore, by approving the use of the IEFA every year to fund seemingly non-adjudicatory functions, Congress acknowledges our construction.

E. The Use of Premium Processing Funds Under the Emergency Stopgap USCIS Stabilization Act

On October 1, 2020, the Continuing Appropriations Act, 2021 and Other Extensions Act (Continuing Appropriations Act) was signed into law. Public Law 116–159 (Oct. 1, 2020). The Continuing Appropriations Act included the Emergency Stopgap USCIS Stabilization Act (USCIS Stabilization Act), which allows USCIS to establish and collect additional premium processing fees and to use premium processing funds for expanded purposes. *See* Public Law 116–159, secs. 4101 and 4102, 134 Stat. 739 (Oct. 1, 2020); 8 U.S.C. 1356(u). That statute is expected to result in continued increases to USCIS premium processing revenue. USCIS can now use premium processing revenue, if necessary, to provide the infrastructure needed to carry out a broader range of activities than previously authorized. Importantly for the purposes of this proposed rule, the USCIS Stabilization Act permits USCIS to make infrastructure improvements in adjudication processes and the provision of information and services to immigration and naturalization benefit requestors. 8 U.S.C. 1356(u)(4). The USCIS Stabilization Act also establishes higher fees for existing premium processing services and permits USCIS to expand premium processing to certain additional benefits. 8 U.S.C. 1356(u)(2) and (3). It also exempts the agency from the requirements of the Administrative Procedure Act (5 U.S.C. 553) when instituting section 4102(b)(1) of the USCIS Stabilization Act. In addition, it provides that the required processing timeframe for the newly designated benefits will not commence until all prerequisites for adjudication are received, which would include biometrics and background check results. *See* section 4102(b)(2) of the USCIS Stabilization Act.

On March 30, 2022, DHS published a final rule, ''Implementation of the Emergency Stopgap USCIS Stabilization Act,'' implementing part of the authority provided under the USCIS Stabilization Act to offer premium processing for those benefit requests made eligible for premium processing by section 4102(b) of that law. *See* 87 FR 18227 (premium processing rule). The USCIS Stabilization Act requires that when DHS implements the expansion of immigration benefit types that are designated for premium processing, it must not result in an increase in processing times for immigration benefit requests not designated for premium processing or an increase in regular processing of immigration benefit requests so designated.[33] For this reason, DHS did not make premium processing immediately available for all immigration benefit requests newly designated in the premium processing rule. *Id.* Rather, premium processing will be made available for a newly designated immigration benefit requests only when DHS determines that it will have the resources in place to adjudicate the requests within the time required, and that the availability of premium processing for that immigration benefit request will not adversely affect other immigration benefit requests not designated for premium processing or the regular processing of immigration benefit requests so designated.[34] Nevertheless, while acknowledging its peripheral impacts as an overlapping or interrelated rulemaking, DHS has determined that, at this time, premium processing revenue is not sufficient to appreciably affect non-premium fees. Thus, this proposed rule does not include changes directly resulting from the USCIS Stabilization Act or premium processing rule, except to conform 8 CFR 106.4 to the USCIS Stabilization Act's requirements. DHS recognizes, however, that it will have more information about the revenue collected from premium processing services by the time DHS publishes a final rule. If appropriate, DHS will consider including premium processing revenue and costs in the final rule. USCIS' forecasted demand for premium processing, revenue projections, and spending plans for the premium processing rule are discussed in greater detail in the premium processing rule. *See* 87 FR 18227 (Mar. 30, 2022). While DHS estimates that the premium processing rule will increase USCIS annual revenues over the next ten years, as stated previously, because of the resources required for expanding the availability of premium processing to newly designated immigration benefit requests, full implementation of expanded premium processing is estimated to be complete around FY 2025. This timeline for full implementation will allow current premium processing revenue to fund other authorized uses and strategic improvements until adequate revenues exist to cover the costs of providing expedited processing of the new

[32] This does not include the appropriations received for FY 2022 as discussed in detail earlier in this preamble.

[33] *See* Public Law 116–159, sec. 4102(c) (Oct. 1, 2020).

[34] *See* Public Law 116–159, sec. 4102(c) (Oct. 1, 2020).

requests. USCIS plans to use premium processing revenue to provide premium processing service, improve our information technology infrastructure, and reduce backlogs. Accordingly, although the revenue from premium processing is not considered in this proposed rule as previously indicated, the *costs* for USCIS to provide premium processing service, improve our information technology infrastructure, and reduce the backlog are also not considered in the proposed fees. Examples of premium processing costs include:

- Realignment of $25.1 million for IRIS Directorate information technology (IT) functions and support contracts in FY 2021.
- Office of Information Technology GE costs of $363.6 million and $497 million for FY 2021 and FY 2022 respectively.
- $57.5 million in FY 2021 and $58.1 million in FY 2022 for Service Center Operations general expenses.

Therefore, the projected revenue to be collected from future premium processing services established by the premium processing rule is too attenuated to be considered in the current biennial fee study and the ABC full cost recovery model used for this rule without placing USCIS at risk of revenue shortfalls if that revenue did not materialize. DHS has historically excluded premium processing revenue and costs from its IEFA fee reviews and rulemakings to ensure that premium processing funds are available for infrastructure investments largely related to information technology, are available to provide staff for backlog reduction, and to ensure that non-premium fees were set at a level sufficient to cover the base operating costs of USCIS. As noted above, if the revenue collected from premium processing services becomes more significant and certain before DHS publishes a final rule, DHS will consider including premium processing revenue and costs in the final rule. In the next USCIS biennial fee study, DHS will take into consideration the future effects of the premium processing rule and the USCIS Stabilization Act allowing for premium processing revenue to be used for more general uses than what was previously authorized.

F. EB–5 Reform and Integrity Act of 2022

On March 15, 2022, the President signed the EB–5 Reform and Integrity Act of 2022, Div. BB of the Consolidated Appropriations Act, 2022, Public Law 117–103. The EB–5 Reform and Integrity Act of 2022 immediately repealed the Regional Center Pilot Program created by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1993, Public Law 102–395, 106 Stat. 1828, sec. 610(b). The law also authorizes a new EB–5 Regional Center Program, effective May 14, 2022, and is authorized through FY 2026 and makes various changes to the program. As discussed more fully in section VIII.O. of this preamble, DHS proposes new fees for the forms used in the EB–5 program in this rule.

The EB–5 Reform and Integrity Act of 2022 requires DHS to conduct a fee study not later than 1 year after the date of the enactment of this Act and, not later than 60 days after the completion of the study, set fees for EB–5 program related immigration benefit requests at a level sufficient to recover the costs of providing such services, and completing the adjudications within certain time frames. *See* Public Law 117–103, sec. 106(b). Further, the law provides that the fee adjustments that it requires are notwithstanding the requirements of INA section 286(m), 8 U.S.C. 1356(m), the authority under which we are publishing this rule. *Id.* The law also provides that the fee study required by 106(a) does not preclude DHS from adjusting its fees in the interim. *Id.* sec. 106(f). Therefore, DHS proposes new fees for the EB–5 program forms in this rule using the full cost recovery model described herein that we have used to calculate those fees since the program's inception and not the fee study parameters and processing time frames required by the EB–5 Reform and Integrity Act of 2022. USCIS will collect fees established under INA section 286(m), 8 U.S.C. 1356(m), for the EB–5 program, including as may be effected by a final rule for this proposed rule, until the fees established under section 106(a) of the EB–5 Reform and Integrity Act of 2022 take effect.

G. Fee Review History

1. Current State of USCIS Fee Schedule Regulations

On August 3, 2020, DHS published the 2020 fee rule, with an effective date of October 2, 2020, to adjust the USCIS fee schedule and make changes to certain other immigration benefit request requirements. On September 29, 2020, the United States District Court for the Northern District of California granted a motion for a preliminary injunction of the 2020 fee rule in its entirety and stayed the final rule's effective date in *ILRC.* On October 8, 2020, the United States District Court for the District of Columbia also granted a motion for a preliminary injunction and stay of the effective date of the final rule in *NWIRP.* DHS subsequently issued a notification of preliminary injunction on January 29, 2021, to inform the public of the two preliminary injunctions. *See* 86 FR 7493. The Department continues to comply with the terms of those orders and is not enforcing the regulatory changes set out in the 2020 fee rule. In addition to the changes made in the 2020 fee rule, in 2019 DHS revised USCIS fee waiver policies and USCIS Form 1–912, including by requiring fee waiver applicants to use the revised Form I–912, requiring waiver applicants to submit tax transcripts to demonstrate income, and not accepting evidence of receipt of a means-tested public benefit as evidence of inability to pay as described (''the 2019 Fee Waiver Revisions''). *See* USCIS Policy Manual Volume 1: General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 3, Fees and Chapter 4, Fee Waivers which were issued on October 25, 2019 and took effect on December 2, 2019 *City of Seattle* v. *Dep't of Homeland Sec.,* No. 3:19–CV–07151–MMC (N.D. Cal. Dec.; *see also* 84 FR 26137 (June 5, 2019) (30-day notice announcing changes to USCIS fee waiver polices and USCIS Form I–912, submission to OMB, and requesting public comment). On December 11, 2019, the United States District Court for the Northern District of California preliminarily enjoined the 2019 Fee Waiver Revisions in11, 2019) (''*City of Seattle*''). USCIS continues to accept the fees that were in place before October 2, 2020, and follow the guidance in place before October 25, 2019, to adjudicate fee waiver requests.

DHS and the parties in *ILRC, NWIRP, City of Seattle,* and the related cases agreed to, and the courts have approved, a stay of those cases while the agency undertook this fee review and prepared this notice of proposed rulemaking.

While DHS is enjoined from implementing or enforcing the 2020 fee rule, the revisions set out in that rule were codified. While 8 CFR part 106 and the other revisions set out in the 2020 fee rule are found in the CFR, DHS did not implement them and continues to charge the fees and follow the fee waiver policies that were, for the most part, in 8 CFR 103.7 as it existed before October 2, 2020. By this rulemaking, DHS will replace the enjoined regulations and correct the currently incorrect USCIS fee regulations in the CFR.

Because the 2020 fee rule was codified, this rule proposes to amend the text of certain changes made by the

2020 fee rule and codified in the CFR. However, because DHS did not implement the 2020 fee rule, this preamble discusses substantive changes that refer to the requirements of the regulations that existed before October 2, 2020. Likewise, the regulatory impact analysis (RIA) for this proposed rule analyzes the impacts of the changes between the pre-2020 fee rule regulations that DHS is following under the injunctions and those proposed in this rule.

This rule proposes relatively minor wording changes to the changes codified by the 2020 fee rule, and, in most cases, DHS is only proposing a new fee amount. However, because DHS could not implement the regulations codified on October 2, 2020, DHS does not believe that describing only the amendments to those sections is adequate to provide the affected public with what it needs to adequately review, understand, and comment on what is being proposed in this rule. Therefore, DHS has published entire portions of the regulatory text being proposed in this rule to provide a clear picture of what DHS is proposing, including sections that are codified in the CFR but were not implemented by USCIS.

Many of the proposed provisions in this rule are verbatim or close to verbatim to what is already codified, although enjoined. However, because those provisions are enjoined, DHS will address them as if they are newly proposed and cite to, for example, ''proposed 8 CFR 106.2.'' When this preamble discusses the no longer codified but still in effect provisions of title 8 of the CFR, the standard of citing to the CFR print edition date [35] may be inaccurate because title 8 was amended by a number of rules during calendar year 2020. Therefore, when citing fee regulations as they existed on October 1, 2020, the regulatory citation will be followed by that date. For example, the citation for the Biometric Services fee that was removed by the 2020 fee rule but is still in effect would be written, ''*See* 8 CFR 103.7(b)(1)(i)(C) (Oct. 1, 2020).'' [36] When citing to a provision that was codified by the 2020 fee rule that is not proposed in this rule, the regulatory citation will be followed by the effective date of the 2020 fee rule. For example, the citation for the separate fees for different versions of Form I–129 is cited as ''8 CFR 106.2(a)(3) (Oct. 2, 2020).''

As stated previously, this rule would replace the changes about which the plaintiffs in *ILRC, NWIRP,* and *City of Seattle* brought suit. For clarity and to avoid unnecessary length in this rule, DHS is not repeating the amendatory instructions and regulatory text for certain changes that were made by the 2020 fee rule if the provision is ministerial, procedural, or otherwise non-substantive, such as a regulation cross reference, form number or form name. Specifically, DHS proposes to make no changes to the following provisions that were codified in the 2020 fee rule:

1. Replace ''§ 103.7(b)(1) of this chapter'' with ''8 CFR 103.7(d)(4)'' in 8 CFR 217.2.
2. Replace ''§ 103.7(b)(1) of this chapter'' with ''8 CFR 103.7(d)(4)'' in 8 CFR 217.2.
3. Remove ''8 CFR 103.7,'' ''8 CFR 103.7(b)'' and ''8 CFR 103.7(b)(1)'' and ''§ 103.7 of this chapter'' and replace it with ''8 CFR 106.2'' in 8 CFR 204.6, 204.310, 204.311, 204.313, 211.1, 211.2, 212.2, 212.3, 212.4, 212.7, 212.15, 212.18, 214.1, 214.3, 214.6, 214.11, 214.16. 216.4, 216.5, 216.6, 223.2, 236.14, 236.15, 245.7, 245.10, 245.15, 245.18, 245.21, 245.23, 245a.12, 245a.13, 245a.20, 245a.33, 248.3, 264.2, 264.5, 264.6, 286.9, 301.1, 319.11, 320.5, 322.3, 322.5, 324.2. 334.2, 341.1, 341.5, 343a.1, 343b.1, 392.4.
4. Replace all references to ''Form I–129'' and any supplements, and adding in its place either ''the form prescribed by USCIS,'' ''application or petition,'' as appropriate in 8 CFR 214.1 and 214.2.
5. Replace ''§ 103.7(b)(1) of this chapter'' with ''8 CFR 103.7(d)(4)'' in 8 CFR 217.2.
6. In 8 CFR part 235, replace ''§ 103.7(b)(1) of this chapter'' and § ''103.7(b)(1)'' with ''8 CFR 103.7(d)(3)'' in 8 CFR 235.1, with ''8 CFR 103.7(d)(7)'' in 8 CFR 235.7, ''8 CFR 103.7(d)(13)'' in 8 CFR 235.12, and ''8 CFR 103.7(d)(14)'' in 8 CFR 235.13.
7. Remove the second sentence of § 245.21(b) and remove and reserve §§ 245.15(c)(2)(iv)(B) and (h)(2), 245.23(e)(1)(iii), and 245.24(d)(3) and (i)(1)(iv).
8. Replace ''Missouri Service Center'' with ''National Benefit Center'' in 8 CFR 245a.18, 245a.19, and 245a.33.

2. Previous Fee Rules

The USCIS IEFA fee schedule that is in effect was published in the DHS FY 2016/2017 fee rule. *See* 81 FR 73292 (Oct. 24, 2016).[37] That rule and associated fees became effective on December 23, 2016. With that rule, DHS adjusted the USCIS immigration benefits fee schedule for the first time in more than six years, increasing fees by a weighted average of 21 percent. The fee schedule adjustment recovered all projected costs for FY 2016/2017, including the costs of the Refugee, Asylum, and International Operations Directorate (RAIO), SAVE, and the Office of Citizenship. *See* 81 FR 26911 and 73293.

The fee schedule had been adjusted previously as well, as follows:

- Before the creation of DHS, the Department of Justice (DOJ) Immigration and Naturalization Service (INS) [38] adjusted fees incrementally in 1994. *See* 59 FR 30520 (June 14, 1994).
- DOJ conducted a comprehensive fee review using ABC and adjusted most IEFA fees in 1998. *See* 63 FR 1775 (Jan. 12, 1998) (proposed rule); 63 FR 43604 (Aug. 14, 1998) (final rule).
- DOJ implemented fees for Nicaraguan Adjustment and Central American Relief Act (NACARA) between 1998 and 1999. *See* 63 FR 64895 (Nov. 24, 1998) (proposed rule); 64 FR 27856 (May 21, 1999) (final rule). DOJ adjusted fees for small volume workloads in 2000. *See* 64 FR 26698 (May 17, 1999) (proposed rule); 64 FR 69883 (Dec. 15, 1999) (final rule). DOJ implemented premium processing in 2001. *See* 66 FR 29682 (June 1, 2001). DOJ adjusted fees for inflation in 2002. *See* 66 FR 65811 (Dec. 21, 2001).
- Following the creation of DHS in 2002, the agency adjusted fees in 2004 and 2005. *See* 69 FR 20528 (Apr. 15, 2004); 70 FR 50954 (Aug. 29, 2005) (increasing the fee for Form I–290B from $110 to $385); 70 FR 56182 (Sept. 26, 2005).
- After those incremental changes, DHS published a comprehensive FY 2008/2009 fee rule in 2007. *See* 72 FR 29851 (May 30, 2007).
- DHS further amended USCIS fees in the FY 2010/2011 fee rule. *See* 75 FR 58962 (Sept. 24, 2010). This rule removed the costs of RAIO, SAVE, and the Office of Citizenship from the fee schedule, in anticipation of appropriations from Congress that DHS requested. *See* 75 FR 58961, 58966. These resources did not fully materialize, requiring USCIS to use other fee revenue to support these programs in the time between the FY 2010/2011 fee rule and the FY 2016/2017 fee rule. *See* 81 FR 26910–26912.

The supporting documentation accompanying this proposed rule in the

[35] The soft bound print edition of the CFR is revised on a quarterly basis. Titles 1 through 16 are revised as of January 1 each year.

[36] Readers may find the OFR's eCFR a useful tool to review historic regulatory text. For more information on viewing historical versions of the eCFR, *see https://www.ecfr.gov/reader-aids/using-ecfr/ecfr-changes-through-time.*

[37] The phrase ''FY 2016/2017 fee rule,'' as used in this proposed rule, encompasses the fee review, proposed rule, final rule, and all supporting documentation associated with the regulations effective as of December 23, 2016.

[38] The Homeland Security Act of 2002 abolished the INS and transferred the INS's immigration administration and enforcement responsibilities from DOJ to DHS. The INS's immigration and citizenship services functions were specifically transferred to the Bureau of Citizenship and Immigration Services, later renamed U.S. Citizenship and Immigration Services. *See* Public Law 107–296, sec. 451 (6 U.S.C. 271).

rulemaking docket at *https://www.regulations.gov* contains a historical fee schedule that shows the immigration benefit fee history since October 2005.[39]

3. Current Fees

Table 2 summarizes the IEFA and biometric services fee schedule that took effect on December 23, 2016. DHS is proposing to change the current fee schedule as a result of the FY 2022/2023 fee review. The table excludes statutory fees that DHS cannot adjust or can only adjust for inflation.

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Table 2: Current Non-Statutory IEFA Immigration Benefit Request Fees		
Form No.[40]	**Title**	**Fee**
G-1041	Genealogy Index Search Request	$65

Table 2: Current Non-Statutory IEFA Immigration Benefit Request Fees		
Form No.[40]	**Title**	**Fee**
G-1041A	Genealogy Records Request	$65
I-90	Application to Replace Permanent Resident Card	$455
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$445
I-129/ 129CW	Petition for a Nonimmigrant Worker	$460
I-129F	Petition for Alien Fiancé(e)	$535
I-130	Petition for Alien Relative	$535
I-131[41]	Application for Travel Document	$575
I-131A	Application for Carrier Documentation	$575
I-140	Immigrant Petition for Alien Worker	$700
I-191	Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)[42]	$930
I-192	Application for Advance Permission to Enter as Nonimmigrant	$930/585[43]
I-193	Application for Waiver of Passport and/or Visa	$585
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	$930
I-290B	Notice of Appeal or Motion	$675
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	$435
I-485	Application to Register Permanent Residence or Adjust Status	$1,140
I-485	Application to Register Permanent Residence or Adjust Status (certain applicants under the age of 14 years)[44]	$750
I-526	Immigrant Petition by Standalone Investor	$3,675
I-526E	Immigrant Petition by Regional Center Investor	$3,675
I-539	Application to Extend/Change Nonimmigrant Status	$370
I-600	Petition to Classify Orphan as an Immediate Relative	$775
I-600A	Application for Advance Processing of an Orphan Petition	$775
I-601	Application for Waiver of Grounds of Inadmissibility	$930

[39] For IEFA fee history before 2005, see USCIS, ''FY 2016/2017 Immigration Examinations Fee Account Fee Review Supporting Documentation with Addendum'' (Oct 25, 2016), *https://www.regulations.gov/document/USCIS-2016-0001-0466*. Appendix VIII—IEFA Fee History, page 56, provides fees from FY 1985 to Nov. 2010.

Table 2: Current Non-Statutory IEFA Immigration Benefit Request Fees		
Form No.[40]	**Title**	**Fee**
I-601A	Application for Provisional Unlawful Presence Waiver	$630
I-612	Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	$930
I-687	Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act	$1,130
I-690	Application for Waiver of Grounds of Inadmissibility	$715
I-694	Notice of Appeal of Decision under Section 210 or 245A	$890
I-698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	$1,670
I-751	Petition to Remove the Conditions on Residence	$595
I-765	Application for Employment Authorization	$410
I-800	Petition to Classify Convention Adoptee as an Immediate Relative	$775
I-800A	Application for Determination of Suitability to Adopt a Child from a Convention Country	$775
I-800A Supp. 3	Request for Action on Approved Form I-800A	$385
I-817	Application for Family Unity Benefits	$600
I-824	Application for Action on an Approved Application or Petition	$465
I-829	Petition by Investor to Remove Conditions on Permanent Resident Status	$3,750
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal[45]	$285/570
I-905	Application for Authorization to Issue Certification for Health Care Workers[46]	$230
I-910	Application for Civil Surgeon Designation	$785
I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	$230
I-941	Application for Entrepreneur Parole[47]	$1,200

Table 2: Current Non-Statutory IEFA Immigration Benefit Request Fees		
Form No.[40]	**Title**	**Fee**
I-956	Application for Regional Center Designation (formerly Form I-924, Application For Regional Center Designation Under the Immigrant Investor Program)	$17,795
I-956G	Regional Center Annual Statement (formerly Form I-924A, Annual Certification of Regional Center)	$3,035
N-300	Application to File Declaration of Intention	$270
N-336	Request for a Hearing on a Decision in Naturalization Proceedings	$700
N-400	Application for Naturalization	$640
N-400	Application for Naturalization (Reduced Fee)	$320
N-470	Application to Preserve Residence for Naturalization Purposes	$355
N-565	Application for Replacement Naturalization/Citizenship Document	$555
N-600	Application for Certification of Citizenship	$1,170
N-600K	Application for Citizenship and Issuance of Certificate Under Section 322	$1,170
Other	USCIS Immigrant Fee	$220
Other	Biometric Services Fee	$85
Other	H-1B Electronic Registration Fee (per beneficiary)	$10

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IV. Fee-Setting Approach—Reversal of 2020 Fee Rule

In the 2020 fee rule NPRM, DHS explained that it was shifting its fees away from an ability-to-pay model to a beneficiary-pays model. *See* 84 FR 62298 (Nov. 14, 2019); *see also* 85 FR 46795 (Aug. 3, 2020) (final rule stating that DHS had proposed shifting to a beneficiary-pays model). As described by the U.S. Government Accountability Office (GAO), under the beneficiary-pays principle, the beneficiaries of a service pay for the cost of providing that service.[48] Under the ability-to-pay principle, those who are more capable of bearing the burden of fees pay more for the service than those with less ability to pay. *Id.* Before the 2020 fee rule, DHS engaged in a balance of these two fee-setting principles when setting USCIS fees. Generally, DHS has given more weight to the ability-to-pay than the beneficiary-pays principle when setting USCIS fees, and has made affordability a central consideration.[49] At the same time, DHS has not wholly rejected the beneficiary-pays principle, including when the agency made clear that it would not authorize fee waivers

[40] Form, when used in connection with a benefit or other request to be filed with DHS to request an immigration benefit, means a device for the collection of information in a standard format that may be submitted in a paper format or an electronic format as prescribed by USCIS on its official website. The term ''Form'' followed by an immigration form number includes an approved electronic equivalent of such form as made available by USCIS on its official website. *See* 8 CFR 1.2 and 299.1. The word ''form'' is used in this proposed rule in both the specific and general sense.

[41] As described in this notice of proposed rulemaking (NPRM), the United States' obligations under the 1967 Protocol relating to the Status of Refugees (incorporating Article 28 of the 1951 Convention relating to the Status of Refugees) guide the Application for Travel Document fees for a Refugee Travel Document. The USCIS ABC model does not set these fees. *See* 8 CFR 103.7(b)(1)(i)(M)(*1*) and (*2*) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(7)(i) and (ii).

[42] Form I–191 was previously titled Application for Advance Permission to Return to Unrelinquished Domicile. *See* 8 CFR 103.7(b)(1)(i)(O) (Oct. 1, 2020).

[43] The Form I–192 fee remained $585 when filed with and processed by U.S. Customs and Border Protection (CBP). *See* 8 CFR 103.7(b)(1)(i)(P) (Oct. 1, 2020).

[44] This reduced fee is applied to ''an applicant under the age of 14 years when [the application] is: (*i*) Submitted concurrently with the Form I–485 of a parent; (*ii*) The applicant is seeking to adjust status as a derivative of his or her parent; and (*iii*) The child's application is based on a relationship to the same individual who is the basis for the child's parent's adjustment of status, or under the same legal authority as the parent.'' 8 CFR 103.7(b)(1)(i)(U)(*2*) (Oct. 1, 2020).

[45] Currently there are two USCIS fees for Form I–881: $285 for individuals and $570 for families. *See* 8 CFR 103.7(b)(1)(i)(QQ)(*1*) (Oct. 1, 2020). DOJ's Executive Office for Immigration Review (EOIR) has a separate $165 fee, which applies when one or more applicants file with the immigration court.

[46] USCIS excluded Form I–905, Application to Issue Certification for Health Care Workers, from the FY 2022/2023 fee review. As such, it will not appear in any tables in this NPRM that display results of the FY 2022/2023 fee review. USCIS does not have a FY 2022/2023 forecast for Form I–905 because it has a five-year renewal cycle and only four applicants file it. USCIS adjudicates it manually, meaning it does not track the filings in any case management system. Future fee reviews may evaluate this fee if more information is available.

[47] USCIS excluded Form I–941, Application for Entrepreneur Parole, from the FY 2022/2023 fee review. As such, it will not appear in tables for workload, in tables for fee-paying volume, or elsewhere in this NPRM. DHS published a separate NPRM that proposed to terminate the program. *See* 83 FR 24415 (May 29, 2018). However, DHS withdrew that NPRM. *See* 86 FR 25809 (May 11, 2021). As of Sep. 30, 2021, there are 24 FY 2021 receipts and only 54 receipts since the beginning of the program. DHS does not believe it has sufficient information to review this fee at this time. DHS does not propose any changes to this fee but may evaluate the fee in future fee reviews when more information is available.

[48] *See* GAO, ''Federal User Fees: A Design Guide'' (May 29, 2008), *https://www.gao.gov/products/GAO-08-386SP,* at 7–12.

[49] *See* 81 FR 26934 (May 4, 2016) (stating, ''The lower fee would help ensure that those who have worked hard to become eligible for naturalization are not limited by their economic means.'').

where such a waiver is inconsistent with the benefit requested, which may require establishing financial stability. *See* 75 FR 58974 (Sept. 24, 2010). In addition, in past fee rules, DHS has declined to expand USCIS fee waivers to benefits for which the eligibility requires financial stability because that would contradict the rationale for shifting costs related to those applications to others through fee waivers. *See* 72 FR 29863 (May 30, 2007). DHS has also previously declined suggestions that it reduce the burden on low-income requestors by setting USCIS fees based on income using a tiered fee system, because the benefits from such a scenario would not justify the administrative costs added by requiring officers to adjudicate the documentation of the applicant's income and eligibility for the requested fee level before processing the request. *Id.* In the 2020 fee rule, DHS was concerned that the level of USCIS annual forgone revenue from fee waivers and exemptions had increased markedly from $191 million in the FY 2010/2011 fee review to $613 million in the FY 2016/2017 fee review. *See* 85 FR 46807 (Aug. 3, 2020) (citing 81 FR 26922 and 73307). DHS estimated in the 2020 fee rule supporting documentation that, without changes to fee waiver policy, it would forgo revenue of almost $1.5 billion and believed that the fees necessary to recoup that foregone revenue [50] were too high to support the continuation of the existing fee waiver policy.[51] DHS notes, however, that in the 2020 fee rule, the agency did not abandon the ability-to-pay principle altogether, and still provided for fee exemptions and statutorily mandated fee waivers in certain circumstances.

In this new fee rule, DHS proposes to return the focus of its fee-setting away from emphasizing the beneficiary-pays principle towards the historical balance between the beneficiary-pays and ability-to-pay principles. DHS proposes this for several reasons.

First, DHS has been directed by the President to reduce barriers and promote accessibility to the immigration benefits that it administers. *See* Executive Order 14012, 86 FR 8277 (Feb. 2, 2021) (E.O. 14012). As the President noted in section 1 of the Executive order, new Americans and their children fuel our economy; contribute to our arts, culture, and government; and have helped the United States lead the world in science, technology, and innovation. DHS agrees with the President's goals of E.O. 14012, and that our laws and policies must encourage full participation by immigrants, including refugees, in our civic life, and that immigration benefits must be delivered effectively and efficiently. More specifically, sections 3(a)(i) and 5(a)(iii) of E.O. 14012, respectively, instruct the Secretary of Homeland Security to identify barriers that impede access to immigration benefits and make the naturalization process more accessible to all eligible individuals, including through a potential reduction of the naturalization fee and restoration of the fee waiver process. *Id.* USCIS has already taken crucial steps towards ensuring fair access and removing unnecessary barriers and bureaucracy. *See, e.g.,* Preserving Continuous Residence and Physical Presence for Purposes of Naturalization while Engaged in Religious Duties Outside the United States (May 25, 2021); [52] Naturalization Eligibility and Voter Registration Through a State's Benefit Application Process (May 27, 2021); [53] Veterans Residing Outside the United States and Naturalization (May 28, 2021); [54] Assisted Reproductive Technology and In-Wedlock Determinations for Immigration and Citizenship Purposes (August 5, 2021); [55] Clarifying Guidance on Military Service Members and Naturalization (November 12, 2021); [56] Demonstrating Eligibility for Modification under Section 337 (November 19, 2021).[57]

As part of implementing Executive Order 14012, USCIS published a Request for Public Input [58] (RPI) on reducing barriers and burdens across USCIS benefits and services as part of implementing Executive Order 14012. It received nearly 7,400 public comments as a result. USCIS analyzed these comments and incorporates actionable suggestions into this proposed rule including expanding fee exemptions, clarifying the financial hardship criteria for fee waivers, and maintaining the reduced fee for naturalization.

Second, DHS has read and considered the many comments that we received on the 2020 fee rule that stated that the increased fees and restrictions on fee waivers in that rule would result in many fewer residents accessing a desired immigration status for which they are eligible, simply because they cannot afford to apply. Others wrote that the proposed naturalization fee increase would make naturalization unaffordable. Thus, many public comments on the 2020 fee rule indicated a preference for DHS placing greater emphasis on the ability-to-pay principle in setting its fees. As a result of these comments, and to encourage full economic and civic participation by immigrants, DHS has also analyzed the effects of this rule in light of its impacts on low-income populations and organizations that assist them in section IX.A, Impact of Fees.

As stated earlier, DHS is operating under two injunctions that preclude it from implementing or following the changes made by the 2020 fee rule, as well as an injunction that precludes it from implementing the 2019 Fee Waiver Revisions. Thus, DHS must consider the concerns expressed and the courts' findings in those cases. For example, in *ILRC,* the order granting the injunction found that DHS failed to analyze the effect of that rule's fees on the demand for immigration benefit requests. The order also found that the rule's deviations from the beneficiary-pays principle conflict with the comments presented on the effects of these changes on low-income and vulnerable

[50] In this context, ''foregone revenue'' refers to the dollar value associated with an approved fee waiver or fee-exempt forms and benefits.

[51] *See, e.g.,* 85 FR 46799 (Aug. 3, 2020) (stating that the fee for Form N–400 would represent the estimated full cost to USCIS and be determined in the same manner as most other USCIS fees).

[52] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Preserving Residence, *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210525-PreservingResidence.pdf* (last updated May 25, 2021).

[53] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Naturalization Eligibility and Voter Registration Through a State's Benefit Application Process, *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210527-VoterRegistration.pdf* (last updated May 27, 2021).

[54] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Veterans Residing Outside the United States and Naturalization, *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210528-MilitaryVeterans.pdf* (last updated May 28, 2021).

[55] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Assisted Reproductive Technology and In-Wedlock Determinations for Immigration and Citizenship Purposes, *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210805-AssistedReproductiveTechnology.pdf* (last updated Aug 5, 2021).

[56] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Clarifying Guidance on Military Service Members and Naturalization, *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20211112-MilitaryNaturalization.pdf* (last updated Nov 12, 2021).

[57] This guidance allows children born to married legal parents, one of whom has a genetic or gestational link to the child, to acquire citizenship because these children are now considered born in wedlock. Immigration and Nationality Act. U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Demonstrating Eligibility for Modification under Section 337 of the Immigration and Nationality Act, *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20211119-ModificationUnderINA337.pdf* (last updated Nov 19, 2021).

[58] *See* 86 FR 20398 (Apr. 19, 2021).

immigrant populations. *See ILRC* at 27. Similarly, the court in *NWIRP* agreed with the plaintiffs that the fees and fee waiver regulations in the 2020 fee rule could cause harm to low-income immigrants. *See NWIRP* at 72.

DHS proposes to set USCIS fees at the level required to recover the full cost of providing immigration adjudication and naturalization services, as permitted or required by law, while providing certain fee exemptions and waivers for low-income immigrants. As USCIS estimates that the current fee structure will not generate sufficient revenue to cover the projected costs of providing immigration adjudication and naturalization services under the ABC methodology, the fees for many immigration benefit requests will by necessity increase. Nevertheless, where DHS has determined that this rule's approach would 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, DHS proposes either to maintain the pre-2020 fee rule regulations, fee waivers, and reduced fees that USCIS is following, or to add new fee exemptions to address accessibility and affordability. For example, as detailed more fully later in this preamble, DHS proposes to maintain the fee waiver regulations and eligibility guidance that took effect in 2010. Consistent with previous fee rules, DHS also proposes to limit the fees for certain benefit requests in recognition that fees set at the ABC model output for these forms would be overly burdensome. For example, as detailed later in this preamble, both considering the affordability of naturalization, and to promote naturalization for the benefits it provides to the country, DHS proposes to set the fee for Form N–400 at a level below what is required to recover the estimated full cost of providing naturalization services. In addition, DHS proposes to expand fee exemptions for certain vulnerable populations, as described later in this preamble.[59]

DHS acknowledges that the ability-to-pay principle necessarily requires the shifting of costs. If some customers are exempt from paying fees or have their fees waived, total fee collections cannot cover the total program costs unless other users pay higher fees to cover the costs associated with processing the benefit requests of non-paying users. USCIS follows the principles in OMB Circular A–25 and uses an ABC model to align its fees closely with the estimated cost for the relevant service. When DHS deviates from the ABC model to limit, waive, or exempt certain customers from fees because they are overly burdensome, or to advance a public policy priority, this results in the fees for particular services being set at a level that is higher than the estimated cost of providing those services to fee-paying users. That means that DHS examined each fee in this proposed rule, and the fees proposed represent the Department's best effort to balance of access, affordability, equity, and benefits to the national interest while providing USCIS with the funding necessary to maintain adequate services.

[59] *See* section VII, Fee Exemptions.

V. FY 2022/2023 Immigration Examinations Fee Account Review

A. USCIS Projected Costs and Revenue

The primary objective of the fee review is to determine whether current immigration and naturalization benefit fees will generate sufficient revenue to fund anticipated operating costs associated with administering USCIS' role in the Nation's legal immigration system. USCIS examines its recent budget history, service levels, and immigration and naturalization trends to forecast costs, revenue, and operational metrics. These data help USCIS identify the difference between anticipated costs and revenue as well as calculate proposed fees. DHS provides a brief summary of how the USCIS budget has evolved from the projections included in the FY 2016/2017 fee rule for context before discussing the elements of the FY 2022/2023 fee review. The FY 2022/2023 fee review encompasses three core elements:

- Cost projections;
- Revenue projections; and
- Cost and revenue differential (the difference between cost and revenue projections).

1. USCIS Budget History

USCIS' costs have grown beyond the levels projected in the FY 2016/2017 fee rule, which went into effect on December 23, 2016. This cost growth reflects increased USCIS workloads and staffing requirements during that time. The FY 2016/2017 fee rule estimated that an average annual IEFA non-premium cost projection of $3,037.8 million was required to meet USCIS' operational requirements.

Spending grew by $1 billion or 28 percent between FY 2016 and FY 2019, while revenue only grew by $406 million or 12 percent during the same period. Spending was driven by $943 million of one-time and recurring enhancements provided over the same time period due to a leadership directive to reduce carryover to around $800 million. The majority of this increased spending was attributed to an additional 3,800 positions that were added between FY 2017 and FY 2019.[60] No enhancements were added in FY 2020 due to budget reductions. Increased spending in enhancements in FY 2019 were approved based on the assumption that the FY 2019/2020 fee rule would be implemented in the summer of FY 2019, however subsequent to those decisions the FY 2019/2020 fee rule was delayed until the end of FY 2020.

Despite the spending increases between FY 2016 and FY 2019, USCIS did not always spend as much as the plan called for, and carryover remained in a relatively strong position (about $1.2 billion) at the end of both FY 2017 and FY 2018. By the end of FY 2019, however, carryover had decreased to about $850 million. In first half of FY 2020, before the onset of the COVID–19 pandemic, the agency had substantially increased its first and second quarter spending, due to the timing of contracts and on-board levels; this drew carryover down to about $600 million at the end of February, with less than $200 million in non-premium carryover, which funded 80 percent of USCIS operations. Although USCIS had surplus premium funding of about $400 million, those funds were fenced due to statutory restrictions and could not be used to offset the deficit.

In the Spring of 2020, in the wake of the COVID–19 pandemic, USCIS revenue dropped by 40 percent in April and an additional 25 percent in May from the forecasted collections. That created a possibility that USCIS might violate statutory anti-deficiency requirements and led to dramatic cuts in spending through the last half of FY 2020, a hiring freeze, and planned furloughs if revenue did not increase.

Towards the end of June and July of 2020, revenue began to return to normal levels, and in conjunction with major budget cuts, allowed USCIS to avoid the furloughs. In FY 2021, USCIS instituted 32 percent cuts to non-payroll expenses, continued the hiring freeze through April 2021, and did not fund enhancements. While USCIS carryover has stabilized and is projected to be over $600 million from non-premium fees at the end of FY 2022, USCIS is still living with effects of those 32 percent budget cuts. USCIS has a minimum carryover

[60] See the supporting documentation in the docket for this rule for more information. Appendix Table 9 on page 49 shows on-board staffing by office and fiscal year. Please note that on-board staffing is a subset of authorized staffing.

threshold of $1,063.8 million in the non-premium IEFA.[61]

The FY 2021 non-premium IEFA cost projections, which USCIS uses as the base for its FY 2022/2023 fee review cost projections, totals $3,776.3 million.[62] As discussed later in greater detail, the FY 2022/2023 fee review projects costs of $5,150.7 million for USCIS to fulfill its IEFA non-premium operational needs on an average annual basis.

Table 3: FY 2016/2017 Fee Rule Cost Projections vs. FY 2021 Operating Plan (Dollars in Thousands)

Type	FY 2016/2017 Average	FY 2021 Operating Plan	Difference	Change
Payroll	$1,631,320	$2,309,288	$677,967	41.6%
Non-Payroll	$1,406,466	$1,467,050	$60,584	4.3%
Total	**$3,037,786**	**$3,776,338**	**$738,552**	**24.3%**

The combined average non-payroll or general expenses (GE)[63] budget for the FY 2016/2017 fee review of $1,406.5 million increased by only 4.3 percent to $1,467.0 million in the FY 2021 Operating Plan (OP), which is a detailed spend plan for the agency that is finalized in the summer before the start of the fiscal year. Typically, the operating plan is executed closely to the original plan and is indicative of the resources needed for each of the Directorates and Program Offices to execute throughout the year. Excluding increased contingency funding, the GE budget actually decreased from $1,406.5 million in the FY 2016/2017 fee review to $1,258.0 million in the FY 2021 OP, a decrease of $148.5 million or 10.6 percent. As evidenced by the financial strains placed on USCIS by the COVID–19 pandemic, however, USCIS must maintain additional contingency funding to deal with emergent operational needs and provide funding in the event of unforeseen financial shortfalls and seasonal fluctuations in filing volumes and revenues.[64] Additionally, GAO acknowledges that fee funded agencies may need to designate funds as operating reserves to weather periods when revenue collections are lower than costs.[65] Therefore, USCIS decided to increase its contingency cost projection in the FY 2021 OP and maintain the same level in the fee review cost budget in case of continued negative effects from the pandemic. USCIS may use contingency funding to cover emergent costs from policy decisions, renegotiation of contracts, or new leases that were not included initially in the OP or in the projected biennial period's cost budget.

The limited growth in USCIS' GE budget is the result of actions taken by USCIS to constrain cost growth. In response to reduction in applicant volume and associated revenues during the COVID–19 pandemic, USCIS implemented significant GE cost-saving measures in FY 2020 and FY 2021. These cuts enabled USCIS to redirect resources to fund payroll and ensure that USCIS did not have to furlough any employees. These cuts included GE reductions of up to 32 percent across all USCIS offices, including a pause on new GE expenditure, reduced travel, implementing shorter periods of performance for contracts, and a freeze on implementing new contracts. Notable examples of GE budget decreases from FY 2016/2017 to FY 2021 include:

- $103.7 million (32 percent) decrease in IT equipment, software, and related contractor support;
- $36.8 million (52.2 percent) decrease in the USCIS Office of Citizenship and Applicant Information Services' (CAIS) GE budget, which included a reduction to the call center support contract and removal of Office of Citizenship grants that were included in the FY 2016/2017 fee rule budget;
- $27.3 million (59.9 percent) decrease in travel and training across all USCIS offices; and
- $52.4 million (83 percent) decrease in Service Center Operations (SCOPS) contractor support.

While USCIS will need to reverse some of the GE spending cuts it has made to ensure the continuation of its operations, USCIS projects that some of these cuts will be permanent, in an effort to limit cost growth and the increase in fees. Further details of restored GE budget cuts in the FY 2022/2023 fee review cost projections are found in section V.A.2.a of this preamble.

In contrast to the limited growth in non-payroll expenses relative to the FY 2016/2017 fee review budget, USCIS' payroll costs have increased substantially due to an increase in staffing. The combined average IEFA non-premium payroll budget for the FY 2016/2017 fee review of $1,631.3 million increased by 41.6 percent to $2,309.3 million in the FY 2021 OP. USCIS experienced a significant increase in application volume during the FY 2016/2017 to FY 2021 period and adjusted its staffing requirements accordingly. The FY 2016/2017 fee review accounted for 14,543 fully funded positions, while as of pay period 6 of FY 2021 (March 27, 2021) USCIS had 18,840 positions authorized to be funded with IEFA non-premium funds (an increase of 29.5 percent). This greater number of positions reflects increased operational demands on USCIS, including growth in workload volumes, growth in the time required

[61] See the IEFA Non-Premium Carryover Projections section of the supporting documentation for how and why USCIS requires a minimum carryover balance.

[62] The USCIS FY 2021 Annual Operating Plan amount of $3,776 million was reported in the FY 2022 Congressional Budget Justification and USCIS used this amount for cost projections to develop the proposed new fee structure. In March 2021, the USCIS FY 2023 Congressional Budget Justification reported a different total FY 2021 Annual Operating Plan of $3,524 million. This fee review uses the earlier FY 2021 operating plan amount, which was a reasonable assumption at the time.

[63] General expenses (GE) refers to non-pay expenses, such as office equipment, technology, training, and travel.

[64] *See* USCIS, ''Deputy Director for Policy Statement on USCIS' Fiscal Outlook'' (June 25, 2020), *https://www.uscis.gov/news/news-releases/deputy-director-for-policy-statement-on-uscis-fiscal-outlook*. *See also* USCIS, ''USCIS Averts Furlough of Nearly 70% of Workforce (Aug. 25, 2020), *https://www.uscis.gov/news/news-releases/uscis-averts-furlough-of-nearly-70-of-workforce*.

[65] *See* U.S. Government Accountability Office, Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability (Sept. 30, 2013), *https://www.gao.gov/assets/gao-13-820.pdf*.

per case which is in part driven by a combination of changing adjudication policy and length of the forms, and expanded responsibilities for other offices, such as Fraud Detection and National Security (FDNS), including social media vetting.[66] Payroll budget increases from FY 2016/2017 to FY 2021 include:

- New positions across all USCIS offices: $324.2 million (19.9 percent). Due to the operational impact of the COVID–19 pandemic and potential furlough of USCIS employees, FY 2020 and FY 2021 did not have any new authorized positions;
- Pay raises: $167.7 million (10.0 percent). Pay raises were 1.3 percent in FY 2016 and 1.0 percent in FY 2021.[67] The highest annual pay raise of 3.1 percent occurred in FY 2020; and
- Significant payroll increases due to an increase in staffing levels in these USCIS offices and directorates:
  - Asylum Division: $49.7 million (40.2 percent);
  - Field Office Directorate: $150.5 million (24.7 percent);
  - FDNS: $91.4 million (73.6 percent); and
  - SCOPS: $184.6 million (68.7 percent).

2. FY 2022/2023 Cost Projections

In developing projected program needs for FY 2022/2023, USCIS used the FY 2021 operating plan (OP) as the starting point. Actual and anticipated changes from the FY 2021 OP are discussed in this section. Enacted funds from FY 2022 are not included in the projections. In addition, there are standard pay adjustments and increases to programs to maintain current services that are fairly standard in budget development. Examples of necessary adjustments include:

- Pay inflation and within-grade pay step increases ($2.67 billion in FY 2022 and an additional $2.76 billion in FY 2023). The assumed Government-wide pay inflation rate for FY 2022 and FY 2023 is 2.7 percent and 1.6 percent respectively.
- Staffing requirements ($315.7 million in FY 2022 and an additional $34.8 million in FY 2023). USCIS models staffing allocations and costs based on projected workload volumes. *See* section V.B. of this preamble for information on how workload and completion rates affect staffing. Staffing allocation model cost estimates are also influenced by position type, grade level and locality.

Overall, the IEFA cost baseline increases by 35.3 percent in FY 2022 and 37.4 percent in FY 2023 both relative to the FY 2021 OP. A detailed summary of adjustments to the FY 2021 OP that resulted in the projected budget requirements for FY 2022 and FY 2023 follows.

Despite the growth in USCIS' IEFA non-premium budget from the levels projected in the FY 2016/2017 fee review to the levels in the FY 2021 OP, USCIS remains underfunded to accomplish its operational objectives, and processing backlogs continue to grow. *See* section III.A of this preamble for information on supplemental appropriations for the backlog.[68] USCIS projects that its IEFA non-premium cost projections must increase by 36.4 percent from $3,776.3 million in FY 2021 to an average of $5,150.7 million in FY 2022/2023 to fulfill USCIS' operational requirements. This increase in funding will ensure that USCIS is able to meet its operational needs during the biennial period. The following subsections provide more details on the required increases for the FY 2022/2023 cost projections.

Table 4: FY 2021 Operating Plan vs. FY 2022/2023 Fee Review Cost Projections (Dollars in Thousands)

Type	FY 2021 Operating Plan	FY 2022/2023 Average	Difference	Change	Percent of Total Change
Payroll	$2,309,288	$3,347,853	$1,038,565	45.0%	75.6%
Non-Payroll	$1,467,050	$1,802,854	$335,805	22.9%	24.4%
Total	**$3,776,338**	**$5,150,708**	**$1,374,370**	**36.4%**	**100.0%**

a. General Expenses

In the USCIS cost projections, GE represent all costs that are not related to pay or benefits of employees. USCIS estimates that its GE budget must increase by $335.8 million (22.9 percent) from $1,467.0 million in FY 2021 to a combined average of $1,802.9 million in the FY 2022/2023 fee review cost projections. Excluding contingency funding, USCIS projects the GE budget must increase from $1,258.0 million in

[66] In 2004, USCIS established the Fraud Detection and National Security Directorate (FDNS) in response to a Congressional recommendation to establish an organization ''responsible for developing, implementing, directing, and overseeing the joint USCIS-Immigration and Customs Enforcement (ICE) anti-fraud initiative and conducting law enforcement/background checks on every applicant, beneficiary, and petitioner prior to granting immigration benefits.'' *See,* Conference Report to accompany H.R. 4567 [Report 108–774], ''Making Appropriations for the Department of Homeland Security for the Fiscal Year Ending September 30, 2005,'' p. 74, available at *https://www.gpo.gov/fdsys/pkg/CRPT-108hrpt774/pdf/CRPT-108hrpt774.pdf.* The Fraud Prevention and Detection Account and the H–1B Nonimmigrant Petitioner Account are funded by statutorily set fees, and divided among USCIS (for fraud detection and prevention), the National Science Foundation, and the U.S. Department of Labor. *See* 8 U.S.C. 1356(v)(2)(B). FDNS is funded out of both the IEFA and the fraud detection and prevention account because the fees fixed by the statute are insufficient to cover the full costs of FDNS. The Fraud fee account revenue collections are divided in three thirds, one for the Department of State, one for the Department of Labor, and one for USCIS. *https://www.gpo.gov/fdsys/pkg/CRPT-108hrpt774/pdf/CRPT-108hrpt774.pdf.* The Fraud Prevention and Detection Account and the H–1B Nonimmigrant Petitioner Account are funded by statutorily set fees, and divided among USCIS (for fraud detection and prevention), the National Science Foundation, and the U.S. Department of Labor. *See* 8 U.S.C. 1356(v)(2)(B). FDNS is funded out of both the IEFA and the fraud detection and prevention account because the fees fixed by the statute are insufficient to cover the full costs of FDNS. The Fraud fee account revenue collections are divided in three thirds, one for the Department of State, one for the Department of Labor, and one for USCIS.

[67] For a history of Federal salary data, see Office of Personnel Management (OPM), *Policy, Data, Oversight: Pay and Leave* available at *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/*. OPM sets Federal salary levels, not DHS.

[68] The appropriated funds will be focused mainly on reducing current backlogs and not on processing future requests. If USCIS does not increase revenue to meet the costs of timely adjudicating all incoming receipts as proposed in this rule, USCIS will not be able to keep up with demand and backlogs are likely to rematerialize despite the funds provided for clearing those requests on hand.

FY 2021 to $1,592.7 million in FY 2022/2023, or 26.6 percent. This increase in GE is primarily the result of the planned reversal of reductions made in FY 2020 and FY 2021 due to the COVID–19 pandemic. These reductions were necessary at the time to preserve the financial stability of USCIS, but some of them must be reversed to ensure that USCIS can adequately perform the adjudication and naturalization services that it is statutorily charged to administer. Notable examples of increases in the GE budget from FY 2021 to the FY 2022/2023 fee review average are projected to occur for these directorates and programs:

- SCOPS contractor support is projected to increase $41 million (386.4 percent) above the FY 2021 level. The funding for SCOPS contractor support would revert close to the level projected in the FY 2016/2017 fee rule because the FY 2021 level had been reduced due to funding constraints associated with the COVID–19 pandemic.
- GE is projected to increase by $35 million to support increased refugee processing associated with a proposed increase to the refugee ceiling.
- Immigration Records and Identity Services (IRIS) is projected to have additional FY 2022/2023 Federal Bureau of Investigation (FBI) fingerprint and background check service costs of $16.7 million based on FBI fees and workload estimates.
- In addition to the restoration of $13 million for Application Support Center (ASC) contract support, costs increase as USCIS restores ASC capacity following the COVID–19 pandemic. USCIS temporarily suspended in-person services between March 18, 2020 until June 4, 2020.[69] ASC appointments that were cancelled due to the temporary office closure were rescheduled causing some individuals to experience significant processing delays. To reduce costs, the annual contract was deferred to nine months. The remaining three months were added to the 12-month optional period to resume in FY 2022.
- The Office of the Chief Information Officer's GE budget is projected to increase by $35.3 million (16 percent) to support the USCIS staffing requirements in the FY 2022/2023 fee review. The additional funding is required to provide IT support, equipment, and network services. This excludes projects funded from premium processing. As stated earlier, non-premium IEFA cost projections are the basis for the fee review budget.
- The budget includes an increase of $9.8 million at the National Records Center (NRC) to reduce the Freedom of Information Act (FOIA) backlog at the NRC in FY 2022/2023. DHS has requested appropriations to fund this additional spending. If USCIS receives appropriations, USCIS may be able to revise downward the cost projections funded by IEFA fees.

b. Payroll

USCIS projects that it must increase its IEFA non-premium pay budget by $1,038.6 million (45 percent) from $2,309.3 million in FY 2021 to $3,347.9 million in the FY 2022/2023 fee review period to meet its operational requirements. The payroll growth includes:

- *Pay and benefit adjustments for onboard staff:* $313.1 million. USCIS budget projections include increased costs associated with the Government-wide cost of living adjustment (COLA) assumption of 2.7 percent for FY 2022 and 1.6 percent for FY 2023.[70]
- *Pay and benefits for new staff:* $590.0 million. Projected FY 2022 and FY 2023 workloads exceed current workload capacity by 10.2 percent, thereby requiring additional staff. The FY 2022 and FY 2023 Staffing Allocation Models (SAMs)[71] estimated an additional 1,921 positions are necessary to meet adjudicative processing goals and other USCIS mission objectives, including administrative functions. This additional staffing requirement reflects the fact that it takes USCIS longer to adjudicate many workloads than was planned for in the FY 2016/2017 fee rule and that workload volumes and operational needs have grown. *See* section V.B. for information on how workload and completion rates affect staffing forecasts. Outside of the SAMs, USCIS has identified the need for another 2,035 new positions to accommodate the Asylum Processing interim final rule (IFR) and the proposed increase in the refugee admissions ceiling to 125,000. See section V.2.c. of this preamble for more information on how the Asylum Processing IFR, 87 FR 18078 (Mar. 29, 2022), and other rulemakings affect the fee review budget.[72]
- *Realignment of 1,157 positions into the non-premium IEFA budget:* $135.5 million. This realignment includes moving 1,127 positions from IEFA premium processing funding ($129.8 million) and 30 positions that were previously funded by appropriated funds for the E-Verify program ($5.7 million) to IEFA non-premium funding. The 1,127 positions were temporarily funded out of the premium processing budget in the FY 2021 OP due to financial constraints. Funding these positions with IEFA non-premium resources will allow USCIS to redirect premium processing funds to infrastructure improvements, including investments in USCIS' digital capabilities, as well as backlog reduction efforts. USCIS is also realigning 30 positions from appropriated E-Verify program funding to IEFA non-premium funding to reflect the appropriate distribution of positions as identified in the Verification Division SAM. The SAM identified that the 30 positions are better attributed to the SAVE program, which is funded with IEFA non-premium funds. Therefore, USCIS accounts for these 30 positions as increased IEFA non-premium costs.

[69] USCIS temporarily suspended in-person office services to help slow the spread of COVID–19 and ensure the safety of our staff and communities. These temporary closures and capacity limitations led to a substantial backlog of cases awaiting biometrics appointments. USCIS has since extended operating hours at high-volume ASCs and adjusted biometrics submission requirements for certain applicants to address the backlogs. *See* USCIS, USCIS Temporarily Closing Offices to the Public March 18–April 1, *https://www.uscis.gov/news/alerts/uscis-temporarily-closing-offices-to-the-public-march-18-april-1* (last updated Mar. 17, 2020); *see also* USCIS, USCIS Preparing to Resume Public Services on June 4, *https://www.uscis.gov/newsroom/alerts/uscis-preparing-to-resume-public-services-on-june-4* (last updated Sept. 16, 2001). At the date of publication of this proposed rule, ASC backlogs have mostly been eliminated.

[70] The FY 2022 COLA assumption is based on President Biden's ''Letter to the Speaker of the House and the President of the Senate on the Alternative Plan for Pay Adjustments for Civilian Federal Employment'', issued on August 27, 2021. *See* White House, ''Letter to the Speaker of the House and the President of the Senate on the Alternative Plan for Pay Adjustments for Civilian Federal Employees'' (Aug. 27, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/27/letter-to-the-speaker-of-the-house-and-the-president-of-the-senate-on-the-alternative-plan-for-pay-adjustments-for-civilian-federal-employees/*. The FY 2023 COLA assumption is based on the available DHS Resource Allocation Plan (RAP) guidance as of March 29, 2021.

[71] The SAMs are SAS-based workforce planning tools that estimate the staffing requirements necessary to adjudicate the projected volume of workload receipts (in other words, applications and petitions).

[72] On March 29, 2022, DHS and DOJ issued an interim final rule, Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers (Asylum Processing IFR), to improve and expedite processing of asylum claims made by noncitizens subject to expedited removal, ensuring that those who are eligible for protection are granted protection quickly, and those who are not are promptly removed. The rule authorizes asylum officers within USCIS to consider the asylum applications of individuals subject to expedited removal who assert a fear of persecution or torture and pass the required credible fear screening. *See* 87 FR 18078.

c. Related Rulemakings

As stated elsewhere in this preamble with regard to the premium processing rule and the DACA NPRM, simultaneously with this rule, DHS is engaging in multiple rulemaking actions that are in various stages of development.[73] *See* 86 FR 53736. DHS has considered and analyzed each of these other rules for peripheral, overlapping, or interrelated effects on this rule and has incorporated their effects, if any, into the supporting documentation, fee calculations, policies, and regulatory text for this proposed rule.

DHS is proposing changes to the USCIS fee schedule in this rule that may be necessary to implement the rule titled ''Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers.'' *See* 87 FR 18078 (Mar. 29, 2022) (Asylum Processing IFR). In the Asylum Processing IFR, DOJ and DHS amended the regulations governing the determination of certain protection claims raised by individuals subject to expedited removal and found to have a credible fear of persecution or torture. The changes are expected to improve the Departments' ability to consider the protection claims of individuals encountered at or near the border and placed into expedited removal more promptly while ensuring fundamental fairness.

DHS includes an estimated cost of the Asylum Processing IFR in our calculation of the proposed fees to recover full costs of USCIS implementation of the rule. Consistent with the reasoning described in the Asylum Processing IFR, DHS has used the primary estimate of annual costs in the model used to calculate the fees in this rule.[74] Use of this figure results in costs of an average $425.9 million per fiscal year during the biennial period.[75] This funding, which is reflected in the figures above, would support 2,035 new staff and associated GE. These expenses constitute approximately 31 percent of the total projected increase in budgetary requirements from FY 2021 to FY 2022/2023.

DHS proposes to include the middle of the three Asylum Processing IFR estimates to plan for these additional staff and other resources. Implementation of this rulemaking is subject to resource constraints, including available IEFA non-premium funding and revenue. When USCIS does not have the resources that it needs to meet its goals, processing times increase and the case processing backlog grows. USCIS evaluates its budget and revenue for operational purposes annually, separate from the fee review process. For example, as mentioned above, the OP is a budget for the current year and is separate from the fee review budget estimates for future years. If actual revenue in FY 2022 or FY 2023 is higher than the estimates included in this proposal, then USCIS may dedicate additional staff and resources to the Asylum Processing IFR. If actual revenue is lower than the estimates in this proposal, then USCIS may dedicate fewer resources to implementing the Asylum Processing IFR. Relatedly, if the ultimate costs of implementing the Asylum Processing IFR exceed the estimates included in this proposal, this will strain the resources available to USCIS and processing backlogs may grow. Future fee review budget estimates will consider current and planned DHS and USCIS policies.

If USCIS identifies alternative funding mechanisms or resources for the Asylum Processing IFR other than IEFA non-premium funds, the fee review budget projections may be reduced accordingly. Therefore, with the implementation realities of the Asylum Processing IFR and possible congressional appropriations to fund that rule, DHS may reduce USCIS' estimated resource requirements for FY 2022/2023 and the fees necessary to generate those resources in a final fee rule.

d. Cost Summary

Table 5 below is a crosswalk summary of the FY 2021 OP to the FY 2022 and FY 2023 cost projections. It accounts for payroll and non-payroll for on-board and new staff, other resource requirements or adjustments, and the removal of costs associated with temporary programs. The FY 2022/2023 IEFA non-premium average annual budget requirement is estimated to be $5,150.7 million. This represents a $1,374.4 million, or 36.4 percent, increase over the FY 2021 IEFA non-premium budget of $3,776.3 million. As previously discussed, the primary cost driver is payroll, which accounts for 76 percent of the increase.

[73] *See* Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions, Agency Rule List-Spring 2022, Department of Homeland Security at *https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=1600* (last accessed July 26, 2022).

[74] *See* 87 FR 18078 (Mar. 29, 2022), at 18206.

[75] DHS acknowledges that, by using the middle of the range of costs, if actual costs are higher than that, then the USCIS fee schedule will be set at a level that is less than what will be required to recover all of the costs added by the Asylum Processing IFR, all other factors remaining the same. Estimated annual costs of the Asylum Processing IFR (mid-range estimate): FY 2022 total costs of $438.2 million plus FY 2023 total costs of $413.6 million equals $851.8. *See* 86 FR 46933–46934. Average total costs of FY 2022/2023 equal $425.9 million.

Table 5: Cost Projections	
FY 2022/2023 Fee Review IEFA Non-Premium Cost Projection (in Millions)	
Total Adjusted FY 2021 IEFA Non-Premium Cost Projection (Base)	**$3,776.3**
Plus: Pay Inflation and Promotions/Within-Grade Increases	$397.5
Plus: FY 2022 SAM	$315.7
Plus: Asylum Processing IFR	$438.2
Plus: Refugee Ceiling Increase	$82.2
Plus: Realignment of Positions	$134.0
Plus: Net Additional Costs	-$32.4
Total Adjusted FY 2022 IEFA Non-Premium Cost Projection	**$5,111.5**
Plus: Additional Pay Inflation and Promotions/Within-Grade Increases	$132.7
Plus: Net additional FY 2023 SAM	$34.8
Plus: Additional Net Additional Costs	-$89.0
Total Adjusted FY 2023 IEFA Non-Premium Cost Projection	**$5,190.0**
FY 2022/2023 Average Non-Premium Cost Projection	**$5,150.7**

3. FY 2022/2023 Revenue Projections

USCIS' revenue projections are informed by internal immigration benefit request receipt forecasts agreed to by the USCIS Volume Projection Committee (VPC). *See* section V.B.1.a of this preamble for more information on the VPC.[76] USCIS also uses 12 months of historical actual fee-paying receipts to account for fee-waiver and fee-exemption trends. To project USCIS IEFA non-premium revenue, USCIS develops application volume projections using all available data. USCIS then considers the fee-paying rate for each application and petition type to reflect the fact that not all applicants and petitioners pay fees due to fee waivers and fee exemptions.

[76] USCIS has developed the VPC, a panel of agency experts, for systematic immigration benefit request filing volume forecasting for use in fee studies. USCIS has considered other business forecasting and structured forecasting approaches and models but has found that the VPC has a reliably accurate history of filing volume prediction. Two annual VPC meetings consider draft and final volume projections for several years ahead. One of three annual VPC meetings reviews the forecasts for the previous year, compares them to actual receipts, and discusses future improvements for greater accuracy.

USCIS uses actual revenue collections from August 2019 to July 2020 as a basis for the fee-paying assumptions in the FY 2022/2023 revenue projections. *See* section V.B.1 of this preamble for a more detailed discussion of USCIS volume projections and fee-paying rates.

USCIS' current fee schedule is expected to yield $3.28 billion of average annual revenue during the FY 2022/2023 biennial period. This represents an increase of $0.80 billion, or 32 percent, from the FY 2016/2017 fee rule projection of $2.48 billion. *See* 81 FR 26911 (May 4, 2016). The projected revenue increase is based on the fees established by the FY 2016/2017 fee rule and more anticipated fee-paying receipts. The FY 2016/2017 fee rule forecasted 5,870,989 total workload receipts and 5,140,415 fee-paying receipts. *See* 81 FR 26923–26924. However, the FY 2022/2023 fee review forecasts 7,601,200 total workload receipts and 6,510,442 fee-paying receipts. *See* section V.B.1. of this preamble for more information on the workload and fee-paying receipt forecasts. This represents a 29 percent increase to workload and 26 percent increase to fee-paying receipt volume assumptions. Despite the increase in projected revenue above the FY 2016/2017 fee rule projection, this additional revenue is projected to be insufficient to recover USCIS' increased costs, as discussed in the next section.

4. Projected Cost Revenue Differential

USCIS identifies the difference between anticipated costs and revenue, assuming no changes in fees, to determine whether the existing fee schedule is sufficient to recover the projected full cost of providing immigration adjudication and naturalization services or whether a fee adjustment is necessary. Table 6 summarizes the projected cost and revenue differential. Non-Premium Revenue represents a revenue forecast using the current fees. Non-Premium Cost represents a budget forecast. In any fee review, if the revenue forecast is less than the budget forecast, then USCIS may propose new or increased fees to cover the budget-revenue shortfall. Otherwise, USCIS may reduce certain costs or services to cover the difference. Summary values may vary due to rounding.

Table 6: IEFA Non-Premium Cost and Revenue (at FY 2021 levels) Comparison (Dollars in Millions)			
Point of Comparison	**FY 2022**	**FY 2023**	**FY 2022/2023 Average**
Non-Premium Revenue with Current Fees	$3,280.3	$3,284.8	$3,282.5
Non-Premium Cost Projection	$5,111.5	$5,190.0	$5,150.7
Difference	**-$1,831.2**	**-$1,905.2**	**-$1,868.2**

Historically, and for the purpose of the fee review, USCIS reports costs and revenue as an average over the 2-year period. In Table 6, USCIS averages FY 2022 and FY 2023 costs and revenue to determine the projected amounts to be recovered through this rule. Based on current immigration benefit and biometric services fees and projected volumes, USCIS expects that if fees remained at their current levels, those fees would generate $3.28 billion in average annual revenue in FY 2022 and FY 2023. For the same period, the average annual cost of processing those immigration benefit requests and providing biometric services is $5.15 billion. This yields an average annual deficit of $1,868.2 million. In other words, USCIS expects the costs of fulfilling its operation requirements in FY 2022/2023 will exceed projected total revenue under its current fee structure.

Because projected costs are higher than projected revenue, USCIS has several options to address the shortfall:

1. Reduce projected costs;
2. Use carryover funds or revenue from the recovery of prior year obligations; or
3. Adjust fees with notice-and-comment rulemaking.

Although USCIS continues to pursue efforts to increase agency efficiency, DHS believes that reducing the projected costs to equal the projected revenue would degrade USCIS operations funded by the IEFA; therefore, this is not a viable alternative to the proposed rule. The projected amount of funding necessary to meet USCIS' operational requirements would exceed USCIS' projected carryover in both FY 2022 and FY 2023, so USCIS is not able to rely on those funds to cover the difference between projected revenue and costs.[77] Likewise, USCIS estimates that recovered revenue from prior year obligations will be insufficient. USCIS estimates that it may recover $91.9 million in FY 2022 and $94.2 million in FY 2023 for the non-premium IEFA. Therefore, DHS proposes to increase revenue through the fee adjustments described in detail throughout this rule. To the extent USCIS is successful in measurably reducing completion rates or achieving other productivity gains, DHS will re-evaluate the fee schedule in subsequent fee rules.

B. Methodology

When conducting a fee review, USCIS reviews its recent operating environment to determine the appropriate method to assign costs to immigration benefit requests, including biometric services. USCIS uses ABC, a business management tool that assigns resource costs to operational activities and then to products, services, or both. USCIS uses commercially available ABC software to create financial models. These models determine the cost of each major step toward processing immigration benefit requests and providing biometric services. This is the same methodology that USCIS used in the last five fee reviews, and it is the basis for the current fee structure. Following the FY 2016/2017 fee rule, USCIS identified several key methodology changes to improve the accuracy of its ABC model. For more information on these changes, please refer to the Changes Implemented in the FY 2022/2023 Fee Review section of the supporting documentation located in the docket of this rule.

1. Volume

USCIS uses two types of volume data in the fee review: workload and fee-paying volume. Workload volume is a projection of the total number of immigration benefit requests that USCIS will receive in a fiscal year. Fee-paying volume is a projection of the number of customers that will pay a fee when filing requests for immigration benefits. Not all customers pay a fee. Those customers to whom a fee exemption applies or for whom USCIS grants a fee waiver are represented in the workload volume, but not the fee-paying volume. Customers who pay a fee fund the cost of processing requests for fee-waived or fee-exempt immigration benefit requests. Tables 7 and 8 compare the FY 2016/2017 fee rule volume forecasts to the volume forecasts for this rulemaking similar to previous fee rules. *See e.g.,* 81 FR 26922–26924. Actual receipts from prior years inform those forecasts, but they may not be the only reason for differences. We explain some of the larger differences in the paragraphs that follow Tables 7 and 8. For information on actual receipts from previous fiscal years, see Appendix Table 13 in the supporting documentation.

a. Workload Volume and Volume Projection Committee

USCIS uses statistical modeling, immigration receipt data, and internal assessments of future developments (such as planned immigration policy initiatives)[78] to develop workload volume projections. All relevant USCIS directorates and program offices are represented on the VPC. The VPC forecasts USCIS workload volume using statistical forecasts and subject-matter expertise from various directorates and program offices, including the service centers, National Benefits Center, RAIO, and regional, district, and field offices. Input from these offices helps refine the

[77] In the docket for this proposed rule, the supporting documentation has more information on carryover estimates. *See* the section titled IEFA Non-Premium Carryover Projections and Targets.

[78] DHS has considered the effects on this rule of all intervening legislation, related rulemakings, and policy changes that USCIS knows have occurred or will occur by the time the rule is signed. However, DHS does not and cannot assert that it knows and has considered every policy change that is planned or that may occur at all levels and agencies of the U.S. Government that may directly or indirectly affect this rule. Immigration policy changes frequently and USCIS must use the best cost data available at a point in time. Initiatives may come about without being incorporated in the proposed and final fees simply due to the time required for rule development and finalization. That necessary shortcoming is ameliorated by the CFO Act requirement that DHS address the effects of the constantly evolving immigration policy environment on its fees, costs, and services every 2 years, as DHS has done through its biennial fee reviews.

statistical volume projections. The VPC reviews short- and long-term volume trends. In most cases, time series models provide volume projections by form type. Time series models use historical receipt data to determine patterns (such as level, trend, and seasonality) or correlations with historical events to forecast receipts. When possible, other, more detailed models are also used to determine relationships within and between different benefit request types. At VPC meetings, the committee members deliberate on the provided forecast, consider alternatives, and agree to a forecast by group consensus.

Workload volume is a key element used to determine the USCIS resources needed to process benefit requests within established adjudicative processing goals. It is also the primary cost driver for assigning activity costs to immigration benefits and biometric services [79] in the USCIS ABC model.

[79] As fully explained later in this preamble, DHS is removing biometric services as a separate fee in this rule, except as associated with an Application for Temporary Protected Status and certain other programs. Accordingly, N/A is included in the average annual FY 2022/2023 projected workload receipts and difference columns for biometrics in Table 7.

Previous fee reviews also relied on VPC forecasts.[80] DHS explains some of the larger differences in the paragraphs after Table 7. Values below are the average of 2 years, rounded to whole numbers. There may be slight differences because of rounding.

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[80] The FY 2010/2011 fee rule was the first to use VPC workload estimates in a fee review. *See,* USCIS, FY 2010/2011 Immigration and Examinations Fee Account Fee Review (June 11, 2010), available at *https://www.regulations.gov/document/USCIS-2009-0033-0007.* All subsequent fee reviews and fee rules used VPC estimates.

Table 7: Workload Volume Comparison			
Immigration Benefit Request	**FY 2016/2017 Fee Review's Average Annual Projected Workload Receipts**	**FY 2022/2023 Fee Review's Average Annual Projected Workload Receipts**	**Difference**
I-90 Application to Replace Permanent Resident Card	810,707	740,000	-70,707
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	10,143	5,020	-5,123
I-129 Petition for a Nonimmigrant Worker Subtotal:	432,156	568,630	136,474
For H-1 nonimmigrants	N/A	430,000	N/A
For H-2A - Named Beneficiaries	N/A	4,020	N/A
For H-2B - Named Beneficiaries	N/A	2,460	N/A
For L nonimmigrants	N/A	42,350	N/A
For O nonimmigrants	N/A	27,300	N/A
Form I-129CW, or Form I-129 for E & TN, H-3, P, Q, or R Classifications	N/A	40,850	N/A
For H-2A - Unnamed Beneficiaries	N/A	17,650	N/A
For H-2B - Unnamed Beneficiaries	N/A	4,000	N/A
I-129F Petition for Alien Fiancé(e)	45,351	44,700	-651
I-130 Petition for Alien Relative	911,349	880,900	-30,449
I-131/I-131A Application for Travel Document Subtotal	256,622	354,416	97,794
I-131 Application for Travel Document	N/A	329,000	N/A
I-131 Refugee Travel Document for an individual age 16 or older	N/A	16,260	N/A
I-131 Refugee Travel Document for a child under the age of 16	N/A	1,157	N/A
I-131A Application for Carrier Documentation	N/A	8,000	N/A
I-140 Immigrant Petition for Alien Worker	88,602	140,000	51,398
I-290B Notice of Appeal or Motion	24,706	36,423	11,717
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	26,428	43,028	16,600

Table 7: Workload Volume Comparison			
Immigration Benefit Request	**FY 2016/2017 Fee Review's Average Annual Projected Workload Receipts**	**FY 2022/2023 Fee Review's Average Annual Projected Workload Receipts**	**Difference**
I-485 Application to Register Permanent Residence or Adjust Status	593,717	608,750	15,033
I-526/I-526E Immigrant Petition by Standalone/Regional Center Investor[81]	14,673	3,900	-10,773
I-539 Application to Extend/Change Nonimmigrant Status	172,001	472,000	299,999
I-600/600A; I-800/800A Intercountry Adoption-Related Petitions and Applications	15,781	4,447	-11,335
I-600A/I-600 Supplement 3 Request for Action on Approved Form I-600A/I-600	N/A	60	N/A
I-601A Provisional Unlawful Presence Waiver	42,724	39,800	-2,924
I-687 Application for Status as a Temporary Resident	18	1	-17
I-690 Application for Waiver of Grounds of Inadmissibility	21	21	0
I-694 Notice of Appeal of Decision	39	4	-35
I-698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	91	20	-71
I-751 Petition to Remove Conditions on Residence on Permanent Resident Status	173,000	154,000	-19,000
I-765 Application for Employment Authorization	747,825	1,666,500	918,675
I-800A Supplement 3 Request for Action on Approved Form I-800A	1,585	933	-653
I-817 Application for Family Unity Benefits	2,069	517	-1,552
I-824 Application for Action on an Approved Application or Petition	10,921	10,596	-325

[81] Combines both Forms I–526 and I–526E. USCIS revised Form I–526 and created Form I–526E as a result of the EB–5 Reform and Integrity Act of 2022.

Table 7: Workload Volume Comparison			
Immigration Benefit Request	**FY 2016/2017 Fee Review's Average Annual Projected Workload Receipts**	**FY 2022/2023 Fee Review's Average Annual Projected Workload Receipts**	**Difference**
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status	3,562	3,250	-312
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	N/A	385	N/A
I-910 Application for Civil Surgeon Designation	609	568	-41
I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant	575	1,150	575
I-956 Application For Regional Center Designation	400	62	-338
I-956G Regional Center Annual Statement	882	728	-154
N-300 Application to File Declaration of Intention	41	17	-24
N-336 Request for a Hearing on a Decision in Naturalization Proceedings	4,666	6,140	1,474
N-400 Application for Naturalization	830,673	831,700	1,027
N-470 Application to Preserve Residence for Naturalization Purposes	362	138	-224
N-565 Application for Replacement Naturalization/Citizenship Document	28,914	26,900	-2,014
N-600/600K Application for Certificate of Citizenship Subtotal	69,723	33,900	-35,823
N-600 Application for Certificate of Citizenship	N/A	30,000	N/A
N-600K Application for Citizenship and Issuance of Certificate Under Section 322	N/A	3,900	N/A
Inadmissibility Waiver Subtotal	71,527	86,210	14,683
I-191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	N/A	111	N/A

Table 7: Workload Volume Comparison			
Immigration Benefit Request	**FY 2016/2017 Fee Review's Average Annual Projected Workload Receipts**	**FY 2022/2023 Fee Review's Average Annual Projected Workload Receipts**	**Difference**
I-192 Application for Advance Permission to Enter as Nonimmigrant	N/A	41,481	N/A
I-193 Application for Waiver of Passport and/or Visa	N/A	6,815	N/A
I-212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	N/A	10,693	N/A
I-601 Application for Waiver of Grounds of Inadmissibility	N/A	19,750	N/A
I-612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	N/A	7,360	N/A
USCIS Immigrant Fee	472,511	543,000	70,489
G-1041 Genealogy Index Search Request	3,605	10,994	7,389
G-1041A Genealogy Records Request	2,410	3,301	891
Request for Certificate of Non-Existence	N/A	4,103	N/A
H-1B Registration Process	N/A	273,990	N/A
Subtotal	**5,870,989**	**7,601,200**	**1,730,211**
Biometric Services	3,028,254	N/A	N/A
Total	**8,899,243**	**7,601,200**	**-1,298,043**

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Differences between the two sets of workload estimates may be unrelated to any proposed fee or policy change. As mentioned earlier, these estimates are based on historical data, statistical analysis, and subject matter and policy input. For example, the Form I–90 forecast consists of two combined forecasts: renewals and replacements. Both Form I–90 forecasts use a time series model that allows for seasonality. As another example, the VPC establishes two Form N–400 forecasts: civilian and military. The statistical model that the VPC considers for the civilian Form N–400 forecast leverages survival analysis to include individual microdata and reflects the differences in application patterns of previous naturalization applicants. USCIS' statistical model uses multiple factors to determine the likelihood of naturalization of members of the pool of potential applicants, including the length of time an individual has been a lawful permanent resident (LPR), as well as an individual's country of origin, visa type, and age. In contrast, the military naturalization forecast is a time series model that does not use survival analysis. USCIS evaluates a variety of models and methods to determine the best forecast for each workload based on the available data and historical trends.

Some differences in workload are the result of proposed changes, in whole or in part. Part of the large differences for Forms I–131 and I–765 relate to a proposed change to Form I–485 fees and interim benefits. *See* section VIII.H.1 for more information. In the FY 2016/2017 fee review, USCIS determined the workload volume for Forms I–765 and I–131 that are not associated with Forms I–485 (in other words, interim benefits). *See* 81 FR 26918 and 73300. The FY 2016/2017 column in Table 7 represents only the standalone workload for Forms I–131 and I–765 because all the interim benefit workloads bundled with Form I–485 are counted in the row for Form I–485. The FY 2022/2023 column of Table 7 includes workloads for Forms I–131 and I–765 that are either standalone or interim benefits concurrently filed with Form I–485. Other factors contributed to

the differences, such as historical trends. There is no biometric services workload forecast for FY 2022/2023 (apart from the TPS workload, as discussed in section E.2 below) because of the proposal to incorporate the cost of providing biometric services in the underlying form fees, as explained in section VIII.E of this preamble.

A comparison of the two sets of forecasts, in isolation, may not illustrate USCIS trends in the several years between fee reviews. For example, when USCIS estimated workload for the FY 2016/2017 fee rule, it had been several years since receipts for Form I–140 were over 100,000. As such, the receipt estimate was reasonable at the time and consistent with receipts from FY 2009 to 2014. Since FY 2015, Form I–140 receipts are routinely over 100,000. There could be a number of reasons for this change, such as availability of employment-based visas or increased demand following economic or policy changes in the intervening years. As another example, filing trends for Form I–539 have changed significantly since the FY 2016/2017 fee rule. The forecast for FY 2022/2023 is based on Student and Exchange Visitor Information System data, which included 225,000 Form I–539 filings annually beginning in January 2021. DHS expects the vast majority of this workload to be optional practical training (OPT) and science, technology, engineering, and mathematics optional practical training (STEM OPT) extensions. As yet another example, the adoption workload has been trending downward for many years. Comparing only two data points in Table 7 does not show that the difference is just the continuation of a gradual trend over many years. Finally, Table 7 does not represent the entirety of USCIS workload. It excludes some workloads without fees. For example, asylum and refugee workloads (credible fear, reasonable fear, Forms I–589 and I–590) and other humanitarian workloads (for example, Forms I–914 and I–918) are excluded from the tables 7 and 8. These omitted workloads are part of the ABC model so that USCIS can estimate their total cost. However, only fee-paying volumes generate revenue for USCIS. *See* section III.C, Full Cost Recovery, of this preamble for more information. As explained later in this preamble, the proposed fees exclude temporary or uncertain workloads, such as TPS and DACA. *See* sections V.C. and V.D of this preamble.

b. Fee-Paying Volume

USCIS uses historical revenue and receipt data to determine the number of individuals who paid a fee for each immigration or naturalization benefit request. Fee-paying percentages by form are usually steady year over year. USCIS uses monthly fee-paying percentages in its forecasts to capture seasonality during the year. Additionally, policy changes, legislation, and executive orders are frequently some of the factors that affect fee-paying percentages, so older historical data to calculate the percentages can be counter-productive. In this proposed rule, USCIS therefore referenced revenue and receipts data from August 2019 to July 2020 for fee-paying figures. Total revenue for an immigration benefit request is divided by its fee to determine the historical number of fee-paying immigration benefit requests. Fee-paying receipts are compared to the total number of receipts (workload volume) to determine a fee-paying percentage for each immigration benefit request. When appropriate, projected fee-paying volume is adjusted to reflect filing trends and anticipated policy changes. These projections include the effects of changes that DHS is proposing in this rule.[82] DHS explains some of the larger differences in the paragraphs after Table 8. Values below are the average of two years, rounded to whole numbers. There may be slight differences because of rounding.

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[82] Table 8 compares the projections from the FY 2016/2017 fee rule with the projections of the FY 2022/2023 fee review. As discussed, these projections are based on a number of factors, including historical data of actual receipts. Although the FY 2016/2017 Fee Review differs to some degree from the actual receipts since the 2016 fee rule, USCIS compares fee projections against each other, rather than against actual receipts, to ensure consistency.

Table 8: Fee-Paying Projection Comparison by Fee Review			
Immigration Benefit Request	**FY 2016/2017 Fee Review's Average Annual Fee-Paying Projection**	**FY 2022/2023 Fee Review's Average Annual Fee-Paying Projection**	**Difference**
I-90 Application to Replace Permanent Resident Card	718,163	648,758	-69,405
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	9,499	4,623	-4,876
I-129 Petition for a Nonimmigrant Worker Subtotal	427,778	568,630	140,852
For H-1	N/A	430,000	N/A
For H-2A - Named Beneficiaries	N/A	4,020	N/A
For H-2B - Named Beneficiaries	N/A	2,460	N/A
For L	N/A	42,350	N/A
For O	N/A	27,300	N/A
Form I-129CW, or Form I-129 for E or TN, H-3, P, Q, or R Classifications	N/A	40,850	N/A
H-2A - Unnamed Beneficiaries	N/A	17,650	N/A
H-2B - Unnamed Beneficiaries	N/A	4,000	N/A
I-129F Petition for Alien Fiancé(e)	39,277	41,432	2,155
I-130 Petition for Alien Relative	907,512	857,514	-49,999

Table 8: Fee-Paying Projection Comparison by Fee Review			
Immigration Benefit Request	**FY 2016/2017 Fee Review's Average Annual Fee-Paying Projection**	**FY 2022/2023 Fee Review's Average Annual Fee-Paying Projection**	**Difference**
I-131/I-131A Application for Travel Document Subtotal	194,461	279,078	84,617
I-131 Application for Travel Document	N/A	253,662	N/A
I-131 Refugee Travel Document for an individual age 16 or older	N/A	16,260	N/A
I-131 Refugee Travel Document for a child under the age of 16	N/A	1,157	N/A
I-131A Application for Carrier Documentation	N/A	8,000	N/A
I-140 Immigrant Petition for Alien Worker	88,602	140,000	51,398
I-290B Notice of Appeal or Motion	20,955	33,803	12,848
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	8,961	4,107	-4,854
I-485 Application to Register Permanent Residence or Adjust Status	473,336	572,497	99,161
I-526/I-526E Immigrant Petition by Standalone/Regional Center Investor[83]	14,673	3,900	-10,773
I-539 Application to Extend/Change Nonimmigrant Status	171,616	462,380	290,764
I-600/600A; I-800/800A Orphan Petitions and Applications	5,811	2,438	-3,373
I-600A/I-600 Supplement 3 Request for Action on Approved Form I-600A/I-600	N/A	29	N/A
I-601A Provisional Unlawful Presence Waiver	42,724	39,800	-2,924
I-687 Application for Status as a Temporary Resident	0	1	1
I-690 Application for Waiver of Grounds of Inadmissibility	17	21	4
I-694 Notice of Appeal of Decision	39	4	-35
I-698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	91	20	-71
I-751 Petition to Remove Conditions on Residence	162,533	130,274	-32,260
I-765 Application for Employment Authorization	397,954	1,084,740	686,786

[83] Combines both Forms I–526 and I–526E. USCIS revised Form I–526 and created Form I–526E as a result of the EB–5 Reform and Integrity Act of 2022.

Table 8: Fee-Paying Projection Comparison by Fee Review			
Immigration Benefit Request	**FY 2016/2017 Fee Review's Average Annual Fee-Paying Projection**	**FY 2022/2023 Fee Review's Average Annual Fee-Paying Projection**	**Difference**
I-800A Supplement 3 Request for Action on Approved Form I-800A	746	448	-298
I-817 Application for Family Unity Benefits	1,988	505	-1,483
I-824 Application for Action on an Approved Application or Petition	10,828	10,292	-536
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status	3,562	3,250	-312
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	N/A	385	N/A
I-910 Application for Civil Surgeon Designation	609	568	-41
I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant	257	1,027	770
I-956 Application For Regional Center Designation	400	62	-338
I-956G Regional Center Annual Statement	882	728	-154
N-300 Application to File Declaration of Intention	36	17	-19
N-336 Request for a Hearing on a Decision in Naturalization Proceedings	3,593	5,137	1,544
N-400 Application for Naturalization (including reduced fee)	631,655	693,820	62,165
N-470 Application to Preserve Residence for Naturalization purposes	360	138	-222
N-565 Application for Replacement Naturalization/Citizenship Document	23,491	21,508	-1,983
N-600/600K Naturalization Certificate Application Subtotal	46,870	18,936	-27,934
N-600 Application for Certificate of Citizenship	N/A	16,041	N/A
N-600K Application for Citizenship and Issuance of Certificate Under Section 322	N/A	2,895	N/A
Inadmissibility Waiver Subtotal	41,902	44,211	2,309
I-191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	N/A	111	N/A
I-192 Application for Advance Permission to Enter as Nonimmigrant	N/A	10,954	N/A

Table 8: Fee-Paying Projection Comparison by Fee Review			
Immigration Benefit Request	**FY 2016/2017 Fee Review's Average Annual Fee-Paying Projection**	**FY 2022/2023 Fee Review's Average Annual Fee-Paying Projection**	**Difference**
I-193 Application for Waiver of Passport and/or Visa	N/A	6,772	N/A
I-212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	N/A	7,260	N/A
I-601 Application for Waiver of Grounds of Inadmissibility	N/A	18,560	N/A
I-612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	N/A	554	N/A
USCIS Immigrant Fee	472,511	543,000	70,489
G-1041 Genealogy Index Search Request	3,605	10,994	7,389
G-1041A Genealogy Records Request	2,410	3,301	891
Request for Certificate of Non-Existence	N/A	4,103	N/A
H-1B Registration Process	N/A	273,990	N/A
Subtotal	**4,929,707**	**6,510,467**	**1,580,760**
Biometric Services	2,598,639	N/A	N/A
Grand Totals	**7,528,346**	**6,510,467**	**-1,017,879**

All fee-paying workload is a subset of total workload, as discussed in the previous section. As such, changes to workload may affect the fee-paying projections. As explained above, USCIS estimates fee-paying receipts by applying a percentage of fee-paying receipts to the workload forecast. For a general explanation on how fee-paying volumes affect fees, *see* section VI, Fee Waivers, of this preamble. Some differences in fee-paying projections are the result of proposed changes, in whole or in part. For example, part of the large differences between the past and current projections for Forms I–131 and I–765 relate to the proposed change to Form I–485 fees and interim benefits. *See* section VIII.H.1 for more information. In the FY 2016/2017 fee review, USCIS determined the fee-paying volume for Forms I–765 and I–131 that are not associated with Forms I–485. *See* 81 FR 26918 and 73300. The FY 2016/2017 column in Table 8 represents the forecasted standalone fee-paying receipts only for Forms I–131 and I–765 because all interim benefit fee-paying receipts bundled with Form I–485 are counted in the row for Form I–485. *See* 81 FR 26919 and 26924. The FY 2022/2023 column of Table 8 includes fee-paying receipts for Forms I–131 and I–765 that are either standalone or interim benefits concurrently filed with Form I–485. Other factors contributed to the differences, such as historical trends. There is no workload forecast for biometric services for FY 2022/2023 because of the proposed elimination of the discrete biometric services fee for most benefit requestors, as explained in section VIII.E of this preamble.

Table 9 is a comparison of fee-paying percentages in the FY 2016/2017 fee rule and this proposed rule. It divides the fee-paying volumes in Table 8 by the workload volumes in Table 7 to calculate the fee-paying percentages. There may be slight differences because of rounding.

Table 9: Fee-Paying Percentage Comparison by Fee Review			
Immigration Benefit Request	**FY 2016/2017 Fee Review's Fee-Paying Percentage**	**FY 2022/2023 Fee Review's Fee-Paying Percentage**	**Difference**
I-90 Application to Replace Permanent Resident Card	89%	88%	-1%
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	94%	92%	-2%
I-129 Petition for a Nonimmigrant Worker Subtotal	99%	100%	1%
For H-1	N/A	100%	N/A
For H-2A - Named Beneficiaries	N/A	100%	N/A
For H-2B - Named Beneficiaries	N/A	100%	N/A
For L	N/A	100%	N/A
For O	N/A	100%	N/A
Form I-129CW, or Form I-129 for E or TN, H-3, P, Q, or R Classifications	N/A	100%	N/A
H-2A - Unnamed Beneficiaries	N/A	100%	N/A
H-2B - Unnamed Beneficiaries	N/A	100%	N/A
I-129F Petition for Alien Fiancé(e)	87%	93%	6%
I-130 Petition for Alien Relative	100%	97%	3%
I-131/I-131A Application for Travel Document Subtotal	76%	79%	3%

Table 9: Fee-Paying Percentage Comparison by Fee Review			
Immigration Benefit Request	**FY 2016/2017 Fee Review's Fee-Paying Percentage**	**FY 2022/2023 Fee Review's Fee-Paying Percentage**	**Difference**
I-131 Application for Travel Document	N/A	77%	N/A
I-131 Refugee Travel Document for an individual age 16 or older	N/A	100%	N/A
I-131 Refugee Travel Document for a child under the age of 16	N/A	100%	N/A
I-131A Application for Carrier Documentation	N/A	100%	N/A
I-140 Immigrant Petition for Alien Worker	100%	100%	0%
I-290B Notice of Appeal or Motion	85%	93%	8%
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	34%	10%	-24%
I-485 Application to Register Permanent Residence or Adjust Status	80%	94%	14%
I-526/I-526E Immigrant Petition by Standalone/Regional Center Investor	100%	100%	0%
I-539 Application to Extend/Change Nonimmigrant Status	100%	98%	-2%
I-600/600A; I-800/800A Orphan Petitions and Applications	37%	55%	18%
I-600A/I-600 Supplement 3 Request for Action on Approved Form I-600A/I-600	N/A	48%	N/A
I-601A Provisional Unlawful Presence Waiver	100%	100%	0%
I-687 Application for Status as a Temporary Resident	N/A	100%	N/A
I-690 Application for Waiver of Grounds of Inadmissibility	81%	100%	19%
I-694 Notice of Appeal of Decision	100%	100%	0%
I-698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	100%	100%	0%
I-751 Petition to Remove Conditions on Residence	94%	85%	-9%
I-765 Application for Employment Authorization	53%	65%	12%
I-800A Supplement 3 Request for Action on Approved Form I-800A	47%	48%	1%
I-817 Application for Family Unity Benefits	96%	98%	2%

Table 9: Fee-Paying Percentage Comparison by Fee Review			
Immigration Benefit Request	**FY 2016/2017 Fee Review's Fee-Paying Percentage**	**FY 2022/2023 Fee Review's Fee-Paying Percentage**	**Difference**
I-824 Application for Action on an Approved Application or Petition	99%	97%	-2%
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status	100%	100%	0%
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	N/A	100%	N/A
I-910 Application for Civil Surgeon Designation	100%	100%	0%
I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant	45%	89%	44%
I-956 Application For Regional Center Designation	100%	100%	0%
I-956G Regional Center Annual Statement	100%	100%	0%
N-300 Application to File Declaration of Intention	88%	100%	12%
N-336 Request for a Hearing on a Decision in Naturalization Proceedings	77%	84%	7%
N-400 Application for Naturalization (including reduced fee)	76%	83%	7%
N-470 Application to Preserve Residence for Naturalization purposes	99%	100%	1%
N-565 Application for Replacement Naturalization/Citizenship Document	81%	80%	-1%
N-600/600K Naturalization Certificate Application Subtotal	67%	56%	-11%
N-600 Application for Certificate of Citizenship	N/A	53%	N/A
N-600K Application for Citizenship and Issuance of Certificate Under Section 322	N/A	74%	N/A
Inadmissibility Waiver Subtotal	59%	51%	-8%
I-191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	N/A	100%	N/A
I-192 Application for Advance Permission to Enter as Nonimmigrant	N/A	26%	N/A
I-193 Application for Waiver of Passport and/or Visa	N/A	99%	N/A

Table 9: Fee-Paying Percentage Comparison by Fee Review			
Immigration Benefit Request	**FY 2016/2017 Fee Review's Fee-Paying Percentage**	**FY 2022/2023 Fee Review's Fee-Paying Percentage**	**Difference**
I-212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	N/A	68%	N/A
I-601 Application for Waiver of Grounds of Inadmissibility	N/A	94%	N/A
I-612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	N/A	8%	N/A
USCIS Immigrant Fee	100%	100%	0%
G-1041 Genealogy Index Search Request	100%	100%	0%
G-1041A Genealogy Records Request	100%	100%	0%
Request for Certificate of Non-Existence	N/A	100%	N/A
H-1B Registration Process	N/A	100%	N/A
Subtotal	**84%**	**86%**	**2%**
Biometric Services	86%	N/A	N/A
Grand Totals	**85%**	**86%**	**1%**

2. Completion Rates

USCIS completion rates are the average hours per adjudication of an immigration benefit request. They identify the adjudicative time required to complete (render a decision on) specific immigration benefit requests. The completion rate for each benefit type represents an average. Completion rates reflect what is termed ''touch time,'' or the time an employee with adjudicative responsibilities actually handles the case. This does not reflect ''queue time,'' or time spent waiting, for example, for additional evidence or supervisory approval. Completion rates do not reflect the total processing time applicants, petitioners, and requestors can expect to wait for a decision on their case after USCIS accepts it.

USCIS requires most employees who adjudicate immigration benefit requests to report adjudication hours and case completions by benefit type. The reported hours and counts are aggregate information that does not allow USCIS to estimate effects of individual policy changes. USCIS calculates completion rates by dividing the adjudication hours by the number of completions for the same period. As such, completion rates represent an average hours per completion. In addition to using these data to determine fees, completion rates help determine appropriate staffing allocations to handle projected workload. The USCIS Office of Performance and Quality (OPQ), field offices, regional management, and service centers continually review the data to capture updates or implementation of new processes and ensure continued accuracy. The continual availability of the information enables USCIS to update cost information for each fee review. The completion rates may change between fee reviews based on more recently reported hours and counts. Possible reasons for completion rate changes include changes to a form, policy changes, and more recently, effects of the pandemic. USCIS relied on completion rates before the pandemic to remove this effect from the fee review. When employees who adjudicate immigration benefit requests do not report adjudication hours, USCIS uses subject-matter expertise to estimate completion rates.

USCIS does not list completion rates for the following immigration benefit requests, forms, or other services, due to the special nature of their processing, as explained below:

- *I–131A, Application for Carrier Documentation.* In this proposed rule, DHS anticipates that the Department of State (DOS) Bureau of Consular Affairs, located outside of the United States, would process all Form I–131A workload. Thus, USCIS projects it will have no hours or workload for Form I–131A in FY 2022/2023 and does not calculate a completion rate for this proposed rule.
- *H–1B Registration Process.* Before a petitioner is eligible to file an H–1B cap-subject petition (including those eligible for the 20,000-petition advanced degree exemption), the prospective petitioner must register electronically through the USCIS website and have their registration selected. *See* 84 FR 888 (Jan. 31, 2019). USCIS does not adjudicate registrations received through the H–1B registration process because the process is automated.
- *USCIS Immigrant Fee.* USCIS does not adjudicate applications for an immigrant visa. Rather, individuals located outside of the United States apply with a DOS consular officer for an

immigrant visa. If DOS issues the immigrant visa, the individual may apply with a Customs and Border Protection (CBP) officer at a port of entry for admission to the United States as an immigrant. This fee represents USCIS' costs to create and maintain files and to issue permanent resident cards (also known as ''Green Cards'') to individuals who go through this process. *See* 8 CFR 103.7(b)(1)(i)(D) (Oct. 1, 2020), proposed 8 CFR 106.2(c)(3).

- *TPS.* DHS proposes not to rely on TPS fee revenue for recovering USCIS' operational expenses, consistent with previous fee rules. *See* 81 FR 73312–73313. TPS designations may be terminated under current law or may decrease due to a reduction in the eligible population. Termination of the program, in whole or in part, after the fees are set would result in unrealized revenue and a commensurate budgetary shortfall. After the fee schedule is effective, fees cannot be adjusted until the next fee schedule notice-and-comment rulemaking. Thus, temporary programs subject to termination based on changed circumstances are generally not included in the fee-setting model. Therefore, USCIS excludes the completion rate, as well as workload volumes and marginal costs, for Form I–821, Application for Temporary Protected Status, and associated Form I–765 filings from discussion in this proposed rule. DHS cannot increase the $50 initial statutory registration fee permitted under INA sec. 244(c)(1)(B) or establish a re-registration fee for TPS. Therefore, to recover some of the costs of administering the TPS program, USCIS will continue to charge the biometric services fee, where required, and the fee for an employment authorization document (EAD), as permitted under 8 U.S.C. 1254b.

Table 10: Completion Rates per Benefit Request (Hours/Completions)	
Immigration Benefit Request	**Service-Wide Completion Rate**
Credible Fear[84]	3.68
G-1041 Genealogy Index Search Request	0.42
G-1041A Genealogy Records Request	1.00
Request for Certificate of Non-Existence	1.07
H-1B Registration Process	N/A
I-90 Application to Replace Permanent Resident Card	0.15
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	0.84
I-129 H-1B Nonimmigrant Worker or H-1B1 Free Trade Nonimmigrant Worker	1.53
I-129 H-2A - Named Beneficiaries	2.36
I-129 H-2B - Named Beneficiaries	2.33
I-129 L Nonimmigrant Worker	3.57
I-129 O Nonimmigrant Worker	2.32
I-129CW, Petition or Application for E, H-3, P, Q, R, or TN Nonimmigrant Worker	1.87
I-129 H-2A - Unnamed Beneficiaries	0.70
I-129 H-2B - Unnamed Beneficiaries	0.89
I-129F Petition for Alien Fiancé(e)	0.91
I-130 Petition for Alien Relative	1.11
I-131 Application for Travel Document	0.29
I-131 Refugee Travel Document[85]	0.28
I-131A Application for Carrier Documentation	N/A
I-140 Immigrant Petition for Alien Worker	1.41
I-191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	1.96
I-192 Application for Advance Permission to Enter as Nonimmigrant	1.46
I-193 Application for Waiver of Passport and/or Visa	0.52
I-212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	1.43
I-290B Notice of Appeal or Motion	1.50
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	2.54
I-485 Application to Register Permanent Residence or Adjust Status	2.08
I-526/I-526E Immigrant Petition by Standalone/Regional Center Investor	20.69

[84] *See* USCIS, Questions and Answers: Credible Fear Screening available at *https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-credible-fear-screening* (last updated July 15, 2015).

[85] USCIS does not track distinct refugee travel document completion rates, nor does it track rates by applicant age group. The completion rate here is for a re-entry permit, a similar travel document.

Table 10: Completion Rates per Benefit Request (Hours/Completions)	
Immigration Benefit Request	**Service-Wide Completion Rate**
I-539 Application to Extend/Change Nonimmigrant Status	0.70
I-589 Application for Asylum and for Withholding of Removal	5.02
I-590 Registration for Classification as Refugee	1.29
I-600/600A; I-800/800A Orphan Petitions and Applications	2.14
I-600A/I-600 Supplement 3 Request for Action on Approved Form I-600A/I-600	2.03
I-601 Application for Waiver of Grounds of Inadmissibility	2.06
I-601A Provisional Unlawful Presence Waiver	2.76
I-612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	0.69
I-687 Application for Status as a Temporary Resident Under Section 245A of the INA	3.01
I-690 Application for Waiver of Grounds of Inadmissibility	2.04
I-694 Notice of Appeal of Decision	2.62
I-698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	3.91
I-730 Refugee/Asylee Relative Petition (and Travel Eligibility)	1.06
I-751 Petition to Remove Conditions on Residence	1.54
I-765 Application for Employment Authorization	0.22
I-800A Supplement 3 Request for Action on Approved Form I-800A	2.03
I-817 Application for Family Unity Benefits	0.88
I-824 Application for Action on an Approved Application or Petition	0.88
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status	15.86
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	2.00
I-910 Application for Civil Surgeon Designation	1.37
I-914 T Nonimmigrant Status	4.88
I-918 U Nonimmigrant Status	4.50
I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant	1.69
I-956 Application For Regional Center Designation	108.50
I-956G Regional Center Annual Statement	4.60
N-300 Application to File Declaration of Intention	1.10
N-336 Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)	3.01
N-400 Application for Naturalization	1.51

Table 10: Completion Rates per Benefit Request (Hours/Completions)	
Immigration Benefit Request	**Service-Wide Completion Rate**
N-470 Application to Preserve Residence for Naturalization purposes	4.01
N-565 Application for Replacement Naturalization/Citizenship Document	0.51
N-600 Application for Certificate of Citizenship	1.16
N-600K Application for Citizenship and Issuance of Certificate Under Section 322	1.16
Reasonable Fear[86]	5.30
USCIS Immigrant Fee	N/A

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3. Assessing Proposed Fees

Historically, as a matter of policy, DHS has used its discretion to limit fee increases for certain immigration benefit request fees that would be overly burdensome on applicants, petitioners, and requestors if set at ABC model output levels. Previous proposed IEFA fee schedules referred to limited fee increases as ''low volume reallocation'' or ''cost reallocation.'' [87] Despite the two separate phrases, the calculation for both is the same. In this proposed rule, DHS will use the phrase ''cost reallocation.'' In the FY 2016/2017 fee rule, USCIS calculated an 8 percent limited fee increase for certain immigration benefit request fees.[88] For this proposed rule, USCIS calculated a limited fee increase of approximately 18 percent using a similar methodology as the FY 2016/2017 fee rule.[89] The 18 percent is approximately the difference between the average current fee compared to the average ABC model output. The sum of the current fees, multiplied by the projected FY 2022/2023 fee-paying receipts for each immigration benefit type, divided by the total fee-paying receipts, is $518. The model output is the total cost determined by the ABC model by fee-paying receipts to determine a fee-paying unit cost. The sum of the ABC model outputs, multiplied by the projected FY 2022/2023 receipts for each immigration benefit type, divided by the fee-paying receipts, is $614. There is a $96 or approximate 18 percent difference between the two averages. These averages exclude fees that do not receive cost reallocation, such as the separate biometric services fee and the proposed genealogy fees. When DHS proposes to maintain the current fee, it affects this calculation. In those cases, the formula multiplies the current fee by fee-paying receipts instead of using the model output. Except for Form I–90 filed online, the estimated volumes are low for the fees that DHS proposes to maintain at the current level. As such, if DHS did not propose to maintain those current fees, the result would round to 17 percent. Thus, DHS has determined that 18 percent is a reasonable figure at which to cap those requests for which USCIS proposes to limit fee increases using the cost reallocation calculation method.

Accordingly, in consideration of the need to balance the beneficiary-pays and ability-to-pay principles and to achieve important policy outcomes (for example, promoting naturalization, funding asylum and other humanitarian programs, and making immigration benefits affordable and accessible), DHS proposes that the increase in the following immigration benefit request fees is limited to 18 percent for the current fees:

- Form I–192, Application for Advance Permission to Enter as Nonimmigrant.
- Form I–193, Application for Waiver of Passport and/or Visa.
- Form I–290B, Notice of Appeal or Motion.
- Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant.
- Form I–600, Petition to Classify Orphan as an Immediate Relative.
- Form I–600A, Application for Advance Processing of an Orphan Petition.
- Form I–600A/I–600, Supplement 3, Request for Action on Approved Form I–600A/I–600.[90]
- Form I–612, Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended).
- Form I–800, Petition to Classify Convention Adoptee as an Immediate Relative.
- Form I–800A, Application for Determination of Suitability to Adopt a Child from a Convention Country.
- Form I–800A, Supplement 3, Request for Action on Approved Form I–800A.
- Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal.
- Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant.
- Form N–300, Application to File Declaration of Intention.
- Form N–336, Request for Hearing on a Decision in Naturalization Proceedings.
- Form N–400, Application for Naturalization.
- Form N–470, Application to Preserve Residence for Naturalization Purposes.
- Form N–600, Application for Certificate of Citizenship.
- Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322.

The proposed increase of approximately 18 percent may vary slightly due to rounding. DHS rounds

[86] *See* USCIS, Questions and Answers: Reasonable Fear Screening, available at *https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-reasonable-fear-screenings* (last updated June 18, 2013).

[87] The FY 2016/2017 proposed fee schedule used both phrases. *See* 81 FR 26915. The FY 2010/2011 and FY 2008/2009 proposed fee schedules used the phrase ''low volume reallocation.'' *See* 75 FR 33461 and 72 FR 4910, respectively.

[88] The 8-percent increase was the percentage difference between the current fees and the model output before reallocation, weighted by fee-paying volume. *See* 81 FR 73296. The model output is a projected fee-paying unit cost from the ABC model. It is projected total cost divided by projected fee-paying receipts. While each fee review may calculate a different percentage, the formula for the calculation remains the same.

[89] In the docket for this proposed rule, the supporting documentation has more information on the proposed cost reallocation and the ABC model output. *See* the Cost Reallocation column of Appendix Table 4: Proposed Fees by Immigration Benefit Request. The docket also includes documentation for the fee schedule.

[90] DHS explains the purpose of this proposed form in section VIII.N.4 of this preamble.

all IEFA non-premium fees to the nearest $5 increment.

For many of these form types, DHS and DOJ have a long history of special consideration for these immigration and naturalization fees. For example, DOJ did not change fees for Forms I–290B, I–360, N–300, N–336, N–470 in the first IEFA fee rule that used ABC modeling. *See* 63 FR 1775 (Jan. 12, 1998) at 1784 (proposed rule); 63 FR 43604 (final rule). DOJ maintained the prior fee for these forms until it could capture sufficient information for these low (less than 10,000 per year) volume forms to change the fees in a separate rulemaking. *See* 64 FR 69883 (Dec. 15, 1999). DHS has a history of setting adoption-related fees lower than the amount suggested by the fee-setting methodology, as discussed in section VIII.N.1 of this proposed rule. DHS also has a long history of special consideration for naturalization fees, as discussed in section VIII.F. of this preamble.

To allow the proposed fee schedule to recover full cost, DHS proposes that other fees be increased to offset the difference between the projected cost of adjudicating these benefit requests and the revenue generated by the 18 percent limited fee increase. Similarly, DHS proposes that other fees increase to offset a projected increase in workloads that are exempt from paying fees or that are capped at a fee less than what the ABC model indicates. In this proposed rule, DHS refers to the process of recovering full cost for workloads without fees or the shifting of cost burdens among benefit request fees due to other policy considerations as cost reallocation.

DHS proposes to maintain the current fee for several benefit requests. These proposed fees would have decreased based on the ABC model results. However, DHS proposes to maintain the current fees. This will allow these forms to fund some of the costs of other forms and may limit the fee increase suggested by the fee calculation model for those other forms. In this proposed rule, DHS proposes to not change the following fees:

- Form I–90, Application to Replace Permanent Resident Card when filed online.
- Form I–131A, Application for Travel Document (Carrier Documentation).
- Form I–191, Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA).
- Form I–698, Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA).
- Form N–565, Application for Replacement Naturalization/Citizenship Document.

Some proposed fees are significantly higher than the current fees. In some cases, this is because DHS proposes to not limit those fee increases, as it has done in the past, for policy reasons, as explained below. For example, previous fee schedules limited the increase for the immigration benefit requests associated with Forms I–212, I–601, I–601A, and I–765.[91] *See* 81 FR 26915–26916. In the FY 2016/2017 fee rule, DHS stopped limiting the fee increase for inadmissibility waivers like Forms I–212 and I–601. *See* 81 FR 73306–73307. In addition, in this proposed rule, DHS proposes not to limit the fee increase to 18 percent for the following immigration benefit requests:

- Form I–601A, Provisional Unlawful Presence Waiver; and
- Form I–765, Application for Employment Authorization.

DHS is not proposing to limit the fee increases for these two immigration benefit requests because, if we did, then other proposed fees would have to increase to recover full cost. For example, DHS limited the fee increase for Form I–765 in the FY 2016/2017 fee rule for humanitarian and practical reasons. *See* 81 FR 26916. Many individuals seeking immigration benefits face financial obstacles and cannot earn money through lawful employment in the United States until they receive an EAD. In this rule, DHS proposes additional fee exemptions instead of limiting the proposed fee for Form I–765. If DHS were to propose limited fee increases for all of the immigration benefit request fees that were limited in the FY 2016/2017 fee rule, then some proposed fees could increase by as much as $2,855, with the average of those changes being an increase of $79 per immigration benefit request. The rationale for some of these proposed changes is further discussed later in the preamble. *See* section VIII, Other Proposed Changes in the FY 2022/2023 Fee Schedule.

Later in this preamble, DHS discusses the proposal for separate online and paper filing fees. See section VIII.G. DHS bases the proposed separate online and paper fees on ABC model results. When DHS proposes limited fee increases or to continue using the current fee, the calculation is based on the current fee instead of ABC model results. As such, there are not separate proposed fees for online and paper filing for immigration benefit requests with limited fee increases or for those held to the current fee.

4. Funding the Asylum Program With Employer Petition Fees

DHS proposes a new Asylum Program Fee of $600 to be paid by employers who file either a Form I–129, Petition for a Nonimmigrant Worker, or Form I–140, Immigrant Petition for Alien Worker. Proposed 8 CFR 106.2(c)(13). DHS proposes this new fee as a way to mitigate the scope of the proposed fee increases in this rule for individual applicants and petitioners. DHS has determined that the Asylum Program Fee is an effective way to shift some costs to requests that are generally submitted by petitioners who have more ability to pay, as opposed to shifting those costs to all other fee payers. DHS arrived at the amount of the Asylum Program Fee by calculating the amount that would need to be added to the fees for Form I–129, Petition for a Nonimmigrant Worker, and Form I–140, Immigrant Petition for Alien Worker, to collect the Asylum Processing IFR estimated annual costs.[92] See Table 11 for details on the calculation. The Asylum Program Fee may be used to fund part of the costs of administering the entire asylum program and would be due in addition to the fee those petitioners would pay using USCIS' standard costing and fee calculation methodologies.

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[91] *See* section VIII.F, Naturalization and Citizenship-Related Forms (discussion on the proposed naturalization fees).

[92] DHS notes that in section V.A.2.c of this preamble it identified the costs of the Asylum Processing IFR as averaging $425.9 million annually over FY 2022/2023. That figure represents the estimated costs that are directly attributable to the implementation of that rule. DHS divided this cost estimate by the estimated fee-paying volume for Forms I–129 and I–140 to determine the $600 Asylum Program Fee. Calculation: $425,900,395/708,630 = $601.02. DHS rounded to the nearest $5, consistent with other proposed fees.

Table 11: Asylum Program Fee Calculation	
Estimated Costs	
Asylum Processing IFR Costs	Total Estimated Cost (150K)
Asylum Processing IFR (150K) Cost Estimate FY 2022	$438,200,000
Asylum Processing IFR (150K) Cost Estimate FY 2023	$413,600,790
Two-year Average	$425,900,395
Estimated Fee-Paying Receipts	
Immigration Benefit Requests	Projected Fee-Paying Receipts
I-129 Petition for a Nonimmigrant Worker Subtotal	568,630
For H-1 nonimmigrants	430,000
For H-2A - Named Beneficiaries	4,020
For H-2B - Named Beneficiaries	2,460
For L nonimmigrants	42,350
For O nonimmigrants	27,300
Form I-129CW, or Form I-129 for E & TN, H-3, P, Q, or R Classifications	40,850
For H-2A - Unnamed Beneficiaries	17,650
For H-2B - Unnamed Beneficiaries	4,000
I-140 Immigrant Petition for Alien Worker	140,000
Employment-based Petition Total	708,630
Asylum Program Fee Calculation	
Estimated cost divided by estimated fee-paying receipts	$601
Asylum Program Fee (above row rounded to nearest $5)	$600
Asylum Program Fee Estimated Revenue (above row multiplied by fee-paying receipts)	$425,178,000

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This Asylum Program Fee adds a fee for Form I–129 and Form I–140 petitioners of $600 while maintaining lower proposed fees for other immigration benefit requestors than would be proposed if the costs were spread among all other fee payers. For example, charging the Asylum Program Fee only to employer petitions reduces the proposed Form I–485 fee by $170 compared to a fee schedule without the cost shift. Similarly, the proposed fee to file Form I–765 on paper is $70 less than it would be absent the proposed Asylum Program Fee. The proposed fees for Forms I–485, I–765, and others are lower in a scenario with the shift of asylum program costs to employers through the new fee because all IEFA non-premium fees are related. Each fee helps recover the cost of work without fees (Forms I–589, I–590, I–914, I–918, etc.) or work with fees that do not recover full cost (Forms N–400, I–600, I–800, etc.). If Forms I–129 and I–140 recover more of those costs, then that means other forms need not recover as much, resulting in lower proposed fees for Forms I–485, I–765, and others that recover more than full cost in this proposal. Table 12 shows the proposed IEFA non-premium fees for Forms I–129 and I–140, including the Asylum Program Fee. The table excludes additional statutory or premium-processing fees that petitioners may pay for these immigration benefit requests.[93]

[93] Most petitioners using Forms I–129 and I–140 may request expedited processing for an additional $2,500 or $1,500 premium processing fee. *See* USCIS, I–907, Request for Premium Processing Service, *https://www.uscis.gov/i-907* (last updated Sep. 30, 2021). Certain H–1B and L petitions may have to pay up to $6,000 in additional statutory fees, which DHS is unable to adjust. USCIS does not keep most of the revenue of these fees. CBP receives 50 percent of the $4,000 9–11 Response and Biometric Entry-Exit fee and the remaining 50 percent is deposited into the General Fund of the Treasury. USCIS retains 5 percent of the $1,500 or $750 American Competitiveness and Workforce Improvement Act (ACWIA) fee. The remainder goes to the Department of Labor and the National Science Foundation. USCIS keeps one third of the $500 Fraud Detection and Prevention fee, while the remainder is split between the Department of State and the Department of Labor. These statutory fees are in addition to the current Form I–129 fee of

Table 12: Proposed IEFA Non-Premium Fees for Forms I-129 and I-140			
Immigration Benefit Request	**Proposed Fee**	**Asylum Program Fee**	**Total Proposed Fee**
I-129 Petition for a Nonimmigrant Worker			
For H-1B	$780	$600	$1,380
For H-2A - Named Beneficiaries	$1,090	$600	$1,690
For H-2B - Named Beneficiaries	$1,080	$600	$1,680
For L	$1,385	$600	$1,985
For O	$1,055	$600	$1,655
Form I-129CW, or Form I-129 for E or TN, H-3, P, Q, or R Classifications	$1,015	$600	$1,615
H-2A - Unnamed Beneficiaries	$530	$600	$1,130
H-2B - Unnamed Beneficiaries	$580	$600	$1,180
I-140 Immigrant Petition for Alien Worker	$715	$600	$1,315

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The proposed $600 Asylum Program Fee would apply to all fee-paying receipts for Forms I–129, I–129CW, and I–140. For example, it would apply to all initial petitions, changes of status, and extensions of stay that use Form I–129.

DHS acknowledges that the scope of the proposed fee increases in this rule is significant. DHS proposes this cost shifting approach with the Asylum Program Fee to place greater emphasis on the ability-to-pay principle for determining user fees. Petitioners for immigrant and nonimmigrant workers generally are required to have the resources necessary to pay the worker(s) for whom the petition is filed, and the fees that the employer must pay USCIS to file a petition are not significant compared to even a small [94] petitioner's revenue and profit. That determination is not changed by the proposed Asylum Program Fee.

DHS considered proposing to transfer the costs of other humanitarian programs, such as the T, U, VAWA, SIJ, and refugee programs, to those who file benefit requests that may be able to better afford to pay fees. DHS recognizes, however, that we have always spread costs of free services that USCIS provides across all other fee-paying requests in the past and we have never directly transferred the costs of one program to another. *See, e.g.,* 85 FR 46869 (stating, ''For the fees that DHS does not limit, we use the total cost for each form to reallocate the cost of limited fee increases or workload without fees.''); 75 FR 58973 (Stating, ''To the extent not supported by appropriations, the cost of providing free or reduced services must be transferred to all other fee-paying applicants.''); 72 FR 29865 (stating, ''As with any other waiver, the loss of that fee revenue would necessarily be spread across all other benefit applications and petitions, having the potential to increase those fees.''). After considering the impact on all of the fees calculated by the model, DHS is proposing that the Asylum Program Fee for Forms I–129 and I–140 is the appropriate place to shift some of the costs of the asylum.

DHS does not propose this Asylum Program Fee without having carefully considered its implications and effects. DHS realizes that some petitioners will object to funding the costs of USCIS-administered programs to which they have no connection or from which they receive no direct benefit. DHS is committed to reducing barriers and promoting accessibility to immigration benefits, and knows that the beneficiaries of Forms I–129 and I–140 fuel our economy, contribute to our arts, culture, and government, and have helped the United States lead the world in science, technology, and innovation. DHS is also aware that Forms I–129 and I–140 are submitted by non-profit entities, organizations performing research for government agencies, as well as farms, small businesses, and individuals. DHS appreciates that non-profit or small entities may not have the same level of financial resources as many large, for-profit corporations that also submit petitions for foreign workers. In our Small Entity Analysis (SEA) for this proposed rule, we provide samples of the I–129 and I–140 forms, and how the fees may impact the small entities with the Asylum Program Fee. Within the SEA, DHS determined the average impacts to employers who file a petition based on their total revenue and profits. For Form I–129, approximately 90 percent of the small entities in the sample experienced an economic impact of less than 1 percent of their reported revenue. For Form I–140, approximately 98 percent of the small entities in the sample experienced an economic impact of less than 1 percent of their reported revenue. USCIS acknowledges that those small entities with greater than 1 percent impact may file fewer petitions as a result of this proposed rule. As previously indicated, the success of the USCIS fee model and this rulemaking in generating the necessary revenue depends on the filing volumes not falling short of those projected herein. At the same time, USCIS is charged with administering the asylum program using fee revenue and must make considered judgments about how to fund it using available and appropriate means. Balancing both of those goals, and

$460 and optional premium processing fee. *See* USCIS, H and L Filing Fees for Form I–129, Petition for a Nonimmigrant Worker, *https://www.uscis.gov/forms/h-and-l-filing-fees-form-i-129-petition-nonimmigrant-worker* (last updated Feb. 20, 2018).

[94] Small is defined by U.S. Small Business Administration Guidelines. *See* Small Entity Analysis for the FY22/23 U.S. Citizenship and Immigration Services Fee Schedule Proposed Rule in Supporting Documents.

considering the resources of the Form I–129 and I–140 filing communities, DHS decided to propose this surcharge. DHS will re-evaluate the Asylum Program Fee based on the status of the Asylum Processing IFR and any funding appropriated for it when DHS develops its final fee rule.

C. Exclusion of Temporary or Uncertain Programs

As stated in section V.B.1.b. of this preamble, the success of the fees established by this rulemaking in providing the funding necessary to sustain USCIS service levels depends on the projected volume of fee-paying requests filed after this rule takes effect being at or near the level projected. If a program is ended, is partially curtailed, or substantially declines, USCIS is at risk of not achieving the projected and necessary revenue. Therefore, USCIS excludes from the fee calculation model the costs and revenue associated with programs that are temporary by definition or where it is possible that the program will diminish or cease to exist. This exclusion includes Form I–821, Application for Temporary Protected Status, and Form I–821D, Consideration of Deferred Action for Childhood Arrivals, as well as the Form I–765 filings and biometrics fees associated with both programs.

DHS excludes projected revenue from expiring or temporary programs in setting the fees required to support baseline operations due to the uncertainty associated with such programs. For example, the Secretary may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances where the country is temporarily unable to adequately handle the return of its nationals. TPS, however, is a temporary benefit, and TPS designations may be terminated. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B). Likewise, DACA allows certain individuals who meet specific guidelines to request consideration of deferred action from USCIS for a specified period unless terminated. DACA is an administrative exercise of enforcement discretion and is implemented at the discretion of DHS, given that it has insufficient resources to enforce the immigration laws against every noncitizen without lawful immigration status. Because DACA is temporary act of enforcement discretion and may be terminated, it is excluded from this fee review, as discussed further in the next section.

DHS excludes the costs and revenue associated with these programs because program eligibility is subject to the discretion of the Department. Because the future of these programs is difficult to predict, as discussed later in this section, USCIS has excluded the cost and workload of these programs from the fee review and does not propose to allocate overhead and other fixed costs to these workload volumes. This mitigates an unnecessary revenue risk. In other words, if DHS established the USCIS fee schedule based on revenue from these programs, and the eligible programs diminish or cease to exist, USCIS will not realize the projected revenue and would not have enough revenue to recover full cost of overhead and other fixed costs. USCIS analyzes variable unit costs associated with processing these benefit types and uses volume forecasts to exclude their costs from the fee review budget and ABC model.

All fee revenue deposited into the IEFA is pooled and collectively used to finance USCIS operations including DACA, TPS, and other temporary programs. USCIS also responds to surges in customer demand for services by realigning resources to cover the cost of processing. Consequently, USCIS is capable of funding these programs even though their costs are not included in the fee review budget or ABC model. By excluding programs that are temporary by nature, DHS maintains the integrity of the ABC model, better ensures recovery of full costs, and mitigates revenue risk from unreliable sources. This approach is consistent with prevailing guidance on the subject as stated by Principle 6 of the Government Accountability Office (GAO) Greenbook, Standards for Internal Control in the Federal Government (''The Greenbook'').[95] Principle 6 provides guidance on objectives and risks and advises managers to determine the acceptable level of variation in performance relative to the achievement of objectives. For example, in FY 2020, there were 647,278 active DACA recipients. *See* 86 FR 53785. DHS estimates that there will be 720,093 active DACA recipients in FY 2023.[96] If DHS were to include the DACA renewals in the fee review, it would be one of the larger populations. For example, in FY 2023, USCIS estimates that 573,563 individuals will request either initial or renewal DACA.[97] However, on October 5, 2022, the U.S. Court of Appeals for the Fifth Circuit affirmed, in part, a July 2021 decision of the U.S. District Court for the Southern District of Texas declaring the 2012 DACA policy unlawful, but remanded the case to the District Court for further consideration of the recently published DACA final rule.[98] TPS volumes can vary significantly by fiscal year. In FY 2022, USCIS collected approximately $5.6 million in revenue for Form I–821, and USCIS forecasts 626,770 receipts for Form I–821 in FY 2023. Nevertheless, DHS cannot predict the disasters or crises that lead to new TPS designations. DHS can reliably predict TPS renewals if existing designations are not terminated; however, renewals are often on an 18-month cycle that does not align with Federal fiscal years. Including volume forecasts that are so variable by fiscal year may result in inaccurate fee calculations, especially over a long term. As such, DHS determined that including temporary or uncertain programs in the fee structure would exceed an acceptable level of risk for the success of this fee rule. Adding TPS and DACA costs, volumes, and revenue to the fee review would lower the fee for Form I–765 if its fee is calculated to recover full cost. However, if a certain country's TPS designation is terminated or if DACA ceases, basing the Form I–765 fee on that projected value leaves USCIS at a risk of not achieving projected revenue and the objectives of this proposed rule. Thus, consistent with four previous fee rules, DHS proposes to exclude from this rule the costs and revenue from programs that are susceptible to large reductions in filing volume.

D. Consideration of DACA Rulemaking

On August 30, 2022, DHS published a final rule, Deferred Action for Childhood Arrivals, 87 FR 53152 (DACA rule). DHS has considered this rule and the DACA rule's possible effects on each other when developing this proposed rule. Because the specific costs and revenue associated with DACA are not separately identified in this proposed rule, each rule is

[95] The Green Book sets internal control standards for Federal entities. Internal control is a process used by management to help an entity achieve its objectives, run its operations efficiently and effectively, report reliable information about its operations and comply with applicable laws and regulations. *See* GAO, Standards for Internal Control in the Federal Government (Sep. 10, 2014), *https://www.gao.gov/products/gao-14-704g.*

[96] 87 FR 53275 (Aug. 30, 2022).

[97] 87 FR 53277 (Aug. 30, 2022).

[98] *Texas* v. *United States,* 50 F.4th 498 (*5th* Cir. 2022). The Fifth Circuit, however, preserved the partial stay issued by the district court in July 2021 (*Texas* v. *United States,* 549 F. Supp. 3d 572, 624 (S.D. Tex. 2021) while the case is on remand to the District Court for further proceedings regarding the new DACA rule. While the stay remains in place, current grants of DACA and related Employment Authorization Documents are valid. USCIS will accept and process renewal DACA requests but not process initial DACA requests.

independent and DHS estimates that the DACA rule will have no effects on this rule or vice versa. The DACA rule interacts with this rule only to the extent that the DACA rule established an $85 fee for Form I–821D at 8 CFR 106.2(a)(38) and this rule proposes to move that fee to 8 CFR 106.2(a)(49).

E. Fee-Related Issues for Consideration

DHS identified a number of issues that do not affect the FY 2022/2023 fee review but do merit some discussion. DHS does not propose any changes related to the issues discussed in this section. USCIS may discuss these issues in future biennial fee reviews or in conjunction with other USCIS fee rules. To better inform this and future fee-setting policies and rules, DHS welcomes comments on all facets of the FY 2022/2023 fee review, this proposed rule, and USCIS fees in general, regardless of whether changes have been proposed here.

1. Accommodating E-Filing and Form Flexibility

DHS attempts, as it did in the FY 2010/2011 fee rule, FY 2016/2017 fee rule, and the 2020 fee rule, to propose fees based on form titles instead of form numbers to avoid prescribing fees in a manner that could undermine the adoption by USCIS of electronic processing. *See* proposed 8 CFR part 106. Form numbers are included for informational purposes but are not intended to restrict the ability of USCIS to collect a fee for a benefit request that falls within the parameters of the adjudication for which the fee is published. DHS has worked for over a decade to remove unnecessary administrative and procedural provisions from title 8 of the CFR so as not to face restrictions such as using a certain form number for a benefit request codified with the force of law. As USCIS modernizes its processes and systems to allow more applicants, petitioners, and requestors to file benefit requests online, the agency may collect fees for immigration benefit requests that do not have a form number or do not have the same form number as described in regulations. This could occur, for example, if USCIS developed an online version of a request that individuals often submit with applications for employment authorization. In this situation, USCIS may find it best to consolidate the two requests without separately labeling the different sections related to the relevant form numbers. DHS would still collect the required fee for the underlying immigration benefit request as well as the request for employment authorization, but the actual online request would not necessarily contain form numbers corresponding to each separate request.

Similarly, USCIS may determine that efficiency would be improved by breaking a paper form into separate paper forms. For instance, USCIS could separate Form I–131, Application for Travel Document, into a separate form and form number each for advance parole, humanitarian parole, refugee travel documents, or re-entry permits. In this example, USCIS could continue to charge the current Form I–131 fee for each separate form. This structure permits USCIS to change forms more easily without having to perform a new fee review each time the agency chooses to do so.

2. Processing Time Outlook

As discussed in the Projected Cost and Revenue Differential section of this preamble, USCIS anticipates having insufficient resources to process its projected workload absent this fee rule. For FY 2022/2023, USCIS estimates that backlogs will continue to grow in the absence of additional resources. Although USCIS has implemented measures to reduce the backlog as described in section IX.C., USCIS net processing backlogs have grown from approximately 1.4 million cases in December 2016, when DHS last adjusted IEFA non-premium fees, to approximately 8.0 million cases at the end of September 2021.[99] On top of these pre-existing strains on USCIS, the COVID–19 pandemic constrained USCIS adjudication capacity by limiting the ability of USCIS to schedule normal volumes of interviews and biometrics appointments while maintaining social distancing standards, contributing to the backlog. Further, USCIS believes that the growing complexity of case adjudications in past years, including prior increases in the number of interviews required and request for evidence (RFE) volumes, has contributed to higher completion rates and growing backlogs. *See* section V.B.2, Completion Rates.

USCIS is reviewing its adjudication and administrative policies to find efficiencies, while strengthening the integrity of the immigration system. This entails evaluating the utility of interview requirements, biometrics submission requirements, RFEs, deference to previous decisions, and other efforts that USCIS believes may, when implemented, reduce the amount of adjudication officer time required, on average, per case. Any improvements in these completion rates would, all else equal, reduce the number of staff and financial resources USCIS requires. Furthermore, USCIS is actively striving to use its existing workforce more efficiently, by investigating ways to devote a greater share of adjudication officer time to adjudications, rather than administrative work. All else being equal, increasing the average share of an officer's time spent on adjudication (that is, utilization rate) would increase the number of adjudications completed per officer and reduce USCIS' overall staffing and resource requirements. USCIS based its fee review largely on existing data that do not presume the outcome of these initiatives. USCIS cannot assume significant efficiency gains in this rule, in advance of such efficiency gains being measurably realized. Establishing more limited fees to account for estimated future efficiency could result in a deficient funding, and USCIS would not be able to meet its operational requirements. In contrast, if USCIS ultimately receives the resources identified in this proposed rule and subsequently achieves significant efficiency gains, this could result in backlog reductions and shorter processing times. Those efficiency improvements would then be considered in future fee reviews.

As explained in the FY 2022/2023 Cost Projections section of this preamble, projected workloads for FY 2022 and FY 2023 exceed current processing capacity. Therefore, USCIS requires additional resources and staff to increase its processing capacity to match projected receipt volumes and ensure that backlogs do not continue to grow. Through the adjustments to the fee schedule proposed in this rule, USCIS expects to collect sufficient fee revenue to fund additional staff who will support the estimated FY 2022/2023 processing capacity requirements. While USCIS is committed to reducing processing times and the current backlog, DHS will not compromise the integrity of the immigration system and safeguarding national security.

VI. Fee Waivers

A. Background

The fee-setting authority in INA sec. 286(m), 8 U.S.C. 1356(m), states that ''[f]ees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum

[99] *See* USCIS, Number of Service wide Forms By Quarter, Form Status, and Processing Time Fiscal Year 2021, Quarter 4, *https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2021Q4.pdf* (last visited Jan. 11, 2022).

applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.'' That provision does not require that USCIS charge a fee for all of its services, and it provides that USCIS may set fees at less than full cost or provide services for free. DHS has long understood this provision to authorize DHS to fund or subsidize discounted or free USCIS operations through the fees charged to other unrelated filings. DHS has exercised its discretion to provide free services in a number of ways, such as providing that a fee may be waived for eligible filers upon request, by codifying ''no fee,'' setting a $0 fee, or simply leaving the fee regulations silent and not codifying a fee for a particular service that it provides.

Currently, USCIS may waive the fee for certain immigration benefit requests when the individual requesting the benefit is unable to pay the fee. *See* 8 CFR 103.7(c) (Oct. 1, 2020). To request a fee waiver, the individual must submit a written waiver request for permission to have their benefit request processed without payment. Under the current regulation, the waiver request must state the person's belief that they are entitled to or deserving of the benefit requested and the reasons for their inability to pay and include evidence to support the reasons indicated. *See* 8 CFR 103.7(c)(2) (Oct. 1, 2020). There is no appeal of the denial of a fee waiver request. *See id.* However, Form I–912 may be resubmitted with additional evidence if the fee waiver request is denied.

Following the 2010 fee rule, USCIS also issued guidance to the field to streamline fee waiver adjudications and make them more consistent among offices and form types nationwide. *See* Policy Memorandum, PM–602–0011.1,[100] Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11–26 (Mar. 13, 2011) (''Fee Waiver Policy''). This guidance clarifies what measures of income can be used and the types of documentation that are acceptable for individuals to present as demonstration that they are unable to pay a fee when requesting a fee waiver. In June 2011, USCIS issued the Request for Fee Waiver, Form I–912, which is an optional standardized form with instructions that can be used to request a fee waiver in accordance with the fee waiver guidance.[101]

DHS has always implemented fee waivers for USCIS applicants based on need, and since 2007, has rejected the filing of fee waivers by individuals that have the financial means to pay required fees for the status or benefit sought. *See* 72 FR 4912 (Feb. 1, 2007). The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) [102] requires DHS to permit certain categories of applicants to apply for fee waivers for ''any fees associated with filing an application for relief through final adjudication of the adjustment of status.'' [103] DHS interprets ''any fees associated with filing an application for relief through final adjudication of the adjustment of status'' [104] to mean that, in addition to the main immigration benefit request (such as Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, Form I–914, Application for T Nonimmigrant Status, or Form I–918, Petition for U Nonimmigrant Status), these categories of applicants must have the opportunity to request a fee waiver for any form associated with the main benefit application up to and including the adjustment of status application.[105]

B. The 2020 Fee Rule Waiver Changes

As stated in section IV of this preamble, each fee review plans for a certain level of fee waivers, fee exemptions, and other fee-paying policy decisions. DHS sets IEFA fees to recover estimated full cost, including the estimated cost of fee-waived and fee-exempt work. Applicants, petitioners, and requestors who pay a fee cover the cost of processing their own requests plus the costs of requests that are fee exempt, fee waived, or fee reduced. In prior years, USCIS fees have given significant weight to the ability-to-pay principle. However, on October 25, 2019, DHS revised USCIS fee waiver policies and Form 1–912, including by requiring fee waiver applicants to use the revised Form I–912, requiring waiver applicants to submit tax transcripts to demonstrate income, and not accepting evidence of receipt of a means-tested public benefit as evidence of inability to pay as described (''the 2019 Fee Waiver Revisions''). *See* USCIS Policy Manual Alert, Fee Submission of Benefit Requests, PA 2019–06 (October 25, 2019).[106] This guidance was effective December 2, 2019. Form I–912 was updated and submitted for a 30-day comment period on June 5, 2019,[107] and subsequently approved by OMB on October 24, 2019.[108] While the 2019 Fee Waiver Revisions took effect on December 2, 2019, the United States District Court for the Northern District of California preliminarily enjoined them in *City of Seattle,* No. 3:19–CV–07151–MMC, on December 11, 2019. USCIS then reverted to using the previous policy and form.

Subsequently, in the FY 2019/2020 fee review, DHS limited fee waivers in the 2020 fee rule to immigration benefit requests for which USCIS is required by law to consider a fee waiver or where the USCIS Director exercised favorable discretion. 8 CFR 106.3(a)(1) (Oct. 2, 2020). The 2020 fee rule also limited fee waivers to individuals who have an annual household income of less than 125 percent of the Federal Poverty Guidelines (FPG) as defined by the U.S. Department of Health and Human Services (HHS). 8 CFR 106.3(c) (Oct. 2, 2020). In addition, the USCIS Director's discretion to grant a waiver was limited to: (1) an individual who had an annual household income at or below 125 percent of the FPG as defined by HHS; (2) was seeking an immigration benefit for which they were not required to submit an affidavit of support under INA sec. 213A, 8 U.S.C. 1183a, or were not already a sponsored immigrant as defined in 8 CFR 213a.1; and (3) was seeking an immigration benefit for which they were not subject to the public charge inadmissibility ground under INA sec. 212(a)(4), 8 U.S.C. 1182(a)(4). 8 CFR 106.3(b) (Oct. 2, 2020). The 2020 fee rule required that a person must submit a request for a fee waiver on the form prescribed by USCIS. 8 CFR 106.3(d) (Oct. 2, 2020). Finally, the 2020 fee rule prescribed the acceptable documentation of gross household income that a person submitting a request for a fee waiver must submit. 8 CFR 106.3(f) (Oct. 2, 2020). As noted above, the 2020 fee rule was preliminarily enjoined before its effective date.

As stated in Section IV, DHS has determined that the 2020 fee rule's changes to fee waiver and fee exemption requirements would adversely impact

[100] USCIS, PM 602.0011.1 (March 13, 2011) available at *https://www.uscis.gov/sites/default/files/document/memos/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf.*

[101] The form and its instructions may be viewed at *http://www.uscis.gov/i-912.*

[102] *See* title II, subtitle A, sec. 201(d)(3), Public Law 110–457, 122 Stat. 5044 (2008); INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7).

[103] *See id.*

[104] *See id.*

[105] Certain USCIS forms are not listed in 8 CFR 103.7(b) and therefore have no fee. *See* proposed 8 CFR 106.2 for proposed fees.

[106] Available at *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20191025-FeeWaivers.pdf.*

[107] *See* 84 FR 26137 (June 5, 2019).

[108] *See* OMB Notice of Action available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201910-1615-006#.*

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. Therefore, in this rule, DHS is proposing to maintain previous regulations for fee waivers and add fee exemptions to address accessibility and affordability. DHS acknowledges that shifting away from the beneficiary-pays approach taken in the 2020 fee rule and reverting to the agency's historical practice of emphasizing the ability-to-pay principle allocates costs away from individuals who are exempt from paying fees or have their fees waived, and results in some fees being higher than the estimated cost of providing the associated service. Nevertheless, DHS has determined that these proposed fee waiver regulations are reasonable, authorized by statute, and consistent with the policy goal of making immigration benefits affordable to the public while providing USCIS with adequate funding for its services.

C. Inability To Pay

DHS does not propose to change fee waiver eligibility based on an inability to pay, and will maintain the 2011 Fee Waiver Policy criteria that established a streamlined process where USCIS could waive the entire fee and the biometric services fee (if applicable) for forms listed in the 8 CFR 103.7(c)(3) (Oct. 1, 2020).[109] Applicants would still be eligible for fee waivers if the form is listed in proposed 8 CFR 106.3(a)(3) and the applicant demonstrates that they meet at least one of the following criteria:

- Is receiving a means-tested benefit;
- Had a household income at or below 150 percent of the FPG; or
- Is experiencing extreme financial hardship, such as unexpected medical bills or emergencies.

The FPG, as annually published by the U.S. Department of Health and Human Services [110] increases the latest updated Census Bureau poverty thresholds by the relevant percentage change in the Consumer Price Index for All Urban Consumers (CPI–U). Census Bureau income thresholds vary by family size and composition. If a family's total income is less than the family's threshold, then every individual in that family is considered to be living in poverty. The official poverty definition uses money income before taxes and does not include capital gains or noncash benefits (public benefits).[111] The 2020 Poverty Guidelines for the 48 Contiguous States and the District of Columbia was $12,760 for a household of one and $26,200 for a household of four.[112]

DHS considered the use of other measures of ability to pay for administration of its fee waiver policies based on input provided by stakeholders and due to concerns about the continued upward trend in the number and dollar amounts of fee waivers approved since the three-step eligibility process and Form I–912 were introduced. For example, besides the FPG and increasing the percentage reviewed, DHS looked at using the United States Department of Housing and Urban Development (HUD) Median Family Income (MFI) [113] estimates. The median household income for 2020 was $67,521 in the United States.[114] HUD Income Limits calculations include the median family incomes for each area. HUD uses the Section 8 (housing choice voucher) program's Fair Market Rent (FMR) [115] area definitions in developing median family incomes.[116] After careful consideration, DHS proposes to maintain the use of the FPG for determining income thresholds for USCIS fee waiver purposes for several reasons. First, the FPG ensures a consistent national standard for income thresholds as HHS is required to update the FPG at least annually, adjusting them based on the Consumer Price Index for All Urban Consumers (CPI–U). The MFI and other thresholds vary greatly by area and require a specific calculation by state and county and, accordingly, relying on them would increase administrative costs. Second, it promotes consistency between fee waivers and numerous other Federal programs that utilize the FPG as an eligibility criterion, including Medicaid. The MFI is specifically used for HUD benefits and the calculation changes based on the area, so additional calculations would need to be done in order to determine eligibility. Thirdly, USCIS has used the FPG since putting the streamlined fee waiver request and approval process in place over a decade ago, has been effectively used, and its continued use would limit confusion.[117] In addition, DHS believes that the using FPG minimizes confusion for the public and USCIS employees in determining income thresholds for fee waiver eligibility. DHS has determined that use of the FPG for determining income thresholds affords consistency for administering a nationwide benefits program that other income guidelines do not, preserves the accessibility and affordability of immigration benefits for those who are eligible and may be less able to afford the proposed fees, and does not result in unmanageable levels of unfunded immigration services that must be borne by other fees.

D. USCIS Director's Discretionary Fee Waivers and Exemptions

The FY 2010/2011 fee rule also authorized the USCIS Director to approve and suspend exemptions from fees or provide that the fee may be waived for a case or class of cases that is not otherwise provided in the 8 CFR 103.7(c) (Oct. 1, 2020). *See* 75 FR 58990 (Sept. 24, 2010); 8 CFR 103.7(d) (Oct. 1, 2020). DHS proposes to retain the authority in regulations for the Director of USCIS to provide exemptions from or waive any fee for a case or specific class of cases, if the Director determines that such action would be in the public interest and the action is consistent with other applicable law. *See* 8 CFR 103.7(d)

[109] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Policy Memorandum, PM–602–0011.1, ''Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11–26'' (Mar. 13, 2011), *https://www.uscis.gov/sites/default/files/document/memos/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf;* AFM Chapter 10.9(b).

[110] *See* Annual Update of the HHS Poverty Guidelines (87 FR 3315, Jan 21, 2022), available at *https://www.federalregister.gov/documents/2022/01/21/2022-01166/annual-update-of-the-hhs-poverty-guidelines.*

[111] See How the Census Bureau Measures Poverty, available at *https://www.census.gov/topics/income-poverty/poverty/guidance/poverty-measures.html#:~:text=Poverty%20Thresholds%3A%20Measure%20of%20Need,and%20age%20of%20the%20members* (last visited April 19, 2022).

[112] See Annual Update of the HHS Poverty Guidelines (86 FR 3060, Jan 17, 2020), available at *https://www.federalregister.gov/documents/2020/01/17/2020-00858/annual-update-of-the-hhs-poverty-guidelines.*

[113] See HHS, Office Of Policy Development And Research (Pd&R), Income Limits, available at *https://www.huduser.gov/portal/datasets/il.html* (last visited 10/26/2021). USCIS fee waiver eligibility for receipt of a means-tested benefit includes through HUD-related housing public benefits.

[114] See U.S. Census Bureau, Income and Poverty in the United States: 2020 (September 14, 2021) available at *https://www.census.gov/library/publications/2021/demo/p60-273.html* (last visited 04/19/2022).

[115] See 24 CFR 888.113 are estimates of 40th percentile gross rents for standard quality units within a metropolitan area or nonmetropolitan county. See Fair Market Rents (40th Percentile Rents) available at *https://www.huduser.gov/portal/datasets/fmr.html* (last visited 4/19/2022).

[116] See Methodology for Determining Section 8 Income Limits available at *https://www.huduser.gov/portal/datasets/il//il21/IncomeLimitsMethodology-FY21.pdf* (last visited 4/19/2022).

[117] As noted in the FY 2016/2017 fee rule, estimates of foregone revenue from fee waivers and exemptions increased markedly, from $191 million in the FY 2010/2011 fee review to $613 million in the FY 2016/2017 Fee Review. *See* 81 FR 73307. Since 2017, the upward trend in the amount of fee revenue foregone has since subsided. *See* Appendix V—Fee Waivers of the supporting documentation in this docket for historical trends from FY 2014 to FY 2020; the graph excludes the cost of fee exemptions.

(Oct. 1, 2021); proposed 8 CFR 106.3(c). Previous USCIS Directors have used this authority to permit fee waivers or provide fee exemptions for specific categories and groups of immigrants.[118] DHS further proposes to maintain the current provision's limitation on the delegation of this authority to waive or exempt fees to the Deputy Director. *Id.* In the 2020 fee rule, DHS had proposed to limit the USCIS' Director's authority to issue fee waivers and exemptions based on categories of applicants such as asylee, refugees, national security or emergencies or natural disasters. *See* 8 CFR 106.3(b) and (e).[119] DHS believes that maintaining the authority for this extraordinary relief with the leaders of USCIS will ensure that it is consistently administered and not handled in a way that could impair USCIS fee revenue or shift significant costs among benefit requests by policy outside of rulemaking.

E. Requirement To Submit Fee Waiver Form

In addition, DHS proposes that fee waiver requests must be submitted on the form prescribed by USCIS, Form I–912, Request for Fee Waiver. Proposed 8 CFR 106.3(a)(2). Currently, requests for fee waivers may be made via a written request submitted with evidence of eligibility. Less than one percent of the fee waivers requests are submitted through a written request instead of Form I–912.[120] Some written fee waiver requests may be denied because they do not provide sufficient information for USCIS to adjudicate the request. DHS believes that requiring Form I–912 will ensure that the information required to make a fee waiver determination is provided and may result in fewer rejections due to insufficient or incomplete requests.

DHS realizes that requiring the form instead of allowing a written statement with documentation may be an additional burden. Adjudicating ad hoc fee waiver requests, however, has proven to be difficult for USCIS due to the varied quality and information provided in such standalone letter requests. Form I–912 has an estimated time of completion of one hour and ten minutes, and it provides standardization that will assist USCIS in review of requests. Because DHS has determined that requiring the form will reduce rejections, DHS believes that any added burden is warranted and in the long term will assist applicants and limit future burdens.

F. Form and Policy Changes

As discussed in the Paperwork Reduction Act section of this rule, DHS is proposing changes to the information collection requirements [121] associated with Form I–912 to clarify the following policies:

- The burden of proof for inability to pay is based on a preponderance of the evidence. An officer may grant a request for fee waiver in the absence of some of this documentation so long as the available documentation supports that the requestor is more likely than not to be unable to pay the fee.
- A child's receipt of public housing assistance, such as public housing or Section 8, will be acceptable as required evidence of the parent's eligibility for a fee waiver when the parent resides in the same residence.
- The documentary requirements for humanitarian categories of fee waiver requestors will include that:
  - Requestors seeking a fee waiver for any immigration benefit associated with or based on a pending or approved petition or application for VAWA benefits or T or U nonimmigrant status do not need to list the following people as household members or provide income information for:
    - Any person in the household who is or was the requestor's abuser, human trafficker, or perpetrator; or
    - A person who is or was a member of the abuser, human trafficker, or perpetrator's household.
  - Financial hardships that qualify an applicant for a fee waiver may result from, but are not limited to the following examples:
    - A medical emergency or catastrophic illness affecting the noncitizen or the noncitizen's dependents;
    - Unemployment;
    - Significant loss of work hours and wages (change in employment status);
    - Eviction;
    - Homelessness;
    - Military deployment of spouse or parent;
    - Natural disaster;
    - Loss of home (destruction such as fire, water, or collapse);
    - Inability to pay basic utilities and rent or mortgage (payments and bills for each month are more than the monthly wages);
    - Substantial financial losses to a small business that affect personal income;
    - Victimization;
    - Divorce or death of a spouse that affects overall income; or
    - Situations that could not normally be expected in the regular course of life events.
  - A requestor may submit tax returns, a W–2, or pay stubs to establish household income.
  - If the requestor has no income due to unemployment, homelessness, or other factors, the requestor may provide, as applicable:
    - A detailed description of the financial situation that demonstrates eligibility for the fee waiver;
    - Hospital bills, or bankruptcy documents;
    - If the requestor is receiving support services, an affidavit from a religious institution, non-profit, hospital, or community-based organization verifying the person is currently receiving some benefit or support from that entity and attesting to the requestor's financial situation; or
    - Evidence of unemployment, such as a termination letter or unemployment insurance receipt.

These proposed policy changes are aimed at reducing the public burden and clarifying the types of documents and applicant can provide with the form. These changes are also responsive to the comments and suggestions provided by the public in the RPI. DHS believes that making these policy changes will provide additional guidance to the public on eligibility and will clarify requirements for vulnerable populations.

G. Request for Comments

DHS welcomes comment on the proposed changes to additional fee waivers which may include additional categories of petitioners, applicants or forms.

In addition, while DHS proposes no changes to the fee waiver criteria, the Department specifically requests comments on the appropriate level of income that should be used by an applicant who is unable to pay their fee and data to support that suggested level or measure.

DHS also welcomes comments on requiring Form I–912 for all fee requests and on alternatives for reducing

[118] For example, *See,* DHS Announces Fee Exemptions, Streamlined Processing for Afghan Nationals as They Resettle in the U.S. (Nov. 8, 2021), available at *https://www.uscis.gov/newsroom/news-releases/dhs-announces-fee-exemptions-streamlined-processing-for-afghan-nationals-as-they-resettle-in-the-us* (last visited 04/19/2022). An individual is not permitted to independently submit a request to the USCIS Director to exempt or waive a fee.

[119] See 85 FR 46920 (Aug 3, 2020).

[120] See the Regulatory Impact Analysis, sec. O, Fee Waivers, for further discussion. A total of 29 letters were submitted in lieu of Form I–912 in 2017, .07 percent of the total.

[121] DHS is proposing these policy changes in guidance and in in form instructions and not codifying them in this rule as regulations but marks those changes in the supporting documents in the docket for the public to review.

rejections based on lack of information or documentation with a written request.

VII. Fee Exemptions

As stated in section VI.A., DHS may provide services for free and fund those free services with the fees charged to other, unrelated filings. DHS has exercised its discretion to provide free services by providing that a fee may be waived upon request, or by codifying ''no fee,'' setting a $0 fee, or not codifying a fee for a particular service that USCIS administers. DHS is proposing to maintain fee exemptions currently being applied and provide new fee exemptions in this rule as follows.

A. Codification of Benefit Requests With No Fees and Exemptions of Certain Categories or Classifications From Fees

DHS proposes to codify several longstanding fee exemptions that are currently provided through policy guidance documents, such as form instructions, the USCIS policy manual, or similar directives, but not in regulations, including the following: [122]

- Form I–90, Application to Replace Permanent Resident Card. No fee if the applicant was issued a card but never received it, or if the applicant's card was issued with incorrect information because of DHS error. Proposed 8 CFR 106.2(a)(1)(iv).
- Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document. No fee for initial filings for a nonimmigrant member of the U.S. armed forces, for a nonimmigrant member of the North Atlantic Treaty Organization (NATO) armed forces or civil component; for a nonimmigrant member of the Partnership for Peace military program under the Status of Forces Agreement; and for replacement for DHS error. Proposed 8 CFR 106.2(a)(2)(i) through (iv).
- Form I–129CWR, Semiannual Report for CW–1 Employers. Proposed 8 CFR 106.2(a)(4)(ii).
- Form I–131, Application for Travel Document. Proposed 8 CFR 106.2(a)(7)(v). No fees for parole requests from current or former U.S. armed forces service members.
- Form I–134, Declaration of Financial Support. Proposed 8 CFR 106.2(a)(9).
- Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant. DHS proposes no fee for the following:
  - A petition for Special Immigrant Juvenile (SIJ) classification, Proposed 8 CFR 106.2(a)(16)(iii); and
  - A petition for a person who served honorably on active duty in the U.S. armed forces filing under INA sec. 101(a)(27)(K). Proposed 8 CFR 106.2(a)(16)(v).
- Form I–361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian. Proposed 8 CFR 106.2(a)(17).
- Form I–363, Request to Enforce Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian. Proposed 8 CFR 106.2(a)(18).
- Form I–407, Record of Abandonment of Lawful Permanent Resident Status. Proposed 8 CFR 106.2(a)(19).
- Form I–485J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j). Proposed 8 CFR 106.2(a)(22).
- Form I–508, Request for Waiver of Certain Rights, Privileges, Exemptions, and Immunities. Proposed 8 CFR 106.2(a)(23).
- Form I–539, Application to Extend/Change Nonimmigrant Status for nonimmigrant A, G, and NATO and T nonimmigrant. Proposed 8 CFR 106.2(a)(25)(iii)(A).
- Form I–566, Interagency Record of Request—A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status. Proposed 8 CFR 106.2(a)(26).
- Form I–589, Application for Asylum and for Withholding of Removal. Proposed 8 CFR 106.2(a)(27).
- Form I–590, Registration for Classification as a Refugee. Proposed 8 CFR 106.2(a)(28).
- Form I–600, Petition to Classify Orphan as an Immediate Relative. DHS proposes no fee for the first Form I–600 filed for a child based on an approved Form I–600A, Application for Advance Processing of an Orphan Petition, during the Form I–600A approval or extended approval period. Proposed 8 CFR 106.2(a)(29)(i).
- Form I–601, Application for Waiver of Grounds of Inadmissibility. DHS proposes to move the current fee exemption for concurrently filing a Form I–601 for certain reasons in 8 CFR 245.1(f) to the fee provision for the Form I–601. Proposed 8 CFR 106.2(a)(32).
- Form I–602, Application by Refugee for Waiver of Grounds of Inadmissibility. Proposed 8 CFR 106.2(a)(34).
- Form I–693, Report of Medical Examination and Vaccination Record. Proposed 8 CFR 106.2(a)(38).
- Form I–730, Refugee/Asylee Relative Petition. Proposed 8 CFR 106.2(a)(41).
- Form I–765, Application for Employment Authorization. DHS proposes that no fee will be charged for an initial EAD for the following:
  - Dependents of certain Government and international organizations or NATO personnel. Proposed 8 CFR 106.2(a)(43)(iii)(B).
  - N–8 (Parent of noncitizen classified as SK3) and N–9 (Child of N–8) nonimmigrants; Proposed 8 CFR 106.2(a)(43)(iii)(C).
  - Persons granted asylee status (AS1, AS6). Proposed 8 CFR 106.2(a)(43)(iii)(D).
  - Citizens of Micronesia, Marshall Islands, or Palau. Proposed 8 CFR 106.2(a)(43)(iii)(E).
  - Persons Granted Withholding of Deportation or Removal. Proposed 8 CFR 106.2(a)(43)(iii)(F).
  - Applicants for Asylum and Withholding of Deportation or Removal including derivatives. Proposed 8 CFR 106.2(a)(43)(iii)(G).
  - Taiwanese dependents of Taipei Economic and Cultural Representative Office E–1 employees. Proposed 8 CFR 106.2(a)(43)(iii)(H).
  - A Request for replacement EAD based on USCIS error. Proposed 8 CFR 106.2(a)(43)(iv).
  - For a renewal or replacement EAD for the following:
    - Dependents of certain foreign government, international organization, or NATO personnel. Proposed 8 CFR 106.2(a)(43)(v)(B);
    - Citizens of Micronesia, Marshall Islands, or Palau. Proposed 8 CFR 106.2(a)(43)(v)(C); and
    - Persons Granted Withholding of Deportation or Removal. Proposed 8 CFR 106.2(a)(43)(v)(D).
- Form I–765V, Application for Employment Authorization for Abused Nonimmigrant Spouse. Proposed 8 CFR 106.2(a)(43)(vi) and 8 CFR 106.3(a)(3)(iii).
- Form I–800, Petition to Classify Convention Adoptee as an Immediate Relative, for the first Form I–800 filed for a child based on an approved Form I–800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, during the Form I–800A approval period or extended approval period. Proposed 8 CFR 106.2(a)(44)(i)(A).
- Form I–821, Application for Temporary Protected Status. There is no fee for re-registration. Proposed 8 CFR 106.2(a)(48)(ii).

[122] Application for Commonwealth of the Northern Mariana Islands (CNMI) Long-Term Resident Status (Form I–955) is not included in this list because USCIS only accepted applications for initial CNMI long-term resident status between February 19, 2020 and August 17, 2020. As of August 17, 2020, USCIS no longer accepts any Forms I–955.

- Form I–854, Inter-Agency Alien Witness and Informant Record. Proposed 8 CFR 106.2(a)(52).
- Form I–864, Affidavit of Support Under Section 213A of the INA. Proposed 8 CFR 106.2(a)(53).
- Form I–864A, Contract Between Sponsor and Household Member. Proposed 8 CFR 106.2(a)(53)(i).
- Form I–864EZ, Affidavit of Support Under Section 213A of the INA. Proposed 8 CFR 106.2(a)(53)(ii).
- Form I–864W, Request for Exemption for Intending Immigrant's Affidavit of Support. Proposed 8 CFR 106.2(a)(53)(iii).
- Form I–865, Sponsor's Notice of Change of Address. Proposed 8 CFR 106.2(a)(53)(iv).
- Form I–912, Request for Fee Waiver. Proposed 8 CFR 106.2(a)(58).
- Supplement A to Form I–914, Application for Immigrant Family Member of a T–1 Recipient, and Supplement B to Form I–914, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. Proposed 8 CFR 106.2(a)(59).
- Supplement A to Form I–918, Petition for Qualifying Family Member of U–1 Recipient, and Supplement B to Form I–918, U Nonimmigrant Status Certification. Proposed 8 CFR 106.2(a)(60).
- Form I–942, Request for Reduced Fee, requesting a reduced fee for the naturalization application Form N–400. Proposed 8 CFR 106.2(a)(65).
- Form N–4, Monthly Report on Naturalization Papers. Proposed 8 CFR 106.2(b)(1).
- Form N–476, Request for Certification of Military or Naval Service. Proposed 8 CFR 106.2(b)(5).
- Form N–644, Application for Posthumous Citizenship. Proposed 8 CFR 106.2(b)(10).
- Form N–648, Medical Certification for Disability Exceptions. Proposed 8 CFR 106.2(b)(11).
- Claimant under INA sec. 289. Proposed 8 CFR 106.2(c)(9).

B. Proposed Fee Exemptions

The TVPRA [123] requires DHS to permit certain categories of requestors filing petitions and applications to apply for fee waivers, including for ''any fees associated with filing an application for relief through final adjudication of the adjustment of status.'' [124] This provision generally is limited to VAWA self-petitioners, as defined in INA sec. 101(a)(51), and noncitizens applying for certain other immigration benefits available to battered spouses and children or for T or U nonimmigrant status. DHS interprets this language to mean that, in addition to the main benefit request, individuals must have the opportunity to request a fee waiver for any form associated with the main benefit request up to and including the adjustment of status application. *See* 8 CFR 103.7(c)(3)(xviii) (Oct. 1, 2020); proposed 8 CFR 106.3(a)(3)(iii). Although DHS is authorized to establish and collect a fee for that benefit request under INA sec. 286(m), 8 U.S.C. 1356(m), several humanitarian benefit requests have been exempted from fees because of the humanitarian nature of these programs and the likelihood that individuals who file requests in these categories will qualify for a fee waiver if they request it.[125] DHS is proposing to provide additional fee exemptions for the following humanitarian-based immigration benefit requests under proposed 8 CFR 106.3(b) for the reasons listed below. These fee exemptions do not impact eligibility for any particular form or when an individual may file the form. These fee exemptions are in addition to the forms listed under proposed 8 CFR 106.2 for which DHS proposes to codify that there is ''no fee.'' Table 13C below provides a summary of the categories and the forms eligible for fee exemptions and fee waivers. In this proposed rule, DHS estimates that the increase in fee exemptions accounts for 1 percent of the 40-percent weighted average fee increase.[126]

1. Victims of Severe Form of Trafficking (T Nonimmigrants)

There is no fee for filing Form I–914, Application for T Nonimmigrant Status; Form I–914, Supplement A, Application for Family Member of T–1 Recipient; and Form I–914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons; under former 8 CFR 103.7(b)(1)(i)(UU) (Oct. 1, 2020), and DHS will continue to have no filing fee for these forms under proposed 8 CFR 106.2(a)(59). Principal applicants for T nonimmigrant status currently also do not file Form I–765 or pay a fee when an EAD is requested on Form I–914 and is issued incident to status. Any principal applicant who does not request employment authorization on Form I–914 must file Form I–765 but is fee exempt. Derivative beneficiaries must file Form I–765 and must submit a fee or fee waiver request. Currently, T nonimmigrants may request fee waivers for all forms up to and including a Form I–485 and associated forms.[127]

In this proposed rule, DHS is proposing to expand fee exemptions for all persons seeking or granted T nonimmigrant status, including principals and derivatives, for all forms associated with an initial application for T nonimmigrant status through final adjudication of the T nonimmigrant's application for adjustment of status to LPR. *See* proposed 8 CFR 106.3(b)(2). Applicants for T nonimmigrant status are a small and especially vulnerable population that has historically underused the T visa program; DHS has never come close to reaching the annual statutory cap of 5,000 visas allocated to principal victims since the creation of the T visa program. Many T visa applicants are also eligible for fee waivers. To encourage eligible victims of trafficking to use the T visa program, DHS is proposing to expand fee exemptions for this population.

2. Victims of Qualifying Criminal Activity (U Nonimmigrants)

There is no fee for filing Form I–918, Petition for U Nonimmigrant Status; Form I–918, Supplement A, Petition for Qualifying Family Member of U–1 Recipient; or Form I–918, Supplement B U Nonimmigrant Status Certification. *See* 8 CFR 103.7(b)(1)(i)(VV) (Oct. 1, 2020). DHS proposes to continue having no fee for these forms. Proposed 8 CFR 106.2(a)(60). Principal U nonimmigrants who are in the United States are also currently fee exempt for fees associated with employment authorization when it is issued incident to status and are not required to file Form I–765 to receive an EAD under 8 CFR 214.14(c)(7). Principal U nonimmigrants outside the United States are fee exempt for fees associated with employment authorization issued incident to status once they enter the United States and file Form I–765. Derivative beneficiaries requesting employment authorization, however, must file Form I–765 with the appropriate fee or fee waiver request. U nonimmigrants may also request a fee waiver for any forms filed up to and including a Form I–485 and associated forms.[128]

DHS is now proposing to expand fee exemptions for persons seeking or granted U nonimmigrant status for all

[123] *See* title II, subtitle A, sec. 201(d)(3), Public Law 110–457, 122 Stat. 5044 (2008); INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7).

[124] *See* INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7).

[125] *See, e.g.,* previous 8 CFR 103.7(b)(1)(i)(UU) and (VV) (codifying no fee for, respectively, the Application for T Nonimmigrant Status, Form I–914, and the Petition for U Nonimmigrant Status, Form I–918).

[126] Office of the Chief Financial Officer (OCFO), September 13, 2021.

[127] *See* INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7); 8 CFR 103.7(c) (Oct. 1, 2020).

[128] *See* INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7).

forms filed before filing a Form I–485. Proposed 8 CFR 106.3(b)(5). Form I–765 would only be fee exempt, however, for an initial request under 8 CFR 274a.12(a)(19) and (20) and an initial request under 8 CFR 274a.12(c)(14).

DHS is proposing that any form associated with U nonimmigrant status be fee exempt up until the filing of a Form I–485. A fee would be due (or a fee waiver requested) for a U nonimmigrant to file a Form I–485 and any Form I–929, Petition for Qualifying Family Member. The fee exemption for U nonimmigrants would not extend to the Form I–485, unlike the fee exemption proposed for a Form I–485 filed by T nonimmigrants. DHS acknowledges that, like T nonimmigrants, U nonimmigrants are a particularly vulnerable population as victims of crimes and may have similar financial resources or employment prospects. However, DHS is proposing to treat them differently with regard to their respective Form I–485 fees. U nonimmigrants may have a longer time with work authorization than T nonimmigrants given the ability of U nonimmigrant petitioners to receive work authorization as part of the bona fide determination (BFD) process or with placement on the waiting list and the lengthy waiting period before a U visa becomes available. While some T nonimmigrant applicants may have work authorization during the pendency of their application pursuant to a grant of Continued Presence by U.S. Immigration and Customs Enforcement (ICE), there has not been a BFD process implemented in the T visa program, nor has a waiting list ever been used. The annual cap of 5,000 visas for the T visa program has also never been met, whereas the annual cap of 10,000 visas for the U visa program is consistently reached. Given current T nonimmigrant status processing times, which are much shorter than in the U visa context, the issuance of T nonimmigrant status may occur before a U petitioner is issued a BFD or waiting list-based work authorization. Some T nonimmigrants are also able to adjust much more quickly than a U visa petitioner given their ability to adjust upon the completion of the trafficking investigation or prosecution if certified by the U.S. Attorney General. In some cases, the investigation or prosecution is already complete at the time the individual receives T nonimmigrant status, rendering them immediately eligible to adjust status. For all of these reasons, U nonimmigrants are likely to have had work authorization much longer than T nonimmigrants, and thus are less likely to need a fee exemption for filing Form I–485.

In addition, USCIS receives a large number of petitions for U nonimmigrant status each year and the cost of administering the U nonimmigrant program is already largely funded by other fee-paying requests. The T nonimmigrant program is also funded by other fee-paying requests, but the costs of the T program are much lower because the volume of T-based requests that USCIS must adjudicate is significantly lower. DHS has determined that extending fee exemptions to the low volume of T nonimmigrants filing Form I–485 could be absorbed with very little impact. In contrast, providing a fee exemption for U nonimmigrants filing Form I–485 would result in substantial adjudication costs being shifted to fee payers because of the much larger number of U nonimmigrants who file Form I–485. Thus, while the populations have many similar characteristics, because of the different levels of cost shifting required, DHS decided that the different treatments for the Form I–485 fee were justified as proposed in this rule.

3. VAWA Form I–360 Self-Petitioners and Derivatives

Violence Against Women Act (VAWA) self-petitioners currently pay no fee for filing Form I–360 and would continue to not pay a fee under this proposed rule. *See* 8 CFR 106.2(a)(16)(ii) (Oct. 1, 2020); proposed 8 CFR 106.3(b)(6). VAWA self-petitioners also currently are not required to file Form I–765 or pay a fee when employment authorization is requested on Form I–360. VAWA self-petitioners who do not request employment authorization on Form I–360, however, and all derivative beneficiaries must file Form I–765 and submit the fee or request a fee waiver to obtain employment authorization. VAWA self-petitioners and derivatives are currently eligible for fee waivers for any forms filed up to and including a Form I–485 and associated forms.[129]

DHS is now proposing to expand fee exemptions for persons seeking or granted immigrant classification as VAWA self-petitioners. *See* proposed 8 CFR 106.3(b)(6). VAWA self-petitioners and derivatives are eligible to concurrently file Form I–360 and Form I–485 if a visa would be immediately available after approval of Form I–360.[130] Therefore, when a VAWA Form I–360 is concurrently filed or pending with Form I–485, DHS proposes that VAWA self-petitioners be fee exempt for all forms associated with the Form I–360 filing through final adjudication of the adjustment of status application, including the filing of Form I–290B. *Id.* When a VAWA Form I–360 is filed as a standalone self-petition, however, the VAWA self-petitioner would only be fee exempt for Form I–290B, if filed as a motion to reopen or reconsider or an appeal of the Form I–360 denial. Proposed 8 CFR 106.3(b)(6)(ii). All separately filed Form I–485s and associated forms would require a fee or fee waiver request. Additionally, only initial requests for employment authorization under 8 CFR 274a.12(c)(14) and initial requests under INA sec. 204(a)(1)(K) for the beneficiary of an approved VAWA self-petition would be fee exempt. Requests for employment authorization approved under INA sec. 204(a)(1)(K) are issued as a category (c)(31) EAD. A fee or fee waiver request will be required to replace or renew the initial, free EAD. For VAWA self-petitioners filing Form I–360, all fee exemptions will also apply to derivative beneficiaries. Proposed 8 CFR 106.3(b)(6).

Like T and U nonimmigrants, VAWA self-petitioners are a particularly vulnerable population as victims of abuse and may not have the financial resources or employment authorization needed to pay for fees when initially filing for immigrant classification as VAWA self-petitioners. When passing VAWA, Congress gave individuals the ability to independently seek immigrant classification without the abusive U.S. citizen or LPR's participation or knowledge. VAWA self-petitioners may still be living with their abuser or may have recently fled their abusive relationship when filing the self-petition. According to the National Network to End Domestic Violence, abusers often maintain control over financial resources to further the abuse, and victims may have to choose between staying in an abusive relationship and poverty and homelessness.[131] Therefore, victims of abuse may not have access to their finances or the financial means to pay for fees when filing VAWA Form I–360, Form I–485, and associated forms. DHS, however, must weigh these difficult considerations against the number of VAWA self-petition filings it receives each year and the transfer of costs to other petitions and applications if these

[129] *See* INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7).

[130] *See* INA sec. 204(a)(1)(A)(iii)(II)(cc), (iv), (v), and (vii); 8 U.S.C. 1154(a)(1)(A)(iii)(II)(cc), (iv), (v), and (vii). *See* 8 CFR 245.2(a)(i)(2)(B).

[131] *See* ''About Financial Abuse,'' Nat'l Network to End Domestic Violence, *https://nnedv.org/content/about-financial-abuse/* (last viewed June 2, 2021).

filings were fee exempt through final adjudication of the adjustment of status application. Therefore, DHS is proposing to limit the new fee exemptions for these populations to forms associated with the VAWA self-petition filing that are filed at the same time as or while the VAWA Form I–360 self-petition is pending before the adjustment of status applicant is filed. DHS is not proposing to exempt VAWA self-petitioners from the Form I–485 fee when it is filed after their I–360 is approved because the approval of the Form I–360 authorizes employment of the self-petitioner and the ability to either obtain the funds to pay the fee or request a fee waiver.

4. Conditional Permanent Residents Filing a Waiver of Joint Filing Requirement Based on Battery or Extreme Cruelty

Conditional permanent residents (CPRs) filing a waiver of the joint filing requirement based on battery or extreme cruelty (abuse waiver) are considered VAWA self-petitioners as defined in INA sec. 101(a)(51)(C) and currently may request a fee waiver when filing Form I–751. *See* 8 CFR 103.7(c)(3)(vii) (Oct. 1, 2020). DHS proposes that a CPR requesting an abuse waiver continue to be eligible to request a fee waiver when filing Form I–751. *See* proposed 8 CFR 106.3(a)(3)(i)(C). Because CPRs filing Form I–751 may file for more than one basis when seeking any waiver of the joint filing requirement, USCIS is unable to provide a fee exemption for Form I–751 abuse waivers. However, because CPRs requesting abuse waivers are a relatively small population and are particularly vulnerable as victims of abuse as stated above, DHS is proposing to exempt them from the fee for Form I–290B to file a motion to reopen or reconsider the decision after a Form I–751 abuse waiver request is denied. *See* proposed 8 CFR 106.2(a)(15).

5. Abused Spouses and Children Adjusting Status Under CAA or HRIFA

Abused spouses and children seeking benefits under the Cuban Adjustment Act (CAA) and the Haitian Refugee Immigration Fairness Act (HRIFA) are considered VAWA self-petitioners as defined in INA sec. 101(a)(51)(D) and (E). As such, they are currently eligible for fee waivers for any forms filed through adjustment of status to LPR, including associated forms.[132] *See* 8 CFR 103.7(c)(3)(xviii) (Oct. 1, 2020).

DHS proposes to provide fee exemptions for these persons for all forms filed through final adjudication for adjustment of status to LPR, including Form I–485 and associated forms. Proposed 8 CFR 106.3(b)(4). For abused spouses and children filing under CAA and HRIFA, they will be fee exempt for Form I–485 and associated forms, as they file for VAWA benefits on Form I–485. Proposed 8 CFR 106.3(b)(4). Associated forms include any forms filed before the individual adjusts their status to LPR, such as a Form I–131; Form I–212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal; Form I–290B, Form I–601, and Form I–765. *Id.* Like VAWA self-petitioners filing Form I–360, these abused spouses and children are particularly vulnerable populations as victims of abuse. As there were fewer than 50 applications filed for these 2 populations combined in FY 2020, and the applicant files for VAWA benefits when filing for adjustment of status to LPR, DHS proposes to provide fee exemptions for the VAWA-based filing (such as for Form I–485) as well as associated forms. *Id.*

6. Abused Spouses and Children Seeking Benefits Under NACARA

Abused spouses and children seeking benefits under the Nicaraguan Adjustment and Central American Relief Act (NACARA) are considered VAWA self-petitioners as defined in INA sec. 101(a)(51)(F). As such, they are currently eligible for fee waivers for any forms filed through adjustment of status, including associated forms.[133] *See* 8 CFR 103.7(c)(3)(xviii) (Oct. 1, 2020).

DHS proposes to provide fee exemptions for abused spouses and children seeking benefits under NACARA for all forms filed through final adjudication for adjustment of status to LPR, including the Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100 (NACARA)) (Form I–881) and associated forms. Proposed 8 CFR 106.3(b)(7). For abused spouses and children under NACARA, they must file for VAWA benefits while in immigration proceedings, so they will be fee exempt for the Form I–881, Form I–601, and Form I–765, which are forms that may be filed with USCIS. Victims of abuse who file for VAWA benefits in immigration court proceedings are a particularly vulnerable population of applicants as mentioned previously. Therefore, DHS proposes to provide fee exemptions for Form I–881 and Form I–765, which are forms that may be filed with USCIS. *Id.*

7. Abused Spouses and Children of LPRs or U.S. Citizens Under INA Sec. 240A(b)(2)

Currently, abused spouses and children of LPRs and U.S. citizens seeking cancellation of removal and adjustment of status under INA sec. 240A(b)(2) are eligible for fee waivers for any forms filed with USCIS through adjustment of status to LPR, including associated forms.[134] *See* 8 CFR 103.7(c)(3)(xviii) (Oct. 1, 2020). In this rule, DHS proposes that this population be exempt from the fee for an Application for Waiver of Grounds of Inadmissibility (Form I–601) and an initial Application for Employment Authorization (Form I–765) when filed under 8 CFR 274a.12(c)(10). *See* Proposed 8 CFR 106.3(b)(8). Abused spouses and children of LPRs and U.S. citizens seeking cancellation of removal and adjustment of status in immigration proceedings are a particularly vulnerable population. Therefore, DHS proposes to provide fee exemptions for the only forms that this population may file with USCIS, Forms I–601 and an initial I–765. *Id.*

8. Special Immigrant Afghan or Iraqi Translators or Interpreters, Iraqi Nationals Employed by or on Behalf of the U.S. Government, or Afghan Nationals Employed by or on Behalf of the U.S. Government or Employed by the International Security Assistance Force and Derivative Beneficiaries

The National Defense Authorization Act for FY 2008[135] and Omnibus Appropriations Act[136] prohibit DHS from charging any fees in connection with an application for, or issuance of, a special immigrant visa for Special Immigrant Afghan or Iraqi translators or interpreters, Iraqi nationals employed by or on behalf of the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the International Security Assistance Force (ISAF). These applicants do not currently pay fees for Form I–360.

[132] *See* INA sec. 245(l)(7); 8 U.S.C. 1255(l)(7).

[133] *See* INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7).

[134] *See* INA sec. 245(l)(7); 8 U.S.C. 1255(l)(7).

[135] *See* Public Law 110–181 (Jan. 28, 2008).

[136] *See* Public Law 111–8 (Mar. 11, 2009).

As part of Operation Allies Welcome, beginning in July 2021, DHS authorized filing fee exemptions, including for Form I–485, Form I–601, and Form I–765, for certain Afghan nationals and their derivative beneficiaries meeting certain criteria, who were evacuated from Afghanistan due to the humanitarian crisis in that country.[137] DHS is proposing to expand fee exemptions for Special Immigrant Afghan or Iraqi translators or interpreters, Iraqi Nationals Employed by or on behalf of the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the ISAF to all forms associated with filings from initial status filing through final adjudication of the adjustment of status application. Proposed 8 CFR 106.3(b)(3). In addition, DHS is clarifying that surviving spouses and children of certain principal applicants who may file a petition for classification as a special immigrant under to section 403 of the Emergency Security Supplemental Appropriations Act, 2021, Public Law 117–31, 135 Stat. 309, 318 (July 30, 2021), are exempt from paying the filing fee for Form I–360.[138] DHS believes this population, who assisted the United States Government often at risk to themselves and their families, should benefit from an immigration process that imposes a minimal financial burden. In addition, because the statutes provide that the special immigrant visa petition is fee exempt, DHS believes that it is consistent with those laws to provide fee exemptions for these additional forms that are generally filed with or associated with the special immigrant visa petition.

9. Special Immigrant Juveniles

DHS currently fee exempts Form I–360[139] for Special Immigrant Juveniles (SIJs) and provides them eligibility to file a fee waiver for Form I–485 and associated forms[140] as well as for a naturalization application.[141] Upon classification as an SIJ, a noncitizen may be eligible to apply for adjustment of status to LPR if an immigrant visa number is immediately available. *See* INA sec. 245(h), 8 U.S.C. 1255(h). DHS is now proposing to fee exempt SIJs for all forms through final adjudication of the adjustment of status application, which will include Form I–485 and associated forms. Proposed 8 CFR 106.3(b)(1). SIJ petitioners and recipients are youth who have suffered abuse, neglect, or abandonment by one or both parents, and DHS believes that most SIJs have no means to pay the fees for these forms. Congress, in recognizing the vulnerability of these youth, has afforded special protections to this population, including access to federally funded assistance through the Unaccompanied Refugee Minors program.[142] Currently, SIJs are not required to provide evidence of household income when applying for a fee waiver, and many are in the foster care system or full-time students or both, without an ability to work.[143] For these reasons, most SIJs are eligible for a fee waiver. DHS is proposing to fee exempt SIJs through final adjudication of Form I–485 to recognize the financial and personal situation of most SIJs, to reduce the burden on SIJs to request a fee waiver, and to reduce the burden on USCIS of adjudicating SIJ fee waivers that are generally approved.

10. Temporary Protected Status

The fee for an Application for Temporary Protected Status (Form I–821) for TPS registrations is limited to $50 by statute. *See* INA sec. 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B). In addition, TPS applicants are eligible for fee waivers for any forms submitted based on the TVPRA.[144] DHS is not proposing any additional fee exemptions or fee waivers for this population.

DHS, however, is proposing to remove the fee exemption for Form I–765 filed by initial TPS applicants under age 14 and over age 65 for initial EAD requests. *See* proposed 8 CFR 244.6(b). Currently, initial TPS applicants under age 14 and over age 65 are exempt from paying the fee for Form I–765 for initial EAD requests. *See* 8 CFR 244.6(b) (Oct. 1, 2020).[145] When the regulations implementing TPS were first published in 1991, the INS required all TPS applicants to file Form I–765 for information collection purposes, even if an applicant did not wish to request employment authorization.[146] At that time, INS did not issue EADs to minor children or persons over age 65.[147] TPS applicants who did not wish to request employment authorization were not required to pay the fee for Form I–765. Initially, only nationals of El Salvador ages 14–65 who requested employment authorization were required to pay the fee for Form I–765. However, on April 25, 1995, INS revised Form I–765 to remove the El Salvador specific language from the form instructions and required all TPS applicants ages 14–65 who were requesting employment authorization to pay the fee for Form I–765, regardless of nationality, although fee waivers were available. The regulatory language was updated to reflect this change in 1999.[148]

USCIS no longer requires TPS applicants to file Form I–765 for information collection purposes, and only requires it if the TPS applicant wants an EAD. Persons applying for TPS who do not wish to request employment authorization need only file Form I–821.[149] The reason that the INS fee exempted a Form I–765 filed by initial TPS applicants under age 14 and over age 65 from a fee no longer exists. Thus, DHS is proposing that all TPS applicants requesting employment authorization must pay the filing fee for Form I–765 or request a fee waiver.

[137] *See* U.S. Dep't of Homeland Security, ''DHS Announces Fee Exemptions, Streamlined Processing for Afghan Nationals as They Resettle in the U.S.'' (Nov. 8, 2021), available at *https://www.dhs.gov/news/2021/11/08/dhs-announces-fee-exemptions-streamlined-processing-afghan-nationals-they-resettle*.

[138] The Emergency Security Supplemental Appropriations Act, 2021, Public Law 117–31, 135 Stat. 309, 318 (July 30, 2021), removed the requirement that the principal noncitizen have a petition for special immigrant visa (SIV) classification approved, in order for the surviving spouse and/or children of the principal noncitizen to apply to obtain SIVs, and replaced it with the requirement that the principal noncitizen must have submitted an application for Chief of Mission (COM) approval under section 1244 of Public Law 110–181, 122 Stat. 3 (Jan. 28, 2008), section 602(b) of the Afghan Allies Protection Act of 2009, Title VI of Public Law 111–8, 123 Stat. 524, 807 (Mar. 11, 2009), or section 1059 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163, 119 Stat. 3136 (Jan. 6, 2006) which included the noncitizen as an accompanying spouse or child, or the principal noncitizen had completed the special immigrant employment requirements at the time of their death.

[139] 8 CFR 103.7(b)(1)(i)(T)(*3*) (Oct. 1, 2020).

[140] 8 CFR 103.7(c)(4)(iii) (Oct. 1, 2020).

[141] 8 CFR 103.7(c)(3)(xiii) (Oct. 1, 2020).

[142] *See* 8 U.S.C. 1232(d)(4)(A).

[143] *See* USCIS, Instructions for Request for Fee Waiver, page 7, available at *https://www.uscis.gov/sites/default/files/document/forms/i-912instr.pdf* (last viewed June 1, 2021).

[144] *See* title II, subtitle A, sec. 201(d)(3), Public Law 110–457, 122 Stat. 5044 (2008); INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7); 8 CFR 103.7(c)(3)(xviii) (Oct. 1, 2020).

[145] The exemption is not codified, except by implication by 8 CFR 244.6, which states that applicants between the ages of 14 and 65 who are not requesting authorization to work will not be charged a fee for an application for employment authorization.

[146] *See* 56 FR 619 (Jan. 7, 1991), as amended at 56 FR 23497 (May 22, 1991) (codifying 8 CFR 240.6 that provided that the fee for Form I–765 was not charged except for nationals from El Salvador between the ages of 14 to 65 who requested an EAD).

[147] *See* 56 FR 23495 (May 22, 1991).

[148] *See* 64 FR 4780–4781 (Feb. 1, 1999).

[149] The October 17, 2017, revision of Form I–821 made concurrent filing of Form I–765 optional. The May 31, 2018, revision of Form I–765 removed the instruction appearing on earlier iterations indicating that Form I–765 must be filed with Form I–821 to register for TPS, regardless of whether the applicant was requesting employment authorization.

11. Asylum Seekers and Asylees

DHS is not proposing any changes to fee exemptions or fee waivers for asylum seekers or asylees and is proposing to codify that there is no fee for an Application for Asylum and for Withholding of Removal (Form I–589). Proposed 8 CFR 106.2(a)(27). *See* Table 13C, Categories of Requestors and Related Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions (Includes Current Eligibility and Proposed Changes). In the 2020 fee rule DHS proposed a $50 fee for Form I–589, Application for Asylum and for Withholding of Removal, for when that form is filed with USCIS (''affirmative asylum applications''). *See* 8 CFR 106.2(a)(20) (Oct. 2, 2020). The U.S. Government had never previously charged a fee for an asylum request and used fees from other form types to fund the operations involved in processing asylum claims. However, in the 2020 fee rule DHS decided to impose an asylum fee of $50, and provided that the fee would not be waivable but exempted an unaccompanied child in removal proceedings from the fee. 8 CFR 106.2(a)(20) (Oct. 2, 2020). A large number of commenters on the 2020 fee rule generally opposed charging asylum applicants a fee. *See* 85 FR 46844. Commenters stated that asylum applicants have few economic resources, the few resources that they do have are necessary for survival, and they are often financially dependent on their family members. Thus, the commenters stated that the asylum fee would create an additional burden on asylum applicants and their families, be detrimental to survivors of torture, and further endanger asylum seekers' health and safety.

After further consideration of the comments received on the 2020 fee rule's asylum fee, asylum applicants' lack of resources and the burdens that they face, DHS proposes to remove the $50 fee for Form I–589. Proposed 8 CFR 106.2(a)(27). DHS currently does not collect the $50 fee for Form I–589 as a result of the injunction against the 2020 Fee Rule discussed above. While INA sec. 208(d)(3), 8 U.S.C. 1158(d)(3), specifically authorizes a fee for the consideration of an asylum application in the discretion of the Secretary, it does not require such fees, and further provides that the Secretary may set adjudication and naturalization fees in accordance with INA sec. 1356(m), 8 U.S.C. 1356(m). DHS believes that the fee could deter asylum seekers from seeking protection because of an inability to pay the fee. Asylum applicants, many of whom arrive in the United States with few resources and lack financial support, may be unable to pay the fee (particularly considering that most are unable to legally seek employment until after the approval of their application for employment authorization based on their pending asylum application, which cannot be filed together), or would choose between paying the fee and paying for basic needs with the few resources they may have arrived with or can attain before being allowed to legally seek employment in the United States. DHS recognizes the vulnerable situations of individuals who apply for asylum and has decided not to impose an asylum application fee, so as to not make affordability a consideration for a person requesting asylum.

DHS will also continue to provide a fee exemption for the initial filing of Form I–765 for persons with pending asylum applications and those who were granted asylum (asylees). Proposed 8 CFR 106.2(a)(43)(iii)(D) and (G).[150] In the 2020 fee rule, DHS required applicants who have applied for asylum or withholding of removal before EOIR (defensive asylum) or filed Form I–589 with USCIS (affirmative asylum), to pay the fee for initial filings of Form I–765. *See* 8 CFR 106.2(a)(32) (Oct. 2, 2020). Previously, USCIS had exempted applicants with pending asylum applications who are filing their first EAD application under the 8 CFR 274a.12(c)(8) eligibility category from the Form I–765 fee if the applicant submitted evidence of a pending asylum application and followed other instructions. However, in the 2020 fee rule, DHS determined that continuing to exempt this population from paying the Form I–765 fee would increase the proposed fee by $10 to fund the cost of EADs for asylum applicants, and required initial applicants with pending asylum claims to pay a $490 Form I–765 fee to keep the fee lower for all fee-paying EAD applicants.

Many commenters on the 2020 fee rule opposed the change to charge asylum applicants for their first Form I–765, Application for Employment Authorization. 85 FR 46851–46853. The commenters wrote that: people who cannot work cannot afford to pay their asylum fees and may work illegally; charging individuals who are not authorized to work to pay a fee to acquire work authorization is counterintuitive; asylum seekers are in dire financial situations; requiring a fee for authorization to work will worsen the already precarious situation of a vulnerable population; and the fee will act as an unjust deterrent for asylum seekers. As a result of the economic challenges faced by asylum seekers, DHS has determined that it agrees that charging asylum seekers for an initial work authorization application could prevent them from obtaining lawful employment, and that the EAD fee is unduly burdensome for asylum seekers. Therefore, DHS proposes to retain the fee exemption for applicants who have applied for asylum or withholding of removal before EOIR (defensive asylum) or filed Form I–589 with USCIS (affirmative asylum) for initial filings of Form I–765. *See* proposed 8 CFR 106.2(a)(43)(iii)(D) and (G).

As explained below, DHS also proposes that the fee for refugee travel documents for asylees and LPRs who obtained such status as asylees will be linked to the DOS fee for a U.S. passport. Proposed 8 CFR 106.2(a)(7)(i) and (ii). DHS also proposes to continue charging a fee for asylees with pending adjustment of status applications who are requesting advance parole. Proposed 8 CFR 106.2(a)(7)(iii). Although asylees and refugees are in some respects similarly situated populations, certain differences justify DHS's decision not to exempt asylees from paying the fee for refugee travel documents or advance parole. Unlike refugees, who are required to apply to adjust status after they have been physically present in the United States for at least one year, asylees are not required to apply for adjustment of status, although they may do so. In addition, because asylees are a larger population than refugees, DHS determined that transferring to other applicants and petitioners the costs of adjudicating requests from asylees for refugee travel documents and advance parole would be overly burdensome to other fee payers. DHS believes that asylees are better able to time the filing of Form I–485 for adjustment of status to LPR or an associated benefit request with their ability to pay the fees or request a fee waiver.

DHS proposes to continue fee waiver eligibility for asylees filing Forms I–290B, I–765 for EAD renewal, and I–485. Proposed 8 CFR 106.3(a)(3)(ii)(C) and (E) and (a)(3)(iv)(C). DHS does not propose new fee exemptions or fee waivers for asylum applicants or asylees in this rulemaking because most forms used by this population are already fee exempt or fee waiver eligible. DHS also considered the number of asylum-based filings made each year and decided that the transfer of the costs of such filings

[150] Except for individuals applying under special procedures pursuant to the settlement agreement reached in *American Baptist Churches* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991).

to other petitions and applications if these filings were fee exempt resulted in too excessive a shift to fee payers to justify.

12. Refugees

DHS is continuing to provide a fee exemption for the initial filing of Form I–765 for persons who were admitted or paroled as refugees. Proposed 8 CFR 106.3(b)(9)(iii). This long-standing policy is consistent with Article 17(1) of the 1951 Convention Relating to the Status of Refugees (as incorporated in the 1967 Protocol Relating to the Status of Refugees), which states, ''The Contracting State shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.'' [151]

DHS also proposes to provide a fee exemption for persons admitted or paroled as refugees who submit Form I–765 to renew or replace their EAD. Proposed 8 CFR 106.3(b)(9)(iii). Currently, refugees may request a fee waiver for such renewal and replacement applications. EAD renewal and replacement filing volume is low, and DHS must expend effort to adjudicate fee waiver requests, which are generally approved. DHS believes that exempting all refugee Form I–765 filings is consistent with the principles of the 1951 Refugee Convention cited above.

DHS further proposes to provide a fee exemption for the filing of Form I–131, Application for Travel Document, for persons admitted or paroled as refugees, including LPRs who obtained such status as refugees in the United States. Proposed 8 CFR 106.3(b)(9)(i). Refugees are by definition a vulnerable population.[152] Congress has recognized that many refugees are more likely than other immigrant populations to lack economic security and determined that it is in the interests of the United States to provide them with support and assistance on their path to self-sufficiency. For example, INA sec. 207(c)(3) specifies that the public charge ground of inadmissibility in INA sec. 212(a)(4) does not apply to refugees. And section 412 of the INA, 8 U.S.C. 1522, authorizes the provision of a variety of benefits and support services to refugees, including employment training and placement, English language training, cash assistance, and medical assistance. In light of these considerations, DHS has historically exempted refugees from paying fees for most applications and petitions for immigration benefits, excluding naturalization, for which a fee waiver is available. DHS now proposes to align Form I–131 with this long-standing policy. For the same reasons, DHS also proposes to fee exempt the Application for Carrier Documentation (Form I–131A) for refugees, persons paroled as refugees (*see* INA sec. 212(d)(5)(B), 8 U.S.C. 1182(d)(5)(B)), and LPRs who obtained such status as refugees. *See* 8 CFR 106.3(b)(9)(ii).

13. Person Who Served Honorably on Active Duty in the U.S. Armed Forces Filing Under INA Sec. 101(A)(27)(K)

An immigrant who has served honorably on active duty in the U.S. armed forces of the United States after October 15, 1978, after original lawful enlistment outside the United States (under a treaty or agreement in effect on October 1, 1991) for a certain period of time and the spouses and children of such immigrants may be granted special immigrant status upon recommendation under the executive department. INA sec. 101(a)(27)(K), 8 U.S.C. 1101(a)(27). These applicants may file for naturalization under INA sec. 328, 8 U.S.C 1439. USCIS does not charge a fee to military naturalization applicants because such fees are prohibited by statute. *See* INA sec. 328(b)(4), 8 U.S.C. 1439(b)(4). Other forms for active or former military service members are also exempt from fees. *See, e.g.,* 8 CFR 103.7(b)(1)(i)(AAA) and (EEE) (Oct. 1, 2020).

On July 2, 2021, Secretary Mayorkas and Secretary of Veterans Affairs Denis McDonough announced a new initiative to support our Nation's noncitizen service members, veterans, and the immediate family members of service members. The initiative recognizes the profound commitment and sacrifice that service members and their families have made to the United States and that DHS agencies would review the policies to remove barriers to naturalization for those eligible, and improve access to immigration services.[153]

As part of this initiative on November 19, 2021, USCIS issued guidance to provide fee exemptions for Form I–131 concurrently filed with N–400 for applicants who are residing outside the United States and seeking naturalization.[154] Because this population submits a low number of forms, and to be consistent with other fees related to military applicants, DHS is proposing to codify a fee exemption for Forms I–131 (parole requests). In addition, DHS is proposing to add fee exemptions for Forms I–360, I–485, and I–765 (initial request) for military applicants.

14. Summary of Proposed Fee Exemptions

The following Table 13A provides a summary of current fee exemptions under INA sec. 245(l)(7). Table 13B provides a list of proposed additional fee exemptions, and the impact on forms that no longer require a fee waiver for these categories of requestors because they will be fee exempt. Table 13C provides a list of all fee exemptions and waivers that includes both the current provisions and the proposed additions.

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[151] Convention Relating to the Status of Refugees, art. 17(1), July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150. The United States is not a party to the 1951 Refugee Convention, but the United States is a party to the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267, which incorporates Articles 2 to 34 of the 1951 Convention. *See INS* v. *Stevic,* 467 U.S. 407, 416 & n.9 (1984).

[152] *See* INA sec. 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A) (defining the term ''refugee'' as ''any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion'').

[153] *See* DHS, VA Announce Initiative to Support Noncitizen Service Members, Veterans, and Immediate Family Members (July 2, 2021), available at *https://www.dhs.gov/news/2021/07/02/dhs-va-announce-initiative-support-noncitizen-service-members-veterans-and-immediate.*

[154] *See* USCIS Policy Manual, Volume 12, Citizenship and Naturalization, Part I Military Members and their Families, Chapter 5, Application and Filing for Service Members (INA sections 328 and 329) [12 USCIS–PM I.5], available at *https://www.uscis.gov/policy-manual/volume-12-part-i-chapter-5.*

Table 13A: Current Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions		
Category	**Current Fee Exemptions**	**Current Fee Waiver Eligibility**
Victims of severe form of trafficking (T nonimmigrants)[155]	• Form I-914 • Form I-914, Supplement A • Form I-914, Supplement B • Form I-765 (initial 8 CFR 274a.12(a)(16) fee exempt for principals only)	• Form I-131 • Form I-192 • Form I-193 • Form I-290B • Form I-485 • Form I-539 • Form I-601 • Form I-765 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Victims of qualifying criminal	• Form I-918	• Form I-131 • Form I-192

[155] *See* INA sec. 101(a)(15)(T); 8 U.S.C. 1101(a)(15)(T) (T nonimmigrant status for victims of severe forms of trafficking in persons).

Table 13A: Current Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions		
Category	**Current Fee Exemptions**	**Current Fee Waiver Eligibility**
activity (U nonimmigrants)[156]	• Form I-918, Supplement A • Form I-918, Supplement B • Form I-765 (initial 8 CFR 274a.12(a)(19) fee exempt for principals only)[157]	• Form I-193 • Form I-290B • Form I-485 • Form I-539 • Form I-601 • Form I-765 • Form I-929 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
VAWA Form I-360 self-petitioners and derivatives[158]	• Form I-360 • Form I-765 (initial category (c)(31) generally fee exempt for principals only)[159]	• Form I-131 • Form I-212 • Form I-290B • Form I-485 • Form I-601 • Form I-765 • Form I-824 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
CPRs filing a waiver of the joint filing	none	• Form I-751 • Form I-290B

[156] *See* INA sec. 101(a)(15)(U) 8 U.S.C. 1101(a)(15)(U) (U nonimmigrant status for victims of qualifying criminal activity).

[157] No initial fee for principals who receive an EAD incident to status.

[158] This category includes VAWA self-petitioners and derivatives as defined in INA sec. 101(a)(51)(A) and (B) and those otherwise self-petitioning for immigrant classification under INA sec. 204(a)(1). *See* INA sec. 101(a)(51); 8 U.S.C. 1101(a)(51). *See* INA sec. 204(a); 8 U.S.C. 1154(a).

[159] Currently, VAWA self-petitioners may check a box on Form I–360 requesting a category (c)(31) EAD upon approval of the self-petition. This EAD is currently fee exempt. If the self-petitioner does not check this box, they must file a Form I–765 to request work authorization under 8 CFR 274a.12(c)(14) designation or under 8 CFR 274a.12(c)(9) if applicable. The self-petitioner may also file a Form I–765 to request a category (c)(31) EAD if not initially requested on the Form I–360. All self-petitioners and derivatives filing a renewal or replacement request must file a Form I–765 with a fee or fee waiver request.

Table 13A: Current Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions		
Category	**Current Fee Exemptions**	**Current Fee Waiver Eligibility**
requirement based on battery or extreme cruelty[160]		• Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children adjusting status under CAA and HRIFA[161]	none	• Form I-131 • Form I-212 • Form I-290B • Form I-485 • Form I-601 • Form I-765 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children seeking benefits under NACARA[162]	none	• Form I-601 • Form I-765 • Form I-881 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children of LPRs or U.S. citizens under	none	• Form I-601 • Form I-765 • Form N-300 • Form N-336 • Form N-400

[160] *See* INA secs. 101(a)(51)(C) and 216(c)(4)(C) and (D); 8 U.S.C. 1101(a)(51)(C) and 1186a(c)(4)(C) and (D).

[161] *See* INA sec. 101(a)(51)(D) and (E); 8 U.S.C. 1101(a)(51)(D) and (E). The proposed fee exemption for Form I–765 for these categories includes all initial, renewal, and replacement EADs filed through final adjudication for adjustment of status.

[162] *See* INA sec. 101(a)(51)(F); 8 U.S.C. 1101(a)(51)(F). The proposed fee exemption for Form I–765 for this category includes all initial, renewal, and replacement EADs filed through final adjudication for adjustment of status.

Table 13A: Current Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions		
Category	**Current Fee Exemptions**	**Current Fee Waiver Eligibility**
INA sec. 240A(b)(2)[163]		• Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused Spouses of A, E-3, G, and H Nonimmigrants[164]	• Form I-765V[165]	Not Applicable
Special Immigrant Afghan or Iraqi translators or interpreters, Iraqi nationals employed by or on behalf of the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the ISAF and their derivative beneficiaries	• Form I-360 • Form I-485 (for certain Special Immigrant Afghans)[166] • Form I-765 (initial filing for certain Afghans)[167] • Form I-601 (for certain Special Immigrant Afghans)[168]	• Form I-131 • Form I-212 • Form I-290B • Form I-485 • Form I-601 • Form I-765 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
SIJs	• Form I-360	• Form I-131 • Form I-290B • Form I-485 • Form I-601 • Form I-765 • Form N-300

[163] Also includes children of battered spouses and children of an LPR or U.S. citizen and parents of battered children of an LPR or U.S. citizen under INA sec. 240A(b)(4); 8 U.S.C. 1229b(b)(4).

[164] *See* INA sec. 106; 8 U.S.C. 1105a. The proposed fee exemption for Form I–765 for these categories includes all initial, renewal, and replacement EADs. If the abused spouses of A, E–3, G, and H Nonimmigrants are able to file under another eligible category, the applicant may be eligible for a fee waiver.

[165] The fee exemption for Form I–765V for this category includes all initial, renewal, and replacement EADs.

[166] Afghan nationals and their derivative beneficiaries paroled into the United States on or after July 30, 2021 and applying to adjust status to permanent residence based on classification as Afghan special immigrants as part of the temporary Operation Allies Welcome (OAW) program.

[167] Afghan nationals and their derivative beneficiaries who were paroled into the United States on or after July 30, 2021. This is part of the temporary OAW program.

[168] Afghan nationals and their derivative beneficiaries paroled into the United States on or after July 30, 2021 who file Form I–601 associated with Form I–485, if filing as an Afghan Special Immigrant.

Table 13A: Current Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions		
Category	**Current Fee Exemptions**	**Current Fee Waiver Eligibility**
		• Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
TPS[169]	• Form I-765 (initial TPS applicant, under 14 and over 65 who is requesting an initial EAD.)[170] • Form I-821 (only re-registration)	• Biometrics Fee • Form I-131 • Form I-290B • Form I-601 • Form I-765 • Form I-821
Asylees	• Form I-131 (Only if an asylee applying for a Refugee Travel Document or advance parole filed Form I-485 on or after July 30, 2007, paid the Form I-485 application fee required, and Form I-485 is still pending.) • Form I-589 • Form I-602 • Form I-730 • Form I-765 (initial request by asylees and initial request by asylum	• Form I-290B • Form I-485 • Form I-765 (renewal request) • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K

[169] *See* INA secs. 244 and 245(l)(7); 8 U.S.C. 1254a and 1255(l)(7). This category includes applicants and recipients of TPS.

[170] Note DHS is proposing to end the fee exemption for Form I–765 initial EAD requests filed by initial TPS applicants under age 14 and over age 65.

[171] These applicants are eligible for naturalization under INA sec. 328; 8 U.S.C. 1439. Most military applicants are eligible for naturalization without lawful permanent residence under INA sec. 329; 8 U.S.C. 1440.

Table 13A: Current Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions		
Category	**Current Fee Exemptions**	**Current Fee Waiver Eligibility**
	applicants with a pending Form I-589)	
Refugees	• Form I-590 • Form I-485 • Form I-602 • Form I-730 • Form I-765 (initial request)	• Form I-290B • Form I-765 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Current and former U.S. armed forces service members, including persons who served honorably on active duty in the U.S. armed forces filing under INA sec. 101(a)(27)(K)[171]	• Form N-400 • Form N-336 • Form N-600 • Form N-600K • Form I-131 (for service members filing concurrently with an N-400)	• Form N-300 • Form N-470 • Form N-565

Table 13B: Additional Categories of Requestors and Related Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions (Includes Current Eligibility and Proposed Changes)[172]		
Category	**Proposed Additional Fee Exemptions[173]**	**Proposed Fee Waivers[174]**
Victims of severe form of trafficking (T nonimmigrants)[175]	• Form I-131 • Form I-192 • Form I-193 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-485 • Form I-539 • Form I-601 • Form I-765[176]	• Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Victims of qualifying criminal activity (U nonimmigrants)[177]	• Form I-192 (only if filed before Form I-485 is filed) • Form I-193 (only if filed before Form I-485 is filed) • Form I-290B (only if filed before Form I-485 is filed) • Form I-539 (only if filed before Form I-485 is filed) • Form I-765 (initial 8 CFR 274a.12(a)(20) and initial (c)(14) fee exempt for principals and derivatives only if filed before Form I-485)	• Form I-131 • Form I-192 (only if filed with or after Form I-485 is filed) • Form I-193 (only if filed with or after Form I-485 is filed) • Form I-290B (only if filed with or after Form I-485 is filed) • Form I-485 • Form I-601 • Form I-765 (renewal and replacement requests) • Form I-929 • Form N-300

[172] This table includes exemptions and fee waivers that are required under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7) and other categories of immigrants for which DHS is proposing additional fee exemptions. This table includes only those exemptions that DHS is required to provide under this statute, and it does not include all USCIS benefit requests or groups for which DHS currently provides or is proposing to provide an exemption in this rule or by policy. See regulatory text for all other fee exemptions and fee waivers.

[173] This column lists all the additional fee exemptions that are being proposed. DHS would continue to maintain all the fee exemptions currently provided under Table 13A, column ''Current Fee Exemptions.''

[174] This column lists all the fee waivers that would still be available after some forms will be fee exempt as listed in ''Current Fee Exemptions'' column.

[175] *See* INA sec. 101(a)(15)(T); 8 U.S.C. 1101(a)(15)(T) (T nonimmigrant status for victims of severe forms of trafficking in persons).

[176] The proposed fee exemption for T nonimmigrants filing Form I–765 includes all initial, renewal and replacement EADs filed at the nonimmigrant and adjustment of status stages.

[177] *See* INA sec. 101(a)(15)(U); 8 U.S.C. 1101(a)(15)(U) (U nonimmigrant status for victims of qualifying criminal activity).

Table 13B: Additional Categories of Requestors and Related Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions (Includes Current Eligibility and Proposed Changes)[172]		
Category	**Proposed Additional Fee Exemptions[173]**	**Proposed Fee Waivers[174]**
		• Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
VAWA Form I-360 self-petitioners and derivatives[178]	• Form I-131 (only when Form I-360 and Form I-485 are concurrently filed or pending) • Form I-212 (only when Form I-360 and Form I-485 are concurrently filed or pending) • Form I-290B (if filed with a standalone Form I-360, then fee exempt if filed to motion or appeal Form I-360) • Form I-290B (if Form I-360 and Form I-485 are concurrently filed, then fee exempt if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-485 (only if filed concurrently with Form I-360) • Form I-601 (only when Form I-360 and Form I-485 are concurrently filed or pending) • Form I-765 (initial 8 CFR 274a.12(c)(9), initial 8 CFR 274a.12 (c)(14), and initial category (c)(31) fee exempt for principals and derivatives)[179]	• Form I-131 • Form I-212 • Form I-290B • Form I-485 • Form I-601 • Form I-765 (renewal and replacement requests) • Form I-824 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
CPRs filing a waiver of the joint filing requirement based on battery or extreme cruelty[180]	• Form I-290B (only when filed for Form I-751)	• Form I-751 • Form I-290B • Form N-300

[178] This category includes VAWA self-petitioners and derivatives as defined in INA sec. 101(a)(51)(A) and (B) and those otherwise self-petitioning for immigrant classification under INA sec. 204(a)(1). *See* INA sec. 101(a)(51); 8 U.S.C. 1101(a)(51). *See* INA sec. 204(a); 8 U.S.C. 1154(a).

[179] Under this proposed rule, the category (c)(31) EAD provided through Form I–360 will continue to be fee exempt. In addition, all Form I–765s filed for an initial 8 CFR 274a.12(c)(9), 8 CFR 274a.12(c)(14), and an initial category (c)(31) EAD will also be fee exempt for both self-petitioners and derivatives.

[180] *See* INA secs. 101(a)(51)(C) and 216(c)(4)(C) and (D); 8 U.S.C. 1101(a)(51)(C) and 1186a(c)(4)(C) and (D).

Table 13B: Additional Categories of Requestors and Related Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions (Includes Current Eligibility and Proposed Changes)[172]		
Category	**Proposed Additional Fee Exemptions[173]**	**Proposed Fee Waivers[174]**
		• Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children adjusting status under CAA and HRIFA[181]	• Form I-131 • Form I-212 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-485 • Form I-601 • Form I-765	• Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children seeking benefits under NACARA[182]	• Form I-765 (submitted under 8 CFR 274a.12(c)(10)) • Form I-881 • Form I-601	• Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children of LPRs or U.S. citizens under INA sec. 240A(b)(2)[183]	• Form I-601 • Form I-765 (initial 8 CFR 274a.12(c)(10) only)	• Form I-765 (renewal and replacement requests) • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K

[181] *See* INA sec. 101(a)(51)(D) and (E); 8 U.S.C. 1101(a)(51)(D) and (E). The proposed fee exemption for Form I–765 for these categories includes all initial, renewal, and replacement EADs filed through final adjudication for adjustment of status.

[182] *See* INA sec. 101(a)(51)(F); 8 U.S.C. 1101(a)(51)(F). The proposed fee exemption for Form I–765 for this category includes all initial, renewal, and replacement EADs filed through final adjudication for adjustment of status.

[183] Also includes children of battered spouses and children of an LPR or U.S. citizen and parents of battered children of an LPR or U.S. citizen under INA sec. 240A(b)(4); 8 U.S.C. 1229b(b)(4).

Table 13B: Additional Categories of Requestors and Related Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions (Includes Current Eligibility and Proposed Changes)[172]		
Category	**Proposed Additional Fee Exemptions[173]**	**Proposed Fee Waivers[174]**
Abused Spouses of A, E-3, G, and H Nonimmigrants[184]		
Special Immigrant Afghan or Iraqi translators or interpreters, Iraqi nationals employed by or on behalf of the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the ISAF and their derivative beneficiaries	• Form I-131 • Form I-212 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-485 • Form I-601 • Form I-765 (initial)	• Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
SIJs	• Form I-131 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-485 • Form I-601 • Form I-765	• Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
TPS[185]	Not applicable	• Biometrics Fee • Form I-131 • Form I-290B • Form I-601 • Form I-765 • Form I-821
Asylees	Not Applicable	• Form I-290B • Form I-485 • Form I-765 (renewal request) • Form N-300 • Form N-336 • Form N-400 • Form N-470

[184] *See* INA sec. 106; 8 U.S.C. 1105a. The proposed fee exemption for Form I–765 for these categories includes all initial, renewal, and replacement EADs. If the abused spouses of A, E–3, G, and H Nonimmigrants are able to file under another eligible category, the applicant may be eligible for a fee waiver.

[185] *See* INA secs. 244 and 245(l)(7); 8 U.S.C. 1254a and 1255(l)(7). This category includes applicants and recipients of TPS.

Table 13B: Additional Categories of Requestors and Related Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions (Includes Current Eligibility and Proposed Changes)[172]		
Category	**Proposed Additional Fee Exemptions[173]**	**Proposed Fee Waivers[174]**
		• Form N-565 • Form N-600 • Form N-600K
Refugees	• Form I-765 (renewal and replacement request) • Form I-131 • Form I-131A	• Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Current and former U.S. armed forces service members, including persons who served honorably on active duty in the U.S. armed forces filing under INA sec. 101(a)(27)(K)[186]	• Form I-131 • Form I-360 • Form I-485 • Form I-765 (initial request for service member)	• Form N-300 • Form N-470 • Form N-565

Table 13C: Forms Eligible for Fee Waivers under INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7), and Fee Exemptions, as of Effective Date of this Proposed Rule		
Category	**Fee Exemptions**	**Fee Waiver Eligibility**
Victims of severe form of trafficking (T nonimmigrants)[187]	• Form I-914 • Form I-914, Supplement A	• Form I-290B • Form N-300 • Form N-336 • Form N-400

[186] These applicants are eligible for naturalization under INA sec. 328; 8 U.S.C. 1439. Most military applicants are eligible for naturalization without lawful permanent residence under INA sec. 329; 8 U.S.C. 1440.

[187] *See* INA sec. 101(a)(15)(T); 8 U.S.C. 1101(a)(15)(T)(T nonimmigrant status for victims of severe forms of trafficking in persons).

Category	Fee Exemptions	Fee Waiver Eligibility
	• Form I-914, Supplement B • Form I-131 • Form I-192 • Form I-193 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-485 • Form I-539 • Form I-601 • Form I-765 (initial, renewal and replacement requests)	• Form N-470 • Form N-565 • Form N-600 • Form N-600K
Victims of qualifying criminal activity (U nonimmigrants)[188]	• Form I-918 • Form I-918, Supplement A • Form I-918, Supplement B • Form I-192 (only if filed before Form I-485 is filed) • Form I-193 (only if filed before Form I-485 is filed) • Form I-290B (only if filed before Form I-485 is filed) • Form I-539 (only if filed before Form I-485 is filed) • Form I-765 (initial 8 CFR 274a.12(a)(20) and initial (c)(14) fee exempt for principals and derivatives only if filed before Form I-485)	• Form I-192 (only if filed with or after Form I-485 is filed) • Form I-193 (only if filed with or after Form I-485 is filed) • Form I-290B (only if filed with or after Form I-485 is filed) • Form I-485 • Form I-601 • Form I-765 (renewal and replacement requests) • Form I-929 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
VAWA Form I-360 self-petitioners and derivatives[189]	• Form I-360 • Form I-131 (only when Form I-360 and Form I-	• Form I-131 • Form I-212

Category	Fee Exemptions	Fee Waiver Eligibility
	485 are concurrently filed or pending) • Form I-212 (only when Form I-360 and Form I-485 are concurrently filed or pending) • Form I-290B (if filed with a standalone Form I-360, then fee exempt if filed to motion or appeal Form I-360) • Form I-290B (if Form I-360 and Form I-485 are concurrently filed, then fee exempt if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-485 (only if filed concurrently with Form I-360) • Form I-601 (only when Form I-360 and Form I-485 are concurrently filed or pending) • Form I-765 (initial 8 CFR 274a.12(c)(9), initial 8 CFR 274a.12 (c)(14), and initial category (c)(31) fee exempt for principals and derivatives)[190]	• Form I-290B • Form I-485 • Form I-601 • Form I-765 (renewal and replacement requests) • Form I-824 • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
CPRs filing a waiver of the joint filing requirement based on battery or extreme cruelty[191]	• Form I-290B (only when filed for Form I-751)	• Form I-751 • Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K

Category	Fee Exemptions	Fee Waiver Eligibility
Abused spouses and children adjusting status under CAA and HRIFA[192]	• Form I-131 • Form I-212 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-485 • Form I-601 • Form I-765	• Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children seeking benefits under NACARA[193]	• Form I-765 (submitted under 8 CFR 274a.12(c)(10)) • Form I-881 • Form I-601	• Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused spouses and children of LPRs or U.S. citizens under INA sec. 240A(b)(2)[194]	• Form I-601 • Form I-765 (initial 8 CFR 274a.12(c)(10) only)	• Form I-765 (renewal and replacement requests) • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Abused Spouses of A, E-3, G, and H Nonimmigrants[195]	• Form I-765V[196]	Not applicable
Special Immigrant Afghan or Iraqi translators or interpreters, Iraqi nationals employed by or on behalf of	• Form I-131 • Form I-212 • Form I-290B (only if filed for any benefit request	• Form I-290B • Form N-300 • Form N-336 • Form N-400

Category	Fee Exemptions	Fee Waiver Eligibility
the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the ISAF and their derivative beneficiaries	filed before adjusting status or for Form I-485) • Form I-360 • Form I-485 • Form I-765 (initial) • Form I-601 •	• Form N-470 • Form N-565 • Form N-600 • Form N-600K
SIJs	• Form I-131 • Form I-290B (only if filed for any benefit request filed before adjusting status or for Form I-485) • Form I-360 • Form I-485 • Form I-601 • Form I-765	• Form I-290B • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
TPS[197]	• Form I-821 (only re-registration)	• Biometrics Fee • Form I-131 • Form I-290B • Form I-601 • Form I-765 • Form I-821
Asylees	• Form I-131 (Only if an asylee applying for a Refugee Travel Document or advance parole filed Form I-485 on or after July 30, 2007, paid the Form I-485 application fee required, and Form I-485 is still pending.) • Form I-589 • Form I-602 • Form I-730 • Form I-765 (initial request by asylees and initial request by asylum applicants with a pending Form I-589)	• Form I-290B • Form I-485 • Form I-765 (renewal request) • Form N-300 • Form N-336 • Form N-400 • Form N-470 • Form N-565 • Form N-600 • Form N-600K
Refugees	• Form I-131 • Form I-131A • Form I-485 • Form I-590	• Form I-290B • Form N-300 • Form N-336 • Form N-400

Category	Fee Exemptions	Fee Waiver Eligibility
	• Form I-602 • Form I-730 • Form I-765 (initial, renewal, and replacement request) •	• Form N-470 • Form N-565 • Form N-600 • Form N-600K
Current and former U.S. armed forces service members, including persons who served honorably on active duty in the U.S. armed forces filing under INA sec. 101(a)(27)(K)[198]	• Form I-131 • Form I-360 • Form I-485 • Form I-765 (initial request for service member) • Form N-336 • Form N-400 • Form N-600 • Form N-600K	• Form N-300 • Form N-470 • Form N-565

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[188] *See* INA sec. 101(a)(15)(U); 8 U.S.C. 1101(a)(15)(U) (U nonimmigrant status for victims of qualifying criminal activity).

[189] This category includes VAWA self-petitioners and derivatives as defined in INA sec. 101(a)(51)(A) and (B) and those otherwise self-petitioning for immigrant classification under INA sec. 204(a)(1). *See* INA sec. 101(a)(51); 8 U.S.C. 1101(a)(51). *See* INA sec. 204(a); 8 U.S.C. 1154(a).

[190] Under this proposed rule, the category (c)(31) EAD provided through Form I–360 will continue to be fee exempt. In addition, all Form I–765s filed for an initial 8 CFR 274a.12(c)(9), 8 CFR 274a.12(c)(14), and an initial category (c)(31) EAD will also be fee exempt for both self-petitioners and derivatives.

[191] *See* INA secs. 101(a)(51)(C) and 216(c)(4)(C) and (D); 8 U.S.C. 1101(a)(51)(C) and 1186a(c)(4)(C) and (D).

[192] *See* INA sec. 101(a)(51)(D) and (E); 8 U.S.C. 1101(a)(51)(D) and (E). The proposed fee exemption for Form I–765 for these categories includes all initial, renewal, and replacement EADs filed through final adjudication for adjustment of status.

[193] *See* INA sec. 101(a)(51)(F); 8 U.S.C. 1101(a)(51)(F). The proposed fee exemption for Form I–765 for this category includes all initial, renewal, and replacement EADs filed through final adjudication for adjustment of status.

[194] Also includes children of battered spouses and children of an LPR or U.S. citizen and parents of battered children of an LPR or U.S. citizen under INA sec. 240A(b)(4); 8 U.S.C. 1229b(b)(4).

[195] *See* INA sec. 106; 8 U.S.C. 1105a. The proposed fee exemption for Form I–765 for these categories includes all initial, renewal, and replacement EADs. If the abused spouses of A, E–3, G, and H Nonimmigrants are able to file under another eligible category, the applicant may be eligible for a fee waiver.

[196] The fee exemption for Form I–765V for this category includes all initial, renewal, and replacement EADs.

[197] *See* INA secs. 244 and 245(l)(7); 8 U.S.C. 1254a and 1255(l)(7). This category includes applicants and recipients of TPS.

[198] These applicants are eligible for naturalization under INA sec. 328; 8 U.S.C. 1439. Most military applicants are eligible for naturalization without lawful permanent residence under INA sec. 329; 8 U.S.C. 1440.

C. Request for Comments

DHS welcomes comment on the proposed changes to which categories of petitioners and applicants are exempt from the fees or which forms should be fee exempt, the annual and cumulative estimated transfer cost, requests to which costs should be shifted, and the reason as to why the particular group should be fee exempt.

VIII. Other Proposed Changes in the FY 2022/2023 Fee Schedule

A. Clarifying Dishonored Fee Check Re-Presentment Requirement and Fee Payment Method

USCIS is proposing to clarify that it will not redeposit financial instruments returned as unpayable for a reason other than insufficient funds. *See* proposed 8 CFR 103.2(a)(7)(ii)(D). In the FY 2016/2017 fee rule, DHS amended the regulations regarding how USCIS treats a benefit request accompanied by fee payment (in the form of check or another financial instrument) that is subsequently returned as not payable. *See* 81 FR 73313–73315 (Oct. 24, 2016); 8 CFR 103.2(a)(7)(ii) and 103.7(a)(2). If a financial instrument used to pay a fee is returned as unpayable after one representment, USCIS rejects the filing and imposes a standard $30 charge. *Id.* In the preamble to the FY 2016/2017 fee rule, DHS stated that, to make sure a payment rejection is the result of insufficient funds and not due to USCIS error or network outages, USCIS (through the U.S. Department of the Treasury (Treasury)) will resubmit rejected payment instruments to the appropriate financial institution one time. *See* 8 CFR 103.2(a)(7)(ii)(D). DHS's intent was to submit only checks that were dishonored due to insufficient funds because the Treasury check clearance regulations only permit an agency to redeposit a check that was dishonored due to insufficient funds.[199] Although Treasury does not permit redeposit of checks dishonored for any other reason, some stakeholders have interpreted 8 CFR 103.2(a)(7)(ii)(D) as requiring DHS to redeposit any check that is returned as unpayable. Several petitioners have had fee payment checks dishonored because the petitioner (or law firms paying the fee on the petitioner's behalf) have placed a fraud hold on their checking account, stopped payment on the check, or the check failed a third-party validation process. DHS appreciates the concerns about fraudulent or counterfeit checks and the impacts on petitioners and beneficiaries when the petitioner or their bank accidently or erroneously stop payments or dishonor checks. In the few cases where checks to USCIS have been dishonored due to anti-fraud mechanisms, USCIS has not seen an

[199] *See* 31 CFR 210.3(b)(1)(i); National Automated Clearing House Association, *2019 NACHA Operating Rules & Guidelines: The Guide to the Rules Governing the ACH Network,* Subsection 2.5.13.3 (limiting redepositing a check to those that are returned due to ''Not Sufficient Funds,'' ''NSF,'' ''Uncollected Funds,'' or comparable).

instance where the account was frozen as a result of actual, fraudulent activity, and the remitting institution has acknowledged its fault or error in dishonoring the fee checks. Nevertheless, USCIS is not responsible for ensuring that a petitioner's or financial institution's check writing procedures do not go awry and allowing resubmission of correctly rejected requests adds work to an already burdened USCIS intake system. In addition to most redeposits being impracticable and in violation of Treasury regulations, the reason DHS provided the check representment requirement in § 103.2(a)(7)(ii)(D) did not materialize, because in the almost five years since the requirement was codified, DHS has rejected no payment because of USCIS error or network outages. *See* 81 FR 73314.[200] Therefore, to comply with the Treasury regulations, because representment of other dishonored checks is not permitted and futile, and representment has proven to not be necessary to protect the public from the Government failings that were feared when the provision was implemented, DHS is proposing in this rule that if a check or other financial instrument used to pay a fee is returned as unpayable because of insufficient funds, USCIS will resubmit the payment to the remitter institution one time. If the remitter institution returns the instrument used to pay a fee as unpayable a second time, USCIS will reject the filing. *See* proposed 8 CFR 103.2(a)(7)(ii)(D).

In addition, DHS proposes two changes to address stale or expired checks. First, DHS proposes that that it may reject a request that is accompanied by a check that is dated more than 365 days before the receipt date. Proposed 8 CFR 103.2(a)(7)(ii)(D). Second, DHS proposes that it will not be responsible for financial instruments that expire before they are deposited and USCIS may reject any filing for which a required payment cannot be processed due to expiration of the financial instrument. Proposed 8 CFR 106.1(d).

Currently, USCIS policy is to reject a check that is dated more than a year before it is submitted. However, that policy is not codified, and DHS has been sued or threatened with litigation multiple times when a check that was dated more than a year before it was submitted was the basis of a rejection that caused the requestor to miss an important deadline. For example, USCIS has permitted an applicant to submit Form I–821 after the deadline [201] and adjudicated a Form I–485 filed after the applicant's U nonimmigrant status had expired because the initial, timely filing was rejected because the applicant submitted a fee check that was more than one year old.[202] While most personal and business checks do not expire, they become what is known as ''stale dated'' 6 months after they are written.[203] In addition, many business entities provide that their checks expire after a certain period, such as 90 days, if not cashed, because they are concerned about the timeliness and accuracy of their accounting records if checks that they issue are valid for a longer period, notwithstanding that the Uniform Commercial Code (UCC) provides that a bank may delay access to the funds from or is not obligated to deposit, cash, honor, or pay a stale check.[204] USCIS projects that it will receive an average of 6,510,442 IEFA non-premium fee payments per year.[205] It is important that its requirements for payment instruments provide certainty and minimize the likelihood of a payment being dishonored. And, while USCIS has experienced delays in receipting requests due to the COVID pandemic, many requests have been received with checks that are very close to the check expiration date.[206] To reduce dishonored payments and to alert those who submit fee checks to USCIS to monitor their expiration dates, DHS proposes to codify its policy of rejecting 365-day-old checks and checks where the expiration date on their face has passed to provide requestors with a reasonable amount of flexibility in case there are delays with their filing. Proposed 8 CFR 103.2(a)(7)(ii)(D); 106.1(d). Although commercial banks use a guideline of 6 months, rejecting a check that is dated more than a year earlier is also consistent with the time limit for a check issued by the U.S. Treasury. *See* 31 CFR 245.3(a) (Any claim on account of a Treasury check must be presented to the agency that authorized the issuance of such check within 1 year after the date of issuance of the check or within 1 year after October 1, 1989, whichever is later.). Rejection of a stale or expired check will not be mandatory, so USCIS will still have the authority to waive the check date requirements in exigent circumstances or on a per case basis, such as when surges in volume reduce USCIS' ability to timely intake requests and deposit checks. For example, USCIS offered flexibility to lockbox filers whose initial filings were rejected solely because a filing fee payment that expired while the benefit request was awaiting processing between Oct. 1, 2020, and April 1, 2021.[207]

B. Payment Method

Currently, USCIS uses the following payment methods:

- For forms accepted at USCIS lockboxes [208]—Check, money order, or credit card.[209]
- For online filing—*Pay.gov* payment submission which includes credit cards, debit cards and Electronic Funds Transfer using routing and account numbers.
- For fees paid at a field office—*Pay.gov* only.
- For immigrant fees paid by immigrants seeking entry into the United States with a visa—*Pay.gov* only.

DHS also proposes to codify that USCIS may require that certain fees be paid using a certain payment method or that certain fees cannot be paid using a particular method. Proposed 8 CFR 106.1(b). For example, USCIS may require that a request be submitted by using *Pay.gov,* a secure portal that transmits an applicant's payment information directly to the U.S. Treasury for processing, or may preclude the use of certain payment

[200] The final FY 2016/2017 fee rule stated, ''To make sure that a payment rejection is the result of insufficient funds and not due to USCIS error or network outages, USCIS (through Treasury) will resubmit rejected payment instruments to the appropriate financial institution one time.''

[201] *See* 8 CFR 244.17(a) (''Applicants for periodic re-registration must apply during the registration period provided by USCIS.'').

[202] *See* 8 CFR 245.24(b)(2)(ii) (requiring the applicant to hold U nonimmigrant status at the time of application).

[203] A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than 6 months after its date, but it may charge its customer's account for a payment made thereafter in good faith. *See* UCC 4–404 (2002).

[204] *Id. See also Aliaga Medical Center, S.C.* v. *Harris Bank N.A.,* 21 NE3d 1203 (IL App (1st), Nov. 10, 2014) (holding that check expiration is generally governed by the account agreement between the bank and customer and the preprinted term ''void'' or phrase ''void after 90 days,'' on a check does not mean that the check cannot be presented, paid, and accounted for as a check in the normal course of the account's regular operation).

[205] *See* section V.B.1.b, Fee-Paying Volume, of this preamble.

[206] *See, e.g., USCIS Lockbox Updates,* at *https://www.uscis.gov/news/alerts/uscis-lockbox-updates* (Jan. 8, 2021).

[207] *See* USCIS, ''USCIS Announces Lockbox Filing Flexibilities,'' available at *https://www.uscis.gov/news/alerts/uscis-announces-lockbox-filing-flexibilities* (June 10, 2021).

[208] Lockboxes that specialize in the intake and deposit of multiple payment types receive about 53 percent of all USCIS filings.

[209] USCIS recently launched a pilot program to test the acceptance of credit cards for payment of fees for benefit requests filed at service centers. *See* USCIS, ''USCIS Announces Pilot Program for Credit Card Payments Using Form G–1450 When Filing Form I–485,'' available at *https://www.uscis.gov/news/alerts/uscis-announces-pilot-program-for-credit-card-payments-using-form-g-1450-when-filing-form-i-485* (June 2, 2021).

types, such as cashier's check and money orders for the payment of a particular form or when payments are made at certain offices. The proposed change provides that the payment method will be described in the form instructions (including for online filing) or by individual notice (a bill, invoice, appointment confirmation, etc.); thereby, requestors will be clearly notified of any limitations on the payment method for the request they are filing. However, this proposed change provides the authority prospectively, and USCIS is proposing no forms changes with this rule that will impose any specific limits on acceptable payments on the date this rule would take effect. The payment method for a particular form will be changed in the future only after the subject form instructions are revised in accordance with the Paperwork Reduction Act (PRA).

For the 2020 fee rule, commenters wrote that requiring online or electronic payments would restrict immigration benefits for individuals who lack computer and internet access, that it is important to permit cashier's checks and money orders because they are available to individuals without banking services such as a credit card, and that many immigrant households lack access to checking and savings accounts or they are unbanked or underbanked. 85 FR 46877. DHS has determined that any person who can purchase a cashier's check or money order from a retailer can similarly purchase a prepaid debit card that can be used to pay their benefit request fee using USCIS Form G–1450 or the *Pay.gov* online payment platform. In addition, filers may split the fees between more than one credit card, and the credit card does not have to be the applicant's if the owner of the credit card authorizes its use. Therefore, DHS believes that requiring the use of a check, credit, or debit card will not prevent applicants or petitioners from paying the required fees. While DHS does not permit the use of gift cards that cannot be reloaded, reloadable debit cards are available for purchase at most convenience, pharmacy, department, and grocery stores, or online.[210] In addition, resources such as libraries offer free online services, access to information, and computers that the public may use to access forms and complete, print or submit them. Nevertheless, in evaluating future changes to acceptable means of payment for each immigration benefit request, DHS will consider the availability of internet access and different means of payment to the affected populations.

Lockboxes that specialize in the intake and deposit of multiple payment types receive about 53 percent of all USCIS filings. However, the requirements and circumstances for the filing of some requests do not permit lockbox submission and intake, and the request must be filed at a particular office or in person. Various offices, such as field offices, embassies, and consulates, are limited in the method of payment that they can receive or process. Additionally, certain payment methods, such as checks or cash, require time-intensive procedures for cashiers and their supervisors to input, reconcile, and verify their daily receipts and deposits. Generally, Federal agency offices must deposit money that they receive on the same day that it is received. *See* 31 U.S.C. 3720(a); 31 CFR 206.5; U.S. Treasury, ''Treasury Financial Manual'' Vol. 1, Part 5, Chapter 2000, Section 2055.[211] There are additional requirements and guidance for timely record keeping and redundancy in personnel that similarly increase workload and processing costs. *See* 31 U.S.C. 3302(e); U.S. Treasury, ''Treasury Financial Manual'' Vol 1, Part 5, Chapter 2000, Section 2030; *see also* GAO, GAO–14–704G ''Standards for Internal Control in the Federal Government'' (2014).[212] The time that USCIS spends complying with payment processing requirements could be used to adjudicate cases. This proposed change to codify that fees must be paid using the method that USCIS prescribes, as provided in the form instructions or by individual notice, would also permit USCIS to reduce administrative burdens and processing errors associated with fee payments.

C. Non-Refundable Fees

Currently, USCIS filing fees generally are non-refundable and must be paid when the benefit request is filed. *See* 8 CFR 103.2(a)(1). DHS is proposing to clarify that fees are non-refundable regardless of the result of the immigration benefit request or how much time passes between USCIS' receipt of the request and completion of the adjudication process.[213] As previously discussed, DHS is authorized to establish fees to recover the costs of providing USCIS adjudication and naturalization services. *See* INA sec. 286(m) and (n); 8 U.S.C. 1356(m) and (n). Although fees are set to recover the cost of processing an immigration benefit request, they must be paid in advance of the request being processed. Therefore, fees are due at the time of filing and are required in order for USCIS to receipt the request and issue a receipt date. *See* 8 CFR 103.2(a)(7)(ii)(D). A benefit request will be rejected if it is not submitted with the correct fee(s), and the fee is not refundable, regardless of how much time is required to complete adjudication or the decision that USCIS makes on the case.

Because fees are non-refundable, DHS further proposes to clarify that fees paid to USCIS using a credit card are not subject to dispute, chargeback, forced refund, or return to the cardholder for any reason except at the discretion of USCIS. USCIS continues to expand the acceptance of credit cards for the payment of USCIS fees. The increased acceptance of credit cards for the payment of USCIS fees has resulted in a sizeable increase in the number of disputes filed with credit card companies challenging USCIS' retention of the fee. Disputes are generally filed by requestors whose request was denied, who have changed their mind about the request, or assert that the service was not provided or was unreasonably delayed. USCIS records show that credit card companies generally side with their cardholders in these disputes and they determine that USCIS fails to adequately warn the cardholder that the fee is not refundable and due regardless of the result of the case or the time required to adjudicate it.[214] In those instances, USCIS has not received payment for adjudication of the request.

When USCIS performs services for which a fee has not been paid, such as when the fee is charged-back by a credit card company, the costs incurred must

[210] *See,* for example, ''Visa Prepaid Cards Easy to use and reloadable, Visa Prepaid cards go everywhere you do. No credit check or bank account needed.'' *https://usa.visa.com/pay-with-visa/find-card/get-prepaid-card* (last viewed June 15, 2021).

[211] Agencies may accumulate deposits less than $5,000 until they reach $5,000 or a given Thursday. U.S. Treasury, ''Treasury Financial Manual'' Vol 1, Part 5, Chapter 2000, *https://tfm.fiscal.treasury.gov/v1/p5/c200.html.*

[212] Principle 10, Design Control Activities, states that management should control information processing and segregation of duties to reduce risk, and it should correctly and promptly record transactions. GAO, ''Standards for Internal Control in the Federal Government'' (Sept. 10, 2014), *https://www.gao.gov/assets/670/665712.pdf.*

[213] In USCIS parlance, rejection of a receipt happens in the initial filing stage. USCIS provides a receipt notice for accepted requests and a rejection notice for rejected requests. *See* 8 CFR 103.2(a)(7). For example, Form I–797C, Notice of Action, will state if a request was accepted or rejected. A denial, on the other hand, is a decision that the request is not eligible for immigration benefits for which it was filed after adjudication. Fees are not returned when a request is denied.

[214] In FY 2020, credit card issuers revoked the fee from USCIS in 855 of 1,182 disputes filed, or roughly 72 percent.

be funded by other fee payers. As the dollar amount of fees paid with credit cards continues to increase, an increase in the number of credit card disputes and chargebacks has the potential to have a significant negative fiscal effect on USCIS. Therefore, DHS is proposing to provide that fees paid to USCIS for immigration benefit requests will not be refunded regardless of the result of the benefit request or how much time the adjudication requires, and that fees paid to USCIS using a credit card are not subject to dispute by the cardholder or charge-back by the issuing financial institution. *See* proposed 8 CFR 103.2(a)(1); 8 CFR 106.1(e). If the institution that issues the credit card rescinds the payment of the fee to USCIS, USCIS may reject the request if adjudication is not complete, or revoke the approval or convert the denial to rejection, and invoice the responsible party (applicant, petitioner, or requestor) and pursue collection of the unpaid fee in accordance with 31 CFR parts 900 through 904 (Federal Claims Collection Standards) if the adjudication is complete.[215]

D. Eliminating $30 Returned Check Fee

DHS also proposes to amend its regulations to remove the $30 charge for dishonored payments. *See* 8 CFR 103.7(a)(2)(i) (Oct. 1, 2020). USCIS data indicate that the cost of collecting the $30 fee outweighs the benefits to the Government derived from imposing and collecting the fee. For example, in FY 2016, USCIS collected a total of $416,541 from the $30 returned check fee while the financial service provider billed $508,770 to collect the $30 fee. In FY 2020, USCIS recovered only $199,829 from the returned check fee. Although USCIS no longer discretely tracks the costs associated with processing returned checks, USCIS is at a net loss when processing returned checks. USCIS also bears the cost and time of processing the returned check. Furthermore, USCIS does not retain the $30 fee for deposit into the IEFA with other immigration benefit request fees. USCIS deposits the fee in Treasury's general fund; thus the $30 fee does not provide revenue to USCIS. As such, USCIS would not benefit from DHS proposing changes to this fee.

Although agencies may prescribe regulations establishing the charge for a service or thing of value provided by the agency [216] Federal agencies are not required to impose fees as a general matter, nor does DHS or USCIS have a specific statutory authorization or requirement to do so. Therefore, DHS is not required to charge a returned check fee. Based on the cost to USCIS and that the bad check fees add nothing to USCIS revenue, DHS proposes to remove the $30 fee from regulations.

E. Changes to Biometric Services Fee

1. Incorporating Biometric Activities Into Immigrant Benefit Request Fees

DHS proposes to incorporate the biometric services cost into the underlying immigration benefit request fees based on the applicable biometric services for each benefit request and the associated costs as estimated in the ABC model. Currently, a separate $85 biometric services fee may apply depending on the immigration benefit request [217] or other circumstances. *See* 8 CFR 103.7(b)(1)(i)(C) (Oct. 1, 2020). USCIS currently provides web content, form instructions, and other information to help individuals assess whether they need to pay the biometric services fee. USCIS rejects an application, petition, or request that fails to pay the separate biometric services fee, if it applies. *See* 8 CFR 103.17(b) (Oct. 1, 2020). DHS proposes to incorporate the cost of biometric services into the underlying immigration benefit request fees using its ABC model to simplify the fee structure, reduce rejections of benefit requests for failure to include a separate biometric services fee, and better reflect how USCIS uses biometric information.

DHS has broad statutory authority to collect biometric information when such information is ''necessary'' or ''material and relevant'' to the administration and enforcement of the INA. *See, e.g.,* INA secs. 103(a), 235(d)(3), 264(a); 8 U.S.C. 1103(a), 1225(d)(3), 1304(a). The collection, use, and reuse of biometric data are integral to identity management, criminal background checks, investigating and addressing national security concerns, and maintaining program integrity.

In previous fee rules, USCIS evaluated the biometric activity cost as a single biometric services fee separate from the underlying application, petition, or request. In the FY 2016/2017 fee review, USCIS called the activity Perform Biometric Services. *See* 81 FR 26913. USCIS clarified that persons filing a benefit request may be required to submit biometrics or be interviewed and pay the biometric services fee. *See* 81 FR 26917 and 81 FR 73325. For many years, there has been a single biometric services fee that includes four separate costs:

- FBI Name Checks;
- FBI fingerprints;
- Application Support Center (ASC) contractual support; and
- Biometric service management overall, including Federal employees at the ASC locations.

In the FY 2022/2023 fee review, USCIS identified each of these four costs as distinct activities in the ABC model. These four activities replace the single biometric activity that USCIS used in previous fee reviews.[218] USCIS used volume estimates to allocate these costs to the proposed immigration benefit requests to which they generally apply. The biometric volume estimates were specific to the projected workload for FBI Name Checks, FBI fingerprints, and contractual support at the ASC locations. In most cases, these estimates used the average proportion of workload for each immigration benefit request. The data on ASC Production and FBI Name Checks are from FY 2015 to FY 2017. The FBI Fingerprints data used FY 2016 to FY 2018. While the information does not cover the most recent years, USCIS believes it is the most appropriate information to use for this calculation because it reflects biometric collection rates before the pandemic and before increased collection of biometrics for certain populations. For example, the data excludes higher biometric service rates for Form I–539 after a 2019 form revision.[219] USCIS temporarily suspended biometric collection for Form I–539 during the pandemic.[220] Thus, the information considered will more closely reflect the annual volume of biometrics submissions that USCIS expects during FY 2022/2023. These proportions of each biometric service to receipts can vary, because there is not always a one-to-one relationship between a specific benefit request and a biometric service. For example, USCIS may not require submission of

[215] USCIS may also prohibit the payment of fees using a credit card from a financial institution that routinely rescinds fee payments due to disputes.

[216] *See* 31 U.S.C. 9701.

[217] For a quick reference of the immigration benefit requests that currently require biometric services with the initial submission, *see* USCIS, Form G–1055, Fee Schedule, available at *https://www.uscis.gov/g-1055.*

[218] The single biometric service activity was called Perform Biometric Services in the FY 2016/2017 fee review. *See* 81 FR 26913–26914. Previously, USCIS called the activity Capture Biometrics. *See* 75 FR 33459 (June 11, 2010) and 72 FR 4897 (Feb. 1, 2007).

[219] *See* USCIS, ''UPDATE: USCIS to Publish Revised Form I–539 and New Form I–539A on March 8'' available at *https://www.uscis.gov/news/alerts/update-uscis-to-publish-revised-form-i-539-and-new-form-i-539a-on-march-8* (last updated March 5, 2019).

[220] *See* USCIS, ''USCIS Temporarily Suspends Biometrics Requirement for Certain Form I–539 Applicants'' available at *https://www.uscis.gov/news/alerts/uscis-temporarily-suspends-biometrics-requirement-for-certain-form-i-539-applicants* (last updated May 13, 2021).

biometrics if it resubmits existing, stored biometric information to the FBI. As another example, some immigration benefit requests, like adoption petitions and applications, require that all adults in a household submit biometric information. *See, e.g.,* 8 CFR 204.310(a)(3)(ii) and (b). As such, a single adoption petition or application may require more than one adult to submit biometric information. Using biometric volumes specific to individual biometric activities enables USCIS to better forecast biometric costs and attribute them to specific benefit requests. DHS proposes to incorporate biometric costs into IEFA immigration benefit request fees by using this biometric activity-specific information in the proposed fees. *See* proposed 8 CFR 106.2.

The proposed changes in this rule may assist USCIS as it shifts to enterprise-wide person-centric identity management. A person-centric view of the data allows adjudicators to see relevant information for an individual across multiple benefits requests and systems. USCIS aims to improve how it acquires, stores, manages, shares, and uses identity data—making all relevant information accessible and usable in support of adjudications. For example, if USCIS modifies the types of background checks conducted, then DHS may propose to increase the fee as appropriate for the affected immigration benefit requests. This approach may ensure that the affected customers would pay the appropriate fee rather than pass the cost burden of all other biometric services to other unrelated customers.

USCIS forecasts biometric workload volumes by immigration benefit request type in order to assign biometrics costs to the appropriate immigration benefit request. Assigning costs to the underlying immigration benefit request type may reduce the administrative burden on USCIS to administer the separate fee and make it easier for applicants, petitioners, and beneficiaries to calculate the total payment that is due. However, USCIS proposes to retain the separate biometric services fee for specific workloads, as described in the next section.

2. Retaining the Separate Biometric Services Fee for Temporary Protected Status

DHS has excluded from USCIS' ABC model for this proposed rule the costs and revenue associated with TPS, consistent with the previous fee rule. *See* 81 FR 73312–73313. In addition, as noted above, DHS proposes generally to eliminate a separate biometric services fee and fund biometric services from the revenue received from the underlying immigration benefit request fees. However, DHS proposes to retain a separate biometric services fee for TPS. *See* proposed 8 CFR 106.2(a)(48)(iii).

While the TPS registration fee is capped by INA sec. 244a(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B) at $50, DHS has specific statutory authority to collect ''fees for fingerprinting services, biometric services, and other necessary services'' when administering the TPS program. *See* 8 U.S.C. 1254b. USCIS collects biometrics for TPS registrants. USCIS requires certain TPS initial applicants and re-registrants to pay the biometric services fee in addition to the fees for Form I–821, Application for Temporary Protected Status, and for Form I–765, Application for Employment Authorization, if they want an employment authorization document. *See* Instructions for Form I–821. The model output of other fees indicates that the $50 amount provided by statute does not recover the full cost of adjudicating these benefit requests.

To reduce the costs of TPS that USCIS must recover from fees charged to other immigration benefit requests, DHS proposes to require a $30 biometric services fee for TPS initial applications and re-registrations. *See* proposed 8 CFR 106.2(a)(48)(iii). As stated previously, while DHS follows OMB Circular A–25, we are not required to set specific fees at the costs of the benefit request or adjudication or naturalization service for which the fee is being charged. Nevertheless, DHS based the proposed $30 biometric services fee on the direct costs of collecting, storing, and using biometric information for TPS initial applications and re-registrations. Currently, USCIS pays approximately $11.25 to the FBI for fingerprinting results. USCIS calculated that biometric collection, storage, and use at an ASC costs approximately $19.50. These same ASC and FBI rates apply to TPS and all other requests that use these services. The sum of these costs is approximately $31. DHS rounded the proposed fee to the nearest $5 increment, similar to other IEFA fees, making the proposed fee $30. The proposed fee is less than the current $85 biometric services fee because the current fee includes indirect costs. The FY 2016/2017 fee rule held the biometric services fee to $85, which has not changed since the FY 2010/2011 fee rule.

3. Executive Office for Immigration Review Biometric Services Fee

Similarly, DHS is maintaining the current requirement that applicants filing certain requests with EOIR [221] submit a biometric services fee. *See* proposed 8 CFR 103.7(a)(2). DHS, including USCIS, handles all aspects of biometrics collection for EOIR and conducts background security checks for individuals in immigration proceedings.[222] This fee is necessary to recover the costs USCIS incurs performing that service for EOIR. When individuals in immigration proceedings before EOIR seek to file an application for relief or protection from removal with the immigration court they are instructed to pay any applicable biometrics and application fees to DHS. *See* 8 CFR 1103.7(a)(3).[223] As previously explained, while DHS proposes to incorporate the costs of biometric services into its underlying immigration benefit request fees, DHS has no authority to change the amounts it receives from any EOIR fees to recover the costs it incurs for biometric services (which includes background checks).

Under this proposed rule, DHS proposes to adjust the biometric services fee for those requests filed with and processed by USCIS. DHS proposes to use the same $30 fee using the same estimates as described for the proposed TPS biometrics fee above. Consequently, DHS proposes a biometric services fee of $30 for certain forms for which it performs intake and biometrics services on behalf of EOIR. *See* proposed 8 CFR 103.7(a)(2).

F. Naturalization and Citizenship-Related Forms

Aside from updating the fees for naturalization and citizenship-related forms, DHS proposes to continue offering fee waivers for the naturalization forms. *See* section VI.E of this preamble. For a general discussion on how fee waivers, limited fee increases, and fee exemptions affect proposed fees, see section IV of this preamble.

The fee-paying unit costs represent the estimated cost per fee-paying applicant as calculated in the USCIS

[221] EOIR is a component of the DOJ and includes the Office of the Director, the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, the Office of Policy, and other staff as the Attorney General or the Director may provide. *See* 8 CFR 1003.0. USCIS provides intake services for several requests filed with, and adjudicated by, EOIR, for which biometrics may be required.

[222] Guidance is available at ''Immigration Benefits in EOIR Removal Proceedings,'' at *https://www.uscis.gov/laws/immigration-benefits-eoir-removal-proceedings* (last updated Aug. 5, 2020).

[223] This regulation provides that, except as provided in 8 CFR 1003.8, EOIR does not accept fees, and that fees relating to EOIR proceedings are paid to DHS.

ABC model.[224] However, as to Forms N–565 and N–600K, both the current fees and the proposed fees are less than the estimated cost (fee-paying unit cost) for each naturalization form. For example, the current fee for Form N–400 is $231 less than the fee-paying unit cost estimated in the FY 2016/2017 fee rule. *See* Table 14. The proposed fee for Form N–400 is $296 less than the estimated FY 2022/2023 fee-paying unit cost. *Id.* As such, while DHS proposes to increase the fee for Form N–400, DHS likewise proposes to recover a smaller percentage of the estimated cost for adjudicating Form N–400 than it does in its current fee structure. If the two difference columns in Table 14 are negative, then DHS proposes to maintain the current practice by keeping the proposed fee below the estimated cost. If the two difference columns are positive, then DHS proposes to recover more than full cost in order to fund operations and policy objectives, like offering fee waivers and charging less than full cost for other naturalization fees.

DHS further proposes separate online and paper fees for some benefit types. Proposed online filing fees are lower than proposed paper filing fees, when available. *See* section VIII.G of this preamble. However, DHS does not propose separate online and paper filing fees for naturalization services because the proposed naturalization fees are based on the current fees instead of ABC model results. Specifically, as a general matter, the proposed fees are approximately 18 percent more than the current fees, based on a calculation described in section V.B.3 of this preamble. However, for Forms N–565 and N–600K, the proposed fees are below the estimated cost from the ABC model, thus DHS proposes no discount for online filing of the N-forms.

Table 14: Naturalization Fees and Cost Estimates Compared

Immigration Benefit Request	FY 2016/2017 Fee-Paying Unit Cost	Current Fee	Difference Between Current Fees and Cost Estimate (Current Fee minus FY 2016/2017 Cost)	FY 2022/2023 Fee-Paying Unit Cost	Proposed Fee	Difference Between Proposed Fees and Cost Estimate (Proposed Fee minus FY 2022/2023 Unit Cost)
N-300 Application to File Declaration of Intention	$840	$270	-$570	$789	$320	-$469
N-336 Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)	$1,294	$700	-$594	$1,537	$830	-$707
N-400 Application for Naturalization	$871	$640	-$231	$1,056	$760	-$296
N-470 Application to Preserve Residence for Naturalization Purposes	$792	$355	-$437	$1,511	$420	-$1,091
N-565 Application for Replacement Naturalization/Citizenship Document	$399	$555	$156	$375	$555	$180
N-600 Application for Certificate of Citizenship	$841	$1,170	$329	$1,474	$1,385	-$89
N-600K Application for Citizenship and Issuance of Certificate Under Section 322	$841	$1,170	$329	$1,048	$1,385	$337

1. Application for Naturalization (Form N–400) Fee

DHS proposes to increase the fee for Form N–400, Application for Naturalization, from $640 to $760, a $120 or 19 percent increase. *See* 8 CFR 103.7(b)(1)(i)(BBB) (Oct. 1, 2020); proposed 8 CFR 106.2(b)(4). Most naturalization applicants pay an additional $85 biometric services fee, making the current total fees for Form N–400 total $725. This rule proposes to add the cost of biometric services to the underlying form fee. *See* section VIII.E of this preamble. As such, the proposed fee for Form N–400 is only $35 or approximately 5 percent more than the current Form N–400 and biometric service fees that most applicants currently pay. For comparison, the inflation since the current fees became effective is approximately 19.75 percent.[225] If DHS adjusted the Form N–400 and biometric services fees by

[224] For more information, see the FY Immigration Examinations Fee Account Fee Review Supporting Documentation (supporting documentation).

[225] Current fees became effective on Dec. 23, 2016. *See* 81 FR 73292. The consumer price index for all urban consumers (CPI–U) was 241.432 in Dec. 2016 and 289.109 in Mar. 2022. The change in the Index over these two periods was 47.68 or 19.75 percent. *See* U.S. Department of Labor, Bureau of Labor Statistics, All Urban Consumers (CPI–U) tables, available at *https://data.bls.gov/timeseries/CUUR0000SA0.* DHS has not recently adjusted IEFA fees by CPI–U inflation, but provides this figure as a point of comparison.

inflation, then the proposed fees would total $865, $140 more than the current fees for Form N–400.[226] DHS provides this inflation-adjusted fee amount only as a point of comparison.

Prior fee rules shifted a portion of the Form N–400 cost to other fee-paying immigration benefit requestors, and DHS proposes to maintain that approach. In the FY 2010/2011 and the FY 2016/2017 fee rules, the Form N–400 fee was set below the ABC model output; in other words, the fee was less than the estimated cost per fee-paying receipt. The FY 2010/2011 fee rule held the fee to $595, the amount set in the FY 2008/2009 fee rule. *See* 75 FR 58975. The FY 2016/2017 fee rule limited the fee to only $640, a $45 or eight percent increase. *See* 81 FR 73307.

The FY 2010/2011 proposed rule explained that holding the fee for the Form N–400 to the FY 2008/2009 fee raised all other proposed fees by approximately $8 each. *See* 75 FR 33462 (June 11, 2010). For DHS to recover the full cost of adjudicating the Form N–400, the FY 2010/2011 proposed fee would have been $655, a $60 or roughly a 10 percent increase. *See* 75 FR 33462–33463. In the FY 2016/2017 fee rule supporting documentation, USCIS estimated that each Form N–400 may cost $871 to complete, plus the cost for biometric services of $75, for a total of $946.[227] In this proposed rule, the estimated cost of Form N–400, including biometrics, is $1,003 when filed online and $1,135 when filed on paper. If DHS were to maintain the current $640 fee, then all other proposed fees would increase by an additional average $12.

In crafting prior fee rules, DHS reasoned that setting the Form N–400 fee at an amount less than its estimated costs and shifting those costs to other fee payers was appropriate in order to promote naturalization and immigrant integration.[228] In the 2020 fee rule, DHS increased the fee for Form N–400, Application for Naturalization, from $640 to $1,170. *See* 8 CFR 103.7(b)(1)(i)(BBB); 8 CFR 106.2(b)(3) (Oct. 2, 2020). DHS determined that shifting costs to other applicants in the manner that it had in previous fee rules was ''not equitable'' given the significant increase in Form N–400 filings in recent years. *See* 84 FR 62316. Therefore, to mitigate the fee increase of other immigration benefit requests and to emphasize the beneficiary-pays principle, DHS did not limit the Form N–400 fee and set a $1,170 fee to recover the full cost of adjudicating the Form N–400, as well as a proportion of costs not recovered by other forms for which fees are limited or must be offered a waiver by statute. As stated earlier, DHS proposes to shift away from emphasizing the beneficiary-pays principle and return towards the historical balance between the beneficiary-pays and ability-to-pay principles. DHS has determined that shifting costs to other applicants in this manner is rational considering the significant value that the United States obtains from the naturalization of new citizens. Many commenters on the 2020 fee rule stated that the fee would deter eligible applicants, and cited peer-reviewed studies indicating that cost can be a prohibitive barrier for would-be naturalization applicants. DHS is committed to promoting naturalization and immigrant integration and making sure that naturalization is readily accessible. Thus, DHS proposes setting the Form N–400 fee at an amount less than its estimated costs and shifting those costs to other fee payers using the cost reallocation methodology.[229] Therefore, DHS proposes to limit the Form N–400 fee at $760 to partially recover the full cost of the Form N–400 and biometrics services while promoting naturalization and integration. If the full costs of administering USCIS programs to be recovered under this rule decrease due to increases in revenue or gains in efficiency between this proposed rule and the final rule, DHS will consider using those cost reductions in to further reduce the Form N–400 fee, considering the value of naturalization and immigrant integration, or to reduce other fees based on policy considerations.

2. Request for Reduced Fee (Form I–942)

In addition to updating the Form N–400 fee waiver requests, as previously explained, DHS proposes to keep the reduced fee option for those naturalization applicants with family incomes not more than 200 percent of the FPG. *See* 8 CFR 103.7(b)(1)(i)(BBB)(*1*) (Oct. 1, 2020). The current N–400 reduced fee is $320 plus the $85 biometrics fee. The proposed N–400 reduced fee is $380, a $60 or approximately 19 percent increase from the current $320 fee but less than the current total cost ($405) with added $85 separate biometrics fee. *See* proposed 106.2(b)(4)(ii). Like the proposed Form N–400 fee, the proposed reduced fee is a limited 18 percent increase from the current fee ($320), rounded to the nearest $5. *See* Section V.B.3 of this preamble. Like most proposed fees, it includes the cost of biometric services. *See* section VIII.E. of this preamble. However, the biometric services fee was not part of the calculation for the proposed fee. DHS calculated the proposed fee for the reduced fee option the same way as the full fee option, as described in section V.B.3 of this preamble.

Currently, qualifying applicants pay a fee of $320 plus an additional $85 for biometric services, for a total of $405. To qualify for a reduced fee, the eligible applicant must submit Form I–942, Request for Reduced Fee, along with their Form N–400. Form I–942 requires the names of everyone in the household and documentation of the household income to determine if the applicant's household income is greater than 150 and not more than 200 percent of the FPG.

DHS eliminated the Form I–942 and reduced fee in the 2020 fee rule to recover the estimated full cost for naturalization services and to reduce the administrative burden on the agency to process the Form I–942. *See* 84 FR 62317; 85 FR 46860. Commenters on the change wrote that eliminating the reduced fee would make it difficult for immigrants with income between 150 percent and 200 percent of the poverty level to afford citizenship. DHS acknowledges that eliminating the reduced fee for Form N–400 would block people from receiving a reduced fee, increase the number of people who are required to pay the full Form N–400 fee, and could result in fewer people applying for naturalization.

DHS implemented this reduced fee option in the FY 2016/2017 fee rule to limit potential economic disincentives that some eligible naturalization applicants may face when deciding whether to seek U.S. citizenship. *See* 81 FR 73307. DHS only proposes that the income level for the reduced fee is not limited to start at 150 percent of the

[226] The inflation adjusted amounts using this example would be as follows: N–400: $640 multiplied by 1.1975, which is approximately $766.38; biometric services fee: $85 multiplied by 1.1975, which is approximately $101.79. DHS rounds fees to the nearest $5. Rounded to the nearest $5, the inflation adjusted fees would be $765 and $100, totaling $865.

[227] *See* the Model Output column of Appendix Table 4: Final Fees by Immigration Benefit Request in the docket of the FY 2016/2017 fee rule. The model output is the projected total cost from the ABC model divided by projected fee-paying volume. It is only a forecast unit cost (using a budget) and not the actual unit cost (using spending from prior years). USCIS does not track actual costs by immigration benefit request. *See* Appendix VI of the supporting documentation included in this docket for more information.

[228] *See,* for example, 75 FR 33461; 81 FR 26916.

[229] Based on filing volume trends in recent years, USCIS forecasts an increase of 62,165 Form N–400 applications, nearly a 10 percent increase from the FY 2016/2017 fee rule forecast. *See* Table 7, Workload Volume Comparison.

FPG. Instead, any applicant who has an income under 200 percent of the FPG can request a naturalization application with a reduced fee if eligible.[230] DHS had originally proposed the reduced fee option for low-income applicants in support of 2015 immigration integration policies and the USCIS mission to support aspiring citizens.[231] The reduced fee helps ensure that many immigrants whose goal it is to apply for naturalization are not unnecessarily limited by their economic means. Other fee payers are required to bear the cost of the reduced fee, but the importance of naturalization justifies the slight shift of burden.[232] Similarly, in keeping the reduced fee for the naturalization application, DHS is supporting and complying with Executive Order 14012 to reduce barriers and promote accessibility to the immigration benefits that it administers. *See* 86 FR 8277 (Feb. 2, 2021) (E.O. 14012). Although receipts of I–942 have remained relatively low, the overall lower cost for a reduced N–400 application may increase access to naturalization applications.

In FY 2020, 3,430 people submitted a reduced fee Form N–400.[233] This represents approximately 0.47 percent of the people who paid for Form N–400 in FY 2020. USCIS forecasts 3,763 average annual receipts for the reduced Form N–400 in this proposed rule. As such, DHS estimates that the reduced fee option for N–400 may provide approximately $1.4 million in revenue with the proposed fee. If DHS were to propose ending the reduced fee option, it would have almost no effect on the resulting fee schedule. Two proposed fees would increase by $5 and one would increase by $10, but all other proposed fees would remain the same. DHS proposes to maintain the reduced fee [234] to further promote naturalization and limit a barrier to naturalization.

3. Military Naturalization and Certificates of Citizenship

DHS does not propose any changes to fee exemptions for current and former military service members who file a Form N–400 under the military naturalization provisions.[235] Military naturalization applications will continue to be fee exempt. *See* 8 CFR 103.7(b)(1)(i)(BBB)(*2*) (Oct. 1, 2020); proposed 8 CFR 106.2(b)(4)(i).[236] USCIS does not charge a fee to military naturalization applicants because such fees are prohibited by statute. *See* INA secs. 328(b)(4), 329(b)(4), 8 U.S.C. 1439 (b)(4), 8 U.S.C. 1440(b)(4). Applicants who request a hearing on a naturalization decision under INA sec. 328 or 329 with respect to military service will continue to be fee exempt. *See* 8 CFR 103.7(b)(1)(i)(AAA) (Oct. 1, 2020); proposed 8 CFR 106.2(b)(3). Current or former military members of any branch of the U.S. armed forces will continue to be exempt from paying the fee for an Application for Certificate of Citizenship, Form N–600. *See* 8 CFR 103.7(b)(1)(i)(EEE) (Oct. 1, 2020); proposed 8 CFR 106.2(b)(8). While the statute prohibits fees for military naturalization applicants themselves, DoD currently reimburses USCIS for costs related to such applications.[237] Accordingly, USCIS does not propose to increase other fees to subsidize the costs of military naturalization applications.

4. Application for Certificate of Citizenship (Form N–600) and Application for Citizenship and Issuance of Certificate Under Section 322 (Form N–600K)

As discussed earlier in this preamble, DHS bases most proposed fees on fee-paying unit costs from the ABC model. *See* section V.B.3., Assessing Proposed fees. Other proposed fees, such as those for naturalizations forms, are based the current fees plus a limited fee increase. *Id.* The current fee for Forms N–600 and N–600K was based on USCIS data that showed approximately one-third of Form N–600 filers received fee waivers. *See* 81 FR 73298. In fact, the substantial fee increase in the FY 2016/2017 fee rule was primarily due to the availability of fee waivers for other N–600s and N–600Ks. *Id.* In the 2010 final rule, DHS assumed that every applicant would pay the fee for Forms N–600 and N–600K.[238] However, the fee-paying volume estimate for Forms N–600 and N–600K decreased from 100 percent in FY 2010/2011 to 67 percent in FY 2016/2017 to reflect USCIS data, showing an increased share of applicants receiving fee waivers. *See* 81 FR 73298. In addition, the FY 2016/2017 fee rule removed the difference in fees between forms filed for biological children versus forms filed for adopted children. *See* 81 FR 73297–73298. In response to the FY 2016/2017 fee rule NPRM, some commenters stated that the proposed fee increases would result in a significant additional burden for applicants, including adoptive families. Nevertheless, DHS increased the fees to recover the cost of adjudications.

In the 2020 fee rule, fees for Forms N–600 and N–600K decreased. *See* 85 FR 46792. However, that fee decrease was the result of limitations on fee waivers that were included in that enjoined rule. *See* 85 FR 46861. DHS is not proposing to similarly restrict fee waivers in this rule. Therefore, fee waivers continue to contribute to the proposed fee increases. Recent USCIS data indicate that approximately 53 percent of Form N–600 applicants and approximately 74 percent of Form N–600K applicants pay the respective fees, and the fees

[230] In 2018, Congress also encouraged USCIS ''to consider whether the current naturalization fee is a barrier to naturalization for those earning between 150 percent and 200 percent of the FPG, who are not currently eligible for a fee waiver.'' H. Rep. 115–948 at 61.

[231] *See* The White House Task Force on New Americans, ''Strengthening Communities by Welcoming All Residents'', at 28–29 (2015), available at *https://obamawhitehouse.archives.gov/sites/default/files/docs/final_tf_newamericans_report_4-14-15_clean.pdf.*

[232] DHS previously stated that adjusting fee levels based on income would be administratively complex and would require higher costs to administer. *See* 75 FR 58971. Specifically, in 2010, DHS stated that a tiered fee system would impose an unreasonable cost and administrative burden, because it would require staff dedicated to income verification and necessitate significant information system changes to accommodate multiple fee scenarios. See *id.* DHS will need to reprogram intake operations for Form N–400 to recognize the new fee and documentation. Staff must be added to review the income documentation provided to determine if the applicant qualifies for the new fee. DHS has determined that the change proposed here, because it applies only to Form N–400 and the act of acquiring citizenship, is of sufficient value from a public policy standpoint to justify USCIS incurring the additional administrative and adjudicative burden and the cost of such covered by other fee payers, which as explained below is limited.

[233] Based on actual FY 2020 revenue collections, 3,430 people filed Form N–400 with Form I–942. In the same year, 726,519 paid the full fee for Form N–400. Thus, the total fee-paying volume for both is 729,949. Reduced fee applicants represented approximately 0.47 percent of total Form N–400 applicants.

[234] This includes a reversal of the 2020 fee rule's removal of the Form I–942.

[235] DHS notes that no other applicant is exempt from the Form N–400 fee but any other applicant submitting a Form N–400 may request a fee waiver.

[236] DHS made no changes to the fee exemptions for military members and veterans in the 2020 fee rule. *See* 84 FR 62317.

[237] The proposed fee would increase the reimbursable agreement between USCIS and DoD by $199,500. The current fees for Form N–400 ($640) and biometric services ($85) total $725 per military naturalization. In FY 2022/2023, USCIS forecasts an average of 5,700 military naturalizations per year. Under the current fees, this would cost DoD $4,132,500 on average each year. With the proposed $760 Form N–400 fee (which includes the cost of biometrics), the same volume would cost $4,332,000, a $199,500 or approximately 5 percent increase.

[238] Compare Forms N–600 and N–600K between Tables 10 and 11 in the 2010 proposed rule. *See* 75 FR 33468–33469 (June 11, 2010). The 2010 proposed rule assumed no fee waivers for Forms N–600 and N–600K because workload volumes are equal to fee-paying volumes for the two respective forms. The 2010 final rule adopted the proposed fees for Forms N–600 and N–600K. *See* 75 FR 58964 (Sept. 24, 2010).

proposed in this rule reflect that.[239] This means that every fee-paying Form N–600 applicant would need to pay almost double the estimated unit cost of the application in order to accommodate applicants that received a fee waiver or qualified for a fee exemption for Form N–600 if the burden were limited to Form N–600 filers.

The current fees represent a combined fee for both Forms N–600 and N–600K.[240] The proposed fees for Forms N–600 and N–600K are calculated and proposed separately. USCIS estimated separate workload and fee-paying volumes for each in this proposed rule. By determining separate volumes and fee-paying percentages for Forms N–600 and N–600K, these proposed fees better reflect the fee-paying percentage of each respective benefit request.

DHS recognizes that increasing fees for Forms N–600 and N–600K to account for the full cost of adjudication may adversely impact applicants who are generally children and are already citizens by law. DHS has determined that the combined effect of high cost and low fee-paying volume would otherwise place an inordinate fee burden on individuals requesting certificates of citizenship. Also, DHS has decided that limiting the fee increase will promote citizenship and immigrant integration.

Therefore, DHS proposes to limit the increase of the fee for these forms and apply the cost reallocation methodology as described in section VIII.F.5., Proposed Changes to Other Naturalization-Related Application Fees. This proposed fee remains below the estimated cost from the USCIS ABC model. By limiting the fee increase, DHS may reduce the financial burden on these applicants. In addition, limiting the N–600 fees does not appreciably increase other fees by shifting an inordinate amount of costs of adjudicating the N–600 to them. The increase to other forms is only $5 in many cases, compared to an increase of hundreds of dollars to the N–600 and N–600K fees to recover full cost. For example, if DHS proposed to recover full cost on Form N–600 and N–600K, then proposed fees for Form N–600 would range from $1,835 when filed online to $2,080 when filed on paper. These hypothetical proposed fees are $450 and $695 more than the respective proposed fees in this rulemaking. Thus, DHS concludes that the proposed Form N–600 and N–600K fees represent a reasonable balance between the beneficiary-pays and ability-to-pay fee-setting models being employed to calculate the fees in this proposed rule.

5. Proposed Changes to Other Naturalization-Related Application Fees

There are other naturalization and citizenship related forms that may be submitted in coordination with the naturalization or certificate of citizenship application. Other forms may be submitted before or after such applications for other benefits. In some cases, such as Form N–565, DHS proposes to recover full cost; however, proposed fees for most naturalization services remain below estimated cost. See Table 14.

DHS uses its fee setting discretion to adjust certain immigration request fees that would be overly burdensome on applicants, petitioners, and requestors. Historically, as a matter of policy, DHS has chosen to limit USCIS fee adjustments for certain benefit requests to the weighted average fee increase represented by the model output costs for fee-paying benefit types. *See* 75 FR 33461.[241] Any additional costs from these benefit request types beyond this calculated weighted average increase figure would be reallocated to other benefit types.

DHS has continuously limited the fees for the following forms:

- Form N–300, Application to File Declaration of Intention;
- Form N–336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA); and
- Form N–470, Application to Preserve Residence for Naturalization Purposes.

DHS recognizes that charging less than the full cost of adjudicating an immigration benefit request requires USCIS to increase fees for other immigration benefit requests to ensure full cost recovery.[242] Nevertheless, DHS proposes to continue limiting the fees for these forms as they are related to naturalization benefits and some have low receipt numbers.

DHS further proposes to maintain the current fee for Form N–565, Application for Replacement Naturalization/Citizenship Document despite the FY 2022/2023 USCIS ABC model calculating a lower fee for it. The current fee for Form N–565 is $555. There is no fee when this application is submitted under 8 CFR 338.5(a) or 343a.1 to request correction of a certificate that contains an error. DHS considered lowering the fee as provided in the model, but decided that the revenue above the costs of adjudicating that would be generated by maintaining the current N–565 fee would help to mitigate the fee increases for other forms.[243] DHS weighed a number of factors in deciding to keep the current fee, which is $180 higher than the FY 2022/2023 fee-paying unit cost. *See* Table 14. DHS recognizes that obtaining a replacement Naturalization/Citizenship Document may be necessary at times; however, a U.S. passport is an available alternative to proof of U.S. citizenship. The number of individuals who would file Form N–565 is limited, a fee waiver is still available, and the fee is not increasing from the FY 2016/2017 fee rule. Therefore, DHS determined that keeping the fee at the amount that it has been for the last 5 years would not be unduly burdensome on applicants or limit access to a replacement certificate. Thus, DHS decided that applicants for a replacement naturalization/citizenship document would pay the current fee although the amount is above the fee-paying unit cost calculated by the ABC model.

6. Request for Comments

While DHS proposes no changes to the Request for Reduced Fee (Form I–942) income threshold for the naturalization application, DHS specifically requests comments on the appropriate level of income that USCIS should use to determine eligibility for the reduced fee and data to support that suggested level or measure. DHS also requests comments on limiting the increase of some fees and applying the cost reallocation methodology.

G. Fees for Online Filing

The June 2018 OMB report, ''Delivering Government Solutions in the 21st Century,'' recognized that an overarching source of Government inefficiency is the outdated reliance on paper-based processes, and prioritized the transition of Federal agencies' business processes and recordkeeping to a fully electronic environment.[244] The

[239] *See* Section V.B.1 earlier in this NPRM. Compare the workload to the fee-paying volume for Forms N–600 and N–600K. Divide the fee-paying receipts by the workload for the fee-paying percentage. For example, Form N–600 estimated workload is 30,000. The estimated fee-paying volume is 16,041. Estimated fee-paying divided by estimated workload equals 53.47 percent as the fee-paying percentage.

[240] *See* 103.7(b)(1)(i)(EEE) and (FFF) (Oct. 1, 2020). Both used the same $1,070 fee; *see* also 81 FR 73295 (Oct. 24, 2016).

[241] See also FY 2008/2009 Fee Rule. 72 FR 4910.

[242] This complies with INA sec. 286(m), 8 U.S.C. 1356(m), which authorizes DHS to set USCIS fees at a level required to cover the costs of providing applicants, petitioners, or requestors a service or part of a service ''without charge.''

[243] See section V.B.3. of this preamble for more information on assessing proposed fees.

[244] OMB, ''Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization

Continued

report noted that Federal agencies collectively spend billions of dollars on paper management, including processing, moving, and maintaining large volumes of paper records, and highlighted the key importance of data, accountability, and transparency.[245] Significantly, it cites USCIS' electronic processing efforts as an example of an agency initiative that aligns with the prioritized reforms.[246]

The FY 2022 President's Budget also noted the need for effective, efficient, and modern Federal information technology to improve service delivery.[247] USCIS will continue to expand upon the current level of operational digital filing platforms and encourage filers to utilize these online resources for a simpler, faster, and more responsive filing experience.[248]

DHS understands that while USCIS has embraced technology in adjudication and recordkeeping, it remains bound to the significant administrative and operational burdens associated with benefit requests that are submitted on paper. The intake, storage, and handling of paper require tremendous operational resources, and information recorded on paper cannot be as effectively standardized or used for fraud and national security, information sharing, and system integration purposes. However, technological advances have allowed USCIS to develop accessible, digital alternatives to traditional paper methods for intaking and adjudicating benefit requests. Every benefit request submitted online instead of on paper provides direct and immediate cost savings and operational efficiencies to both USCIS and filers—benefits that will increase throughout an individual's immigration lifecycle as more benefit requests become available for online filing and case management.

Even as benefit requests become available for online filing, USCIS continues to provide the option of engaging with USCIS on paper. DHS recognizes that people adopt new technology at varying rates and have different levels of access to technology resources.[249] In this case, the complexity of the immigration benefit request system may exacerbate the tendency toward the status quo. Those familiar with paper-based forms and interactions may feel there is no reason to change a method that has worked for them in the past.

DHS agrees that transitioning to online filing for benefit requests is an important step in improving USCIS service and financial stewardship while promoting the objectives of the Government Paperwork Elimination Act[250] and the E-Government Act.[251] Therefore, USCIS has calculated the fee-paying unit cost (model output) for paper filing and online filing separately. USCIS modified its ABC model to distinguish between paper and online filing costs when both options exist for an immigration benefit request.[252] USCIS used domestic receipt data from April 2020 to March 2021 to estimate the percentage of receipts by filing method (online or paper) for each type of immigration benefit request available for online filing. USCIS applied those percentages to the total receipt forecasts by fiscal year to estimate online and paper filing volumes for immigration benefit requests for which both filing options are available.[253] The ABC model assigned costs differently to the two filing methods. For example, the model assigned the Intake activity to only paper workloads. The Intake activity represents mailroom operations, data entry and collection, file assembly, fee receipting, adjudication of fee waiver requests, and lockbox operations.

DHS recognizes that the international COVID–19 pandemic may have increased the level of online filing versus paper filing for benefit requests where online filing is available. To encourage continued use of online filing at the same or a higher rate after the pandemic, DHS proposes a lower fee for online filing of immigration benefit requests for which both paper and online filing options are available.[254] *See* proposed 8 CFR 106.2.[255] *See* Table 15, Fees for Online Filing, for a comparison of paper and online filing fees. In some cases, DHS proposes to not change the fee. *See* section V.B.3., Assessing Proposed Fees, for more information.

Recommendations'' (2018), available at *https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf.*

[245] *Id.* at 100.

[246] *Id.* at 101–02.

[247] OMB, ''Budget of the U.S. Government: Fiscal Year 2022'' (2021), available at *https://www.whitehouse.gov/wp-content/uploads/2021/05/budget_fy22.pdf.*

[248] OMB, ''12. Information Technology and Cybersecurity Funding'' (2021), available at *https://www.whitehouse.gov/wp-content/uploads/2021/05/ap_12_it_fy22.pdf.*

[249] *See* Brian Kennedy & Cary Funk, Pew Research Group, ''28 percent of Americans are 'strong' early adopters of technology'' (July 12, 2016), available at *http://www.pewresearch.org/fact-tank/2016/07/12/28-of-americans-are-strong-early-adopters-of-technology. See also* Emily Vowels, Pew Research Group, ''Digital divide persists even as Americans with lower incomes make gains in tech adoption'' (June 22, 2021), available at *https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/.*

[250] *See* Pub. L. 105–227, 112 Stat. 2681 (Oct. 21, 1998).

[251] *See* Pub. L. 107–347, 116 Stat. 2899 (Dec. 17, 2002).

[252] USCIS uses commercially available ABC software, CostPerform, to create financial models to implement ABC, as described in the Methodology section of this preamble and the supporting documentation in the docket for this proposed rule. The supporting documentation also provides additional information on activities and their assignments in the ABC model.

[253] USCIS did not use online filing data for Form I–765 during this timeframe. Online filing for certain applicants filing Form I–765 became available on April 12, 2021. *See* USCIS, ''F–1 Students Seeking Optional Practical Training Can Now File Form I–765 Online,'' available at *https://www.uscis.gov/news/news-releases/f-1-students-seeking-optional-practical-training-can-now-file-form-i-765-online* (last revised Apr. 12, 2021). USCIS used the online filing rates for Form I–539 as a proxy for the online filing rates for the eligible categories of I–765 filers.

[254] DHS codified a fee for forms currently available for online filing with USCIS and filed online that was $10 lower than the fee for the same paper. 8 CFR 106.2(d) (Oct. 2, 2020). In this rule, DHS also proposes separate fees for filing forms online.

[255] CBP accepts USCIS Forms I–192 and I–212 online. Available at *https://www.cbp.gov/travel/international-visitors/e-safe* (last modified Oct. 28, 2020). However, USCIS has no data on the cost of online filing with CBP. Therefore, DHS proposes that USCIS online and paper fees apply to USCIS forms submitted to USCIS only.

Table 15: Proposed Fees for Online Filing			
Immigration Benefit Request	**Online Filing Fee**	**Paper Filing Fee**	**Difference**
I-90 Application to Replace Permanent Resident Card	$455	$465	$10
I-130 Petition for Alien Relative	$710	$820	$110
I-539 Application to Extend/Change Nonimmigrant Status	$525	$620	$95
I-765 Application for Employment Authorization	$555	$650	$95
N-336 Request for Hearing on a Decision in Naturalization Proceedings	$830	$830	$0
N-400 Application for Naturalization	$760	$760	$0
N-565 Application for Replacement Naturalization/Citizenship Document	$555	$555	$0
N-600 Application for Certificate of Citizenship	$1,385	$1,385	$0
N-600K Application for Citizenship and Issuance of Certificate	$1,385	$1,385	$0
G-1041 Genealogy Index Search Request	$100	$120	$20
G-1041A Genealogy Records Request	$240	$260	$20

DHS bases the proposed separate online and paper fees on ABC model results. When DHS proposes limited fee increases or to continue using the current fee, the calculation is based on the current fee instead of ABC model results. As such, there are not separate proposed fees for online and paper filing for immigration benefit requests with limited fee increases or held to the current fee.

USCIS will further evaluate the effects of these changes in future biennial fee reviews. For example, if the level of online filing increases or as more benefit requests become available for online filing, then USCIS will incorporate that information into future fee reviews.

H. Form I–485, Application To Register Permanent Residence or Adjust Status

1. Interim Benefits

Usually, a primary immigration benefit request must be approved before an applicant can receive associated benefits such as employment authorization or a travel document or both. That is, USCIS only grants associated benefits after or at the same time as it grants the primary immigration benefit request. However, in some situations, an applicant may qualify for an associated immigration benefit while the primary benefit request is still pending adjudication. For example, in certain instances, a person with a pending adjustment of status application may apply for employment authorization or a travel document or both. *See* 8 CFR 274a.12(c)(9). When associated benefits are issued while a primary benefit request is pending, USCIS refers to them as ''interim'' benefits.

DHS proposes to require separate filing fees for Form I–765, Application for Employment Authorization, and Form I–131, Application for Travel Document, when filed concurrently with Form I–485, Application to Register Permanent Residence or Adjust Status, or as interim benefit requests on the basis of a pending Form I–485 filed on or after the effective date of this rule.

Before the FY 2008/2009 fee rule, applicants paid separate fees for Form I–765 and Form I–131 while waiting for USCIS to adjudicate Form I–485. Applicants who had not yet received a permanent residence card (PRC, also known as a ''Green Card'' or Form I–551), but who had to renew these interim benefits, paid any associated fees for the renewals. *See* 72 FR 4894. Since the FY 2008/2009 fee rule, USCIS has allowed applicants who properly file and pay the required fee for Form I–485 to file Forms I–765 and I–131 without paying the fees for those forms. Form I–765 or Form I–131, or both, may be filed concurrently with Form I–485 or as standalone interim benefit requests while Form I–485 is still pending. Applicants who have not yet received a PRC but who have to renew these interim benefits also do not have to pay the associated fees. For the FY 2008/2009 fee rule, USCIS determined that calculating fees for Form I–485 at an amount that would include interim benefits would improve efficiency and save most applicants money. *See* 72 FR 4894 and 29861–29862. By providing that the fees for interim benefits would be included in the fee for Form I–485, USCIS addressed the perception that it benefits from increased revenue by processing Form I–485 more slowly. *See* 72 FR 4894 and 72 FR 29861–29862 (May 30, 2007). The FY 2010/2011 fee rule continued the practice of ''bundling'' the fees for interim benefits and Form I–485. *See* 75 FR 58968.

In the FY 2016/2017 fee review, USCIS calculated the workload volume and fee-paying percentage for Forms I–

765 and I–131 that were not associated with a Form I–485. This enabled USCIS to derive a fee-paying percentage for Forms I–765 and I–131 not filed concurrently with a Form I–485. *See* 81 FR 26918 (May 4, 2016) and 81 FR 73300. By isolating standalone Form I–765 and Form I–131 interim benefit applications from those filed concurrently with Form I–485, USCIS more accurately assessed fee-paying percentages, fee-paying volumes, and fees for all three benefit types. *Id.*

DHS proposes to charge separate fees for Form I–765 and Form I–131 when filed concurrently with Form I–485 or as interim benefit requests while Form I–485 is pending adjudication. *See* proposed 8 CFR 106.2(a)(16); 8 CFR 106.2(a)(32); 8 CFR 106.2(a)(7)(iii).[256] The proposed change would be subject to phased implementation. Specifically, individuals who filed a Form I–485 after July 30, 2007 (the FY 2008/2009 fee rule), and before this change proposed in this rule takes effect will continue to be able to file Form I–765 and Form I–131 without additional fees while their Form I–485 is pending and would, therefore, be unaffected by this change. Individuals who filed Form I–485 before the FY 2008/2009 fee rule and those who file Form I–485 on or after the date the proposed change becomes effective would pay separate fees for the interim benefits. The proposed changes are summarized in Table 16. The date the proposed changes would take effect is not yet available.

Table 16: Form I-485 Filing Dates and Interim Benefits

Form I-485 Filing Date	Bundled Fee Applies?
Before July 30, 2007	No
After July 30, 2007, but before implementation of this change via final rule	Yes
After implementing this proposed change with a final rule	No

DHS proposes this change to reduce the proposed fee increases for Form I–485 and other forms. For example, in the FY 2016/2017 fee rule, USCIS isolated the workload volume and fee-paying percentage of Forms I–765 and I–131 that are not associated with Form I–485. *See* 81 FR 26918. Isolating the volumes for interim benefits reduced the overall volume on the fee schedule because USCIS only counted interim benefit volumes as part of the Form I–485 forecast instead of counting them twice (for Form I–485 and the interim benefit). USCIS expects approximately 500,000 new fee-paying annual interim benefit applications in the FY 2022/2023 forecast as a result of the proposed change.

In the proposed fee schedule, USCIS assumes these interim benefit applicants will pay the applicable fees for Forms I–485, I–765, and I–131. If applicants continued to only pay a bundled fee, then the proposed fee for Form I–485 would be $1,715, which is $175 or approximately 37 percent more than the actual proposed fee of $1,540. *See* 8 CFR 103.7(b)(1)(i)(U) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(16). Other proposed fees would also change on this hypothetical fee schedule including Form I–765, Application for Employment Authorization. If USCIS continued to allow free interim benefits, the proposed Form I–765 fee would be $825 when filed on paper. This would be $415 or approximately 101 percent more than the current $410 fee. By proposing that Form I–765 require the fee when filing as an interim benefit, the proposed Form I–765 fee is $650, which is $240 or approximately 59 percent more than the current $410 fee. *See* 8 CFR 103.7(b)(1)(i)(II) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(43)(ii). By having one fee for Form I–485 and interim benefits, the weighted average fee increase would be 51-percent compared to the 40-percent average fee increase in the proposed fee schedule.[257]

In a bundled scenarios, USCIS only counts Form I–485 as a fee-paying receipt. In a scenario without bundled interim benefits, USCIS may count Forms I–485, I–765, and I–131 each as up to three fee-paying receipts. In general, fees are higher in a fee schedule with bundled fee interim benefits because it has lower fee-paying volumes than the proposed fee schedule. This means there are fewer immigration benefit requests from which USCIS can recover projected costs in a fee schedule with bundled fee interim benefits. For example, USCIS estimates that approximately 65 percent of Form I–765 applicants may pay the Form I–765 fee in a scenario without bundled interim benefits; this is the proposed fee scenario with higher fee-paying volumes overall. In a bundled scenario, approximately 45 percent of Form I–765 applicants may pay the fee for Form I–765. While Form I–485 applicants would not have to pay the fee for Form I–765 in a bunded scenario, the fee for all other Form I–765 applicants would be higher because a bundled scenario reduces fee-paying receipts overall. In the bundled scenario, people would pay more to recover the cost of Form I–765 because of the approximate 20 percent difference between the two scenarios. These points of comparison ignore additional fee exemptions that are also part of the proposed fees. Put another way, if USCIS performs less bundled work, then applicants pay lower fees for that work because it will increase fee-paying volumes for Forms I–485, I–765, and I–131. If USCIS continues to offer bundled interim benefits, then other immigration benefit request fees will be higher. DHS proposes separate fees for interim benefit applications and Form I–485 applications in order to lower the proposed fees for most other applicants, petitioners, and requestors, and to tailor applicants' costs more directly to the benefits for which they apply.

[256] In the 2020 fee rule, DHS required separate filing fees when filing Form I–765, Application for Employment Authorization, and Form I–131, Application for Travel Document, concurrently with a Form I–485, Application to Register Permanent Residence or Adjust Status, or after USCIS accepts their Form I–485 and while it is still pending. DHS is not proposing to reverse that change and is proposing it again in this rule for the reasons stated.

[257] USCIS uses a weighted average instead of a straight average because of the difference in volume by immigration benefit type and the resulting effect on fee revenue. In a fee schedule with free interim benefits, the sum of the current fees multiplied by the projected FY 2022/2023 fee-paying receipts for each immigration benefit type, divided by the total fee-paying receipts is $522. This is $4 higher than in the proposed fee schedule because the fee-paying volumes are lower when DHS assumes free interim benefits. The weighted average proposed fee is $790, $65 or approximately 16 percent higher than the weighted average current fee of $522 in this hypothetical fee schedule that assumes free interim benefits.

DHS proposes to increase the Form I–485 fee to $1,540, which is $400 or 35 percent more than the current $1,140 fee that includes interim benefits. USCIS did not realize the efficiency gains anticipated when it originally bundled interim benefits in the FY 2008/2009 fee rule. *See* 72 FR 4894. This is due to a number of reasons. Mainly, annual numerical visa limits established by Congress and high demand have created long wait times for some visa categories, known as retrogression. Some Form I–485 applicants must wait years for visas to become available again after they file their adjustment of status applications.[258] While USCIS has some control over its own allocation of resources to address processing times and backlogs, USCIS has no direct control over delays caused by the DOS's allocation of visa numbers and Congress' annual visa numerical limits. USCIS has taken some actions to alleviate the filing burden and fees on those individuals whose Form I–485 applications are still pending due to the lack of available immigrant visas. For example, DHS, as of June 9, 2021, provides EADs with 2-year rather than 1-year validity periods to decrease the burden on both the Department and applicants caused by long waits for visa availability.[259]

As a result of this proposal, new Form I–485 applicants would only pay for the benefits that they request. In the FY 2008/2009 and FY 2010/2011 fee rules, some commenters stated they did not want to pay for additional benefits they did not want, need, or receive, which was a consequence of the bundled fee approach. *See* 72 FR 29861–29863 (May 30, 2007) and 75 FR 58968. In previous fee rules, bundled interim benefit fees were only associated with a pending Form I–485. However, other applications may also warrant interim benefits.[260] DHS has decided it is more equitable to treat all petitioners and applicants who apply for interim benefits the same, regardless of the pending primary request that may grant interim benefits, even though some applicants would pay significantly more to adjust status and apply for one or more interim benefits. If USCIS continues offering bundled interim benefits, then other customers may bear the burden of higher fees as a result of bundled interim benefits that do not benefit them. For example, DHS believes it would present unfair barriers for unrelated applicants with limited financial resources (like asylum renewals or students) for Form I–765 to pay higher fees so that Form I–485 applicants would pay lower fees. Table 17 compares the current fees for Form I–485 applicants that may bundle interim benefits to the proposed fees without bundling.

Table 17: Current and Proposed Fees for Adjustment of Status with Interim Benefits

Immigration Benefit Request	Current Fees	Proposed Fees	Difference	Percentage Difference
I-485, Application to Register Permanent Residence or Adjust Status	$1,140	$1,540	$400	35 percent
I-765, Application for Employment Authorization - Paper	$410	$650	$240	59 percent
I-131, Application for Travel Document	$575	$630	$55	10 percent
Biometric Services Fee	$85	$0	($85)	-100 percent
Total Fees for Form I-485 and biometric services	$1,225	$1,540	$315	26 percent
Total Fees for Forms I-485 and I-765 and biometric services		$2,190	$965	79 percent
Total Fees for Forms I-485 and I-131 and biometric services		$2,170	$945	77 percent
Total Fees for Form I-485, all interim benefits, and biometric services		$2,820	$1,595	130 percent

DHS acknowledges that applicants and petitioners may face additional difficulties in paying the proposed fees, and may be required to request a fee waiver if eligible, save money longer to afford the fees, or resort to credit cards or borrowing to pursue their or their family members' immigration benefit. DHS has weighed these impacts and interests and considered alternatives to the proposals in this rule as described in this preamble. DHS is committed to affordability and access for all and acknowledges that the increase in some fees may appear contrary to this commitment. As discussed above, however, bundled interim benefits are currently making other immigration

[258] *See* USCIS, ''Visa Retrogression,'' available at *https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/visa-retrogression* (last updated Mar. 8, 2018).

[259] *See* USCIS, ''USCIS Policy Manual'' (Vol. 10), Employment Authorization, Part B, Specific Categories, Chapter 4, Adjustment Applicants Under INA sec. 245, Policies to Improve Immigration Services at *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210609-EmploymentAuthorization.pdf* (last updated June 9, 2021). USCIS may, in its discretion, determine the validity period assigned to any document issued evidencing an individual's authorization to work in the United States. *See* 8 CFR 274a.12(b).

[260] Individuals may derive interim benefits from an Application for Temporary Protected Status, Form I–821. Unless otherwise stated in this proposed rule preamble, DHS uses interim benefits to refer to benefits associated with Form I–485, Application to Register Permanent Residence or Adjust Status.

benefits less affordable. DHS requests comments on the proposed change to Form I–485 and interim benefits.

2. Form I–485 Fee for Child Under 14, Filing With Parent

Currently, Form I–485 has two fees: the fee for an adult is $1,140, and the fee for a child under the age of 14 concurrently filing with a parent is $750. *See* 8 CFR 103.7(b)(1)(i)(U) (Oct. 1, 2020). DHS proposes to require payment of the proposed $1,540 fee for all applicants, including children under the age of 14 years concurrently filing Form I–485 with a parent.[261] *See* 8 CFR 103.7(b)(1)(i)(U)(*2*) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(16).[262]

DHS no longer believes there is a cost basis for the two different Form I–485 fees. As explained in the FY 2016/2017 fee rule, USCIS does not track the adjudication time for Form I–485 based on the age of the applicant, so there are no data showing a cost difference correlated to the difference in applicant age. *See* 81 FR 73301. The FY 2016/2017 fee rule calculated the $750 fee using the model output to comply more closely with the ABC methodology for full cost recovery. *See* 81 FR 26919. USCIS assumed that the $750 fee would not include the cost of an EAD. *Id.* As such, the completion rate for the $750 fee was lower than for most adults. However, because DHS proposes to charge separate fees for interim benefits, there are no longer any Form I–765 adjudication costs included in the calculation of the fee, meaning that the previous rationale for providing a discount no longer exists. However, children under the age of 14 do not typically pay the $85 biometric services fee required for adults that apply to adjust status, which this rule proposes to bundle into the fee for Form I–485.

In the proposed Form I–485 fee, USCIS assumes the same completion rate and biometric services for adults and children to reflect USCIS data and processes, and because DHS proposes to separate interim benefit request fees from the fee for Form I–485. DHS believes that a single fee for Form I–485 will reduce the burden of administering separate fees and better reflect the cost of adjudication. This proposal will affect a small percentage of Form I–485 applicants. In FY 2019 and FY 2020, approximately five to six percent of Form I–485 applicants paid the $750 fee. *See* Table 18 for Form I–485 fee-paying receipts and percentages for the 2 years.

Table 18: Form I-485 Fee-Paying Receipts

Form I-485 Applicant Type	Current Fee	FY 2019 Fee-Paying Receipts	Percent of FY 2019	FY 2020 Fee-Paying Receipts	Percent of FY 2020
Applicant under the age of 14 years who submits the application concurrently with the Form I-485 of a parent	$750	26,437	5	30,166	6
All other fee-paying applicants for Form I-485	$1,140	462,844	95	446,980	94
Total	**N/A**	**489,281**	**100**	**477,146**	**100**

3. INA Sec. 245(i) Statutory Sum

In addition, DHS is proposing to clarify the statutory sum for applicants for adjustment of status under INA sec. 245(i).[263] Such applicants are required to properly file Form I–485 with fee along with Form I–485 Supplement A and the $1,000 statutory sum, unless exempted by the statute. USCIS proposes that the statutory sum for Form I–485 Supplement A, Adjustment of Status Under Section 245(i), be revised to clarify that Form I–485 Supplement A and the $1,000 statutory sum must be submitted when Form I–485 is filed or still pending. *See* proposed 8 CFR 106.2(a)(21). DHS is also proposing to remove the additional reference from the Form I–485 Supplement A that states there is no required statutory sum when the applicant is an unmarried child under 17 or the spouse or the unmarried child under 21 of an individual with lawful immigration status and who is qualified for and has applied for voluntary departure under the family unity program. *See* 8 CFR 103.7(b)(1)(i)(V) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(17). Those exemptions from the required statutory sum are explicitly provided by statute and will be included in the applicable form instructions. *See* INA sec. 245(i)(1)(C), 8 U.S.C. 1255(i)(1)(C). Therefore, it is unnecessary to codify them in the CFR.

[261] The parent may be seeking classification as an immediate relative of a U.S. citizen, a family-sponsored preference immigrant, or a family member accompanying or following to join a spouse or parent under sections 201(b)(2)(A)(i), 203(a)(2)(A), or 203(d) of the INA; 8 U.S.C. 1151(b)(2)(A)(i), 1153(a)(2)(A), or 1153(d).

[262] DHS made this change in the 2020 fee rule and is proposing that it not be reversed for the reasons stated.

[263] The additional $1,000 sum is required to be submitted with each INA sec. 245(i), 8 U.S.C. 1255(i), adjustment of status application, unless the applicant is (1) an unmarried child under age 17, or (2) the spouse or unmarried child of a legalized alien who satisfies the requirements for an exemption in 8 CFR 245.10(c).

I. Continuing To Hold Refugee Travel Document Fee for Asylees to the Department of State Passport Fee

Consistent with U.S. obligations under Article 28 of the 1951 Convention relating to the Status of Refugees,[264] DHS proposes to continue to link the fee charged for Form I–131, Application for Travel Document, to the DOS's fee for a first time United States passport book when Form I–131 is filed by asylees, or by LPRs who obtained such status as asylees, to request a refugee travel document.[265] In previous fee rules, DHS aligned the refugee travel document fees to the sum of the U.S. passport book application fee plus the additional execution fee that DOS charges for first time applicants. *See* 81 FR 73301 and 75 FR 58972. Since the FY 2016/2017 fee rule, DOS increased the execution fee from $25 to $35, which is a $10 or 40 percent increase. *See* DOS, ''Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates—Passport Services Fee Changes,'' 83 FR 4425 (Jan. 31, 2018). In addition, DOS increased the passport book security surcharge from $60 to $80, a $20 or 33 percent increase. *See* DOS, ''Schedule of Fees for Consular Services-Passport Security Surcharge,'' 86 FR 59613 (Oct. 27, 2021). Together, these two DOS rules represent a $30 increase in passport book fees since DHS last changed the refugee travel document fees. Under this proposal, DHS would increase refugee travel document fees by a conforming amount for asylees and LPRs who obtained such status as asylees. DHS refugee travel document fees for this population would be $165 for adults and $135 for children under the age of 16 years, consistent with U.S. passport fees. *See* proposed revised and republished 8 CFR 106.2(a)(7)(i) and (ii). As discussed in section VII.B.12. of this preamble, DHS proposes to exempt refugees from paying the fee for refugee travel documents. DHS estimates that the cost to USCIS of processing refugee travel documents exceeds the fee for a U.S. passport book. Consistent with past and current practice, DHS proposes to set other fees marginally higher to recover the difference between the cost of adjudicating Form I–131 for refugee travel documents and the revenue generated from the fees in light of the considerations and policy reasons described above relating to refugees.

J. Form I–131A, Carrier Documentation

DHS proposes to separate the fee for Form I–131A, Application for Carrier Documentation, from other travel document fees and maintain the current Form I–131A fee. *See* 8 CFR 103.7(b)(1)(i)(M)(*3*) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(8). The proposed fee for Form I–131A is the same as the current $575 fee. *Id.* USCIS began using Form I–131A, Application for Carrier Documentation, in 2016. *See* 80 FR 59805 (Oct. 2, 2015). In the FY 2016/2017 fee rule, DHS implemented a fee that was calculated using the total Form I–131 and I–131A workload. *See* 81 FR 73294–73295.

Currently, certain LPRs may use Form I–131A to apply for a travel document (carrier documentation) if their PRC, also known as a ''Green Card'' or Form I–551, or their re-entry permit is lost, stolen, or destroyed while outside of the United States. Carrier documentation allows an airline or other transportation carrier to board the LPR without any penalty for permitting an individual to board without a visa or travel document. *See* INA sec. 273, 8 U.S.C. 1323 (providing for a fine of $3,000 for each noncitizen without proper documentation). In order to be eligible for carrier documentation, an LPR who was traveling on a PRC must have been outside the United States for less than 1 year, and an LPR who was traveling on a re-entry permit must have been outside the United States for less than 2 years. Form I–131A is not an application for a replacement PRC or re-entry permit.

DHS proposes that the fee for Form I–131A does not change. While the result of the ABC model indicated that the fee should decrease, Form I–131A requires a different adjudicative process than Form I–131, including processing by DOS personnel outside of the United States, which affects the projected cost for Form I–131A. Other travel documents may be adjudicated inside or outside of the United States, while the DOS Bureau of Consular Affairs, located outside of the United States, will process Form I–131A following the closure of most USCIS international offices.[266] The proposed fee includes direct costs to account for the fee DOS charges USCIS to adjudicate Form I–131A applications, which is approximately $337 per application.[267] In the FY 2020 interagency agreement and in this proposed rule, USCIS projects that DOS will receive approximately 8,000 Forms I–131A each year. In addition, the proposed fee includes a portion of the cost of RAIO staff. Among other duties, RAIO oversees the interagency agreement with the DOS. USCIS may also process some Form I–131A requests at the remaining offices abroad. However, USCIS is uncertain how many. USCIS is unable to estimate a workload forecast because the COVID–19 pandemic forced the remaining USCIS locations abroad to close to the public shortly after the reorganization. In light of this uncertainty, DHS decided to maintain the current fee to generate more revenue. DHS will reassess the fee in future fee reviews.

K. Separating Fees for Form I–129, Petition for a Nonimmigrant Worker, by Nonimmigrant Classification

Currently, employers and other qualified filers, such as agents, sponsoring organizations and investors (collectively referred to as a ''benefit requestor'' or separately referred to as a ''petitioner'' or ''applicant,'' as applicable) may use Form I–129, Petition for a Nonimmigrant Worker, to submit a benefit request on behalf of a current or future nonimmigrant worker to temporarily perform services or labor, or to receive training in the United States.[268] Using this single form, petitioners or applicants can file petitions or applications for many different types of nonimmigrant workers.[269] Some classifications also

[264] The United States is party to the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6224, 606 U.N.T.S. 267 (1968), which incorporates articles 2 through 34 of the 1951 Convention. The United States is not party to the 1951 Convention. *See Sale* v. *Haitian Ctrs. Council, Inc.,* 509 U.S. 155, 169 n.19 (1993) (''Although the United States is not a signatory to the Convention itself, in 1968 it acceded to the United Nations Protocol Relating to the Status of Refugees, which bound the parties to comply with Articles 2 through 34 of the Convention as to persons who had become refugees because of events taking place after January 1, 1951.'').

[265] *See* 75 FR 58972 (Sept. 24, 2010) (discussing Article 28 standards for assessing charges for a refugee travel document).

[266] *See* USCIS, ''USCIS Will Adjust International Footprint to Seven Locations,'' available at *https://www.uscis.gov/news/news-releases/uscis-will-adjust-international-footprint-seven-locations* (last updated Aug. 9, 2019).

[267] The FY 2020 interagency agreement between DOS and USCIS uses an Economy Act rate of $313.11 for the adjudication. Additionally, State charges a $23.82 cashiering fee for each Form I–131A. USCIS used FY 2020 rates when calculating the proposed fees. The total of these two fees is $336.93.

[268] *See* USCIS, ''Temporary (Nonimmigrant) Workers,'' available at *https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers* (last updated Sept. 7, 2011). *See also* 8 CFR 214.2(h)(2)(i)(A) (Oct. 1, 2020) (stating that ''A United States employer seeking to classify an alien as an H–1B, H–2A, H–2B, or H–3 temporary employee must file a petition on Form I–129, Petition for Nonimmigrant Worker, as provided in the form instructions.'').

[269] For example, nonimmigrants workers in the following classifications: E–1, E–2, E–2C, H–1B, H–

Continued

allow nonimmigrants to ''self-petition'' or file a petition or application on their own behalf. Some nonimmigrant classifications require use of Form I–129 supplemental forms, such as the H Classification Supplement, or additional separate forms, such as Form I–129S, Nonimmigrant Petition Based on Blanket L Petition. In some cases, certain petitioners or applicants must pay statutory fees in addition to a base filing fee. For example, several statutory fees exist for H and L nonimmigrant workers.[270] In some cases, petitioners or applicants pay a single fee for multiple nonimmigrant beneficiaries. USCIS provides several optional checklists to help navigate the specific requirements of some nonimmigrant classifications.

In the 2020 fee rule, DHS separated Form I–129 into the following forms: Form I–129E&TN, Petition for Nonimmigrant Worker: E and TN Classifications; Form I–129H1, Petition for Nonimmigrant Worker: H–1 Classifications; Form I–129H2A, Petition for Nonimmigrant Worker: H–2A Classification; Form I–129H2B, Petition for Nonimmigrant Worker: H–2B Classification; Form I–129L, Petition for Nonimmigrant Worker: L Classifications; Form I–129O, Petition for Nonimmigrant Worker: O Classifications; and Form I–129MISC, Petition for Nonimmigration Worker: H–3, P, Q, or R Classifications. 8 CFR 106.2(a)(3) (Oct. 2, 2020). DHS and USCIS believed that splitting the form and proposing several different fees would simplify or consolidate the information requirements for petitioners and applicants as well as better reflect the cost to adjudicate each specific nonimmigrant classification. 84 FR 62307.

In the 2020 fee rule, DHS also limited the number of multiple beneficiaries that could be requested on a single petition for nonimmigrant worker, provided a different fee for petitions for up to 25 named beneficiaries versus petitions for more than 25 named beneficiaries, and required that if a petition includes more than 25 beneficiaries, an additional petition is required. 8 CFR 214.2(h)(2)(ii) (Oct. 2, 2020). DHS estimated that it requires less time and resources to adjudicate a petition with unnamed workers than one with named workers. USCIS runs background checks on named workers, but it cannot do so for unnamed workers. After a petition for unnamed workers is approved, the petitioner finds workers and then the workers apply for nonimmigrant visas with DOS, who will then vet the worker before adjudicating the visa application. Therefore, USCIS believes that it takes less time for USCIS immigration services officers to adjudicate a petition with unnamed workers. 84 FR 62309.

In this rule, DHS proposes different fees for Form I–129 based on the nonimmigrant classification being requested in the petition, the number of beneficiaries on the petition, and, in some cases, according to whether the petition includes named or unnamed beneficiaries. The proposed fees are calculated to better reflect the costs associated with processing the benefit requests for the various categories of nonimmigrant worker. The current base filing fee for Form I–129 is $460. *See* 8 CFR 103.7(b)(1)(i)(I) (Oct. 1, 2020). This base filing fee is paid regardless of how many nonimmigrant workers will benefit from the petition or application, the type of worker (for example, landscaper, chef, scientist, computer programmer, physician, athlete, musician, etc.), whether an employee is identified, and without differentiating the amount of time it takes to adjudicate the different nonimmigrant classifications. In order to reflect these differences, DHS is proposing a range of fees for petitions and applications for nonimmigrant workers, listed in Table 19 and explained in the subsequent sections. USCIS believes the proposed different fees will better reflect the cost to adjudicate each specific nonimmigrant classification.

In 2017, the DHS Office of Inspector General (OIG) released a report on H–1B visa participants.[271] It discussed how USCIS verifies H–1B visa participants through the Administrative Site Visit and Verification Program (ASVVP). ASVVP includes site visits on all religious worker petitioners, including petitioners for R nonimmigrants, as well as randomly selected site visits for certain H–1B and L workers to assess whether petitioners and beneficiaries comply with applicable immigration laws and regulations. As a result of the OIG audit, USCIS began to collect better information on the costs associated with ASVVP. For example, ASVVP now uses unique project and task codes in the USCIS financial system to track spending. Based on FY 2020 spending, USCIS estimates that it may spend $8.4 million for ASVVP payroll in the FY 2022/2023 fee review budget. Additionally, USCIS tracks ASVVP hours by form type in the FDNS Data System, which USCIS uses to identify fraud and track potential patterns. In the FY 2022/2023 fee review, USCIS used some of this new information to identify distinct costs for these site visits. USCIS used the ASVVP hours by immigration benefit request to assign the costs of site visits to Forms I–129, I–360, and I–829. The proposed fees would result in the cost of ASVVP being covered by the fees paid by the petitioners in proportion to the extent to which ASVVP is being used for that benefit request.

Additionally, USCIS now captures adjudication hours for nonimmigrant worker petitions based on the classification for which the petition is filed (*see* discussion of Completion Rates in section V.B.2.). Therefore, the proposed fees include the costs associated with the estimated adjudication hours for each of the new petitions being proposed in this rule.

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2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, R–1, TN1, and TN2. *See* Form I–129, Petition for a Nonimmigrant Worker, at *https://www.uscis.gov/i-129* (last updated April 23, 2021).

[270] Various statutory fees apply to H and L nonimmigrants. For more information on the fees and statutory authority, *see* USCIS, ''H and L Filing Fees for Form I–129, Petition for a Nonimmigrant Worker,'' available at *https://www.uscis.gov/forms/h-and-l-filing-fees-form-i-129-petition-nonimmigrant-worker* (last updated/reviewed Feb. 2, 2018).

[271] DHS OIG, *USCIS Needs a Better Approach to Verify H–1B Visa Participants* (Oct. 20, 2017), *https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-18-03-Oct17.pdf.*

Table 19: Proposed Form I-129CW Fee and Form I-129 Fees by Nonimmigrant Classification					
Form Number	Nonimmigrant Classification	Current Fee(s)	Proposed Fee(s)	Change	Percent Change
I-129	H-1 Classification	$460	$780	$320	70%
I-129	H-2A Classification	$460	$1,090 (named); $530 (unnamed)	$630 (named); $70 (unnamed)	137% (named); 15% (unnamed)
I-129	H-2B Classification	$460	$1,080 (named); $580 (unnamed)	$620 (named); $120 (unnamed)	135% (named); 26% (unnamed)
I-129	L Classification	$460	$1,385	$925	201%
I-129	H-3, P, Q, or R Classifications	$460	$1,015	$555	121%
I-129	O Classification	$460	$1,055	$595	129%
I-129	E or TN Classifications	$460	$1,015	$555	121%
I-129CW	CNMI-Only Nonimmigrant Transitional Worker	$460	$1,015	$555	121%
	H-1B Electronic Registration Fee	$10	$215	$205	2050%

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1. Form I–129, Petition for Nonimmigrant Worker: H–1 Classification

The H–1B nonimmigrant program is for individuals who will perform services in a specialty occupation, services relating to a Department of Defense cooperative research and development project or coproduction project, or services as a fashion model who is of distinguished merit and ability, while the H–1B1 nonimmigrant program is for nationals of Singapore or Chile engaging in specialty occupations. *See* INA sec. 101(a)(15)(H)(i)(b) and (a)(15)(H)(i)(b1); 8 U.S.C. 1101(a)(15)(H)(i)(b) and (a)(15)(H)(i)(b1).[272] DHS proposes a fee of $780 for Form I–129 petitions when filed for H–1B and H–1B1 nonimmigrant classifications. The proposed fee more accurately incorporates the direct cost of USCIS fraud prevention efforts for H–1B workers and other planned changes. DHS does not propose any changes to statutory fee amounts for certain H–1B petitioners where it does not have the authority to change the amount of these fees.[273]

2. Form I–129, Petitions for H–2A or H–2B Classifications

The H–2A visa program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs.[274] The H–2B visa program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary nonagricultural jobs.[275] On March 6, 2017, the OIG issued an

[272] *See* USCIS, ''H–1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models,'' available at *https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models* (last updated Feb. 5, 2021).

[273] Certain H–1B petitions may have to pay up to $6,000 in statutory fees. DHS does not have the authority to adjust the amount of these statutory fees. USCIS does not keep most of the revenue. CBP receives 50 percent of the $4,000 9–11 Response and Biometric Entry-Exit fee and the remaining 50 percent is deposited into the General Fund of the Treasury. USCIS retains five percent of the $1,500 or $750 American Competitiveness and Workforce Improvement Act fee. The remainder goes to the Department of Labor (DOL) and the National Science Foundation. USCIS keeps one-third of the $500 Fraud Detection and Prevention fee, while the remainder is split between the DOS and the DOL. These statutory fees are in addition to the current Form I–129 fee of $460 and optional premium processing fee of $1,500 or $2,500. *See* USCIS, ''H and L Filing Fees for Form I–129, Petition for a Nonimmigrant Worker,'' available at *https://www.uscis.gov/forms/h-and-l-filing-fees-form-i-129-petition-nonimmigrant-worker* (last updated/reviewed Feb. 2, 2018). Premium processing fees are available at *https://www.uscis.gov/i-907* (last updated Dec. 21, 2020).

[274] *See* USCIS, ''H–2A Temporary Agricultural Workers,'' available at *https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers* (last updated Jan. 12, 2021).

[275] *See* USCIS, ''H–2B Temporary Non-Agricultural Workers,'' available at *https://www.uscis.gov/working-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers* (last updated Feb. 2, 2021). H–2B petitioners who file with USCIS are required to pay a $150 Fraud Detection and Prevention fee per petition regardless of the number of beneficiaries to which the petition pertains. DHS does not propose any change to this statutory fee because it lacks the authority to do so by rulemaking. *See* INA secs. 214(c)(13), 286(v); 8 U.S.C. 1184(c)(13), 1356(v). This statutory fee is in addition to the current Form I–129 fee of $460 and optional premium processing fee of $1,500.

audit report after reviewing whether the fee structure associated with H–2 petitions is equitable and effective.[276] OIG identified a number of issues and provided recommendations to address the issues. In response to OIG recommendations, USCIS proposes the following changes:

- Separate fees for petitions with named workers and petitions with unnamed workers;
- Limit the number of named workers that may be included on a single petition to 25.

DHS proposes separate H–2A and H–2B fees for petitions with named workers and unnamed workers. Currently, petitions for H–2A or H–2B workers may include named or unnamed workers. Petitioners must name workers when: (1) the petition is filed for a worker who is a national of a country not designated by the Secretary of Homeland Security as eligible to participate in the H–2A or H–2B programs; or (2) the beneficiary is in the United States. *See* 8 CFR 214.2(h)(2)(iii) (Oct. 1, 2020). In addition, USCIS may require the petitioner to name H–2B workers where the name is needed to establish eligibility for H–2B nonimmigrant status. USCIS estimates that it requires less time and resources to adjudicate a petition with unnamed workers than one with named workers. USCIS runs background checks on named workers but cannot do so for unnamed workers. After the petition is approved, the petitioner finds workers and the worker applies for a nonimmigrant visa with DOS, who will then vet the worker. The 2020 fee rule relied on separate USCIS estimated hours per petition for named or unnamed beneficiaries. In FY 2021, USCIS began tracking Form I–129 adjudication hours by petitions for named or unnamed beneficiaries. This proposal is based on those hours for the first 6 months of FY 2021, which was the most recent available at the time of the FY 2022/2023 fee review. USCIS data indicate that it takes less time for a USCIS immigration services officer to adjudicate a petition with unnamed workers. The proposed fees reflect the average adjudication time estimated by USCIS.

USCIS proposes to implement a limit of 25 named beneficiaries per petition. Proposed 8 CFR 214.2(h)(2)(ii), (h)(5)(i)(B). Currently, there is no limit on the number of named or unnamed workers that may be on a single petition. USCIS currently charges a flat fee regardless of whether a petition includes one or hundreds of named temporary nonimmigrant workers. However, because USCIS completes a background check for each named beneficiary, petitions with more named beneficiaries require more time and resources to adjudicate than petitions with fewer named beneficiaries. This means the cost to adjudicate a petition increases with each additional named beneficiary. In one case, a petitioner included more than 600 named workers in one petition.[277] OIG observed that the flat fee structure (meaning the same fee regardless of the number of nonimmigrants included in the petition) disproportionally costs more per nonimmigrant for petitions with few beneficiaries compared to those with large numbers of beneficiaries. In other words, petitioners filing petitions with low named beneficiary counts subsidize the cost of petitioners filing petitions with high named beneficiary counts.

OIG's interviews of USCIS immigration services officers indicated that a maximum of 10 nonimmigrant workers could usually be processed within a normal workday.[278] DHS estimates the proposed change will increase H–2A and H–2B petition filing volume by approximately 1,800 after comparing our H–2A and H–2B petition forecasts for FY 2022/2023 with or without the proposed change. DHS assumes that the total number of named beneficiaries requested by an employer would remain the same, so that an employer petitioning for more than 25 named beneficiaries would file multiple petitions.

The proposed fees would address the imbalances in the current fee structure identified by the OIG audit. For example, the proposed $530 fee for an H–2A petition without named workers is $560 less than the proposed $1,090 fee for an H–2A petition with named workers because the adjudication of petitions requesting unnamed workers requires less time.

3. Form I–129, Petition for Nonimmigrant Worker: L Classification

Under current requirements, petitioners sponsoring L nonimmigrant workers, who are intracompany transferees,[279] may be required to submit additional statutory fees or other additional forms to USCIS along with Form I–129. For example, two statutory fees may apply for L nonimmigrant workers.[280] Some petitions require the additional Form I–129S, Nonimmigrant Petition Based on Blanket L Petition. DHS is not proposing different fees for managers and executives, because the agency has no records on the difference in completion rates or costs for processing petitions for managers and executives. USCIS currently captures completion rates for H–1B, L, and other types of petitions, but not for subgroups within classifications, such as managers and executives. The $1,385 proposed fee is based partly on the average completion rate for L–1 petitions. The proposed fees also assign the direct costs of ASVVP site visits, currently used for certain H–1B, L, and all religious workers, to the specific form for the classification.

4. Form I–129, Petition for Nonimmigrant Worker: O Classification

DHS proposes a fee of $1,055 for Form I–129 petitions filed to request O classifications. Similar to some other proposed changes to Form I–129, DHS proposes to limit each Form I–129 filed for O classifications to 25 named beneficiaries.[281] Proposed and republished 8 CFR 214.2(o)(2)(iv)(F). As previously discussed in the H–2A and H–2B section above, limiting the number of named beneficiaries simplifies and optimizes the adjudication of these petitions, which can lead to reduced average processing times for a petition. Because USCIS completes a background check for each named beneficiary, petitions with more named beneficiaries require more time and resources to adjudicate than petitions with fewer named

[276] DHS OIG, ''H–2 Petition Fee Structure Is Inequitable and Contributes to Processing Errors'' (Mar. 6, 2017), available at *https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-42-Mar17.pdf.*

[277] *Id.* at 13.

[278] *Id.* at 17.

[279] The L–1 intracompany transferee nonimmigrant classification permits a multinational organization to transfer certain employees from one of its foreign entities to one of its affiliated entities in the United States. The L–1A classification is for employees coming to the United States temporarily to perform services in a managerial or executive capacity. The L–1B classification is for employees coming to the United States temporarily to perform services that require specialized knowledge. *See* INA sec. 101(a)(15)(L), 8 U.S.C. 1101(a)(15)(L).

[280] Certain L petitioners may have to pay up to $5,000 in statutory fees. DHS does not have the authority to adjust the amount of these statutory fees. USCIS does not keep most of the revenue derived from these fees. CBP receives 50 percent of the $4,500 9–11 Response and Biometric Entry-Exit fee revenue and the remaining 50 percent is deposited into the General Fund of the Treasury. USCIS retains one-third of the $500 Fraud Detection and Prevention fee revenue, while the remainder is split between the DOS and the DOL. These statutory fees are in addition to the current Form I–129 fee of $460 and optional premium processing fee of $2,500. *See* USCIS, ''H and L Filing Fees for Form I–129, Petition for a Nonimmigrant Worker,'' available at *https://www.uscis.gov/forms/h-and-l-filing-fees-form-i-129-petition-nonimmigrant-worker* (last updated Feb. 2, 2018).

[281] While O–1 petitions are limited to a single named beneficiary, a petition for O–2 nonimmigrant workers may include multiple named beneficiaries in certain instances. *See* 8 CFR 214.2(o)(2)(iii)(F).

beneficiaries. This means the cost to adjudicate a petition increases with each additional named beneficiary. Thus, limiting the number of named beneficiaries may ameliorate the inequity to petitioners filing petitions with low beneficiary counts of effectively subsidizing the cost of petitioners filing petitions with high beneficiary counts. USCIS currently captures adjudication hours for these types of petitions. As stated in section V.B.2., Completion Rates, the proposed fee is partly based on these data.

5. Form I–129, Petition for Nonimmigrant Worker: E and TN Classifications

DHS proposes a fee of $1,015 for Form I–129 petitions filed for Treaty Trader (E–1), Treaty Investor (E–2), E–3, and TN classifications. The Treaty Trader (E–1) and Treaty Investor (E–2) classifications are for citizens of countries with which the United States maintains treaties of commerce and navigation. The applicant must be coming to the United States to engage in substantial trade principally between the United States and the treaty country (E–1), to develop and direct the operations of an enterprise in which the applicant has invested or is in the process of investing a substantial amount of capital (E–2), or to work in the enterprise as an executive, supervisor, or essentially skilled employee. *See* INA sec. 101(a)(15)(E), 8 U.S.C. 1101(a)(15)(E); 8 CFR 214.2(e). An E–2 CNMI or E–2C investor is a noncitizen who seeks to enter or remain in the CNMI in order to maintain an investment in the CNMI that was approved by the CNMI government before November 28, 2009. This classification allows an eligible noncitizen to be lawfully present in the CNMI in order to maintain the investment during the transition period from CNMI to Federal immigration law, which was extended by Public Law 115–218, sec. 3(a) on July 24, 2018, and will expire on December 31, 2029. *See* 48 U.S.C 1806; proposed and republished 8 CFR 214.2(e)(23). The E–3 classification applies to nationals of Australia who are coming to the United States solely to perform services in a specialty occupation requiring theoretical and practical application of a body of highly specialized knowledge and at least the attainment of a bachelor's degree, or its equivalent, as a minimum for entry into the occupation in the United States. *See* INA secs. 101(a)(15)(E) and 214(i)(1); 8 U.S.C. 1101(a)(15)(E) and 1184(i)(1). The TN classification was originally created to implement part of the trilateral North American Free Trade Agreement (NAFTA) between Canada, Mexico, and the United States. NAFTA was replaced by the U.S.-Mexico-Canada Agreement (USMCA). The USMCA entered into force on July 1, 2020. The USMCA did not make any changes to the Immigration chapter of NAFTA that have significance for this proposed rule. The USMCA retains all substantive elements of the former NAFTA, and the TN designation continues to be used for NAFTA/USMCA professionals.[282] TN admissions under NAFTA were governed by the list of Professionals in Appendix 1603.D.1 to Annex 1603 of NAFTA. Under the USMCA, TN admissions are governed by the (identical) list of Professionals now found in USMCA Chapter 16 Appendix 2. For the purposes of discussing TN classification, this document uses the term ''USMCA'' but applies to nonimmigrants under both the former ''NAFTA'' and ''USMCA'' interchangeably. In accordance with the USMCA, a citizen of Canada or Mexico who seeks temporary entry as a businessperson to engage in certain business activities at a professional level may be admitted to the United States. *See* INA sec. 214(e), 8 U.S.C. 1184(e); 8 CFR 214.6; proposed 8 CFR 106.2(a)(3)(viii). USCIS does not have separate completion rates for the E and TN classifications. Currently, USCIS adjudicators report hours on these classifications in a catch-all Form I–129 category.

6. Form I–129, Petition for Nonimmigrant Worker: H–3, P, Q, or R Classifications

DHS proposes to create a fee of $1,015 for the remaining nonimmigrant worker classifications: H–3, P, Q, and R. *See* proposed 8 CFR 106.2(a)(3)(viii). The costs used to determine the proposed fee for these classifications aggregate all identifiable costs associated with the adjudication of these different visa classifications, including the costs of administering site visits for R visa workers under the ASVVP.[283] As previously discussed in sections 2 and 4, DHS proposes to limit petitions for H–3, P, Q, or R classifications that allow 1 petition to be filed for multiple beneficiaries to 25 named beneficiaries. Proposed 8 CFR 214.2(h)(2)(ii), 8 CFR 214.2(p)(2)(iv)(F), and 8 CFR 214.2(q)(5)(ii). As stated previously, this change is expected to simplify and optimize the adjudication of these petitions, which is expected to lead to reduced processing times and reduced completion rates. Because USCIS completes a background check for each named beneficiary, petitions with more beneficiaries require more time and resources to adjudicate than petitions with fewer named beneficiaries. This means the cost to adjudicate a petition increases with each additional named beneficiary. Thus, limiting the number of named beneficiaries may ameliorate the inequity to petitioners filing petitions with low beneficiary counts of effectively subsidizing the cost of petitioners filing petitions with high beneficiary counts. USCIS does not have separate completion rates for the H–3, P, Q, or R classifications. Currently, USCIS adjudicators report hours on these classifications in a catch-all Form I–129 category. As such, DHS lacks the information to propose separate fees for each of these classifications.

DHS proposes to republish a paragraph of regulatory text that incorporates statutory changes and longstanding practices that allow petitions for multiple P nonimmigrants. *See* proposed republished 8 CFR 214.2(p)(2)(iv)(F). Specifically, DHS proposes and republishes a reference to ''team'' to account for INA sec. 214(c)(4)(G), 8 U.S.C. 1184(c)(4)(G) (The Secretary of Homeland Security shall permit a petition under this subsection to seek classification of more than one alien as a nonimmigrant under section 1101(a)(15)(P)(i)(a) of this title), which was added in 2006 and mandates DHS to allow a petitioner to include multiple P–1A athletes in one petition. *See id.* and Public Law 109–463, 120 Stat. 3477 (2006). DHS also proposes to retain the revisions from the 2020 final fee rule as set out in proposed 8 CFR 214.2(p)(2)(iv)(F) because certain athletic teams applying for P–1 nonimmigrant classification and groups applying for P–2 or P–3 nonimmigrant classification are not necessarily required to establish reputation of the team or group as an entity. *Id.*

7. Separating Form I–129 Into Multiple Forms

DHS is not separating Form I–129 into multiple forms in this rule as it did in the 2020 fee rule, but may take that action separately as a revision of the currently approved Form I–129 information collection under the PRA. *See* 86 FR 46260, 86 FR 46261, and 86 FR 46263 (August 18, 2021). Although DHS separated Form I–129 into different forms in the 2020 fee rule, the form and its instructions can be revised in that same way using the procedures

[282] *See* United States-Mexico-Canada Agreement Implementation Act, Public Law 116–113 (2020).

[283] The estimated cost of ASVVP for this proposed fee is $69. See the Direct Costs column of Appendix Table 6 in the supporting documentation in the docket.

provided in 5 CFR part 1320 and obtaining approval from the OMB.[284] As stated in section V.E.1 of this preamble, form numbers are included for informational purposes, but USCIS may collect fees for immigration benefit requests regardless of the assigned form number. If the Form I–129 is separated into smaller forms with different names in the future, then the new, separate forms for nonimmigrant petitions will each have the same fee that is established for that nonimmigrant classification if this rule is final. Finally, as previously noted in the preamble, DHS proposes to remove references to ''Form I–129'' from 8 CFR. *See e.g.* 8 CFR 214.1 and 214.2 (Oct. 1, 2020); proposed 8 CFR 214.1 and 214.2.

8. Commonwealth of the Northern Mariana Islands Fees

DHS proposes to create a fee of $1,015 for Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker. *See* proposed 8 CFR 106.2(a)(4). Two recent public laws affected statutory fees for the CNMI. The Northern Mariana Islands Economic Expansion Act, Public Law 115–53, section 2, 131 Stat. 1091, 1091 (2017) (2017 CNMI Act) increased the CNMI education funding fee from $150 to $200. *See* 48 U.S.C. 1806(a)(6)(A)(i). USCIS began accepting this increased fee on August 23, 2017.[285] DHS proposes to make conforming edits to the fee for the Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW, because of this statutory change. *See* 8 CFR 103.7(b)(1)(i)(J) (Oct. 1, 2020); proposed 8 CFR 106.2(c)(7). Employers must pay the fee for every beneficiary that they seek to employ as a CNMI-only transitional worker. The fee must be paid at the time the petition is filed. By statute, since the fee is for each worker approved, USCIS refunds the CNMI education funding fee if the petition is not approved. The fee is a recurring fee that petitioners must pay every year. A prospective employer requesting issuance of a permit with a validity period longer than 1 year must pay the fee for each year of requested validity. USCIS transfers the revenue from the CNMI education funding fee to the treasury of the Commonwealth Government to use for vocational education, apprenticeships, or other training programs for United States workers. The Northern Mariana Islands U.S. Workforce Act of 2018, Public Law 115–218, sec. 3, 132 Stat. 1547 (2018) (2018 CNMI Act), granted DHS the authority to adjust the fee for inflation. *See* 48 U.S.C. 1806(a)(6)(A)(ii).

DHS proposes a $10 adjustment to the $200 CNMI education funding fee based on the methodology described in the authorizing statute.[286] Beginning in FY 2020, DHS may adjust the CNMI education funding fee once per year by notice in the **Federal Register**.[287] The adjustment must be based on the annual change in the CPI–U published by the BLS. *See* proposed 8 CFR 106.2(c)(7)(iii). Therefore, the CNMI education funding fee would be $210 (rounded to the nearest $5 increment). Although the law provides DHS with explicit authority to adjust the fee for inflation based on the CPI–U, DHS includes this proposed increase along with other fees that USCIS collects. DHS took a similar approach when it first increased the premium processing fee in 2010. *See* 75 FR 33477. The final rule will establish an amount based upon the latest published annual CPI–U before the final rule publication. DHS may revisit inflation increases to the CNMI education funding fee in future fee rules or separately.

In addition to authorizing inflation adjustments for the CNMI education funding fee, the 2018 CNMI Act created a new $50 CNMI fraud prevention and detection fee. 2018 CNMI Act, sec. 3 (amending 48 U.S.C. 1806(a)(6)(A)(iv)). The new $50 fraud prevention and detection fee is in addition to other fees that employers must pay for petitions to employ CNMI-only transitional workers. *See* proposed 8 CFR 106.2(c)(6). USCIS began accepting the fee on July 25, 2018.[288] The new fee is only due at the time of filing and is a single $50 fee per petition, not a fee charged per beneficiary like the CNMI education funding fee. USCIS must use the revenue for preventing immigration benefit fraud in the CNMI, in accordance with INA sec. 286(v)(2)(B), 8 U.S.C. 1356(v)(2)(B). *See also* 48 U.S.C. 1806(a)(6)(A)(iv), as amended by 2018 CNMI Act, sec. 3.

DHS also proposes conforming edits to CNMI regulations regarding fee waivers and biometric services. Currently, some CNMI applicants and beneficiaries may qualify for a fee waiver based on inability to pay or other reasons. *See* 8 CFR 214.2(e)(23)(xv), (w)(5), and (w)(14)(iii). Generally, fee waivers are not available for employment-based applications and petitions. However, when DHS established the CW–1 petition fees, it decided to treat the CNMI with more flexibility in this regard. *See* 76 FR 55513–55514 (Sept. 7, 2011). DHS proposes in this rule to continue to offer fee waivers for CNMI applicants filing Form I–129CW and Form I–539. *See* proposed 8 CFR 106.3. Currently, CNMI beneficiaries may pay a biometric services fee when seeking a grant or extension of CW–1 status in the CNMI. *See* 76 FR 55513–55514; 8 CFR 214.2(e)(23)(viii) and (w)(16). As explained in section VIII.E., Changes to Biometric Services Fee, DHS proposes to incorporate the cost of biometric services into the underlying immigration benefit request fees. This proposed change would place the entire financial burden for CNMI petition fees on the employer, eliminating any fees paid by the beneficiary. *See* proposed 8 CFR 106.2, 214.2(v)(23)(viii) and (w)(16).

DHS does not propose to limit the number of named beneficiaries included in a single I–129CW filing. USCIS does not have separate completion rates for CNMI petitions. Currently, USCIS adjudicators report hours for Form I–129CW in a catch-all Form I–129 category.

9. H–1B Electronic Registration Fee

In 2019, DHS established a $10 registration fee per beneficiary for H–1B petitions. *See* ''Registration Fee Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap Subject Aliens,'' 84 FR 60307 (Nov. 8, 2019). The $10 registration fee is separate from and in addition to the H–1B petition filing fee. *See* 84 FR 60309. USCIS requires the registration fee regardless of whether the potential petitioner's registration is selected. USCIS lacked sufficient data to precisely estimate the costs of the

[284] The Administrative Procedure Act excepts ''. . . rules of agency organization, procedure or practice.'' 5 U.S.C. 553(b)(A); *James* v. *Hurson Assocs., Inc.* v. *Glickman,* 229 F.3d 277, 280 (D.C. Cir. 2000).

[285] USCIS, ''New Legislation Increases Availability of Visas for CNMI Workers for Fiscal Year 2017,'' available at *https://www.uscis.gov/news/news-releases/new-legislation-increases-availability-visas-cnmi-workers-fiscal-year-2017* (last updated on Aug. 28, 2017).

[286] The unadjusted annual average CPI–U for 2019 was 255.657. *See* BLS, CPI for All Urban Consumers (CPI–U) 1982–84=100 (Unadjusted)—CUUR0000SA0, available at *https://data.bls.gov/cgi-bin/surveymost?bls* (last visited Feb. 18, 2022). In 2021, it was 270.97, a 15.313 or approximately a 5.99 percent increase. *Id.* The $200 fee adjusted for inflation is approximately $212, a $12 increase. When rounded to the nearest $5, the inflation adjusted fee would be $210.

[287] Beginning in FY 2020, the Secretary of Homeland Security, through notice in the **Federal Register**, may annually adjust the supplemental fee imposed under clause (i) by a percentage equal to the annual change in the Consumer Price Index for All Urban Consumers (CPI–U) published by the Bureau of Labor Statistics (BLS). 48 U.S.C. 1806(a)(6)(A)(ii).

[288] USCIS, ''New Law Extends CNMI CW–1 Program, Mandates New Fraud Fee, and Will Require E-Verify Participation,'' available at *https://www.uscis.gov/news/alerts/new-law-extends-cnmi-cw-1-program-mandates-new-fraud-fee-and-will-require-e-verify-participation* (last updated on Oct. 23, 2018).

registration process at the time, but implemented the $10 fee to provide an initial stream of revenue to fund part of the costs to USCIS of operating the registration program. *Id.* DHS stated that USCIS would review the fee in the future. *Id.* DHS proposes $215 based on the results of the FY 2022/2023 fee review. *See* proposed 8 CFR 106.2(c)(11).

USCIS lacks information on the direct cost of H–1B registration, but USCIS estimated the indirect costs of the H–1B registration program using the same methods as it did to calculate other fees. The methodology for estimating the cost provides results that are similar to the USCIS Immigrant Fee, which was established as part of the FY 2010/2011 fee rule. *See* 75 FR 58979. However, the H–1B registration fee contains and funds fewer activities. DHS bases the proposed fee on the activity costs for the following activities:

- Inform the Public
- Management and Oversight

As such, the proposed fee is based on the estimated cost of these two activities. See the supporting documentation included in the docket for this rulemaking for more information on USCIS fee review activities. The proposed fee does not include activity costs for paper intake because registration is only available online. It does not include the cost of any adjudication activities because the fee is only for registration, not a decision. If selected, the petitioner must file Form I–129 separately.

DHS understands that an increase from $10 to $215 may appear to be exorbitant at first glance. However, the $10 fee was established simply to cover a small portion of the costs of the program rather than perpetually leaving 100 percent of those costs to be funded by the fees paid for other unrelated requests. As stated in the rule setting the fee, ''DHS proposed a $10 fee to provide an initial stream of revenue to mitigate potential fiscal effects on USCIS. Following implementation of the registration fee provided for in this rule, USCIS will gather data on the costs and burdens of administering the registration process in its next biennial fee review to determine whether a fee adjustment is necessary to ensure full cost recovery.'' 84 FR 60309. DHS sees no reasons why U.S. employers who wish to temporarily employ foreign workers in specialty occupations should not cover the expenses of the H–1B registration program, which is a prerequisite to being able to file a nonimmigrant petition for a foreign worker in the H–1B nonimmigrant classification. Even with the higher registration fee requirement, the registration process is still expected to result in a net cost-savings to USCIS and petitioners due to cost savings associated with unselected petitions in DHS' Registration Requirement for Petitioners Seeking to File H–1B Petitions on Behalf of Cap-Subject Aliens.[289]

L. Premium Processing—Business Days

DHS proposes to define the premium processing timeframe for all immigration benefit request types designated for premium processing to only include business days.[290] DHS is proposing to define business days as days that the Federal Government is open for business, which do not include weekends, federally observed holidays, or days on which Federal Government offices are closed, such as for weather-related or other reasons.[291] The closure may be nationwide or in the region where the adjudication of the benefit for which premium processing is sought will take place. The former INS established the current premium processing timeframe interpretation in June 2001. *See* ''Establishing Premium Processing Service for Employment-Based Petitions and Applications,'' 66 FR 29682. The rule's preamble stated that the District of Columbia Appropriations Act of 2001 (Pub. L. 106–553) ''specified that the Service was required to process applications under the Premium Processing Service in 15 calendar days,'' as part of a general description of the statute. 66 FR 29682.

DHS has re-examined the District of Columbia Appropriations Act of 2001 and found that it did not define the timeframe by which INS was required to process applications under the Premium Processing Service and was, in fact, silent on the issue.[292] Thus, DHS has determined that the June 1, 2001, interim rule stating a 15 calendar day processing timeframe was required by the District of Columbia Appropriations Act of 2001 was incorrect because there is nothing in that statute establishing a timeframe in which premium processing must occur, let alone how that timeframe is to be calculated. Without a specific timeframe or an explanation of how that timeframe is to be calculated, DHS may interpret its authority under INA sec. 286(u), 8 U.S.C. 1356(u), to define the timeframe in which premium processing must occur. Thus, DHS has reevaluated its old statutory interpretation to see if the premium processing program and premium processing timeframes can be revised to make the program more serviceable for USCIS while continuing to provide an expedited level of processing for their immigration petitions and applications.[293]

When USCIS is unable to complete premium processing within the required timeframe, USCIS must suspend premium processing. When USCIS suspends premium processing, it must refund the fees for the premium processing requests it cannot complete. In recent years, USCIS has suspended for certain categories of employment-based petitions when it determines that it has inadequate resources to devote to premium processing requests, and might otherwise refund a large number of Form I–907 fees for failure to meet the required processing timeframe.[294]

[289] *See* 84 FR 940.

[290] *See* 8 CFR 106.4(e). DHS lengthened the timeframe for USCIS to take an adjudicative action on petitions filed with a request for premium processing from 15 calendar days to 15 business days in the 2020 fee rule. *See* 8 CFR 106.4 (Oct. 2, 2020). However, on March 30, 2022, USCIS published the Implementation of the Stopgap USCIS Stabilization Act rule (Premium Processing Rule), which amended USCIS premium processing regulations by updating the regulations to include the fees established by the Emergency Stopgap USCIS Stabilization Act for immigration benefit requests that were designated for premium processing on August 1, 2020, and established new fees and processing timeframes consistent with section 4102(b) of the Emergency Stopgap USCIS Stabilization Act. *See* 87 FR 18227. The Premium Processing Rule explained that USCIS was not calculating premium processing timeframes in business days because at that time 8 CFR 106.4 was not being administered as a result of the injunction staying the 2020 Fee Rule in *ILRC* and *NWIRP*. The Premium Processing rule explained that by removing the reference to business days in the premium processing regulations, the premium processing regulations will be clear and consistent with current practices and requirements and not be a source of confusion to the public. *Id.* at 18233.

[291] DHS recognizes that calculating premium processing timeframes in business days is inconsistent with the definition of ''day'' in 8 CFR 1.2, which provides that when computing the period of time for taking any action [in chapter I of title 8 of the CFR] including the taking of an appeal, [it] shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period computed falls on a Saturday, Sunday, or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday. However, having recognized the definition of ''day'' in 8 CFR 1.2, DHS believes for the reasons stated and explained in the preamble that it is necessary for DHS to define premium processing timelines in business days.

[292] *See* Public Law 106–553 (2000) sec. 112.

[293] DHS also notes that section 4102(b) of the USCIS Stabilization Act provides premium processing times of 30 and 45 days, indicating that Congress considers periods that are two and three times longer than 15 days to be premium service.

[294] USCIS has not suspended premium processing for any requests since the USCIS Stabilization Act became law. That law provides that DHS may suspend the availability of premium processing for designated immigration benefit requests only if circumstances prevent the completion of processing of a significant number of such requests within the

Continued

In certain instances, USCIS has been unable to maintain existing premium processing timeframes due to the high volume of incoming petitions and a significant surge in premium processing requests.[295] For example, USCIS twice suspended premium processing before cap-subject H–1B season, which is the largest premium processing workload. In one such circumstance, USCIS initially announced it expected the suspension to last up to 6 months then extended it for several more months.[296] The suspension not only lasted longer than USCIS initially announced, but it also lasted well past the start date (October 1) for H–1B cap employees. As a result, this led to uncertainty for both employers and employees, because the employees were not able to timely start when the employers requested and neither party could predict when the employees would ultimately begin their employment. In addition to the harm and uncertainty that suspensions cause employers, when premium processing must be suspended, USCIS is not able to obtain the revenue from premium processing to offset its costs and for other uses. USCIS currently shifts adjudicators and other resources to address seasonal increases in filings. USCIS will also transfer files to offices with more processing capacity as needed. However, shifting adjudicators or files to focus on premium processing does not achieve the efficiency needed as higher volumes of incoming petitions or applications limit USCIS' ability to complete processing within the required processing timeframe.

USCIS also had to suspend premium processing due to the COVID–19 pandemic.[297] At that time, all the petitions eligible for premium processing were filed on paper at the service centers. Service centers needed time to adapt workspace configurations and procedures to ensure physical distancing and other safety protocols for employees working on site and picking up and dropping off files. Contracted employees had to be in the building to receive the petitions, data enter them into the system, put the files together, and deliver the files to the adjudicators. The adjudicators had to come into the building to pick up and drop off the files. The requirement of physical presence in the building greatly inhibited USCIS' ability to process petitions within the allotted timeframe. Irrespective of the COVID–19 pandemic, many of the benefit requests eligible for premium processing are still filed manually on paper, which necessarily requires USCIS employees and contractors to physically handle such benefit requests. If something should occur, such as a natural or manmade disaster, that interferes or prevents USCIS employees or contractors from being able to adjudicate benefit requests seeking premium processing, those workdays lost should not count against the premium processing timeframe.

USCIS employees are limited in the hours they are available to work by collective bargaining agreements and contracted staff are limited to the hours provided by contract, and both Federal employees and contracted staff are prohibited from working outside regular business hours or while not in a pay status. If USCIS needs its employees to work overtime to process these petitions and applications within a certain timeframe, it must of course pay them the applicable overtime pay rate. Because USCIS adjudication operations are fee funded, USCIS does not always have sufficient funds to support overtime; therefore, it must calculate the premium processing timeframes based on the days in which it can actually process petitions and applications (business days). USCIS is not asserting that all adjudications will increase to the full allowance of business days, however this change provides needed flexibility for holidays, weather emergencies, and other circumstances outside the agency's control.

In addition, the USCIS Stabilization Act prohibits USCIS from making premium processing available if it adversely affects processing times for immigration benefit requests not designated for premium processing or the regular processing of immigration benefit requests so designated. *See* USCIS Stabilization Act, sec. 4102(c), Public Law 116–159 (Oct. 1, 2020). The USCIS Stabilization Act allows for expansion of premium processing to certain EB–1 and EB–2 (NIW) petitions, which are more complex adjudications typically containing voluminous evidence and generally requiring more time to adjudicate than benefit types previously afforded premium processing. *See* 8 U.S.C. 1356(u)(2)(B). It also allows for expansion to Forms I–539 and I–765, which, while less complex, constitute an exceptionally large filing volume which necessitates a longer processing time. *See* 8 U.S.C. 1356(u)(2)(C) and (D). USCIS must have sufficient staff able to process premium processing cases during the allotted timeframe.

USCIS cannot expand premium processing, which was specifically requested by many commentors in the previous fee rule, until it has sufficient staff to consistently adjudicate within the timeframes. However, it is difficult to estimate the staff needed to process petitions during a certain timeframe using calendar days. In 2018, premium processing was suspended in April, then the suspension was extended until after the Federal holidays in December and January. In the last 2 weeks of December 2018, USCIS lost 3 days of processing to Federal holidays and 4 days to weekends. USCIS cannot hire additional staff in short periods of time, nor can it reallocate staff without affecting other processing times. DHS's proposed solution to consistently offer and expand (as Congress has authorized) premium processing services is to calculate the timeframe in business days. Calculating the premium processing timeframes based on the days in which USCIS is actually processing petitions and applications (business days) will enable USCIS to make premium processing more consistently available and expand it to the newly designated classifications and categories as intended by the USCIS Stabilization Act. This avoids USCIS having to suspend premium processing, which limits access to more applicants and petitioners and extends the pending period for adjudication.

DHS has determined that it is more appropriate for the premium processing timeframes to be calculated using business days rather than calendar days and proposes to apply this interpretation to all premium processing timeframes.[298] USCIS considers

required period. 8 U.S.C. 1356(u)(5)(A). While that law reiterates the standard that USCIS has generally followed in suspending premium processing, DHS does not know if that provision will reduce future suspensions by itself.

[295] *See* USCIS, ''USCIS Will Temporarily Suspend Premium Processing for All H–1B Petitions,'' available at *https://www.uscis.gov/archive/uscis-will-temporarily-suspend-premium-processing-all-h-1b-petitions* (last updated March 3, 2017); *see also* ''USCIS Will Temporarily Suspend Premium Processing for Fiscal Year 2019 H–1B Cap Petitions,'' available at *https://www.uscis.gov/news/alerts/uscis-will-temporarily-suspend-premium-processing-fiscal-year-2019-h-1b-cap-petitions* (last updated March 20, 2018).

[296] *See* USCIS, ''USCIS Resumes Premium Processing for Fiscal Year 2019 H–1B Cap Petitions,'' available at *https://www.uscis.gov/news/alerts/uscis-resumes-premium-processing-for-fiscal-year-2019-h-1b-cap-petitions* (last updated Jan. 25, 2019).

[297] *See* USCIS, ''USCIS Announces Temporary Suspension of Premium Processing for All I–129 and I–140 Petitions Due to the Coronavirus Pandemic,'' available at *https://www.uscis.gov/news/alerts/uscis-announces-temporary-suspension-of-premium-processing-for-all-i-129-and-i-140-petitions-due-to* (last updated Mar. 27, 2020).

[298] On October 1, 2020, the USCIS Stabilization Act amended section 286(u) of the INA, 8 U.S.C. 1356(u), and did not define how to calculate the

calculating premium processing timeframes in business days appropriate because: (1) USCIS can only process petitions and applications on business days; (2) using calendar days results in inconsistent and varying timeframes for USCIS to process requests for premium processing based on holidays and weather emergencies; and (3) using calendars days causes particular operational challenges when trying to meet the shorter 15-day premium processing timeframe applicable to certain immigration benefits. By changing to business days instead of calendar days, USCIS avoids having to suspend premium processing more frequently which therefore alleviates the waiting time for applicants and petitioners.

Separate from this rulemaking, USCIS is providing more flexibility in paying the premium processing fee. For example, USCIS piloted and expanded credit card payments for Forms I–129, I–140, and I–907.[299] USCIS will continue to evaluate options that give employers more options and flexibility when using premium processing and when filing petitions in general.

M. Permitting Combined Payment of the Premium Processing Fee

DHS proposes to permit the fee to request premium processing service to be paid with the same remittance as other filing fees. Proposed 8 CFR 106.4(b). DHS currently requires the fee to request premium processing service to be paid in a separate remittance from other filing fees. 8 CFR 106.4(b). DHS has found in its application of the new premium processing regulations (87 FR 18260) that mandating a separate payment in all premium processing submissions may impose unnecessary burdens on petitioners, applicants and DHS. For example, any limitation on fee intake that must be enforced by USCIS adds a business requirement for the immigration benefit to be accepted. Each rule requires system programming and may result in unnecessary rejections. Thus, DHS proposes, instead of mandating the separate payment, to provide that USCIS may require the fee to request premium processing service to be paid in a separate remittance from other filing fees. Proposed 8 CFR 106.4(b). DHS will maintain the authority to require separate payments when combined payments need to be precluded because they cause intake and acceptance problems. USCIS may require the premium processing service fee be paid in a separate remittance from other filing fees and preclude combined payments in the applicable form instructions. *Id.*

N. Intercountry Adoptions

DHS made several changes in the 2020 fee rule related to intercountry adoptions. *See* 8 CFR 204.3 and 204.312 (Oct. 2, 2020). As discussed elsewhere, DHS and USCIS are enjoined from following the regulations codified by that rule and DHS is proposing this rule to replace the 2020 fee rule. Nevertheless, commenters supported the changes to the handling of Hague Adoption Convention transition cases and the adoption process improvements in that rule. *See* 85 FR 46850. Therefore, in the following sections of this preamble, DHS generally repeats the rationale that we provided for all of the adoption related changes from the 2019 proposed rule. *See* 84 FR 62313–62315.

1. Adjustment to Proposed Fees for Certain Intercountry Adoption-Specific Forms

DHS proposes to limit the increase of adoption-related fees in this rule consistent with previous fee rules. *See, e.g.,* 81 FR 73298. DHS will continue its policy of reducing fee burdens on adoptive families by covering some of the costs attributable to the adjudication of certain adoption-related petitions and applications (Forms I–600/600A/800/800A) through the fees collected from other immigration benefit requests. If DHS used the estimated fee-paying unit cost from the ABC model for Form I–600A, then this benefit request would have a fee of at least $1,454.[300] DHS believes that it would be contrary to public and humanitarian interests to impose a fee of this amount on prospective adoptive parents seeking to adopt a child from another country. Therefore, DHS proposes to apply the 18 percent weighted average increase to the current fee of $775, which represents a $145 increase to $920 for Forms I–600/600A/800/800A. Proposed 8 CFR 106.2(a)(29), (30), (44), and (45). The percentage increase is not specific to adoption application and petition fees. It is the same percentage that DHS uses for all USCIS fees that DHS proposes to keep below full cost. *See* section V.B.3. It is worth noting that the proposed fee would include the cost of biometric services under this proposal. *See* section VIII.E. of this preamble. As such, the $920 proposed fee is less than the current $775 plus the separate $85 fees for biometric services for two adults in a household. Two adults in a household would pay $945 with the current fee structure for intercountry adoption. Thus, the proposed fees are $25 less than the current fees for two adults in a household who file an intercountry adoption-based application or petition to adopt a single child or birth siblings.

DHS greatly values its role in intercountry adoptions and places high priority on the accurate and timely processing of immigration applications and petitions that enable U.S. families to provide permanent homes for adopted children from around the world. It also recognizes that the financial costs, both foreign and domestic, involved in intercountry adoptions can have significant impacts on these families. DHS has a history of modifying policies to ease burdens associated with international adoption. Before 2007, USCIS required prospective adoptive parents who had not found a suitable child for adoption within 18 months after approval of their Application for Advance Processing of an Orphan Petition, Form I–600A, to submit a fee with their request to extend their approval. Since 2007, USCIS has permitted adoptive parents to request one extension of their Form I–600A approval without charge, including the biometric fee. *See* 72 FR 29864; 8 CFR 103.7(b)(1)(i)(Z) (Oct. 1, 2020). Finally, DHS does not charge an additional filing fee for an adoption petition filed on behalf of the first beneficiary child or birth siblings. *See* 8 CFR 103.7(b)(1)(i)(Z) and (b)(1)(i)(JJ)(*1*) (Oct. 1, 2020).

DHS also has a history of setting adoption-related fees lower than the amount suggested by the fee-setting methodology. In the 2010 fee rule, the calculated fee for adoption petitions and applications (Forms I–600/I–600A and I–800/I–800A) was $1,455, based on

timeframe by which USCIS must process applications under the Premium Processing Service, with section 286(u) of the INA, 8 U.S.C. 1356(u), still remaining silent on the issue.

[299] *See* USCIS, ''USCIS Expands Credit Card Payment Pilot Program to California Service Center'', available at *https://www.uscis.gov/newsroom/alerts/uscis-expands-credit-card-payment-pilot-program-to-california-service-center* (last updated Nov. 5, 2021); *see also* USCIS, ''USCIS Expands Credit Card Payment Pilot Program to Vermont Service Center'', available at *https://www.uscis.gov/newsroom/alerts/uscis-expands-credit-card-payment-pilot-program-to-vermont-service-center* (last updated Oct 21, 2021); *see also* USCIS, ''USCIS Expands Credit Card Payment Pilot Program to Form I–140 When Requesting Premium Processing'', available at *https://www.uscis.gov/news/alerts/uscis-expands-credit-card-payment-pilot-program-to-form-i-140-when-requesting-premium-processing* (last updated July 20, 2021); *see also* USCIS, ''USCIS Expands Credit Card Payment Pilot Program to Texas Service Center'', available at *https://www.uscis.gov/newsroom/alerts/uscis-expands-credit-card-payment-pilot-program-to-texas-service-center* (last updated Sept 9, 2021).

[300] Model output from Appendix Table 4 in the FY 2022/2023 Immigration Examinations Fee Account Fee Review Supporting Documentation (supporting documentation) in the docket.

projected costs. *See* 75 FR 33461; 8 CFR 103.7(b)(1)(i)(Y), (Z), (II), (JJ) (Oct. 1, 2020). In the FY 2016/2017 fee review, DHS set the Form I–600 fee at $775 despite the estimated cost of $2,258. *See* 81 FR 73299. Shifting the adoption application and petition costs to other fees is consistent with past DHS efforts and is in the public interest to support parents of children adopted abroad.

2. Clarification of Fee Exemption for Birth Siblings

DHS proposes to revise and republish amendments to 8 CFR 106.2, 204.3, and 204.313 to clarify the regulations and align them with current practice that prospective adoptive parents with a valid Form I–600A or Form I–800A approval are not required to pay a fee for the first Form I–600 or Form I–800 petition. If they are approved to adopt more than one child, they are required to pay the filing fee for additional Form I–600 or Form I–800 petitions unless the beneficiaries are birth siblings.

To align with current and historical practice, DHS proposes to clarify in the regulations that this exception is limited to ''birth'' siblings. This approach is consistent with the special treatment afforded in the INA to ''natural siblings,'' which allows a Form I–600 or Form I–800 petition to be filed for a child up to age 18, rather than up to age 16, only if the beneficiary is the ''natural sibling'' of another foreign-born child who has immigrated (or will immigrate) based on adoption by the same adoptive parents. INA sec. 101(b)(1)(F)(ii) and (G)(iii); 8 U.S.C. 1101(b)(1)(F)(ii) and (G)(iii). While the INA uses the term ''natural sibling,'' DHS generally uses the term ''birth sibling'' synonymously, which includes half-siblings but does not include adoptive siblings.

DHS also proposes to remove fee-related language from 8 CFR 204.3(h)(3)(i)(C) and (D) because this language will be covered in 8 CFR 106.2.

3. Suitability and Eligibility Approval Validity Period

DHS proposes to revise and republish the amendments to 8 CFR 204.3 relating to orphan cases under INA sec. 101(b)(1)(F), 8 U.S.C. 1101(b)(1)(F) (non-Convention cases). The proposed revised and republished revisions to the orphan regulations are necessary to eliminate disparity between the 18-month approval period for the Form I–600A, Application for Advance Processing of an Orphan Petition, the 15-month validity period of FBI fingerprint clearances, and the 15-month approval period for a Form I–800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, and any approved extension.

Currently, the approval of a Form I–600A in an orphan case is valid for 18 months. *See* 8 CFR 204.3(h)(3)(i) (Oct. 1, 2020). However, standard USCIS policy has been that the FBI's clearance of a person's fingerprints is valid for 15 months, thereby creating inconsistency between the 15-month fingerprint clearance validity and the 18-month approval validity period for the Form I–600A. This inconsistency was partially resolved with the ratification of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) and subsequent codification of 8 CFR 204.312(e)(1), whereby the initial approval period for a Form I–800A in a Convention case is 15 months from the date USCIS received the initial FBI response for the fingerprints of the prospective adoptive parent(s) and any adult members of the household. This 15-month period also applies to the extension of the Form I–800A approval period for an additional 15 months from the date USCIS receives the new FBI response on the fingerprints. Creating parity in the approval periods for suitability and eligibility determinations provides additional protections for adopted children and provides consistency and alignment of the orphan and Hague regulations. Having a standardized 15-month validity period will also alleviate the burden on prospective adoptive parents and adoption service providers to manage and monitor multiple expiration dates. Therefore, DHS proposes to alter the validity period for a Form I–600A approval in an orphan case to 15 months. *See* proposed 8 CFR 204.3(b), (d), and (h)(7) and (13). *See* proposed 8 CFR 204.3(h)(3).[301]

DHS proposes to remove fee-related language from 8 CFR 204.3(h)(3)(ii) because that language would be unnecessarily redundant with the fee language in proposed 8 CFR 106.2.

4. Form I–600A/I–600, Supplement 3, Request for Action on Approved Form I–600A/I–600

DHS proposes to revise and republish the regulation that creates a new form[302] to further align the processes for adoptions from countries that are not party to the Hague Adoption Convention (Hague or Convention) with the processes for adoptions from countries that are party to that Convention. The proposed form name is Form I–600A/I–600, Supplement 3, Request for Action on Approved Form I–600A/I–600. The proposed fee is $455. Proposed 8 CFR 106.2(a)(31). As discussed in the PRA section of this preamble, the draft Supplement 3 is posted in the docket of this rulemaking for the public to review and provide comments.

Currently, prospective adoptive parents face different processes for requests for action on approved suitability applications in Hague cases than they do in non-Hague cases. USCIS uses Forms I–800, I–800A, and I–800A Supplement 3 for Hague cases. USCIS uses Forms I–600 and I–600A for orphan cases. A fee for Form I–600A/I–600 Supplement 3 would further align the Form I–600A/I–600 request for action process with the existing Form I–800A process in four key areas:

1. Suitability and eligibility extensions.
2. New approval notices.
3. Change of country; and
4. Duplicate approval notices.

USCIS adjudicators must reassess whether prospective adoptive parents are still suitable and eligible to adopt if the prospective adoptive parents' circumstances have changed after the initial USCIS suitability determination. The proposed fee would help recover some of the cost for this work.

Requirements related to a prospective adoptive parent's change in marital status for the orphan process are similar to the Hague process, but not identical. This is because the orphan process provides an option for combination filing, unlike the Hague process. In the orphan process, a prospective adoptive parent can file their Form I–600 petition on behalf of a specific child together with the supporting documents for Form I–600A, Application for Advance Processing of an Orphan Petition, to request that USCIS decide their suitability and eligibility to adopt at the same time as the child's eligibility. This is referred to as combination filing.

For Hague cases, prospective adoptive parents cannot use Form I–800 Supplement 3 if their marital status

[301] In addition to changing the 18-month period to 15 months, DHS is removing the internal procedure from 8 CFR 204.3(h)(3)(i) that provides where documents will be forwarded and how notification of overseas offices of the approval is handled. DHS is also correcting a reference to the number of children the prospective adoptive parents are approved for in the home study to refer to the number of children the prospective adoptive parents are approved for in the Form I–600A approval. Finally, DHS is also adding a reference to proposed 8 CFR 106.2(a)(31) in § 204.3(h)(3)(i), relating to Form I–600A extension requests.

[302] As defined in 8 CFR 1.2.

changes. If the prospective adoptive parent's marital status changes before they complete the intercountry adoption process, their Form I–800A approval is automatically revoked. This is because a change in marital status considerably changes the facts supporting a prior suitability approval and who the adoptive parents will be. The prospective adoptive parent must submit a new Form I–800A with an updated home study. If the prospective adoptive parent had already filed a Form I–800 based on the approval of the prior Form I–800A, they must also file a new Form I–800. The prospective adoptive parent must pay a new application fee unless their Form I–800A is still pending. *See* 8 CFR 204.312(e)(2).

Similarly, a prospective adoptive parent will not be able to use Form I–600A/I–600 Supplement 3 for the orphan process if their marital status changes. If the prospective adoptive parent's marital status changes before they complete the intercountry adoption process, they must submit a new a Form I–600A or Form I–600 combination filing (referred to in this preamble as a ''suitability application'') with an updated home study. If the prospective adoptive parent already filed a Form I–600 based on the approval of the prior Form I–600A, they must also file a new Form I–600. They must pay a new application or petition fee unless their suitability application is still pending. This is consistent with longstanding practices, as reflected in prior versions of the Form I–600A and Form I–600 instructions, which has required that prospective adoptive parents file a new suitability application with an updated home study if their marital status changes, rather than relying on the previously filed suitability application, regardless of whether the suitability application is pending or approved. With the addition in this proposed rule of the Supplement 3 for the orphan process, DHS proposes to codify this longstanding practice at 8 CFR 204.3(h)(14), consistent with the Hague process at 8 CFR 204.312(e)(2).

Table 20 and the following sections summarize the current process and the proposed changes.

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Table 20: Summary of Current and Proposed Adoption Processes Related to Proposed Form I-600A/I-600 Supplement 3

Type of Change	Current Process	Proposed Process
Suitability & Eligibility Extensions	The Form I-600A approval notice reflects a validity period for the prospective adoptive parents' suitability and eligibility determination. Currently, prospective adoptive parents may request one initial extension of their Form I-600A approval without fee by submitting a request in writing. Prospective adoptive parents are not able to request a second or subsequent extension of their Form I-600A approval. An applicant may not request an extension more than 90 days before their Form I-600A suitability approval expires but must do so on or before its expiration date.	DHS proposes to require prospective adoptive parents to submit Form I-600A/I-600, Supplement 3 to request the initial no-fee extension. Form I-600A/I-600 Supplement 3 would allow prospective adoptive parents to request second or subsequent extensions with the proposed fee. An applicant must file a Supplement 3 to seek an extension before their Form I-600A suitability approval expires. However, a Supplement 3 seeking an extension that is filed more than 90 days before the Form I-600A suitability approval expires may be denied.

Table 20: Summary of Current and Proposed Adoption Processes Related to Proposed Form I-600A/I-600 Supplement 3		
Type of Change	**Current Process**	**Proposed Process**
New Approval Notices	Currently, prospective adoptive parents can request a new approval notice based on a significant change and updated home study with no fee. New approvals require adjudicators to reassess whether prospective adoptive parents remain suitable and eligible to adopt after the significant change in circumstances. (For example, significant decreases in finances, change of residence, change in household composition, etc.)	DHS proposes to require prospective adoptive parents to submit Form I-600A/I-600, Supplement 3 to request a new approval notice. The prospective adoptive parent must pay the fee unless they are also filing a first-time request for either an extension or change of country. Second or subsequent requests would require the proposed fee.
Change of Country	Currently, prospective adoptive parents may change their proposed country of adoption once without fee. For example, if they are matched with an eligible orphan in a country other than the country initially identified on their Form I-600A. For subsequent country changes, prospective adoptive parents file Form I-824, Application for Action on an Approved Application or Petition, with fee.	DHS proposes to require prospective adoptive parents to submit Form I-600A/I-600, Supplement 3 to request the initial no-fee change of proposed country of adoption.[303] Form I-600A/I-600 Supplement 3 would allow prospective adoptive parents to request a second or subsequent change in the proposed country of adoption with the proposed fee.
Duplicate Approval Notices	For duplicate approval notices, prospective adoptive parents file Form I-824, Application for Action on an Approved Application or Petition, with fee.	DHS proposes to require prospective adoptive parents to submit Form I-600A/I-600, Supplement 3, with the proposed fee, to request a duplicate approval notice.

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a. Suitability and Eligibility Extensions

Currently, prospective adoptive parents pursuing an intercountry adoption from non-Hague countries may request a no-fee initial extension of their Form I–600A approval.[304] Requests are submitted in writing and second or subsequent requests to extend their approval are not allowed. See 8 CFR 103.7(b)(1)(i)(Z)(3) (2020) (Oct. 1, 2020). DHS proposes that prospective adoptive parents be allowed to request more than one extension of their Form I-600A approval, if necessary, by filing the proposed Form I-600A/I-600 Supplement 3. The first request would be free under this proposal. Second or subsequent requests would require the proposed fee of $455. See proposed 8 CFR 106.2(a)(31).

Currently, if an applicant needs to extend their Form I–600A approval, they may file a written request for an extension no more than 90 days before their Form I–600A suitability approval expires, but on or before its expiration date. DHS now proposes that an applicant must file a Supplement 3 to seek an extension before their Form I–600A suitability approval expires. A Supplement 3 seeking an extension cannot be filed more than 90 days before the Form I–600A suitability approval expires and must be filed before the approval expires if they need to extend their validity period. A Supplement 3 may be denied if filed sooner.[305] This

[303] *See* section VIII.N.4.e for limitations in Hague Adoption Convention transition cases and countries.

[304] The Form I–600A approval notice reflects the validity period of the prospective adoptive parents' suitability and eligibility determination.

[305] This is current practice that DHS is codifying with the creation of Supplement 3 and a fee. See

codifies the administrative efficiencies created by ensuring applicants timely file their extensions and mirrors the existing time frames for requesting an extension. In addition, this further aligns the processes for requesting extensions for adoptions from countries that are not party to the Hague Adoption Convention (Hague) with the processes for countries that are a party to that Convention. *See* proposed 8 CFR 204.3(h)(3)(ii).

DHS proposes to remove 8 CFR 204.3(h)(3)(ii) (Oct. 1, 2020). This regulation that provides for DHS to extend suitability approvals without the prospective adoptive parents requesting one in certain scenarios would no longer be necessary because applicants would have a form (Supplement 3) they can file to request unlimited extension requests for non-Hague cases. Currently, DHS does not have a form for applicants to request extensions for non-Hague cases, and only allows one written extension request. In association with this rule, DHS proposes to create a form that prospective adoptive parents can use to file unlimited extension requests for non-Hague cases. In addition, this proposed change also aligns the non-Hague adoptions regulations with the Hague Adoption Convention regulations, which do not contain a parallel provision that provides DHS authority to extend suitability approvals in the event of such emergency because prospective adoptive parents can file a form to request an extension and can do so an unlimited number of times. Finally, DHS has an obligation to ensure applicants remain suitable for intercountry adoption and must update our suitability determination before extending approvals. For this reason, DHS proposes to remove 8 CFR 204.3(h)(3)(ii) (Oct. 1, 2020).[306]

b. New Approval Notices

Currently, prospective adoptive parents using the non-Hague process may request a new approval notice based on a significant change in circumstances at no cost. *See* 8 CFR 103.7(b)(1)(i)(Z) (Oct. 1, 2020). DHS proposes that prospective adoptive parents must file the proposed Form I–600A/I–600 Supplement 3, and an updated home study, to notify USCIS of a significant change and request a new approval notice. *See* proposed 8 CFR 106.2(a)(31). The prospective adoptive parent must pay the proposed fee of $455 unless they are also filing either a first-time request for an extension or first-time change of country on the same Supplement 3.

c. Change of Country

Currently, prospective adoptive parents may change the proposed country of adoption once without fee. They may make subsequent country changes by filing Form I–824, Application for Action on an Approved Application or Petition, with fee. *See* 8 CFR 103.7(b)(1)(i)(OO) (Oct. 1, 2020). DHS proposes that prospective adoptive parents be allowed to change the proposed country of adoption by filing the proposed Form I–600A/I–600 Supplement 3. The first request to change countries would remain free. Second or subsequent requests would require the proposed fee of $455. *Id.*

d. Duplicate Approval Notices

Currently, prospective adoptive parents may request a duplicate approval notice by filing Form I–824, Application for Action on an Approved Application or Petition, with its $465 fee. DHS proposes that prospective adoptive parents make duplicate approval notice requests by filing the proposed Form I–600A/I–600 Supplement 3, with the proposed fee of $455. *See* proposed 8 CFR 106.2(a)(31).

e. Hague Adoption Convention Transition Cases

DHS proposes to clarify the processes for requesting an extension of the Form I–600A approval and other actions on an approved Form I–600A or Form I–600 as they pertain to adoptions from countries that newly become a party to the Hague Adoption Convention. When the Hague Adoption Convention enters into force for a country, cases that meet certain criteria are generally permitted by the new Convention country to proceed as ''transition cases'' under the non-Hague Adoption Convention process (Form I–600A and Form I–600 process). Provided that the new Convention country agrees with the transition criteria, USCIS will generally consider a case to be a transition case if, before the date the Convention entered into force for the country, the prospective adoptive parents: (1) filed a Form I–600A that designated the transition country as the intended country of adoption or did not designate a specific country and filed the Form I–600 while the Form I–600A approval was still valid; (2) filed a Form I–600 on behalf of a beneficiary from the transition country; or (3) completed the adoption of a child from the transition country. If the case does not qualify as a transition case, the prospective adoptive parents will generally need to follow the Hague Adoption Convention process with the filing of Form I–800A and Form I–800. With the addition of the new Form I–600A/I–600 Supplement 3, DHS proposes to codify certain limitations on when the Supplement 3 can be used in the context of transition cases.

i. Suitability and Eligibility Extensions

If a case qualifies as a transition case based on the filing of Form I–600A before the entry into force date, to continue as a transition case, the prospective adoptive parents must file the Form I–600 petition while the Form I–600A approval remains valid. Currently, prospective adoptive parents are permitted to request a one-time, no-fee extension of their Form I–600A approval to remain a transition case. As discussed in section a.) above, DHS proposes that prospective adoptive parents may request more than one extension of their Form I–600A approval outside of the transition context. DHS proposes that prospective adoptive parents may only be permitted to request a one-time extension of their Form I–600A approval as a qualified transition case. *See* proposed 8 CFR 106.2(a)(31). Generally, transition countries have requested that DHS limit the ability of transition cases to continue indefinitely to limit the confusion that having two simultaneously running processes causes to its administrative bodies and judicial systems. This will provide prospective adoptive parents who have taken certain steps to begin the intercountry adoption process with a country before the Convention entered into force additional time to complete the adoption process under the non-Hague process, but reasonably limits the ability to indefinitely extend the validity period of the Form I–600A approval and the processing of transition cases under the non-Hague process.

ii. Change of Country

The transition criteria were generally designed to permit prospective adoptive parents who had taken certain steps to begin the intercountry adoption process with a country before the Convention entered into force to be able to continue under the non-Hague process, rather than requiring them to begin again

USCIS Policy Manual Volume 5, Adoptions, Part B, Adoptive Parent Suitability Determinations Chapter 5, Action on Pending or Approved Suitability Determinations [5 USCIS–PM B.5] available at *https://www.uscis.gov/policy-manual/volume-5-part-b-chapter-5*.

[306] This provision was changed by the 2020 fee rule, to remove language specific to SARS, and to replace with more general language about a public health or other emergency. 85 FR 46921; 8 CFR 204.3(h)(3)(ii) (Oct. 2, 2020). DHS now proposes to remove that provision altogether for the reasons stated here.

under the Hague process, which has different processing requirements. If the prospective adoptive parents already designated a country of intended adoption other than the transition country on their Form I–600A or previously changed countries to a non-transition country, they generally would not fall into the category of families the transition criteria were intended to reach because the designation is an indication that they have begun the intercountry adoption process with the designated country and not with the transition country. Therefore, in the transition context, prospective adoptive parents who designated a non-transition country on their Form I–600A or previously changed countries to a non-transition country generally have not been permitted to change their Form I–600A approval to a transition country for purposes of being considered a transition case. DHS proposes to codify this limitation in this rule. *See* proposed 8 CFR 106.2(a)(31).

iii. Request To Increase the Number of Children Approved To Adopt

Outside of the transition context, prospective adoptive parents are generally permitted to request an updated Form I–600A approval notice to increase the number of children they are approved to adopt. In the transition context, however, prospective adoptive parents with transition cases generally have not been permitted to request an increase in the number of children they are approved to adopt from a transition country.[307] However, unless prohibited by the new Convention country, DHS will permit prospective adoptive parents to request an updated Form I–600A approval notice to increase the number of children they are approved to adopt as a transition case only in order to pursue the adoption of a birth sibling, provided the birth sibling(s) is (are) identified and the Form I–600 petition is filed before the Form I–600A approval expires. *See* proposed 8 CFR 106.2(a)(31). This approach is consistent with the special treatment afforded in the INA to ''natural siblings,'' which allows a Form I–600 or Form I–800 petition to be filed for a child up to age 18, rather than age 16, only if the beneficiary is the ''natural sibling'' of another foreign-born child who has immigrated (or will immigrate) based on adoption by the same adoptive parents. INA sec. 101(b)(1)(F)(ii) and (G)(iii); 8 U.S.C. 1101(b)(1)(F)(ii) and (G)(iii).

[307] *See* USCIS, ''Transition Cases'', available at *https://www.uscis.gov/adoption/immigration-through-adoption/transition-cases* (last viewed Jun. 21, 2022).

While the INA uses the term ''natural sibling,'' DHS generally uses the term ''birth siblings'' synonymously, which includes half-siblings but does not include adoptive siblings.

5. Form I–800A, Supplement 3, Request for Action on Approved Form I–800A

DHS also proposes a fee of $455 at 8 CFR 106.2 and revises and republishes a clarification to 8 CFR 204.312 to align with the current process for adjudicating Form I–800A Supplement 3. Currently, prospective adoptive parents may request a first extension of the Form I–800A approval, and a first-time change in the proposed country of adoption, by filing Form I–800A Supplement 3 without a fee. Second or subsequent requests for an extension, change of country, or duplicate approval notice can currently be made by filing Form I–800A Supplement 3 with a fee. Additionally, prospective adoptive parents can currently request a new approval notice based on a significant change and updated home study by filing Form I–800A Supplement 3. A request for a new approval notice must be submitted with a fee unless the prospective adoptive parents are also filing a first-time request for either an extension or change of country on the same Supplement 3. When DHS implemented the Hague Adoption Convention, as a matter of operational efficiency USCIS decided to accept Form I–800A Supplement 3 extension requests regardless of whether the Form I–800 petition was already filed, rather than requiring prospective adoptive parents to file a new Form I–800A to begin the process anew. That procedure generally shortens the subsequent suitability and eligibility adjudication process for prospective adoptive parents seeking an extension of their Form I–800A approval, as Supplement 3 adjudications are generally prioritized over new Form I–800A filings, allowing for a new decision on the prospective adoptive parents' suitability and eligibility to occur more quickly. Therefore, DHS proposes to republish 8 CFR 204.312(e)(3)(i) to permit the filing of Form I–800A Supplement 3 regardless of whether Form I–800 has been filed.

DHS proposes to revise 8 CFR 204.312(e)(3)(ii) to clarify the evidentiary requirements for updates due to significant changes. The Supplement 3 can be filed for an extension request, a change of country, a duplicate approval notice, or an update due to a significant change. The evidentiary requirements are the same regardless of which type of request the applicant makes. However, the current regulation only describes the evidence required for a Supplement 3 for an extension request or a change of country. The current regulations do not include updates when listing evidentiary requirements for Supplement 3. This proposed clarification mirrors current practices and form instructions. *See* proposed 8 CFR 204.312(e)(3)(ii).

DHS proposes to remove the fee language from 8 CFR 204.312(e)(3)(i), including amending paragraph (e)(3)(i)(A) and striking paragraphs (e)(3)(i)(C) and (D), because this language is unnecessarily redundant with the fees in 8 CFR 106.2.

O. Immigrant Investors

1. Immediate Effects of the EB–5 Reform and Integrity Act of 2022

DHS proposes changes to various fees for regional centers and related immigration benefit requests related to Employment-Based Immigrant Visa, Fifth Preference (EB–5). As explained in section III.F. above, on March 15, 2022, the President signed the EB–5 Reform and Integrity Act of 2022, Div. BB of the Consolidated Appropriations Act, 2022 (Public Law 117–103). The EB–5 Reform and Integrity Act of 2022 repealed the prior authorizing statute for the EB–5 ''regional center program'' and codified a substantially reformed regional center program in the INA, effective 60 days after enactment on May 14, 2022. The EB–5 Reform and Integrity Act of 2022 has no immediate impact on the staffing levels of the USCIS Immigrant Investor Program Office. Nevertheless, and despite the changes in the law and program, DHS has proposed fees in this rule based on the currently projected staffing needs to meet the adjudicative and administrative burden of the Immigrant Investor Program Office pending the fee study required by section 106(a) of the EB–5 Reform and Integrity Act of 2022.

2. Background of the EB–5 Program

Congress created the EB–5 program in 1990 to stimulate the U.S. economy through job creation and capital investment by immigrant investors. The EB–5 regional center program was later added in 1992 by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993. Public Law 102–395, sec. 610, 106 Stat. 1828 (Oct. 6, 1992). As amended by the EB–5 Reform and Integrity Act of 2022, the EB–5 program makes approximately 10,000 visas available annually to foreign nationals (and their dependents) who invest at least $1,050,000 or a

discounted amount of $800,000 if the investment is in a targeted employment area (TEA) (which includes certain rural areas and areas of high unemployment) or infrastructure project in a U.S. business that will create at least 10 full-time jobs in the United States for qualifying employees. *See* INA sec. 203(b)(5), 8 U.S.C. 1153(b)(5); 8 U.S.C. 11538 U.S.C. 1153. Investors may satisfy up to 90 percent of the job creation requirements with jobs that are estimated to be created indirectly through qualifying investments within a commercial enterprise associated with a regional center approved by USCIS for participation in the regional center program. INA sec. 203(b)(5), 8 U.S.C. 1153(b)(5). In FY 2013, USCIS created the Immigration Investor Program Office (IPO) in Washington, DC, to handle EB–5 matters, hiring staff with expertise in economics, law, business, finance, securities, and banking to enhance consistency, timeliness, and integrity within the program.

USCIS is committed to strengthening the integrity and improving the overall administration of the EB–5 program. There is perennial and increasing media attention around the EB–5 Program, largely created around the exploitation of the program by abusive actors.[308] Since the FY 2016/2017 fee rule, IPO added staff positions to focus both on managing the program and identifying fraud, national security, public safety, and non-compliance concerns within the program. For example, IPO hired auditors to complete regional center compliance reviews associated with the review of the annual certification filings. *See* INA section 203(b)(5)(G), 8 U.S.C. 1153(b)(5)(G). On March 20, 2017, USCIS instituted EB–5 regional center compliance reviews to enhance the EB–5 program integrity and verify information in regional center applications and annual certifications. USCIS designed this program to verify the information provided by designated regional centers and verify compliance with applicable laws and authorities to ensure continued eligibility for the regional center designation. These compliance reviews are full-file reviews and include contact via written correspondence, telephone, interviews, and onsite assessments conducted by IPO auditors.

3. Proposed EB–5 Program Fees

The proposed fee for Forms I–526, Immigrant Petition by Alien Entrepreneur, and Form I–526E, Immigrant Petition by Regional Center Investor, is $11,160, a $7,485 or 204 percent increase from the current $3,675 fee. *See* 8 CFR 103.7(b)(1)(i)(W) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(24). The proposed fee for Form I–829, Petition by Investor to Remove Conditions on Permanent Resident Status, is $9,525, a $5,775 or 154 percent increase from the current $3,750 fee. *See* 8 CFR 103.7(b)(1)(i)(PP) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(51). The proposed fee for Form I–956, Application for Regional Center Designation, is $47,695, a $29,900 or 168-percent increase from the $17,795 fee for Form I–924, Application for Regional Center Designation under the Immigrant Investor Program. *See* 8 CFR 103.7(b)(1)(i)(WW) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(64). DHS also proposes a $47,695 fee for Form I–956F, Application for Approval of Investment in a Commercial Enterprise, because the information it collects and the benefit that results was previously an optional submission that was adjudicated on Form I–924, when included. Section 103(b)(1)(F) of the EB–5 Reform and Integrity Act of 2022, Div. BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103) now requires a regional center, once designated with an approved Form I–956, to submit an application for approval of an investment in a commercial enterprise (Form I–956F). The proposed fee for Form I–956G, Regional Center Annual Statement, is $4,470, a $1,435 or 47 percent increase from the $3,035 fee for Form I–924A, Annual Certification of Regional Center. *See* 8 CFR 103.7(b)(1)(i)(WW) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(66). The EB–5 program encompasses Forms I–526, I–526E, I–829, I–956, I–965F, and I–956G.[309]

In the FY 2016/2017 fee rule, USCIS planned for 204 positions in IPO. In the FY 2022/2023 fee review, USCIS estimates an annual average requirement of 245 positions in IPO. As discussed earlier, projected volumes and completion rates are two of the main drivers in the fee review.[310] Staffing requirements and costs change as volume or completion rate estimates change. Generally, EB–5 volume estimates decreased since the FY 2016/2017 fee rule while completion rate estimates increased.[311] For example, the FY 2022/2023 workload volume estimate for Forms I–526 and I–526E decreased by 10,773 or −73 percent compared to Form I–526 in FY 2016/2017. Estimated workload for Form I–924 decreased by 338 or −85 percent. Overall, EB–5 actual receipts declined consistently year-over-year from FY 2016 to FY 2020. *See* Table 21, EB–5 Receipts from FY 2016 to FY 2020. However, completion rates increased. For example, the estimated completion rate for Form I–526 was 6.5 hours in the FY 2016/2017 fee rule. *See* 81 FR 26925. In the FY 2022/2023 fee review, USCIS estimates that the completion rate for Forms I–526 and I–526E is 20.69 hours, a 14.19 hour or 218 percent increase. The estimated completion rate for Form I–924 was 40 hours in the current fee structure. *Id.* In the FY 2022/2023 fee review, USCIS is using the methodology for Forms I–924 and I–924A and applying it to Forms I–956 and I–956G respectively. USCIS estimates that the completion rate for Form I–956 (formerly Form I–924) is 108.50 hours, a 68.50 hour or 171 percent increase. The work associated with Form I–956 adjudications includes reaffirmations and terminations; therefore, the time requirements associated with these subsequent actions is factored into the overall completion rate for Form I–956. The number of approved regional centers decreased from 2016 to 2020 by over 200, significantly increasing the number of hours spent on the terminations of those regional centers. Increased work associated with terminations contributed to the overall increase in the completion rates.

[308] Michelle Hackman & Konrad Putzier, ''Cash-for-Visa Program Looks to Be in Jeopardy,'' The Wall Street Journal (June 15, 2021), available at *https://www.wsj.com/articles/cash-for-visa-program-looks-to-be-in-jeopardy-11623758401; see also* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Hearing on ''Citizenship for Sale: Oversight of the EB–5 Investor Visa Program'' before the Senate Committee on the Judiciary on June 19, 2018'' (last updated June 19, 2018), available at *https://www.uscis.gov/tools/resources-for-congress/testimonies/hearing-on-citizenship-for-sale-oversight-of-the-eb-5-investor-visa-program-before-the-senate;* U.S. Dep't of Justice, Office of Public Affairs, ''Chinese National Pleads Guilty to Illegal Exports to Northwest Polytechnical University'' (Apr. 28, 2021), available at *https://www.justice.gov/opa/pr/chinese-national-pleads-guilty-illegal-exports-northwestern-polytechnical-university;* U.S. Dep't of Justice, U.S. Attorney's Office, Eastern District of Louisiana, ''Ex-White House Military Aide and Maryland Businessman Found Guilty for Operating Fraudulent EB–5 Visa Scheme (Sept. 6, 2019), available at *https://www.justice.gov/usao-edla/pr/ex-white-house-military-aide-and-maryland-businessman-found-guilty-operating-fraudulent;* U.S. Dep't of Justice, U.S. Attorney's Office, West District of Wisconsin, ''Developer Sentenced to 4 Years in Prison for Defrauding Investors seeking Permanent Residency under Federal Immigration Program (Aug. 4, 2017), available at *https://www.justice.gov/usao-wdwa/pr/developer-sentenced-4-years-prison-defrauding-investors-seeking-permanent-residency.*

[309] DHS has also created Forms I–956H, Bona Fides of Persons Involved with Regional Center Program, and I–956K Registration for Direct and Third-Party Promoters, for the new EB–5 program. DHS proposes no fee for those forms in this rule.

[310] *See* section V.B, Methodology, earlier in this preamble for workload volumes and completion rates in the FY 2022/2023 fee review.

[311] *Id.*

IPO staffing did not decrease from the levels estimated in the FY 2016/2017 fee rule despite lower workload volumes because the amount of work required per form increased (in other words, completion rates increased) and USCIS increased the number of other positions to strengthen the program integrity, resulting in increased staffing overall. In some cases, there was adjudicative work that was required even if there was no petition and associated filing fee filed. In addition to reviewing Form I–956G (formerly Form I–924A), USCIS also incurs costs associated with regional centers that fail to file Form I–956G. USCIS will sanction or terminate the designation of a regional center in the program if a regional center fails to submit information annually. *See* INA section 203(b)(5)(G), 8 U.S.C. 1153(b)(5)(G). Therefore, USCIS must take adjudicative action on regional centers that fail to file this form, and there is a cost involved even if no fee is filed to cover the cost.

The reduced EB–5 workload volume contributes to significantly higher fee-paying unit costs in the ABC model because there are fewer paying customers from whom USCIS recovers the cost of processing the EB–5 workloads. As discussed in earlier in this preamble, DHS bases most proposed fees on fee-paying unit costs from the ABC model. *See* section V.B.3., Assessing Proposed fees. In a separate rulemaking, DHS may reevaluate EB–5 proposed fees to meet the timely processing goals of Public Law 117–103. *See* Public Law 117–103 at div. BB, sec. 106.

Table 21: EB-5 Receipts from FY 2016 to FY 2020

Form	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
I-526/I-526E	14,147	12,165	6,424	4,194	4,378
I-829	3,474	2,625	3,283	3,756	3,096
I-956 (former I-924)	436	280	122	79	34
I-956G (former I-924A)	785	842	787	808	702
EB-5 Total	**18,842**	**15,912**	**10,616**	**8,837**	**8,210**

The proposed fees represent consistent application of the methodology discussed earlier in this preamble. In each case, the EB–5 proposed fees are based on the ABC model outputs. As explained earlier in the preamble, the fees for benefit requests with higher fee-paying volume or model outputs, such as the EB–5 forms, are set higher than the model outputs via the process called cost reallocation. *See* section V.B.3. Consistent with the practice and the treatment of similar forms in this proposed rule, the proposed fees for the EB–5 forms exceed the estimated full cost of adjudication because, under the model, the fees include amounts needed to recover the costs associated with processing other workloads where fees are insufficient to recover full cost. Id. DHS may reevaluate EB–5 proposed fees to meet the additional fee guidelines of EB–5 Reform and Integrity Act of 2022 sec. 106(c). Under the ability-to-pay principle, those who are more capable of bearing the burden of fees should pay more for a service than those with less ability to pay. The requirements of immigrant investor program indicate that immigrant investors and regional centers have the ability-to-pay more than most USCIS customers. In addition, compared to the amount of capital required and the required investment levels for an immigrant investor, the amount of the USCIS fees are an insignificant amount. Thus, DHS proposes that the fee amounts indicated by the ABC full cost recovery model for the four immigrant investor forms are not capped or decreased. DHS believes that immigrant investors and regional centers are able to pay the fees and the requirements for financial wherewithal in the program are inconsistent with shifting its costs to other requests and requiring others to subsidize its share of the costs of USCIS. While the proposed EB–5 fees are some of the highest on the fee schedule, the revenue from them is still a small part of the total revenue forecast because the volumes are low. See Table 22. The EB–5 average annual revenue forecast is approximately $80.7 million for the FY 2022/2023 period. As such, the EB–5 revenue forecast is only approximately 2 percent of the total average annual FY 2022/2023 revenue forecast with the proposed fees.

Table 22: FY 2022/2023 Average Annual EB-5 Revenue Forecast with Proposed Fees	
Immigration Benefit Request	**Revenue with Proposed Fees (in Millions)**
I-526/I-526E Immigrant Petition by Standalone/Regional Center Investor	$43.52
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status	$30.96
I-956, Application for Regional Center Designation	$2.96
I-956G, Regional Center Annual Statement	$3.25
EB-5 Subtotal	**$80.69**
Asylum Program Fee	$425.18
All other IEFA non-premium revenue	$4,657.85
Grand Total	**$5,163.72**

P. Genealogy and Records

1. Genealogy Search and Records Requests

DHS revised the regulations governing genealogical research requests in the 2020 fee rule. *See* 85 FR 46915. The changes were intended to allow USCIS to send pre-existing digital records as part of a response to requestors who have filed Form G–1041, Genealogy Index Search Request, and otherwise help USCIS improve genealogy processes. DHS also proposed a fee for a Genealogy Index Search Request, Form G–1041, of $240, and for a Genealogy Records Request, Form G–1041A, of $385. 84 FR 62362. Numerous commenters generally opposed increasing fees for genealogy search and records requests for various reasons. 85 FR 46834. For the 2020 final rule, USCIS refined the methodology used to estimate genealogy program costs and DHS established a fee for Form G–1041 when filed online as $160 and $170 when filed on paper. DHS established a fee for Form G–1041A when filed online as $255 and $265 when filed by paper. These fees were enjoined and not implemented.

The FY 2022/2023 IEFA fee review has determined that USCIS needs additional funds for its Genealogy Search and Records Requests program. Therefore, DHS again proposes changes to the genealogy search and request program. These proposals will allow USCIS to send pre-existing digital records as part of a response to requestors who have filed Form G–1041, Genealogy Index Search Request, recover the costs of the genealogy program, and may otherwise help USCIS improve genealogy processes.

Congress provided specific authority for establishing USCIS genealogy program fees. *See* INA sec. 286(t), 8 U.S.C. 1356(t). The statute requires that genealogy program fees be deposited into the IEFA and provides that the fees for such research and information services may be set at a level that will ensure the recovery of the full costs of providing all such services. *Id.* USCIS does not receive appropriations for genealogy workloads, and genealogy revenue does not augment Government tax revenue. USCIS only receives appropriations for E-Verify, the Citizenship and Integration Grant Program, and other specific purposes, as explained in section III.B. of this preamble.

The USCIS genealogy program processes requests for historical records of deceased individuals. *See* Establishment of a Genealogy Program, 73 FR 28026 (May 15, 2008) (final rule). Before creating a genealogy program, USCIS processed the requests as FOIA request workload, which resulted in delays. *See* Establishment of a Genealogy Program, 71 FR 20357 (Apr. 20, 2006) (proposed rule). Requestors use the USCIS website [312] or Form G–1041, Genealogy Index Search Request, to request an index search of USCIS historical records. *See* 8 CFR 103.7(b)(1)(i)(E) (Oct. 1, 2020). USCIS informs the requestor whether any records are available by mailing a response letter. Requestors use the Form G–1041A, Genealogy Records Request, to obtain copies of USCIS historical records, if they exist. *See* 8 CFR 103.7(b)(1)(i)(F) (Oct. 1, 2020).

In the FY 2016/2017 fee rule, USCIS adopted the first change to the genealogy search and records requests fees since they had been established. *See* 81 FR 73304. DHS set both genealogy search and records requests fees at $65. *Id.* At the time, genealogy fees were insufficient to cover the full costs of the genealogy program. DHS increased the fee to meet the estimated cost of the program and permit USCIS to respond to requests for such historical records and materials.

After more than ten years of operating the genealogy program, DHS proposes to make several changes to the process. Ultimately, DHS expects these changes may allow USCIS to provide genealogy search results and historic records more quickly when pre-existing digital records exist.

First, DHS proposes to revise genealogy regulations to encourage requestors to submit the electronic versions of Form G–1041, Genealogy Index Search Request, and Form G–1041A, Genealogy Records Request, through the online portal at *https://www.uscis.gov/records/genealogy*. *See* proposed 8 CFR 103.40(b). Electronic versions of the requests reduce the administrative burden on USCIS by eliminating the need to manually enter requestor data into its systems. Requestors that cannot submit the forms electronically may still submit paper copies of both forms with the required filing fees.

Second, DHS proposes to change the search request process so that USCIS may provide requestors with pre-existing digital records, if they exist, in response to a Form G–1041, Genealogy Index Search Request. When requestors submit Form G–1041, Genealogy Index Search Request, on paper or electronically, USCIS searches for available records. If no record is found,

[312] USCIS, ''Genealogy,'' available at *https://www.uscis.gov/records/genealogy*.

then USCIS notifies the requestor by mail or email. If USCIS identifies available records, then USCIS provides details on the available records, but does not provide the copies of the actual records. Under current regulations, a requestor must file Form G–1041A, Genealogy Records Request, with a fee for each file requested, before USCIS provides any records that it found as a result of the search request. DHS proposes to provide the requestor with those pre-existing digital records, if they exist, via email in response to the initial search request. *See* proposed 8 CFR 103.40(f). If only paper copies of the records exist, or if the requestor wants a physical copy of the digitized record, then the requestor must follow the current process and file Form G–1041A. Consistent with current practices, requestors must still pay the Form G–1041A request fee to request a paper record. In short, the proposal may allow some customers to file a single search request with a single fee and still receive the genealogy information that they requested. USCIS forecasts that records requests may be approximately 30 percent of index search requests. *See* section V.B.1. of this preamble for immigration benefit request volumes. Meaning, for approximately 70 percent of index searches, USCIS may provide electronic copies of digital records, USCIS may not identify any records, or customers may not follow-up with a records request for hardcopies.

Lastly, DHS proposes to change the genealogy fees to reflect these operational changes and recover the full cost of providing genealogical services. *See* 8 CFR 103.7(b)(1)(i)(E) and (F) (Oct. 1, 2020); proposed 8 CFR 106.2(c)(1) and (2). USCIS estimated the workload volume based on these proposed changes and historic information. USCIS must estimate the costs of the genealogy program because it does not have a discrete genealogy program operating budget. Maintaining a separate genealogy program budget would be administratively burdensome because it is such a small portion of USCIS staffing, as explained later in this section.

The proposed fees are based on results from the same ABC model used to calculate other immigration benefit request fees proposed in this NPRM. However, the proposed increase reflects changes in USCIS' methodology for estimating the costs of the genealogy program to improve the accuracy of its estimates. In the FY 2016/2017 fee rule, DHS estimated the costs of the genealogy program indirectly using projected volumes and other information. *See* 81 FR 26919. It did not separate genealogy from the other costs related to the division that handles genealogy, FOIA, and similar USCIS workloads. *Id.* This methodology underestimated the total cost to USCIS of processing genealogy requests by not fully recognizing costs associated with the staff required to process genealogical requests. Therefore, other fees have been funding a portion of the costs of the genealogy program, and DHS proposes to correct that.

In the 2020 fee rule, USCIS created a new activity for this workload, called Research Genealogy, in the ABC model.[313] Previous fee reviews captured this work as part of the Records Management activity. The same office that researches genealogy requests, the National Records Center (NRC), also performs other functions, such as FOIA operations, retrieving, storing, and moving files. To improve efficiency and decrease wait times for USCIS Genealogy Program customers, processing of USCIS genealogy requests transitioned from Washington, DC, to USCIS NRC in Lee's Summit, Missouri. This change enabled USCIS to revise its cost estimation methodology to incorporate a proportional share of the NRC's operating costs based on the staff devoted to the genealogy program. USCIS estimates that there are approximately 6 genealogy positions out of the total 24,266 positions in the fee review.

USCIS used historical information to calculate completion rates for genealogy search and records requests. The completion rates allow for separate search and record request fees based on the average time to complete a request. As such, the proposed fees each represent the average staff time required to complete the request, similar to most other fees proposed in this rule. The completion rates in the 2020 fee rule documentation did not reflect the workload transfer. Updated data that reflects the change were used for this fee review and shows that completion rates decreased.

In addition to genealogy staffing, USCIS also incurs overhead costs associated with storing and managing genealogy records, including the cost of facilities and information technology. The projected costs included a portion of these overhead costs. The paper filing fee includes a portion of lockbox costs for genealogy requests filed on paper. Requests filed online do not include lockbox costs. USCIS estimates that over 90 percent of genealogy customers may file online.

The proposed fees for Form G–1041 are $100 for online and $120 for paper filing. The proposed fees for Form G–1041A are $240 for online and $260 for paper filing. See Table 23 for a summary of current and proposed genealogy fees. As explained earlier in this section, the proposal may allow some customers to file a single search request with a single fee and still receive the genealogy information that they requested. The proposal to include pre-existing digital records, if they exist, via email in response to the initial search request would also be more efficient than the current process, as described earlier in this section. USCIS estimates that genealogy fees may provide $1.9 million in revenue or approximately 0.04 percent of the USCIS total $5,163.7 million in revenue from the proposed fee structure.

[313] The current FY 2022/2023 fee review continues to use this new activity. *See* the supporting documentation accompanying this proposed rule for more information on the activities in the ABC model.

Table 23: Genealogy Fee Comparison					
Form No.	**Form Description**	**Current Fee(s)**	**Proposed Fee**	**Difference**	**Percentage Difference**
G-1041	Genealogy Index Search Request - Online	$65	$100	$35	54%
G-1041	Genealogy Index Search Request - Paper	$65	$120	$55	85%
G-1041A	Genealogy Records Request - Online	$65	$240	$175	269%
G-1041A	Genealogy Records Request - Paper	$65	$260	$195	300%
G-1041 and G-1041A	Genealogy Index Search Request and Records Request - Online (digital records)	$130	$100	-$30	-23%

2. Request for a Certificate of Non-Existence

USCIS allows individuals to request a Certificate of Non-Existence to document that USCIS has no records indicating that an individual became a naturalized citizen of the United States. *See* 8 CFR 103.7(f) (Oct. 1, 2020) (stating, ''The Director of USCIS, or such officials as he or she may designate, may certify records when authorized under 5 U.S.C. 552 or any other law to provide such records.''). This service is often used by individuals gathering genealogical records to claim the citizenship of another nation. Historically, USCIS has operated the Certificate of Non-Existence request process informally and at no cost to individuals requesting a Certificate. USCIS has now proposed to create USCIS Form G–1566, Request for a Certificate of Non-Existence to enable customers to request the Certificate. A Request for a Certificate of Non-Existence is mailed to and processed at the NRC. USCIS is currently seeking public comment and OMB approval for creation of Form G–1566, Request for a Certificate of Non-Existence, in compliance with the requirements of the PRA. *See* 86 FR 68680 (December 3, 2021) (requesting public comments on the information collection instrument for 30 days).[314]

DHS proposes a fee of $330 for a request for a Certificate of Non-Existence. DHS calculated the fee to recover the estimated full cost of processing these requests. If finalized, the fee will be established in this rule and will be required for submission of Form G–1566 if it is approved before this rule takes effect. If the form is not approved before this rule is to take effect, the fee will be due with the submission of a non-form request until the form is prescribed as provided in 8 CFR 299.1. DHS proposes this fee consistent with the full cost recovery model used for this rule to generate revenue to mitigate the need for other fee payers to fund the costs of providing certificates.

The proposed fee for a request for a Certificate of Non-Existence is based on the same ABC model used to calculate the other proposed fees. USCIS created a new activity for this workload, called Certify Nonexistence, in the ABC model. Similar to the genealogy fee, previous fee reviews captured this work as part of the Records Management activity. *See* the supporting documentation accompanying this proposed rule for more information on the activities in the ABC model. Additionally, USCIS used subject matter expert input to determine a completion rate for reviewing and responding to requests for a Certificate of Non-Existence. Therefore, the proposed fee represents the average staff time required to complete a request, similar to most other fees proposed in this rule. The fee DHS proposes does not reflect cost reallocation from other non-paying workloads to processing requests for a Certificate of Non-Existence, because DHS determined that including such costs would disproportionately affect the small number of requestors.

Q. Fees Shared by CBP and USCIS

CBP shares the workload with USCIS in adjudicating the following immigration benefit requests:

- Form I–192, Application for Advance Permission to Enter as a Nonimmigrant.
- Form I–193, Application for Waiver of Passport and/or Visa.
- Form I–212, Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal.
- Form I–824, Application for Action on an Approved Application or Petition.

USCIS and CBP each keep the revenue for the applications that they adjudicate. Tables 20 and 21 summarize CBP and USCIS information for these shared workloads. Table 24 provides revenue information for both DHS components. CBP provided revenue collections from FY 2014 to FY 2020 for these immigration benefit requests. Travel restrictions in FY 2020 likely lowered revenue collections. DHS believes that pre-pandemic data is likely to be more representative of reasonable expectations for FY 2022 and FY 2023 and so DHS decided to use FY 2019 amounts to reflect costs and revenue before the pandemic. USCIS divided the

[314] See Notice by USCIS, Agency Information Collection Activities; New Collection: Request for a Certificate of Non-Existence, available at *https://www.federalregister.gov/documents/2021/12/03/2021-26245/agency-information-collection-activities-new-collection-request-for-a-certificate-of-non-existence.*

revenue collections by the fee for each immigration benefit request to derive the fee-paying volume for each immigration benefit request. CBP did not provide total workload counts for these immigration benefit requests. Table 24 summarizes the USCIS and CBP revenue collections, current fees, and fee-paying actuals.

Table 24: USCIS and CBP FY 2019 Revenue Actuals

Form	Revenue Collections	Current Fee	Fee-Paying Receipts
I-192	**$24,678,675**	**N/A**	**28,569**
I-192 USCIS Total	$21,472,270	$930	23,088
I-192 CBP Total	$3,206,405	$585	5,481
I-193	**$3,980,339**	**N/A**	**6,804**
I-193 USCIS Total	$26,325	$585	45
I-193 CBP Total	$3,954,014	$585	6,759
I-212	**$7,877,160**	**N/A**	**8,470**
I-212 USCIS Total	$7,697,670	$930	8,277
I-212 CBP Total	$179,490	$930	193
I-824	**$4,944,135**	**N/A**	**10,633**
I-824 USCIS Total	$4,920,945	$465	10,583
I-824 CBP Total	$23,190	$465	50
USCIS and CBP Total	**$41,490,034**		**54,476**
USCIS Total	**$34,117,210**		**41,993**
CBP Total	**$7,363,099**		**12,483**

DHS proposes to move to a single fee for each of these four immigration benefit requests. The proposed fee is the same whether CBP or USCIS adjudicates the application. To calculate the proposed fees for these four forms, DHS combined the estimated cost and volume information for these applications that both USCIS and CBP adjudicate. DHS adds together the fee-paying receipt and cost data for both components, as shown in Table 25, when calculating overall estimated costs and projected receipts. USCIS calculated proposed fees using the same methodology as other proposed fees and then added information from CBP into the USCIS fee schedule. CBP estimated the total cost for Forms I–192 and I–193 in FY 2019. As stated earlier, DHS used FY 2019 CBP data because it is likely more representative of a typical year than more recent data. CBP did not estimate the total cost of Forms I–212 or I–824 in FY 2019. Based on CBP revenue collections in Table 24, fee-paying receipts for Forms I–212 and I–824 appear to be very low. USCIS incorporated the total costs and derived fee-paying volume for the respective CBP workloads into the USCIS fee schedule and added the CBP estimated costs to the USCIS estimated total cost from the ABC model. USCIS added the CBP-derived fee-paying volume to the USCIS fee-paying volume estimates. We divided the combined total cost by the combined total fee-paying volumes for these immigration benefits. Table 25 details the estimated cost data, fee-paying receipts, fee-paying unit cost, and proposed fees for combined USCIS and CBP workloads.

Table 25: USCIS and CBP FY 2022/2023 Estimated Costs				
Form	**Cost Data**	**Estimated Fee-Paying Receipts**	**FY 2022/2023 Fee-Paying Unit Cost**	**Proposed Fee**
I-192	**$23,143,825**	**10,954**	**$2,113**	**$1,100**
I-192 USCIS Total	$20,829,436	5,473	$3,806	
I-192 CBP Total	$2,314,389	5,481	$422	
I-193	**$19,478,943**	**6,772**	**$2,876**	**$695**
I-193 USCIS Total	$17,020	13	$1,309	
I-193 CBP Total	$19,461,923	6,759	$2,879	
I-212	**$7,457,101**	**7,260**	**$1,027**	**$1,395**
I-212 USCIS Total	$7,457,101	7,067	$1,055	
I-212 CBP Total	-	193	-	
I-824	**$5,106,968**	**10,633**	**$480**	**$675**
I-824 USCIS Total	$5,106,968	10,242	$499	
I-824 CBP Total	-	50	-	
USCIS and CBP Total	**$55,186,837**	**35,278**		
USCIS Total	**$33,410,525**	**22,795**		
CBP Total	**$21,776,312**	**12,483**		

The proposed fees represent single DHS fees for each of these workloads by combining the estimated costs and fee-paying volumes of USCIS and CBP. DHS believes that a single fee for each of these shared workloads will reduce confusion for individuals interacting with CBP and USCIS. DHS used the combined CBP and USCIS fee-paying unit cost to calculate the proposed fees. DHS proposes to limit the fee increases for Forms I–192 and I–193. *See* section V.B.3 for information on how DHS assesses fees. The proposed fees for Forms I–212 and I–824 would recover full cost. Under this proposal, CBP and USCIS will each continue to keep the revenue that they collect for these fees.

R. Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100 (NACARA))

DHS proposes to adjust the fee for Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100 (NACARA)). The IEFA fees for this application have not changed since 2005. The proposed fee remains less than USCIS' estimated costs associated with adjudicating the application. Additionally, DHS proposes to combine the current multiple fees into a single Form I–881 fee because we have no data that supports limiting the amount charged to a family.

INS implemented two fees for this benefit request in 1999. *See* 63 FR 64895 (Nov. 24, 1998) (proposed rule) and 64 FR 27856 (May 21, 1999) (interim final rule). The two IEFA fees were $215 for an individual and $430 as a maximum per family. *See* 64 FR 27867–27868. EOIR collected a separate $100 fee. *Id.* INS used ABC to determine the proposed IEFA fees. *See* 63 FR 64900. The IEFA NACARA fees have only changed by inflation since creation of the NACARA program. *See* 69 FR 20528 (Apr. 15, 2004) and 70 FR 56182 (Sept. 26, 2005). The current fees are as follows:

1. $285 for individuals,
2. $570 maximum for families, and
3. $165 at EOIR, whether an individual or family.

In FY 2020, Form I–881 fees generated $107,640 in IEFA revenue. Approximately 53 percent of applicants paid the $285 fee. *See* Table 26. EOIR provided receipt information for FY 2016 to FY 2018. EOIR received 339 applications in FY 2016, 326 in FY 2017, and 277 in FY 2018. DHS proposes no changes to the EOIR fee because it lacks the authority to change DOJ fees.

Table 26: FY 2020 I-881 Revenue and Fee-Paying Data				
Description	**Fee**	**FY 2020 Revenue**	**FY 2020 Fee-Paying Receipts**	**FY 2020 Percentage of Receipts Volume**
I-881 Individual	$285	$68,685	241	53 percent
I-881 Family	$570	$5,130	9	2 percent
I-881 EOIR	$165	$33,825	205	45 percent

Table 26: FY 2020 I-881 Revenue and Fee-Paying Data				
Description	**Fee**	**FY 2020 Revenue**	**FY 2020 Fee-Paying Receipts**	**FY 2020 Percentage of Receipts Volume**
Total	**N/A**	**$107,640**	**455**	**100 percent**

In prior fee rules, DHS has not changed the Form I–881 fees. *See* 72 FR 29854, 75 FR 58964, and 75 FR 73312. DHS excluded this immigration benefit request from previous fee rules, essentially treating it like other temporary programs or policies such as TPS and DACA. *See* 81 FR 73312. DHS expects the population will be exhausted eventually due to relevant eligibility requirements. *Id.*

DHS proposes a single $340 fee for any Form I–881 filed with USCIS. *See* proposed 8 CFR 106.2(a)(54). DHS estimated the fee-paying unit cost (model output) for Form I–881 is $2,382. USCIS forecasts an average of 385 annual Form I–881 receipts in the FY 2022/2023 biennial period. Given the low volume and high model output, DHS proposes a fee that is far less than the estimated cost to adjudicate the form. DHS believes that the fee that the ABC model calculates for this form would be overly burdensome and could result in an eligible applicant being unable to file a request. Considering both its affordability and that the estimated volume is so small, recovering full cost for this workload would not significantly affect other fees. USCIS does not track the different level of effort required to adjudicate Form I–881 applications filed by an individual compared to a family. However, because DHS is proposing a fee that is only 14 percent of the relative cost to USCIS to adjudicate the from, DHS is not providing a multiple filing discount to applicants in the same family who file their Form I–881 simultaneously.

S. 9–11 Response and Biometric Entry-Exit Fee for H–1B and L–1 Nonimmigrant Workers (Pub. L. 114–113 Fees)

In section 402(g) of Div. O of the Consolidated Appropriations Act, 2016 (Pub. L.114–113) [315] enacted December 18, 2015, Congress required the submission of an additional fee of $4,000 for certain H–1B petitions and $4,500 for certain L–1A and L–1B petitions. The language in Public Law 114–113 is ambiguous and, as a result, DHS had to determine whether the fee applied to all extension petitions by covered employers, or just those for which the fraud fee was also charged (extension of stay with change of employer). DHS interpreted the Public Law 114–113 fee to apply only when the fraud fee, described in INA sec. 214(c)(12), 8 U.S.C. 1184(c)(12), is also required and issued guidance accordingly. *See* 8 CFR 103.7(b)(1)(i)(III) and (JJJ) (Oct. 1, 2020). However, in the 2020 fee rule, DHS revisited the issue and interpreted Public Law 114–113 fee as applying to all extension of stay petitions even when the fraud fee is not applicable. DHS still believes that the language in the subject statute is ambiguous and could be interpreted as provided in the 2020 fee rule. However, DHS is not including the 9–11 Response and Biometric Entry-Exit Fees for H–1B and L–1 Nonimmigrant Workers in this rulemaking. Thus, 8 CFR 106.2(c)(7) and (8) as codified effective October 2, 2020, are proposed to be revised in this rulemaking with the text that existed immediately before the 2020 fee rule. See proposed 8 CFR 106.2(c)(8) and (9) (setting out the text of 8 CFR 103.7(b)(1)(i)(III) and (JJJ) as of October 1, 2020, except providing that the fee is scheduled to end on September 30, 2027, as required by section 30203 of Public Law 115–123 (Feb. 9, 2018)). DHS may address the 9–11 Response and Biometric Entry-Exit Fees for H–1B and L–1 Nonimmigrant Workers in a separate rulemaking in the future.

T. Adjusting USCIS Fees for Inflation

DHS is proposing to codify a provision that will authorize it to adjust the fees prescribed in proposed 8 CFR 106.2 by the rate of inflation. Proposed 8 CFR 106.2(c). Before DHS removed it with the 2020 fee rule, 8 CFR 103.7(b)(3)(Oct. 1, 2020) provided that DHS may adjust USCIS immigration benefit fees annually by publication of an inflation adjustment notice in the **Federal Register**. The adjustment was based on Federal employee salary inflation figures issued by the Office of Management and Budget. *Id.* DHS last adjusted fees by inflation in 2005. *See,* 70 FR 56182 (Sept. 26, 2005). In the 2020 fee rule, DHS removed that provision for a number of reasons. First, an agency cannot publish a document in the Notices category of the **Federal Register** that provides that regulated parties ignore the CFR and follow what the Notice provides instead. That violates the Federal Register Act, 44 U.S.C. 1510, and its implementing regulations, 1 CFR part 21. Thus, 8 CFR 103.7(b)(3) did not provide the authorization for which it was intended. In addition, DHS felt that adjusting USCIS fees by inflation or social security cost of living adjustments would be insufficient to recover the full cost of providing adjudication and naturalization services. *See* 85 FR 46867.

DHS has reconsidered the value of codifying an inflationary adjustment provision. Regardless of the CFO Act requirements, and although DHS has completed its biennial fee reviews as required, the time required to propose and finalize new full cost recovery fee schedules does not allow DHS to make timely adjustments to USCIS fees to keep up with the effects of changes in immigration laws, policy, or the costs of services. DHS has not calculated what the effects of an inflation adjustment of fees in intervening years between fee rules would have been. However, while we assume that inflationary adjustments would not have provided USCIS with sufficient revenue to fully cover costs, we think intermittent adjustments would have ameliorated the size of fee adjustments when they were made via rulemaking.

DHS proposes to use the Consumer Price Index for All Urban Consumers (CPI–U), as published by the U.S. Department of Labor, U.S. Bureau of Labor Statistics, as the inflation index for these fee adjustments.[316] Proposed 8 CFR 106.2(c). In recognition of the rapid growth in the size of transfers between a growing number of stakeholders affected by the past three fee rules, adjusting USCIS fees for inflation as measured by the CPI–U may insure future revenues against the gradual erosion of real fee revenue dollars in the event that future rulemakings are

[315] Section 402(g) of Div. O of Public Law 114–113 added a new section 411 to the Air Transportation Safety and System Stabilization Act, 49 U.S.C. 40101 note. Section 411 provided that the fees collected thereunder would be divided 50/50 between general Treasury and a new ''9–11 Response and Biometric Exit Account,'' until deposits into the latter amounted to $1 billion, at which point further collections would go only to general Treasury. Deposits into the 9–11 account are available to DHS for a biometric entry-exit screening system as described in 8 U.S.C. 1365b.

[316] See, Consumer Price Index, at *https://www.bls.gov/news.release/cpi.toc.htm* (last viewed July 27, 2022).

slowed by intensive, careful consideration of complex competing interests and impacts. Consistent with the FPG, this approach may also base fees on the constant-dollar value to consumers, generally, rather than more opaque estimates of Government costs or the salaries of Federal employees. Finally, using the CPI–U as our inflation index for all fees is consistent with various statutes that have provided that USCIS will use the CPI to adjust certain fees. *See, e.g.,* Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000) (premium processing fee adjustment); 48 U.S.C. 1806(a)(6)(A)(ii) (Authority to adjust the CNMI education fee for inflation), and; 8 U.S.C. 1356(u)(3)(C) (adjustment of premium processing fees on a biennial basis).

The impacts of such an adjustment would be analyzed in a future rule should DHS decide to use this proposed authority. In such a case, the inflation adjusted fees may be higher or lower than proposed here. For example and as a point of comparison only, if DHS adjusted the Form N–400 and biometric services fee by inflation as of March 22, 2022, then the inflation-adjusted fees would be at least $865, $140 more than the current fees for Form N–400 of $725 ($640 + $85), and $105 more than the proposed N–400 fee of $760, but less than the fee set in the 2020 fee rule of $1,170.[317] Other inflation adjusted fees, such as those for Forms I–129 or I–485, would likely be less than the fees proposed in this rule. Future inflation-based fee increases would not include policy changes. They would only adjust fees. It is unlikely that DHS would pursue an inflation-based fee adjustment until FY 2025 or at least one year after DHS finalizes the fees it proposes in this rule.

[317] Current fees became effective on Dec. 23, 2016. *See* 81 FR 73292. The current fees for Form N–400 ($640) and biometric services ($85) total $725 for most applicants. The consumer price index for all urban consumers (CPI–U) was 241.432 in Dec. 2016 and 289.109 in Mar. 2022. The change in the index between these two periods was 47.68 or 19.75 percent. *See* U.S. Department of Labor, Bureau of Labor Statistics, All Urban Consumers (CPI–U) tables, available at *https://data.bls.gov/timeseries/CUUR0000SA0*. The inflation adjusted amounts using this example would be as follows: N–400: $640 multiplied by 1.1975, which is approximately $766.38; biometric services fee: $85 multiplied by 1.1975, which is approximately $101.79. DHS rounds fees to the nearest $5. Rounded to the nearest $5, the inflation adjusted fees would be $765 and $100, totaling $865. The proposed fee for Form N–400 (including the cost of biometric services) is $760, which is $35 or 5 percent more than the total current fees of $725 for Form N–400 and biometric services.

U. Miscellaneous Technical and Procedural Changes

DHS proposes several technical or procedural changes. This rule proposes to move the fee regulations for USCIS to a separate part of chapter I of title 8 of the CFR. It moves them from 8 CFR part 103 to 8 CFR part 106 to reduce the length and density of part 103 as well as to make it easier to locate specific fee provisions. In addition to the renumbering and redesignating of paragraphs, this proposed rule has reorganized and reworded some sections to improve readability. However, as noted earlier in this preamble, DHS is proposing to adopt the changes made by the 2020 fee rule as proposed for revision or republication in this rule.

DHS also proposes to republish the amended title of 8 CFR part 103 to make it more descriptive of its contents. *See* proposed republished 8 CFR part 103. The title of part 103 before October 2, 2020, was ''Immigration Benefits; Biometric Requirements; Availability of Records.'' Part 103 contains several significant requirements for filing requests, forms, and documents with USCIS, especially in 8 CFR 103.2, which should be made clearer to the users of that part. Therefore, DHS proposes to revise the title of the part to include a reference to filing requirements. The proposed title is ''Part 103—Immigration Benefit Requests; USCIS Filing Requirements; Biometric Requirements; Availability of Records.''

In addition, DHS is proposing and republishing a severability provision in new 8 CFR part 106. As stated repeatedly in this preamble, the fees DHS is proposing in this rule are essential to USCIS being able to fund its operations without further deterioration of its services. While all of the proposed fees and other changes in this rule are needed to ensure adequate resources, partially achieving the objectives of this rule is preferable to achieving none of them. DHS believes that some of the provisions of each new part can function sensibly independent of other provisions. As explained in this preamble, ABC and the full cost recovery fee model that DHS uses to calculate the fees in this rule results in most of the fees being dependent on policy decisions that affect the level of other fees. For example, when DHS shifts the cost of benefit request fees due to policy considerations, exempts requests from fees, or if fees are capped by law, most other fees must/then increase to compensate to recover full cost. On the other hand, certain fees, like the Asylum Program Fee and genealogy fees, could be removed entirely without affecting all other fees generally, although they would reduce USCIS projected revenue or carryover balances. For example, absent the Asylum Program Fee or appropriations, USCIS may continue to implement the Asylum Processing IFR, perhaps at a reduced level. Such a funding decision may be similar to when USCIS anticipated appropriations to fund RAIO, SAVE, and the Office of Citizenship when it finalized fees in the FY 2010/2011 fee rule. *See* 75 FR 58961, 58966. When appropriations resources did not fully materialize, USCIS used other fee revenue to support these programs in the time between the FY 2010/2011 fee rule and the FY 2016/2017 fee rule. *See* 81 FR 26910–26912. If Congress provides full or partial appropriations to fund the Asylum Processing IFR, then DHS may be able to remove or reduce the proposed $600 Asylum Program Fee in a final rule. If a court ruling were to enjoin the Asylum Processing IFR or the Asylum Program Fee, then other USCIS operations could continue to benefit from the increased revenue from other proposed fees while halting or reducing implementation of the Asylum Processing IFR. Therefore, to protect the goals for which this rule is being proposed DHS is codifying our intent that the provisions be severable so that, if necessary, the regulations can continue to function should a provision be stricken. *See* proposed republished 8 CFR 106.6.

IX. Proposed Fee Adjustments to IEFA Immigrant Benefits

At current fee levels, projected USCIS costs for FY 2022 and FY 2023 exceed projected revenue by an average of $1,262.3 million each year. *See* Table 6, IEFA Non-Premium Cost and Revenue Comparison. Therefore, DHS proposes to adjust the fee schedule to recover the full cost of processing immigration benefit requests and to continue to maintain or improve current service delivery standards.

After resource costs are identified, the ABC model distributes them to USCIS' primary processing activities. Table 27 outlines total IEFA costs by activity. See the supporting documentation in the docket of this rulemaking for more information on the ABC model, activities, and results described in this section. While not an activity, the table lists the Asylum Processing IFR as a separate row to be transparent.

Table 27: Projected IEFA Costs by Activity (Dollars in Millions)			
Activity	**FY 2022**	**FY 2023**	**FY 2022/2023 Average**
Certify Nonexistence	$1.3	$1.4	$1.4
Conduct TECS Check	$129.6	$133.2	$131.4
Direct Costs	$117.0	$116.7	$116.8
Fraud Detection and Prevention	$328.6	$342.1	$335.4
Inform the Public	$315.9	$323.6	$319.8
Intake	$126.5	$128.4	$127.5
Issue Document	$47.2	$46.4	$46.8
Make Determination	$1,852.4	$1,901.1	$1,876.8
Management and Oversight	$1,256.7	$1,275.8	$1,266.3
Perform Biometrics Services Subtotal	$190.4	$193.5	$191.9
Manage Biometric Services	$45.9	$46.9	$46.4
Collect Biometric Data	$38.1	$39.2	$38.7
Check Fingerprints	$39.3	$39.9	$39.6
Check Name	$67.0	$67.4	$67.2
Records Management	$255.0	$260.5	$257.8
Research Genealogy	$1.9	$1.9	$1.9
Systematic Alien Verification for Entitlements	$50.6	$51.7	$51.1
Subtotal before Asylum Processing IFR	**$4,673.3**	**$4,776.4**	**$4,724.8**
Asylum Processing IFR	$438.2	$413.6	$425.9
Total with Asylum Processing IFR	**$5,111.5**	**$5,190.0**	**$5,150.7**

Next, the ABC model distributes activity costs to immigration benefit requests. Each total cost result is based on the resources, activities, and various drivers which contribute to the estimated cost of its completion. The ABC model estimates total cost before calculating unit costs. For total cost by activity as unit costs, see Appendix VIII of the supporting documentation included in this docket. Table 28 summarizes total cost estimates by immigration benefit request based on the ABC model results. As explained earlier in the preamble, the ABC model excludes costs for TPS and DACA. The table includes benefit requests without fees. This table includes USCIS costs in the 2-year average for FY 2022/2023. It also includes CBP costs; as such, the total in Table 28 is higher than in Table 27. *See* Table 25 in section VIII.Q. for CBP total costs separately.

Table 28: Projected FY 2022/2023 Average Annual Total Cost per Immigration Benefit with Proposed Fees (Dollars in Millions)	
Immigration Benefit Request	**Total Cost**
I-90 Application to Replace Permanent Resident Card Subtotal	$213.56
I-90 Application to Replace Permanent Resident Card - Online	$131.23
I-90 Application to Replace Permanent Resident Card - Paper	$82.33
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$2.31
I-129 Petition for a Nonimmigrant Worker Subtotal	$355.89
H-1 Classification	$247.11
H-2A - Named Beneficiaries	$3.22
H-2B - Named Beneficiaries	$1.96
L Classification	$43.24
O Classification	$21.17
I-129CW, E, H-3, TN, P, Q, or R Classifications	$30.59
H-2A - Unnamed Beneficiaries	$6.89
H-2B - Unnamed Beneficiaries	$1.71
I-129F Petition for Alien Fiancé(e)	$22.01
I-130 Petition for Alien Relative Subtotal	$500.49
I-130 Petition for Alien Relative - Online	$112.4
I-130 Petition for Alien Relative - Paper	$388.09
I-131 Application for Travel Document	$117.37
I-131 Refugee Travel Document	$9.58
I-131A Application for Carrier Documentation	$2.70
I-140 Immigrant Petition for Alien Worker	$73.87
I-191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	$0.08
I-192 Application for Advance Permission to Enter as Nonimmigrant	$23.14

Table 28: Projected FY 2022/2023 Average Annual Total Cost per Immigration Benefit with Proposed Fees (Dollars in Millions)	
Immigration Benefit Request	**Total Cost**
I-193 Application for Waiver of Passport and/or Visa	$19.48
I-212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	$7.46
I-290B Notice of Appeal or Motion	$47.76
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$36.1
I-407 Abandonment of Lawful Permanent Resident Status	$0.03
I-485 Application to Register Permanent Residence or Adjust Status	$648.53
I-526/I-526E Immigrant Petition by Standalone/Regional Center Investor	$32.06
I-539 Application to Extend/Change Nonimmigrant Status Subtotal	$197.43
I-539 Application to Extend/Change Nonimmigrant Status - Online	$71.58
I-539 Application to Extend/Change Nonimmigrant Status - Paper	$125.85
I-589 Application for Asylum and for Withholding of Removal	$275.94
I-590 Registration for Classification as Refugee	$205.38
I-600/600A; I-800/800A Intercountry Adoption-Related Petitions and Applications	$3.54
I-600A/I-600 Supplement 3 Request for Action on Approved Form I-600A/I-600	$0.03
I-601 Application for Waiver of Grounds of Inadmissibility	$14.33
I-601A Provisional Unlawful Presence Waiver	$32.4
I-602 Application By Refugee For Waiver of Grounds of Inadmissibility	$0.07
I-604 Determination on Child for Adoption	$0.36
I-612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	$3.19
I-687 Application for Status as a Temporary Resident	$0.00
I-690 Application for Waiver of Grounds of Inadmissibility	$0.02
I-694 Notice of Appeal of Decision	$0.00
I-698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	$0.02
I-730 Refugee/Asylee Relative Position (and Travel Eligibility)	$17.83
I-751 Petition to Remove Conditions on Residence	$114.73

Table 28: Projected FY 2022/2023 Average Annual Total Cost per Immigration Benefit with Proposed Fees (Dollars in Millions)	
Immigration Benefit Request	**Total Cost**
I-765 Application for Employment Authorization Subtotal	$517.71
I-765 Application for Employment Authorization - Online	$16.72
I-765 Application for Employment Authorization - Paper	$501.
I-800A Supplement 3 Request for Action on Approved Form I-800A	$0.67
I-817 Application for Family Unity Benefits	$0.33
I-824 Application for Action on an Approved Application or Petition	$5.11
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status	$22.79
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	$0.87
I-910 Application for Civil Surgeon Designation	$0.51
I-914 T Nonimmigrant Status	$3.16
I-918 U Nonimmigrant Status	$53.82
I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant	$0.67
I-956 Application For Regional Center Designation	$2.18
I-956G Regional Center Annual Statement	$2.4
N-300 Application to File Declaration of Intention	$0.01
N-336 Request for a Hearing on a Decision in Naturalization Proceedings Subtotal	$7.89
N-336 Request for Hearing on a Decision in Naturalization Proceedings - Online	$2.58
N-336 Request for Hearing on a Decision in Naturalization Proceedings - Paper	$5.32
N-400 Application for Naturalization Subtotal	$732.98
N-400 Application for Naturalization - Online	$381.16
N-400 Application for Naturalization - Paper	$351.82
N-470 Application to Preserve Residence for Naturalization Purposes	$0.21
N-565 Application for Replacement Naturalization/Citizenship Document Subtotal	$8.07
N-565 Application for Replacement Naturalization/Citizenship Document - Online	$4.87

Table 28: Projected FY 2022/2023 Average Annual Total Cost per Immigration Benefit with Proposed Fees (Dollars in Millions)	
Immigration Benefit Request	**Total Cost**
N-565 Application for Replacement Naturalization/Citizenship Document - Paper	$3.20
N-600 Application for Certificate of Citizenship Subtotal	$23.64
N-600 Application for Certificate of Citizenship - Online	$7.33
N-600 Application for Certificate of Citizenship - Paper	$16.31
N-600K Application for Citizenship and Issuance of Certificate Under Section 322 Subtotal	$3.03
N-600K Application for Citizenship and Issuance of Certificate - Online	$1.24
N-600K Application for Citizenship and Issuance of Certificate - Paper	$1.79
USCIS Immigrant Fee	$93.75
H-1B Registration Process	$43.25
Request for Certificate of Non-Existence	$1.35
G-1041 Genealogy Index Search Request Subtotal	$1.10
G-1041 Genealogy Index Search Request - Online	$1.03
G-1041 Genealogy Index Search Request - Paper	$0.07
G-1041A Genealogy Records Request Subtotal	$0.79
G-1041A Genealogy Records Request - Online	$0.74
G-1041A Genealogy Records Request - Paper	$0.05
Automatic Certificate of Citizenship	$1.39
Credible Fear	$157.16
DNA Collection	$0.48
Overseas Verifications	$0.46
Reasonable Fear	$31.96
SAVE reimbursable workload	$51.13
Subtotal	$4,746.58
Asylum Program Fee	$425.90
Total	$5,172.48

Table 29 depicts the current and proposed USCIS fees for immigration benefit requests and biometric services. Current USCIS fees are available to the public as part of the current Form G–1055, Fee Schedule, available at *https://*

www.uscis.gov/g-1055; individual web pages for each form are available from *https://www.uscis.gov/forms/all-forms;* and the USCIS Fee Calculator is available at *https://www.uscis.gov/feecalculator.* In addition, the proposed fees are available in the draft version of Form G–1055 as part of the docket for this rulemaking. For a more detailed description of the basis for the changes described in this table, *see* Appendix Table 3 in the supporting documentation accompanying this proposed rule. See Table 1 in the Executive Summary of this preamble for a comparison of current and proposed fees that includes additional contributing factors, like the proposal to remove the separate biometric services fee in most cases. Table 1 may more accurately reflect how the proposed fees affect users.

Table 29: Proposed Fees by Immigration Benefit

Immigration Benefit Request		Current Fee	Proposed Fee	Delta ($)	Percent Change
I-90	Application to Replace Permanent Resident Card - Online	$455	$455	$0	0%
I-90	Application to Replace Permanent Resident Card - Paper	$455	$465	$10	2%
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$445	$680	$235	53%
I-129	Petition for a Nonimmigrant Worker: H-1 Classifications	$460	$780	$320	70%
I-129	H-2A - Named Beneficiaries	$460	$1,090	$630	137%
I-129	H-2B - Named Beneficiaries	$460	$1,080	$620	135%
I-129	Petition for L Nonimmigrant Worker	$460	$1,385	$925	201%
I-129	Petition for O Nonimmigrant Worker	$460	$1,055	$595	129%

Table 29: Proposed Fees by Immigration Benefit					
Immigration Benefit Request		**Current Fee**	**Proposed Fee**	**Delta ($)**	**Percent Change**
I-129CW, and I-129	Petition for a CNMI-Only Nonimmigrant Transitional Worker; Application for Nonimmigrant Worker: E and TN Classifications; and Petition for Nonimmigrant Worker: H-3, P, Q, or R Classification.	$460	$1,015	$555	121%
I-129	H-2A - Unnamed Beneficiaries	$460	$530	$70	15%
I-129	H-2B - Unnamed Beneficiaries	$460	$580	$120	26%
I-129F	Petition for Alien Fiancé(e)	$535	$720	$185	35%
I-130	Petition for Alien Relative - Online	$535	$710	$175	33%
I-130	Petition for Alien Relative - Paper	$535	$820	$285	53%
I-131	Application for Travel Document	$575	$630	$55	10%
I-131	Refugee Travel Document for an individual age 16 or older	$135	$165	$30	22%
I-131	Refugee Travel Document for a child under the age of 16	$105	$135	$30	29%
I-131A	Application for Carrier Documentation	$575	$575	$0	0%
I-140	Immigrant Petition for Alien Worker	$700	$715	$15	2%
I-191	Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	$930	$930	$0	0%
I-192	Application for Advance Permission to Enter as Nonimmigrant	$585/ $930[318]	$1,100	$515/$170	88%/18%
I-193	Application for Waiver of Passport and/or Visa	$585	$695	$110	19%
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	$930	$1,395	$465	50%
I-290B	Notice of Appeal or Motion	$675	$800	$125	19%

Table 29: Proposed Fees by Immigration Benefit					
Immigration Benefit Request		**Current Fee**	**Proposed Fee**	**Delta ($)**	**Percent Change**
I-360	Petition for Amerasian Widow(er) or Special Immigrant	$435	$515	$80	18%
I-485	Application to Register Permanent Residence or Adjust Status	$1,140/ $750[319]	$1,540	$400/$790	35%/105%
I-526/I-526E	Immigrant Petition by Standalone/Regional Center	$3,675	$11,160	$7,485	204%
I-539	Application to Extend/Change Nonimmigrant Status - Online	$370	$525	$155	42%
I-539	Application to Extend/Change Nonimmigrant Status - Paper	$370	$620	$250	68%
I-600/ 600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of an Orphan Petition	$775	$920	$145	19%
I-600A/I-600 Supp. 3	Request for Action on Approved Form I-600A/I-600	N/A	$455	$70	18%
I-601	Application for Waiver of Grounds of Inadmissibility	$930	$1,050	$120	13%
I-601A	Application for Provisional Unlawful Presence Waiver	$630	$1,105	$475	75%
I-612	Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	$930	$1,100	$170	18%
I-687	Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act	$1,130	$1,240	$110	10%
I-690	Application for Waiver of Grounds of Inadmissibility	$715	$985	$270	38%

Table 29: Proposed Fees by Immigration Benefit					
Immigration Benefit Request		**Current Fee**	**Proposed Fee**	**Delta ($)**	**Percent Change**
I-694	Notice of Appeal of Decision	$890	$1,155	$265	30%
I-698	Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA)	$1,670	$1,670	$0	0%
I-751	Petition to Remove Conditions on Residence	$595	$1,195	$600	101%
I-765	Application for Employment Authorization - Online	$410	$555	$145	35%
I-765	Application for Employment Authorization - Paper	$410	$650	$240	59%
I-800/ 800A	Petition to Classify Convention Adoptee as an Immediate Relative/Application for Determination of Suitability to Adopt a Child from a Convention Country	$775	$920	$145	19%
I-800A Supp. 3	Request for Action on Approved Form I-800A	$385	$455	$70	18%
I-817	Application for Family Unity Benefits	$600	$875	$275	46%
I-824	Application for Action on an Approved Application or Petition	$465	$675	$210	45%
I-829	Petition by Investor to Remove Conditions on Permanent Resident Status	$3,750	$9,525	$5,775	154%
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal	$285/ 570[320]	$340	$55/-$230	19%/-40%
I-910	Application for Civil Surgeon Designation	$785	$1,230	$445	57%
I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	$230	$270	$40	17%
I-941	Application for Entrepreneur Parole	$1,200	$1,200	$0	0%
I-956	Application for Regional Center Designation	$17,795	$47,695	$29,900	168%

Table 29: Proposed Fees by Immigration Benefit					
Immigration Benefit Request		**Current Fee**	**Proposed Fee**	**Delta ($)**	**Percent Change**
I-956G	Regional Center Annual Statement	$3,035	$4,470	$1,435	47%
N-300	Application to File Declaration of Intention	$270	$320	$50	19%
N-336	Request for a Hearing on a Decision in Naturalization Proceedings - Online	$700	$830	$130	19%
N-336	Request for a Hearing on a Decision in Naturalization Proceedings - Paper	$700	$830	$130	19%
N-400	Application for Naturalization - Online	$640	$760	$120	19%
N-400	Application for Naturalization - Paper	$640	$760	$120	19%
N-400	Application for Naturalization - Reduced Fee	$320	$380	$60	19%
N-470	Application to Preserve Residence for Naturalization Purposes	$355	$420	$65	18%
N-565	Application for Replacement Naturalization/Citizenship Document - Online	$555	$555	$0	0%
N-565	Application for Replacement Naturalization/Citizenship Document - Paper	$555	$555	$0	0%
N-600	Application for Certificate of Citizenship - Online	$1,170	$1,385	$215	18%
N-600	Application for Certificate of Citizenship - Paper	$1,170	$1,385	$215	18%
N-600K	Application for Citizenship and Issuance of Certificate Under Section 322 - Online	$1,170	$1,385	$215	18%
N-600K	Application for Citizenship and Issuance of Certificate Under Section 322 - Paper	$1,170	$1,385	$215	18%
	USCIS Immigrant Fee	$220	$235	$15	7%
H-1B Registration Tool (OMB-64)	H-1B Registration Process Fee	$10	$215	$205	2050%
G-1566	Request for Certificate of Non-Existence	$0	$330	$330	N/A
G-1041	Genealogy Index Search Request - Online	$65	$100	$35	54%

Table 29: Proposed Fees by Immigration Benefit					
Immigration Benefit Request		**Current Fee**	**Proposed Fee**	**Delta ($)**	**Percent Change**
G-1041	Genealogy Index Search Request - Paper	$65	$120	$55	85%
G-1041A	Genealogy Records Request - Online	$65	$240	$175	269%
G-1041A	Genealogy Records Request - Paper	$65	$260	$195	300%
	Biometric Services	$85	$30	-$55	-65%
	Asylum Program Fee	N/A	$600	N/A	N/A

A. Impact of Fees

For some immigration benefits and services, fees are increasing substantially. DHS recognizes that this may be challenging for some customers and stakeholders, especially those that may be taking actions or making decisions with the expectation that USCIS fees remain unchanged or increase more modestly. DHS acknowledges that applicants and petitioners may face additional difficulties in paying the fees, and may be required to request a fee waiver, save money longer to afford the fees, or resort to credit cards or borrowing to pursue their or their family members' immigration benefit. DHS has weighed these impacts and interests and considered alternatives to the proposals in this rule as described in this preamble. DHS examined each fee in this proposed rule and adjusted the fees computed by the fee model where appropriate and as discussed herein. It is DHS's view that the fees proposed represent the best balance of access, affordability, and benefits to the public interest while providing USCIS with the funding necessary to maintain adequate services.

DHS notes that the success of this rulemaking in funding USCIS services depends on the fee-paying request filing volume meeting or exceeding the projections used in the fee model as described in section V.B.1.b of this preamble and the supporting documents. Many commenters on the FY 2020 Fee Rule stated that DHS was increasing USCIS fees to deter demand for immigration benefits and to discourage immigration in general. As stated earlier with regard to E.O. 14012, DHS is committed to encouraging access to immigration benefits. DHS appreciates the concerns of these earlier commenters, and sincerely hopes that this rulemaking does not discourage or impede individuals from obtaining the benefits for which they are eligible. This is true not only as a policy matter but as a practical necessity. If a USCIS fee rule were to cause a significant reduction in the demand for USCIS services in its administration of the legal immigration system, it would not meet DHS objectives and would cause USCIS serious fiscal problems. A large reduction in the number of immigration benefit filings on USCIS caused by the COVID–19 pandemic had enormous detrimental effects on the fiscal health of USCIS. Thus, taking any actions that could result in fewer requests being filed would be self-defeating to the purposes of a rule that adjusts USCIS fees.[321]

DHS also acknowledges that USCIS fees and fee policies affect the operations of organizations that assist applicants and petitioners with the preparation and submission of USCIS benefit requests. Assistance organizations generally do not pay the fees that would be established by this rule (unless they independently apply to hire a foreign national employee), and aside from those organizations to which USCIS provides citizenship and integration grants, DHS has no role in regulating the functions of such groups. Nonetheless, this rule could indirectly affect the population and mix of the people who will want to avail themselves of the services of such organizations; thus, these groups may choose to obtain additional funding or alter their programs. As discussed earlier in this proposed rule, absent a fee increase, USCIS anticipates having insufficient resources to process its projected workload. Providing USCIS with the funding necessary to maintain adequate services would benefit our customers and stakeholders with more timely processing. After considering the impacts on the affected groups and the objectives of this proposed rule, DHS has decided to move forward with this rulemaking despite such groups choosing to adjust their business model to the proposed fees and policies.[322]

B. USCIS Fiscal Health

As a fee-funded agency, USCIS was directly and adversely affected by the global pandemic.[323] This contrasts with congressionally appropriated agencies, whose budgets are not directly impacted by fluctuations in fee revenue. To address its deteriorating fiscal situation when the pandemic compelled a temporary closure of USCIS offices and led to a plunge in filing and fee receipts, USCIS tightened its budget while continuing mission critical operations.

[318] The current fee for Form I–192 is $585 when filed with and processed by CBP. When filed with USCIS, the fee is $930. *See* 8 CFR 103.7(b)(1)(i)(P) (Oct. 1, 2020).

[319] The $750 fee applies to ''an applicant under the age of 14 years when [the application] is: (*i*) Submitted concurrently with the Form I–485 of a parent; (*ii*) The applicant is seeking to adjust status as a derivative of his or her parent; and (*iii*) The child's application is based on a relationship to the same individual who is the basis for the child's parent's adjustment of status, or under the same legal authority as the parent.'' *See* 8 CFR 103.7(b)(1)(i)(U)(*2*) (Oct. 1, 2020).

[320] Currently there are two USCIS fees for Form I–881: $285 for individuals and $570 for families. *See* 8 CFR 103.7(b)(1)(i)(QQ)(*1*) (Oct. 1, 2020). EOIR has a separate $165 fee. DHS proposes no changes to the EOIR fee.

[321] DHS has considered, but not identified any direct impacts on any state government because it is not projected to increase or decrease the number of immigrants who enter or leave the United States, or result in a shift of immigrants between or among the states. To the extent that states, cities, counties or municipal governments (or organizations that they maintain) serve as advocacy organizations or submit immigration benefit requests to USCIS, the impacts on those groups are addressed in the relevant sections of this rule or the supporting documentation in the docket.

[322] See section X.B.1 of this preamble for a discussion of the impacts of this rule on small entities.

[323] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Deputy Director for Policy Statement on USCIS' Fiscal Outlook, Available at *https://www.uscis.gov/news/news-releases/deputy-director-for-policy-statement-on-uscis-fiscal-outlook* (last viewed Jun 25, 2020).

USCIS froze hiring and terminated contracts. *See* section V.A.2. of this preamble. When USCIS does not have the resources that it needs to meet its goals, processing times increase and the case processing backlog grows. Congress authorized an immediate increase in certain premium processing fees and gave USCIS wider authority to spend the premium processing revenue. *See* section III.D. of this preamble. More recently, USCIS received appropriations from Congress for processing workloads stemming from the agency backlog, refugee admissions, and Operation Allies Welcome. *See* section III.A. of this preamble. USCIS may continue to seek appropriations to supplement fee-funded operations. If USCIS is certain to receive appropriations to fund the FY 2023 refugee program at the time of the final rule, then USCIS may reduce the estimated budget requirements funded by IEFA fees accordingly. USCIS will still face resource challenges just in keeping pace with incoming receipts if its fees do not recover full costs.

C. Planned Increases in Efficiency

USCIS is pursuing efficiencies that will streamline the adjudication of immigration benefits along with increasing adjudication capacity without adding additional costs. It is important to note that these efficiencies are not included in this fee rule; however, they will be reflected in future fee rules. USCIS expects that future customers will be able to see the benefits in more quickly adjudicated cases. DHS plans to address the challenge of the large volume of pending cases and the associated growth in processing times by focusing the efforts of the USCIS workforce to process pending cases and by using policy and operational improvements to reduce both the number of pending cases and overall processing times.

The USCIS Stabilization Act requires a five-year plan to (1) establish electronic filing procedures for all applications and petitions for immigration benefits, (2) accept electronic payment of fees at all filing locations, (3) issue correspondence, including decisions, requests for evidence, and notices of intent to deny, to immigration benefit requestors electronically, and (4) improve processing times for all immigration and naturalization benefit requests. *See* USCIS Stabilization Act, sec. 4103, Public Law 116–159 (Oct. 1, 2020). USCIS provided an implementation plan to Congress and has begun moving from a primarily paper-based adjudication and correspondence to an electronic-based process.[324] Throughout the implementation of the plan, USCIS expects that efficiencies through the use of electronic processing will improve future processing times. Since this is a five-year plan, the results of improving processing times may not be immediately evident as there are many interconnected processes associated with adjudicating immigration applications and petitions. As such, USCIS is not forecasting any financial efficiencies in this rule.[325]

There are multiple factors that contribute to calculating the number of staff needed to adjudicate projected receipt volume. One such factor is the utilization rate, the amount of time throughout a fiscal year that an officer spends doing core adjudicative work. Further, USCIS has broken down utilization rates to ''manageable'' and ''un-manageable'' time; un-manageable time includes weekends, Federal holidays, sick and annual leave, while manageable time includes meetings, reporting, training, and other non-adjudicative work an officer is required to complete. Since FY 2015, USCIS has seen utilization rates decrease to below 60 percent. Beginning in FY 2022, USCIS has set a target utilization rate of 60 percent. While this certainly provides for more adjudications without the need for additional staff, it is not factored into this rule because of a nearly year-long hiring freeze at USCIS, which ended in April of 2021. USCIS is working to staff back up. Given the efforts within USCIS to staff up for current vacancies, it is imprudent to account for efficiencies that USCIS may not realize, because a goal of this rule is to achieve full cost recovery. However, USCIS expects to achieve a 60 percent utilization rate as it reduces vacancies by hiring and training the new staff.

While the volume of immigration benefit requests that USCIS receives has increased substantially in recent years, DHS recognizes that USCIS fees have increased at a higher rate than have the annual number of workload receipts that USCIS receives. In the short run, absent funding from other sources such as Congressional appropriations, USCIS must obtain the fees that will result from this proposed rule to maintain an acceptable level of service. In the longer term, USCIS is implementing several measures that are intended to assist in increasing efficiency and reducing costs.

USCIS has examined our processes and begun making changes to improve efficiency and allow officers to devote more time to work that requires their expertise and provides the greatest value to the public. For example, USCIS has taken the following actions:

- Made interviews more efficient and effective by ensuring we are interviewing cases only where an interview will add appreciative value to the adjudication, and relying on officer judgment to decide when an interview is necessary to determine eligibility and admissibility and should not be waived.
- Eliminated the need for individuals who have applied for a change of status (COS) to F–1 student to apply to change or extend their nonimmigrant status while their initial F–1 COS application is pending.[326]
- Suspended the biometrics submission requirement for certain applicants filing Form I–539, Application To Extend/Change Nonimmigrant Status, requesting an extension of stay in or change of status to H–4, L–2, and E nonimmigrant status.[327]
- Allowed fingerprint and photograph reuse while ASC services and/or operations were at reduced capacity as a result of the COVID–19 pandemic and when there was no need for an in-person identity verification at an ASC.[328]
- Extended the time that receipt notices can be used to show evidence of status from 18 months to 24 months for petitioners who properly file Form I–751, Petition to Remove Conditions on Residence, or Form I–829, Petition by

[324] *See* USCIS, ''Section 4103 Plan Pursuant to the Emergency Stopgap USCIS Stabilization Act: Fiscal Year 2021 Report to Congress'' (Sep. 7, 2021), *https://www.uscis.gov/sites/default/files/document/reports/SIGNED-Section-4103-FY2021-Report-9-7-21.pdf* (last reviewed Jan. 19, 2022).

[325] If USCIS is able to clearly identify reductions in the costs of USCIS to be recovered under this rule between the proposed and final rule, DHS may consider those cost reductions to either reduce the proposed fees, or certain fees based on policy considerations, in the final rule.

[326] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Applicants for Change of Status to F–1 Student No Longer Need to Submit Subsequent Applications to 'Bridge the Gap', *https://www.uscis.gov/news/alerts/applicants-for-change-of-status-to-f-1-student-no-longer-need-to-submit-subsequent-applications-to* (last viewed Dec 1, 2021).

[327] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, USCIS Temporarily Suspends Biometrics Requirement for Certain Form I–539 Applicants, *https://www.uscis.gov/news/alerts/uscis-temporarily-suspends-biometrics-requirement-for-certain-form-i-539-applicants* (last viewed Dec 1, 2021).

[328] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, USCIS to Continue Processing Applications for Employment Authorization Extension Requests Despite Application Support Center Closures, *https://www.uscis.gov/news/alerts/uscis-to-continue-processing-applications-for-employment-authorization-extension-requests-despite* (last viewed Dec 1, 2021).

Investor to Remove Conditions on Permanent Resident Status.[329]

- Returned to adjudicating asylum workload on a last-in-first-out basis.[330]

In addition, USCIS has transitioned non-adjudicative work from adjudicators to other staff, has centralized the delivery of information services through the policies and processes in place to allow USCIS Contact Center, and is leveraging electronic processing and automation. Applicants, petitioners, and requestors also can track the status of their immigration benefit requests online by using their receipt number or by creating an online account at *https://uscis.gov/casestatus*. Applicants may make an ''outside normal processing time'' case inquiry for any benefit request pending longer than the time listed for the high end of the range by submitting a service request online at *https://egov.uscis.gov/e-request/* or calling the USCIS Contact Center at 1–800–375–5283.

USCIS expects to improve the user experience as it continues to transition to online filing and electronic processing of immigration applications and petitions. With a new person-centric electronic case processing environment, USCIS will possess the data necessary to provide near-real-time processing updates on the status of a case and the time that has elapsed between actions for each individual case. This provides greater transparency to the public on how long it will take to process each case effective as it moves from stage to stage (for example, biometrics submission, interview, decision). In addition, USCIS has adjusted how it calculates and posts processing time information to improve the timeliness of such postings, and to achieve greater transparency. USCIS will continue to provide processing times in an accurate and transparent fashion.

Finally, as discussed in section V.A.2.b., DHS proposes to fund with IEFA non-premium funds 1,127 staff positions currently supported by premium processing funds. Realigning the cost of these staff to non-premium funds will free up an equivalent amount of premium processing funding for use by USCIS as it pursues additional investments in its online filing and electronic processing capabilities. Furthermore, these premium processing funds also may fund additional staff for backlog reduction efforts, which may result in reduced backlog sizes and decreased processing times.

X. Statutory and Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Order (E.O.) 12866 and E.O. 13563 direct agencies to assess the costs and benefits of available alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs (OIRA), within the Office of Management and Budget (OMB), has designated this proposed rule a significant regulatory action that is economically significant under section 3(f)(1) of E.O. 12866. Accordingly, OIRA has reviewed this regulation.

The fee adjustments, as well as changes to the forms and fee structures used by USCIS, would result in net costs, benefits, and transfer payments. For the 10-year period of analysis of the rule (FY 2023 through FY 2032), DHS estimates the annualized net costs to the public would be $532,379,138 discounted at 3- and 7-percent. Estimated total net costs over 10 years would be $4,541,302,033 discounted at 3-percent and $3,739,208,286 discounted at 7-percent.

The proposed changes in this rule would also provide several benefits to DHS and applicants/petitioners seeking immigration benefits. For the Government, the primary benefits include reduced administrative burdens and fee processing errors, increased efficiency in the adjudicative process, and the ability to better assess the cost of providing services, which allows for better aligned fees in future regulations. The primary benefits to the applicants/petitioners include simplification of the fee payment process for some forms, elimination of the $30 returned check fee, USCIS' expansion of the electronic filing system to include more forms, and for many applicants, limited fee increases and additional fee exemptions to reduce fee burdens.

Fee increases and other changes in this proposed rule would result in annualized transfer payments from applicants/petitioners to USCIS of approximately $1,612,133,742 discounted at both 3-percent and 7-percent. The total 10-year transfer payments from applicants/petitioners to USCIS of approximately $13,751,827,819 at a 3-percent discount rate and $11,322,952,792 at a 7-percent discount rate.

Fee reductions and exemptions in this proposed rule would result in annualized transfer payments from USCIS to applicants/petitioners of approximately $116,372,429 discounted at both 3-percent and 7-percent. The total 10-year transfer payments from USCIS to applicants/petitioners would be $992,680,424 at a 3-percent discount rate and $817,351,244 at a 7-percent discount rate.

The annualized transfer payments from the Department of Defense (DoD) to USCIS would be approximately $222,145 at 3- and 7-percent discount rates. The total 10-year transfer payments from DoD to USCIS would be $1,894,942 at a 3-percent discount rate and $1,560,254 at a 7-percent discount rate. These costs, transfers, and cost savings (qualitative benefits) are briefly described below in Table 30, and in more detail in a separate Regulatory Impact Analysis.

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[329] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, USCIS Extends Evidence of Status for Conditional Permanent Residents to 24 Months with Pending Form I–751 or Form I–829, *https://www.uscis.gov/newsroom/alerts/uscis-extends-evidence-of-status-for-conditional-permanent-residents-to-24-months-with-pending-form* (last viewed Dec 1, 2021).

[330] USCIS, *USCIS to Take Action to Address Asylum Backlog,* available at *https://www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog* (last updated Feb. 2, 2018). See section III.B of this preamble for a discussion of the FY 2022 appropriation for backlog reduction.

Table 30. Summary of Proposed Provisions and Other Fee Adjustments - Costs, Cost Savings, Transfer Payments and Benefits			
Proposed Rule Provisions	**Description of Change**	**Estimated Annual Costs and Transfer Payments**	**Estimated Annual Cost Savings and Benefits**
1. Dishonored Check Re-presentment Requirement, Fee Payment Method, and Non-refundability	• DHS proposes that if a check or other financial instrument used to pay a fee is returned as unpayable because of insufficient funds, USCIS will resubmit the payment to the remitter institution one time. • If the remitter institution returns the instrument used to pay a fee as	**Quantitative: Applicants-** • Transfer payments from applicants/petitioners to USCIS of approximately $546,286 (annual average amount USCIS refunds to applicant's/petitioner's) due to non-refundable fees. **Qualitative: Applicants –** • None.	**Quantitative: Applicants –** • None. **Qualitative:** **Applicants –** • None. **DHS/USCIS –** • Clarifying dishonored fee check re-presentment non-refundability policies,

	unpayable, USCIS will re-deposit the financial instrument if it is returned for insufficient funds. If it is returned a second time, USCIS will reject the filing. Checks returned for another reason will not be re-deposited and such filings will be rejected immediately. • In addition, DHS may reject a request that is accompanied by a check that is dated more than 365 days before the receipt date. • DHS is also proposing to codify its authority to limit payment options so that it may require that certain fees must be paid using a specific payment method. • DHS is also proposing to clarify that fees are non-refundable regardless of the result of the request or how much time the request requires to be adjudicated. • DHS proposes to provide that fees paid to USCIS using a credit card cannot be disputed.	**DHS/USCIS –** • None.	limiting the age of checks to be presented and limiting payment options would reduce administrative burdens and fee processing errors for USCIS. • USCIS will be able to invoice the responsible party (applicant, petitioner, or requestor) and pursue collection of the unpaid fees when banks that issue credit cards rescind payment. • USCIS will lose fewer credit card disputes.
2. Eliminate $30 Returned Check Fee	• USCIS is proposing to eliminate the $30 charge for	**Quantitative: Applicants-** • None.	**Quantitative: Applicants –**

	dishonored payments.	**Qualitative: Applicants –** • None. **DHS/USCIS –** • There may be an increase in insufficient payments by applicants because the $30 fee may serve as a deterrent for submitting a deficient payment.	• DHS estimates the annual cost savings to applicants/petitioners would be $356,370. **Qualitative:** **Applicants –** • The current $30 charge and the potential of having a benefit request rejected encourages applicants to provide the correct filing fees when submitting an application or petition. • Applicants who submit bad checks will no longer have to pay a fee. **DHS/USCIS –** • This proposed change will provide additional cost savings to USCIS as it spends more than $30 to collect the $30 returned payment charges. USCIS hires a financial service provider to provide fee collection services to pursue and collect the $30 fee.
3. Changes to Biometric Services Fee	• For nearly all benefit types, DHS proposes to incorporate the biometric services cost into the underlying immigration benefit request fees for which biometric services are applicable.	**Quantitative: Applicants-** • As a result of the $55 reduction in the biometric services fee, TPS, and Executive Office for Immigration Review (EOIR) an agency within the Department of Justice, applicants will experience a total of $9,447,570 in reduced fees annually. This	**Quantitative: Applicants –** • None. **Qualitative:** **Applicants –** • Incorporating the biometric services fee into the underlying benefit request filing fee would benefit applicants by

	• DHS proposes to retain a separate biometric services fee of $30 for initial applications and re-registrations for Temporary Protected Status (TPS).	represents transfer payments from USCIS to the fee payers as USCIS would now incur the indirect costs of providing the biometric services. **Qualitative: Applicants –** • None. **DHS/USCIS –** • Eliminating the separate payment of the biometric services fee would decrease the administrative burdens required to process both a filing fee and biometric services fee for a single benefit request.	simplifying the payment process. • This measure may also reduce the probability of applicants submitting incorrect fees and consequently have their benefit requests rejected for failure to include a separate biometric services fee. **DHS/USCIS –** • Eliminating the separate payment of the biometric services fee would decrease the administrative burdens required to process both a filing fee and biometric services fee for a single benefit request.
4. Naturalization and Citizenship Related Forms	• DHS proposes to limit the increase of the fee to $760 for Form N-400, Application for Naturalization, to partially recover the full cost of adjudicating the Form N-400 while still promoting naturalization and integration. • DHS is also proposing to keep the reduced fee option of $380 for naturalization applicants with family incomes not exceeding 200-percent of the Federal poverty guidelines (FPG).	**Quantitative:** **Applicants-** • Increase in fees to the following naturalization and citizenship related forms: Forms N-300, N-336, N-400, N-470, N-600 and N-600K. This would result in transfer payments from the fee-paying applicants to USCIS of $46,991,905 annually. **Qualitative:** **Applicants –** • None **DHS/USCIS –** • Transfer payments from DoD to USCIS of $222,145 annually for	**Qualitative:** **Applicants-** • Limited fee increase allows more residents, especially those with financial and income constraints to seek citizenship.

	• DHS is keeping the existing statutory fee exemptions for military members and veterans who file a Form N-400, Application for Naturalization and Form N-600, Application for Certificate of Citizenship, under the military naturalization provisions.	N-400 (military only) reimbursements. • The proposal to expand eligibility to request reduced fees would benefit qualified applicants. DHS estimates that the fee decrease would result in transfer payments from USCIS to Form I-942 approved applicants of $103,225 per year. • Expanding the population of applicants using Form I-942 would increase the administrative burden on the agency to process these forms.	
5. Fees for Filing Online	• In recognition of the lower marginal costs to USCIS from online filling, DHS intends to lower fees for online filing of immigration benefit requests for which both paper and online filing options are available. The forms include: • Form I-90, Application to Replace Permanent Resident Card • Form I-130, Petition for Alien Relative • Form I-539, Application to Extend/Change Nonimmigrant Status • Form I-765, Application for Employment Authorization	**Quantitative:** **Petitioners -** • Transfer payments of $52,954,120 annually from Forms I-90, I-130, I-539 and I-765 online filers to USCIS. **DHS/USCIS-** • None. **Qualitative:** **Petitioners –** • None. **DHS/USCIS –** • None.	**Quantitative:** **Petitioners-** Online filing of Forms I-90, I-130, I-539 and I-765 would provide estimated annual cost savings of $29,974,655 to applicants. The societal cost savings would come about if more people opted to apply online as a result of the fee differential between online and paper that is introduced in this proposed rule. **Qualitative:** **Petitioners-** • Encourages electronic processing and adjudications which helps streamline USCIS processes. This could reduce costs and could speed adjudication of cases.

	• Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA) • Form N-400, Application for Naturalization • Form N-565, Application for Replacement Naturalization/Citizenship Document • Form N-600, Application for Certificate of Citizenship • Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 • Form G-1041, Genealogy Index Search Request • Form G-1041A, Genealogy Records Request		**DHS/USCIS –** • USCIS will save in reduced intake and storage costs at the USCIS lockbox or other intake facilities. • Decrease the risk of mishandled, misplaced, damaged files or lost paper files because electronic records would not be physically moved around to different adjudication offices. • Increased access to administrative records. USCIS could easily redistribute electronic files among adjudications offices located in different regions, for better management of workload activities.
6. **Form I-485, Application to Register Permanent Residence or Adjust Status**	• DHS is proposing separate filing fees for applicants filing Form I-765, Application for Employment Authorization, and Form I-131, Application for Travel Documentation concurrently with Form I-485, Application to Register Permanent Residence or Adjust	**Quantitative: Applicants-** • This increase in the Form I-485 fee would result in approximately $22,860,810 in transfer payments annually from applicants filing I-485 (only) to USCIS. • DHS estimates that requiring separate filing fees for applicants filing I-765 and I-131 interim benefits with Form I-	**Quantitative: Applicants-** • Not estimated. **Qualitative: Applicants –** • None. **DHS/USCIS –** • DHS believes that unbundling the fee for Form I-485 from Forms I-131 and I-765 would reduce the burden of

	Status or after USCIS accepts their Form I-485 and while it is still pending. • DHS is proposing that all applicants, including children under the age of 14 years concurrently filing Form I-485 with a parent, pay the full fee.	485 would result in transfer payments from applicants to USCIS of $597,439,512 annually. • DHS estimates transfer payments from applicants to USCIS of $19,339,200 annually for children under the age of 14 years concurrently filing Form I-485 with a parent. **Qualitative: Applicants –** • None. **DHS/USCIS –** • None.	administering separate fees and better reflect the cost of adjudication.
7. **Form I-131A, Application for Travel Document (Carrier Documentation) Changes**	• DHS proposes to separate the fee for Form I-131A, Application for Carrier Documentation, from other travel document fees.	**Quantitative: Applicants-** • None. **Qualitative: Applicants –** • None. **DHS/USCIS -** • None.	**Quantitative: Applicants-** • None. **Qualitative: Applicants –** • None. **DHS/USCIS –** • Allows USCIS to assess the cost of providing services for this immigration benefit and propose better aligned fees in future fee reviews
8. **Separate Fees for Form I-129, Petition for a Nonimmigrant Worker, by Nonimmigrant Classification and Limit Petitions Where Multiple Beneficiaries are Permitted to 25 Named Beneficiaries per Petition**	• DHS proposes to charge different fees for Form I-129, Petitioner for a Nonimmigrant Worker based on the nonimmigrant classification being requested in the petition, the number of beneficiaries on the petition and in some cases, according to	**Quantitative: Applicants –** • The annual increase in transfer payments from Form I-129 visa classification petitions to USCIS is expected to be $273,101,915. • The total costs of the Asylum Program fee to petitioners would be	**Quantitative: Applicants –** • None. **DHS/USCIS –** • None. **Qualitative: Applicants –** • None. **DHS/USCIS –**

	whether the petition includes named or unnamed beneficiaries. • DHS also proposes to limit to 25 the number of named beneficiaries that may be included on a single petition for H-2A, H-2B, O, H-3, P, Q and R workers. • DHS is also proposing a new Asylum Program fee of $600 to be paid by employers who file either a Form I-129, Petition for a Nonimmigrant Worker, or Form I-140, Immigrant Petition for Alien Worker.	approximately $574,884,600 annually. **DHS/USCIS –** • Not estimated. **Qualitative: Applicants –** • None. **DHS/USCIS –** • None.	• A benefit of the different fees for the Form I-129 classifications is that it would allow USCIS to further refine its fee model and better reflect the cost to adjudicate each specific nonimmigrant classification. • Limiting the number of named beneficiaries to 25 per petition simplifies and optimizes the adjudication of these petitions, which can lead to reduced average processing times for a petition.
9. **Adjustments to Premium Processing**	• DHS is proposing to change the premium processing timeframe from 15 calendar days to 15 business days for the immigration benefit request types with a premium processing service.	**Quantitative: Applicants –** • None. **DHS/USCIS –** • None. **Qualitative: Applicants –** • None. **DHS/USCIS –** • None.	**Qualitative: Applicants –** • The additional days would increase the time frame to adjudicate which in turn might reduce the refunds issued by USCIS and thereby increase the applications adjudicated **DHS/USCIS –** • The additional days would increase the time frame to adjudicate which in turn might reduce the refunds issued by USCIS. • USCIS would have additional time to process petitions which would allow USCIS to avoid

			suspending premium processing service as often as has recently been required when premium processing request volumes are high. • This change would enable USCIS to make premium processing more consistently available and expand this service to the newly designated classifications and categories allowed by the USCIS Stabilization Act. **Qualitative: Applicants and DHS/USCIS** -- • DHS has found in its application of the new premium processing regulations (87 FR 18260) that mandating a separate payment in all premium processing submissions may impose unnecessary burdens on petitioners, applicants, and DHS. Hence, not mandating a separate payment in all premium processing submissions reduces unnecessary burdens on petitioners, applicants, and DHS.
	• Currently, DHS mandates separate payments to request premium processing services. Instead of mandating the separate payments, DHS proposes that USCIS *may* require premium processing service fees be paid in a separate remittance from other filing fees. • DHS is also proposing to permit combined payments of the premium processing service fee with the remittance of other filing fees.	**Quantitative: Applicants –** • None. **DHS/USCIS –** • None. **Qualitative: Applicants –** • None. **DHS/USCIS –** • None.	
10. Intercountry Adoptions	• DHS proposes to clarify and align regulations with current practice regarding when prospective adoptive parents are not required to pay the Form I-600 or Form	**Quantitative: Applicants-** • DHS estimates that the filing fee and the time to complete and submit Form I-600A/I-600 Supplement 3 would cost $ 215,590 annually.	**Quantitative: Applicants –** • None. **Qualitative: Applicants –** • Limiting the fee increase helps to

	I-800 filing fee for multiple Form I-600 or Form I-800 petitions. • DHS is altering the validity period for a Form I-600A approval in an orphan case from 18 to 15 months to remove inconsistencies between Form I-600A approval periods and validity of the Federal Bureau of Investigation (FBI) background check. • DHS is also proposing to create a new form called Form I-600A/I-600 Supplement 3, Request for Action on Approved Form I-600A/I-600.	• The increase to the current fees for the existing adoption-related forms would result in transfer payments from applicants to USCIS of approximately $ 246,060 annually. **Qualitative: Applicants –** • None. **DHS/USCIS-** • None.	reduce the fee burdens on adoptive families by covering some of the costs attributable to the adjudication of certain adoption-related petitions and applications. • The uniform 15-month validity period will also alleviate the burden on prospective adoptive parents and adoption service providers to monitor multiple expiration dates. • These proposed changes also clarify the process for applicants who would like to request an extension of Form I-600A/I-600 and/or certain types of updates or changes to their approval. • Accepting the Form I-800A Supplement 3 extension requests will make subsequent suitability and eligibility adjudication process faster, for prospective adoptive parents seeking an extension of their Form I-800A approval. **DHS/USCIS –** • Standardizes USCIS process and provides for the ability to collect a fee.

			• Improve and align the USCIS adjudication and approval processes for adoptions of children from countries that are party to the Hague Adoption Convention and from countries that are not.
11. Immigrant Investors	• DHS proposes to increase fees across the forms including Forms I-526/I-526E,[331] I-829, I-956 (formerly I-924), I-956G (formerly I-924A) and I-956F associated with the EB-5 program.	**Quantitative: Applicants-** • Annual transfer payments from EB-5 investors and regional centers to USCIS would be approximately $61,841,070 for Form I-526/526E, $18,751,425 for I-829, $5,681,000 for I-956, and $1,173,830 for I-956G. **Qualitative: Applicants –** • None. **DHS/USCIS –** • None.	**Quantitative: Applicants-** • None. **Qualitative: Applicants –** • None. **DHS/USCIS –** • None.
12. Changes to Genealogy Search and Records Requests	• DHS proposes to revise genealogy regulations to encourage requestors to use the online portal to submit electronic versions of Form G-1041. • DHS also proposes to change the index search request process so that USCIS may provide requesters with digital records via email in response to	**Quantitative: Applicants-** • Annual transfer payments from fee paying applicants of Forms G-1041, G-1041A and G-1566 to USCIS of $1,198,890. **Qualitative: Applicants –** • None. **DHS/USCIS –** • None.	**Quantitative: Applicants-** • None. **Qualitative: Applicants –** • Streamlining the genealogy search and records request process increases accuracy due to reduced human error from manual data entry. **DHS/USCIS –** • Reduce costs for mailing, records processing, and storage

	the initial search request. • DHS intends to lower the proposed fees for the online filing of Forms G-1041 and G-1041A to reflect the lower marginal costs to USCIS from online filing. • DHS is proposing to charge a fee for requests for a Certificate of Non-Existence.		costs because electronic versions of records requests will reduce the administrative burden on USCIS. • Streamlining the genealogy search and records request process increases accuracy.
13. Fees Shared by CBP and USCIS	• DHS proposes to adjust fees for the following immigration benefit requests it adjudicates with U.S. Customs and Border Protection (CBP): *Form I-192,* Application for Advance Permission to Enter as a Nonimmigrant *Form I-193,* Application for Waiver of Passport and/or Visa *Form I-212,* Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal *Form I-824,* Application for Action on an Approved Application or Petition.	**Quantitative:** **Applicants-** • Annual transfer payments of $12,705,970 from fee payers to USCIS. **Qualitative:** **Applicants –** • None. **DHS/USCIS –** • None.	**Quantitative:** **Applicants-** • None. **Qualitative:** **Applicants –** • A single fee for each shared form would reduce confusion for individuals interacting with CBP and USCIS. **DHS/USCIS** – • None.
14. Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public	• DHS is combining the current multiple fees charged for an individual or family into a single fee for each filing of Form	**Quantitative:** **Applicants-** • Transfer payments of $1,529 annually from I-881 individual filers to USCIS.	**Quantitative:** **Applicants-** • None. **Qualitative:**

Law 105-100 [NACARA])	I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100, the Nicaraguan Adjustment and Central American Relief Act [NACARA]).	• $184 annually in transfer payments from USCIS to I-881 family applicants since this fee is less than the cost to adjudicate the application **Qualitative: Applicants –** • None. **DHS/USCIS –** • None.	**Applicants –** • None. **DHS/USCIS –** • Combining the two Immigration Examinations Fee Account (IEFA) fees into a single fee will streamline the revenue collections and reporting. • A Single Form I-881 fee may help reduce the administrative and adjudication process for USCIS more efficient.
15. Fee Waivers	• DHS proposes that fee waiver requests must be submitted only on the form prescribed by USCIS, which is the Request for Fee Waiver (Form I-912).	**Quantitative: Applicants –** • None. **DHS/USCIS –** • None. **Qualitative: Applicants –** • None. **DHS/USCIS –** • None.	**Quantitative: Applicants –** • None. **DHS/USCIS –** • None. **Qualitative: Applicants –** • None. **DHS/USCIS –** • More simplified and streamlined system to process fee waivers.
16. Fee Exemptions	• DHS is proposing to provide fee exemptions for additional benefit requests filed by the following humanitarian-based immigration beneficiaries:[332] • Victims of Severe Form of Trafficking (T Nonimmigrants)	**Quantitative: Applicants-** • Transfer payment of approximately $106,821,450 annually from USCIS to the public. **Qualitative: Applicants –** • None.	**Quantitative: Applicants-** • Average of $12,390,027 in cost savings to the public for no longer having to complete and submit Form I-912. **Qualitative:**

	• Victims of Qualifying Criminal Activity (U Nonimmigrants) • VAWA Form I-360 Self-Petitioners and Derivatives • Conditional Permanent Residents Filing a Waiver of the Joint Filing Requirement Based on Battery or Extreme Cruelty • Abused Spouses and Children Adjusting Status under CAA and HRIFA • Abused Spouses and Children Seeking Benefits under NACARA • Abused Spouses and Children of LPRs or U.S. Citizens under INA Section 240A(b)(2) • Special Immigrant Afghan or Iraqi Translators or Interpreters, Iraqi Nationals Employed by or on Behalf of the U.S. Government, or Afghan Nationals Employed by or on Behalf of the U.S. Government or Employed by the ISAF (SI1 and SI2) • Special Immigrant Juveniles (SIJs) • Temporary Protected Status (TPS) • Asylees • Refugees • Person Who Served Honorably on Active Duty in The U.S. Armed Forces Filing Under INA Section 101(A)(27)(K)	**DHS/USCIS –** • DHS expects a decrease in administrative burden associated with the processing of the Form I-912 (fee waiver) for categories of requestors that would no longer require a fee waiver because they will be fee exempt	**Applicants -** • Individuals who are unable to afford immigration benefit request fees would benefit from filing a request with no fees. **DHS/USCIS –** • None.

17. Additional Fee Adjustments	DHS proposes to increase fees for the following forms: • I-90 (paper) • I-102 • I-130 (paper) • I-131 • I-140 • I-601 • I-612 • I-290B • I-360 • I-539 (paper) • I-601A • I-687/I-690/I-694 • I-751 • I-765 (paper) • I-817 • I-910 • I-929	**Quantitative: Applicants-** • Transfer payment from fee payers to USCIS of approximately $674,215,570 annually. **Qualitative: Applicants –** • None.	**Quantitative: Applicants-** • None. **Qualitative: Applicants –** • None. **DHS/USCIS –** • None.
18. Adjusting USCIS Fees for Inflation	• DHS proposes to use the CPI-U as the inflation index for fee adjustments between comprehensive fee rules. The actual impacts of such adjustments would be analyzed in a future rule should DHS exercise this proposed authority.	**Quantitative: Applicants-** • None. **Qualitative: Applicants –** • None. **DHS/USCIS –** • None.	**Qualitative: Applicants** • None. **Qualitative: DHS/USCIS –** • Allows DHS to publish timely fee schedule adjustments to insure the real value of USCIS fee revenue dollars against future inflation.
Source: USCIS analysis. Note: The dollar amounts in this table are undiscounted.			

DHS has prepared a full analysis according to E.O. 12866 and E.O. 13563, which can be found in the docket for this rulemaking or by searching for RIN 1615–AC18 on *www.regulations.gov*. In addition to the impacts summarized above, Table 31 presents the accounting statement as required by Circular A–4.[333]

[331] Combines both Forms I–526, Immigrant Petition by Standalone Investor and I–526E, Immigrant Petition by Regional Center Investor. USCIS revised Form I–526 and created Form I–526E as a result of the EB–5 Reform and Integrity Act of 2022.

[332] These fee exemptions do not impact eligibility for any particular form or when an individual may file the form. They are in addition to the forms listed under proposed 8 CFR 106.2 for which DHS proposes to codify that there is no fee.

[333] OMB Circular A–4 is available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last viewed on September 22, 2022).

Table 31: OMB A-4 Accounting Statement ($ in millions, 2021; period of the analysis: FY 2023 through FY 2032)				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS				
Annualized Monetized Benefits over 10 years	N/A	N/A	N/A	
	N/A	N/A	N/A	
Annualized quantified, but un-monetized, benefits Unquantified Benefits	The proposed changes in this rule would provide several benefits to DHS and applicants/petitioners seeking immigration benefits. For the Government, the primary benefits include reduced administrative burdens and fee processing errors, increased efficiency in the adjudicative process, and the ability to better assess the cost of providing services which allows for better aligned fees. Using the CPI-U as the inflation index for fee schedule adjustments between comprehensive USCIS fee rules would allow DHS to publish timely fee adjustments that insure the real value of USCIS fee revenue dollars against future inflation. The primary benefits to applicants/petitioners include the simplification of the fee payment process for some forms, elimination of the $30 returned check fee, expansion of the electronic filing system to include Form G-1041 and Form G-1041A, reduced re-applications for premium processing and for many applicants, limited fee increases and additional fee exemptions to reduce fee burdens.			Regulatory Impact Analysis (RIA)
COSTS				
Annualized monetized costs over 10 years	(3% and 7%) $532			RIA
Annualized quantified, but un-monetized, costs	N/A			
Qualitative (unquantified) costs	Eliminating the separate payment of the biometric services fee would decrease the administrative burdens required to process both a filing fee and biometric services fee for a single benefit request. DHS also expects a decrease in administrative burden associated with the processing of the Form I-912 (fee waiver) for categories of requestors that would no longer require a fee waiver because they will be fee exempt. Expanding the population of applicants using Form I-942 (reduced fee request) would increase the administrative burden on the agency to process these forms.			
TRANSFERS				

Annualized monetized transfers: From the applicants/ petitioners to USCIS	(3% and 7%) $1,612	RIA
Annualized monetized transfers: From USCIS to applicants/petitioners	(3% and 7%) $116	RIA
Annualized monetized transfers: From DoD to USCIS	(3% and 7%) $0.22	RIA
Miscellaneous Analyses/Category	***Effects***	
Effects on state, local, and/or tribal governments	***None***	Preamble
Effects on small businesses	DHS does not believe that the increase in fees proposed in this rule would have a significant economic impact on a substantial number of small entities that file I-140, I-910, or I-360. DHS does not have sufficient data on the revenue collected through administrative fees by regional centers to definitively determine the economic impact on small entities that may file Form I-956 (formerly I-924) or Form I-956G (formerly I-924A). DHS also does not have sufficient data on the requestors that file genealogy forms, Forms G-1041 and G-1041A, to determine whether such filings were made by entities or individuals and thus is unable to determine if the fee increase for genealogy searches is likely to have a significant economic impact on a substantial number of small entities.	Initial Regulatory Flexibility Analysis (IRFA) and Small Entity Analysis (SEA)
Effects on wages	***None***	None
Effects on Growth	***None***	None

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B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. DHS nonetheless welcomes comments regarding potential impacts on small entities, which DHS may consider as appropriate in a final rule.

In addition, the courts have held that the RFA requires an agency to perform an initial regulatory flexibility analysis (IRFA) of small entity impacts only when a rule directly regulates small entities. Below is a summary of the Small Entity Analysis (SEA). The complete detailed SEA [334] is available in the rulemaking docket at *https://www.regulations.gov.*

Individuals, rather than small entities, submit the majority of immigration and naturalization benefit applications and petitions, but this proposed rule would affect entities that file and pay fees for certain immigration benefit requests. Consequently, there are six categories of USCIS benefits that are subject to a small entity analysis for this proposed rule: Petition for a Nonimmigrant

[334] DHS, USCIS Small Entity Analysis (SEA) for the USCIS Fee Schedule Proposed Rule dated May 24, 2022.

Worker, Form I–129; Immigrant Petition for an Alien Worker, Form I–140; Civil Surgeon Designation, Form I–910; Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360; Genealogy Forms G–1041 and G–1041A, Index Search and Records Requests; and the Application for Regional Center Designation Under the Immigrant Investor Program, Form I–956, and the Regional Center Annual Statement, Form I–956GA.

DHS does not believe that the increase in fees proposed in this rule would have a significant economic impact on a substantial number of small entities that file I–140, I–910, or I–360. DHS does not have sufficient data on the revenue collected through administrative fees by regional centers to definitively determine the economic impact on small entities that may file Form I–956 or Form I–956G.

DHS also does not have sufficient data on the requestors that file genealogy forms, Forms G–1041 and G–1041A, to determine whether such filings were made by entities or individuals and, thus, is unable to determine if the fee increase for genealogy searches is likely to have a significant economic impact on a substantial number of small entities.

DHS is publishing this IRFA to aid the public in commenting on the small entity impact of its proposed adjustment to the USCIS fee schedule. In particular, DHS requests information and data that would help to further assess the impact of the fee changes on the genealogy forms or the regional center forms on small entities.

1. Initial Regulatory Flexibility Analysis (IRFA)

a. A Description of the Reasons Why the Action by the Agency Is Being Considered

DHS proposes to adjust fees USCIS charges for certain immigration and naturalization benefits. DHS has determined that current fees would not recover the full costs of services provided. Adjustment to the fee schedule is necessary to recover costs and maintain adequate service.

b. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

DHS's objectives and legal authority for this proposed rule are discussed in the preamble.

c. Description and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

As noted above, below is a summary of the Small Entity Analysis (SEA). The complete detailed SEA is available in the rulemaking docket at *https://www.regulations.gov.* The SEA has a full analysis of all samples for each small entity form described below, in the Initial Regulatory Flexibility Act Analysis.

Entities affected by this proposed rule are those that file and pay fees for certain immigration benefit applications and petitions on behalf of a foreign national. These applications include Form I–129, Petition for a Nonimmigrant Worker; Form I–140, Immigrant Petition for an Alien Worker; Form I–910, Civil Surgeon Designation; Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant; Genealogy Forms G–1041 and G–1041A, Index Search and Records Requests; Form I–956 (formerly Form I–924), Application for Regional Center Designation Under the EB–5 Regional Pilot Program, and Form I–956G (formerly Form I–924A), Regional Center Annual Statement. Annual numeric estimates of the small entities impacted by this fee increase total (in parentheses): Form I–129 (75,269 entities), Form I–140 (17,417 entities), Form I–910 (382 entities), and Form I–360 (465 entities).[335] DHS was not able to determine the numbers of regional centers or genealogy requestors that would be considered small entities and; therefore, does not provide numeric estimates for Form I–956, Form I–956G, or Forms G–1041 and G–1041A.[336]

This rule applies to small entities, including businesses, non-profit organizations, and governmental jurisdictions filing for the above benefits. Forms I–129 and I–140 would see a number of industry clusters impacted by this rule (see Appendix A of the Small Entity Analysis (SEA) for a list of impacted industry codes for Forms I–129, I–140, I–910, and I–360). The fee for civil surgeon designation would apply to physicians requesting such designation. The fee for Amerasian, widow(er), or special immigrants would apply to any entity petitioning on behalf of a religious worker. Finally, DHS is creating these new forms as stated above, as part of the EB–5 Reform and Integrity Act of 2022. Since Form I–956/I–956G will be new forms and historical data does not exist; therefore, DHS will use historical data of the previous Form I–924, Application for Regional Center Designation Under the Immigrant Investor Program and Form I–924A, Annual Certification of Regional Center as a proxy for the analysis. The Form I–956 would impact any entity seeking designation as a regional center under the Immigrant Investor Program or filing an amendment to an approved regional center application. Captured in the dataset for Form I–956 is also Form I–956G, which regional centers must file annually to establish continued eligibility for regional center designation for each fiscal year.

DHS does not have sufficient data on the requestors for the genealogy forms, Forms G–1041 and G–1041A, to determine if entities or individuals submitted these requests. DHS has previously determined that requests for historical records are usually made by individuals.[337] If professional genealogists and researchers submitted such requests in the past, they did not identify themselves as commercial requestors and thus could not be segregated in the data. Genealogists typically advise clients on how to submit their own requests. For those who submit requests on behalf of clients, DHS does not know the extent to which they can pass along the fee increases to their individual clients. DHS assumes genealogists have access to a computer and the internet. DHS is unable to estimate the online number of index searches and records requests; however, some will receive a reduced fee and cost savings, by filing online. Therefore, DHS does not currently have sufficient data to definitively assess the estimate of small entities for these requests.

1. Petition for a Nonimmigrant Worker, Form I–129

Funding the Asylum Program With Employer Form I–129 by Visa Classification Petition Fees

In this proposed rule, DHS proposes a new Asylum Program Fee of $600 be paid by any employers who file either a Form I–129, Petition for a Nonimmigrant Worker, or Form I–140, Immigrant Petition for Alien Worker. Proposed 8 CFR 106.2(c)(13). DHS has determined that the Asylum Program

[335] Calculation: 86,715 Form I–129 * 86.8 percent = 75,269 small entities; 25,279 Form I–140 * 68.9 percent = 17,417 small entities; 428 Form I–910 * 89.3 percent = 382 small entities; 489 Form I–360 * 95.0 percent = 465 small entities.

[336] Small entity estimates are calculated by multiplying the population (total annual receipts for the USCIS form) by the percentage of small entities, which are presented in subsequent sections of this analysis.

[337] *See Establishment of a Genealogy Program,* 73 FR 28026 (May 15, 2008).

Fee is an effective way to shift some costs to requests that are generally submitted by petitioners who have more ability to pay, as opposed to shifting those costs to all other fee payers applications/petitioners. DHS determined the Asylum Program Fee by calculating the amount that would need to be added to the fees for Form I–129 and Form I–140 to collect the Asylum Processing IFR estimated annual costs.[338] The Asylum Program Fee may be used to fund part of the costs of administering the entire asylum program and would be due in addition to the fee those petitioners would pay under USCIS' standard costing and fee collection methodologies for their Form I–129 and Form I–140 benefit requests.

DHS is not separating Form I–129 into multiple forms in this proposed rule as it did in the 2020 fee rule, but it is taking that action separately as a revision of the currently approved Form I–129 information collection under the Paperwork Reduction Act. In this proposed rule, DHS proposes different fees for Form I–129 based on the nonimmigrant classification being requested in the petition, the number of beneficiaries on the petition, and, in some cases, according to whether the petition includes named or unnamed beneficiaries. The proposed fees are calculated to better reflect the costs associated with processing the benefit requests for the various categories of nonimmigrant worker. The current base filing fee for Form I–129 is $460. DHS proposes separate H–2A and H–2B fees for petitions with named workers and unnamed workers.

In Table 32a, as stated above, the Asylum Program Fee of $600 would be included with each Form 1–129 Petition for a Nonimmigrant Worker classification. It would apply to all fee-paying receipts for Forms I–129, I–129CW, and I–140. For example, it would apply to all initial petitions, changes of status, and extensions of stay that use Form I–129.

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Table 32a. USCIS Fees for Form I-129 Petition for Nonimmigrant Worker by Classification for FY 2022/2023

Visa Classification Immigration Benefit Request	Current Fee	Proposed Fee	Asylum Program Fee	Total Proposed Fee
H-1B	$460	$780	$600	$1,380/$1,595[339]
H-2A – Named Beneficiaries	$460	$1,090	$600	$1,690
H-2B – Named Beneficiaries	$460	$1,080	$600	$1,680
H-2A – Unnamed Beneficiaries	$460	$530	$600	$1,130
H-2B – Unnamed Beneficiaries	$460	$580	$600	$1,180
O-1/O-2	$460	$1,055	$600	$1,655
L-1A/L-1B/LZ Blanket	$460	$1,385	$600	$1,985
CW, H-3, E, TN, Q, P, and R	$460	$1,015	$600	$1,615

Source: *See* sections II.C., Summary of Current and Proposed Fees, and V.B.4., Funding the Asylum Program with Employer Petition Fees of the NPRM, of this preamble.

Note: Employers may apply using Form I-129 also for P-1, P-1S, P-2, P-2S, P-3, P-3S, R1, E-1, E-2, E-3.

For petitioners filing Form I–129, DHS proposes increasing the fee filed for all worker types. The fee adjustments and percentage increases are summarized, shown in Table 32b. For petitioners filing Form I–129, DHS proposes increasing the fee filed for all worker types. The fee adjustments and percentage increases are summarized below. H–1B classification cap-subject petitions will include a $215 registration fee, an increase of $205 from the original $10 fee. Non-cap subject petitions (*e.g.,* extension petitions or cap-exempt filer petitions) would not have to pay the registration fee. This registration fee is added to the fee increase and results in an overall increase for cap-subject H–1B classification petitions of $920 ($215 + $705).

[338] DHS acknowledges that, by using the middle of the range of costs, if actual costs are higher than that, then the USCIS fee schedule will be set at a level that is less than what will be required to recover all of the costs added by the Asylum Processing IFR, all other factors remaining the same. Estimated annual costs of the Asylum Processing IFR (mid-range estimate): FY 2022 total costs of $438.2 million plus FY 2023 total costs of $413.6 million equals $851.8. Average total costs of FY 2022/2023 equal $425.9 million. That figure represents the estimated costs that are directly attributable to the implementation of that rule.

[339] USCIS in this SEA used the H–1B, Petition for Nonimmigrant Worker: H–1B Classification fee of $1,595 = The fee includes the $1,380 proposed fee for H–1B Classification + $215 initial mandatory for cap-subject H–1B Registration Fee (current $10 to proposed $215; $205 dollar increase). This registration fee of $215 is for each registration, each registration is for a single beneficiary. Registrants or their representative are required to pay the $215 non-refundable H–1B registration fee for each beneficiary before beng eligible to submit a registration for that beneficiary for the H–1B cap. The fee will not be refunded if the registration is not selected, withdrawn, or invalidated. H–1B cap-exempt petitions are not subject to registration and are not required to pay the registration fee of $215; therefore, those petitioners would only pay the $1,380 propoposed fee. *See Registration Fee Requirement for Petitioners Seeking to File H–1B Petitions on Behalf of Cap Subject Aliens, Final Rule* (84 FR 60307, November 8, 2019). Available at *https://www.govinfo.gov/content/pkg/FR-2019-11-08/pdf/2019-24292.pdf. See* Regulatory Impact Analysis in the docket on regulations.gov, section (3)(H), Separate Fees, for Form I–129, Petition for a Nonimmigrant Worker, by Nonimmigrant Classification and Limit Petitions Where Multiple Beneficiaries are Permitted to 25 Named Beneficiaries per Petition, Table 22 and 23, for further detail on the cap and non-cap H–1B petitions.

Table 32b. USCIS Fees for Form I-129 Classifications for FY 2022/2023

Visa Classification Immigration Benefit Request	Current Fee	Total Proposed Fee	Difference in Fee Increase	Percent Change
H-1B	$460	$1,380/$1,595[340]	$920/$1,135	200%/247%
H-2A – Named Beneficiaries	$460	$1,690	$1,230	267%
H-2B – Named Beneficiaries	$460	$1,680	$1,220	265%
H-2A – Unnamed Beneficiaries	$460	$1,130	$670	146%
H-2B – Unnamed Beneficiaries	$460	$1,180	$720	157%
O-1/O-2	$460	$1,655	$1,195	260%
L-1A/L-1B/LZ Blanket	$460	$1,985	$1,525	332%
CW, H-3, E, TN, Q, P, and R	$460	$1,615	$1,155	251%

Source: *See* sections II.C., Summary of Current and Proposed Fees, and V.B.4., Funding the Asylum Program with Employer Petition Fees of the NPRM, of this preamble.

Note: Employers may apply using Form I-129 also for P-1, P-1S, P-2, P-2S, P-3, P-3S, R1, E-1, E-2, E-3.

To calculate the impact of this increase, DHS estimated the total costs associated with the proposed fee increase for each entity and divided that amount by the sales revenue of that entity.[341] H–1B classification cap-subject petitions will include a $215 registration fee, an increase of $205 from the original $10 fee. This registration fee is added to the fee increase and results in an overall increase for H–1B classification petitions of $920 ($215 + $705). Because entities can file multiple petitions, the analysis considers the number of petitions submitted by each entity. Based on the proposed fee increases for Form I–129, this will amount to average impacts on all 353 small entities with revenue data as summarized in Table 32c.[342] DHS determined that 289 of the 353 entities searched were small entities based on sales revenue data, which were needed to estimate the economic impact of the proposed rule.[343]

[340] USCIS in this SEA used the H–1B, Petition for Nonimmigrant Worker: H–1B Classification fee of $1,595 = The fee includes the $1,380 proposed fee for H–1B Classification + $215 initial mandatory for cap-subject H–1B Registration Fee (current $10 to proposed $215; $205 dollar increase). This registration fee of $215 is for each registration, each registration is for a single beneficiary. Registrants or their representative are required to pay the $215 non-refundable H–1B registration fee for each beneficiary before beng eligible to submit a registration for that beneficiary for the H–1B cap. The fee will not be refunded if the registration is not selected, withdrawn, or invalidated. H–1B cap-exempt petitions are not subject to registration and are not required to pay the registration fee of $215; therefore, those petitioners would only pay the $1,380 propoposed fee. *See Registration Fee Requirement for Petitioners Seeking to File H–1B Petitions on Behalf of Cap Subject Aliens, Final Rule* (84 FR 60307, November 8, 2019). Available at *https://www.govinfo.gov/content/pkg/FR-2019-11-08/pdf/2019-24292.pdf*. *See* Regulatory Impact Analysis in the docket on regulations.gov, section (3)(H), Separate Fees, for Form I–129, Petition for a Nonimmigrant Worker, by Nonimmigrant Classification and Limit Petitions Where Multiple Beneficiaries are Permitted to 25 Named Beneficiaries per Petition, Table 22 and 23, for further detail on the cap and non-cap H–1B petitions.

[341] Total Impact to Entity = (Number of Petitions Submitted per Entity × $X Amount of Fee Increase)/ Entity Sales Revenue. DHS used the lower end of the sales revenue range for those entities where ranges were provided.

[342] Random sample of small entities with revenue data selected to estimate impacts is described in Table 1 of the SEA.

[343] Entities that were considered small based on employee count with missing revenue data were excluded.

Table 32c: Form I-129 Classifications Economic Impacts on Small Entities with Revenue Data		
Visa Classification Immigration Benefit Request	**Fee Increase**	**Average Impact Percentage***
H-1B	$920/$1,135**	0.66/0.73%
H-2A – Named Beneficiaries	$1,230	0.37%
H-2B – Named Beneficiaries	$1,220	0.75%
H-2A – Unnamed Beneficiaries	$670	0.37%
H-2B – Unnamed Beneficiaries	$720	0.75%
L-1A/L-1B/LZ Blanket	$1,525	0.42%
O-1/O-2	$1,195	0.57%
CW, H-3, E, TN, Q, P, and R	$1,155	0.25%

Source: USCIS calculation.

Note: There is no distinction between named and unnamed beneficiaries. Each average impact percentage calculation for H-2A—Named Beneficiaries required assuming each H-2A request is for named beneficiaries while each average impact percentage calculation for H-2A—Unnamed Beneficiaries required assuming that each H-2A request is for unnamed beneficiaries. The same process applied to H-2B requests.

Note: Employers may apply using Form I-129 also for P-1, P-1S, P-2, P-2S, P-3, P-3S, R1, E-1, E-2, E-3.

*These figures are percentages, not proportions.

**$920 includes the fee increase ($705) and the increase in registration fee for H-1B cap-subject petitions ($215).

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Using a 12-month period of data on the number of Form I–129 petitions filed from October 1, 2019, through September 31, 2020, DHS collected internal data for each filing organization including the name, Employer Identification Number (EIN), city, state, zip code, and number/type of filings. Each entity may make multiple filings. For instance, there were receipts for 553,889 Form I–129 petitions, but only 86,715 unique entities that filed those petitions. Since the filing statistics do not contain information such as the revenue of the business, DHS used third-party sources of data to collect this information. DHS used a business provider database—Data Axle—as well as three open-access databases—Manta, Cortera, and Guidestar—to help determine an organization's small entity status and then applied Small Business Administration (SBA) size standards to the entities under examination.[344]

The method DHS used to conduct the SEA was based on a representative sample of the impacted population with respect to each form. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 384 entities, which included using a 95 percent confidence level and a 5 percent confidence interval for a population of 86,715 unique entities filing Form I–129 petitions. Based on previous experience conducting small entity analyses, DHS expects to find 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, DHS selected a sample size that was approximately 69 percent larger than the necessary minimum to allow for non-matches (filing entities that could not be found in any of the four databases). Therefore, DHS conducted searches on 650 randomly selected entities from a population of 86,715 unique entities that filed Form I–129 petitions.

Of the 650 searches for small entities that filed Form I–129 petitions, 439 searches returned a successful match of a filing entity's name in one of the databases and 211 searches did not match a filing entity. Based on previous experience conducting regulatory flexibility analyses, DHS assumes filing entities not found in the online database are likely to be small entities. As a result, to prevent underestimating the number of small entities this rule would affect, DHS conservatively considers all of the non-matched entities as small entities for the purpose of this analysis. Among the 439 matches for Form I–129, DHS determined 353 to be small entities based on revenue or employee count and according to their assigned North American Industry Classification System (NAICS) code. Therefore, DHS was able to classify 564 of 650 entities as small entities that filed Form I–129 petitions, including combined non-matches (211), matches missing data (0), and small entity matches (353). Using the online databases mentioned above (Data Axle, Manta, Cortera, and Guidestar), the 0 matches missing data found in the databases lacked applicable revenue or employee count data.

DHS determined that 564 of 650 (86.8 percent) of the entities filing Form I–129 petitions were small entities. Furthermore, DHS determined that 353 of the 650 entities searched were small entities based on sales revenue or employee data, which were needed to estimate the economic impact of the proposed rule. Since these 353 small entities were a subset of the random sample of 650 entity searches, they were considered statistically significant in the context of this research. To calculate the economic impact of this rule, DHS estimated the total costs associated with the proposed fee increase for each entity and divided that amount by the sales revenue of that entity.[345]

Among the 353 matched small entities, 289 small entities had reported revenue data, 90.4 percent experienced

[344] Office of Advocacy, SBA, Size Standards Table. Available at *https://www.sba.gov/document/support--table-size-standards.*

[345] Total Economic Impact to Entity = (Number of Petitions Submitted per Entity * $X Amount of Fee Increase)/Entity Sales Revenue. DHS used the lower end of the sales revenue range for those entities where ranges were provided. Entities in the population without complete or with no EIN information (such as incomplete employee data or revenue information), were removed before the sample was selected for this analysis.

an economic impact of less than 1 percent with the exception of 9.6 of the small entities. Those small entities with greater than 1 percent impact filed multiple petitions and had a low reported revenue. Therefore, these small entities may file fewer petitions as a result of this proposed rule. Depending on the immigration benefit request, the average impact on all 289 small entities with revenue data ranges from 0.25 to 0.75 percent as shown above in Table 29c. In other words, no matter which version of the separated Form I–129 is applicable, the greatest economic impact proposed by this fee change was 19.04 percent and the smallest was 0.005 percent per entity. The average impact on all 289 small entities with revenue data was 0.57 percent.

Small Entity Classifications

With an aggregated total of 564 out of a sample size of 650, DHS inferred that a majority, or 86.8 percent, of the entities filing Form I–129 petitions were small entities. Small entities filing petitions could be for-profit businesses or not-for-profit entities. To understand the extent to which not-for-profits were included in the samples selected for each form DHS categorized entities as for-profit or not-for-profit. The business data provider databases do not distinguish if entities are for-profit or not-for-profit, so DHS used the assumption that entities with NAICS codes 712 (Museums, Historical Sites, and Similar Institutions), 813 (Religious, Grantmaking, Civic, Professional, and Similar Organizations), and 6241 (Family Social Services) were not-for-profit. The NAICS code 611 (Educational Services) may have for-profit entities. Most of the sample consisted of small businesses when looked at by type of small entity. There are no small governmental jurisdictions in the sample and 38 small not-for-profits.

2. Immigrant Petition for an Alien Worker, Form I–140

Funding the Asylum Program With Form I–140 Petition Fees

As explained in section X.B.1., Petition for a Nonimmigrant Worker, Form I–129 Funding the Asylum Program with Employer Form I–129 by Visa Classification Petition Fees, DHS proposes a new Asylum Program Fee of $600 to be paid by any Form I–140, Immigrant Petition for Alien Worker. This Asylum Program Fee adds a fee for Form I–140 petitioners of $600 while maintaining the fees other immigration benefit requestors that this rule proposes lower than would be proposed if the costs were spread among all other fee payers. For example, by charging the Asylum Program Fee to I–140 petitioners as well as the I–129 petitioners, it helps recover the cost of the Asylum Program work while minimizing fee increases on forms that do not recover full cost (Forms N–400, I–600, I–800, etc.), or without adding a fee to forms that currently have none (Forms I–589, I–590, I–914, I–918, etc.). If Forms I–129 and I–140 recover more of those costs, then that means other forms need not recover as much. This results in lower proposed fees for certain forms, and others that recover more than full cost in this proposal. It would apply to all fee-paying receipts for Form I–140 and Form I–129.

DHS proposes to increase the fee to file Immigrant Petition for an Alien Worker, Form I–140, from $700 to $715, an increase of $15 (2 percent). The total proposed fee would include the $600 Asylum Program Fee for a total of $1,315, an overall increase of $615 (88 percent) per petition. Using a 12-month period of data on the number of Form I–140 petitions filed from October 1, 2019, through September 31, 2020, DHS collected internal data similar to that of Form I–129. The total number of Form I–140 petitions was 129,531, with 25,279 unique entities that filed petitions. DHS used the same databases previously mentioned to search for information on revenue and employee count.

DHS used the same method as with Form I–129 to conduct the SEA based on a representative sample of the impacted population. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 383 entities, which included using a 95 percent confidence level and a 5 percent confidence interval on a population of 25,279 unique entities for Form I–140 petitions. Based on previous experience conducting small entity analyses, DHS expected to find 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, DHS selected a sample size that was approximately 44 percent larger than the necessary minimum to allow for non-matches (filing entities that could not be found in any of the four databases). Therefore, DHS conducted searches on 550 randomly selected entities from a population of 25,279 unique entities that filed Form I–140 petitions.

Of the 550 searches for small entities that filed Form I–140 petitions, 464 searches successfully matched the name of the filing entity to names in the databases and 86 searches did not match the name of a filing entity. Based on previous experience conducting regulatory flexibility analyses, DHS assumes filing entities not found in the online databases are likely to be small entities. As a result, in order to prevent underestimating the number of small entities this rule would affect, DHS conservatively considers all of the non-matched entities as small entities for the purpose of this analysis. Among the 464 matches for Form I–140, DHS determined 292 to be small entities based on revenue or employee count and according to their NAICS code. Therefore, DHS was able to classify 379 of 550 entities as small entities that filed Form I–140 petitions, including combined non-matches (86), matches missing data (1), and small entity matches (292). Using the online databases mentioned above (Data Axle, Manta, Cortera, and Guidestar), one matched entity found in the databases lacked applicable revenue statistics.

DHS determined that 379 out of 550 (68.9 percent) entities filing Form I–140 petitions were small entities. Furthermore, DHS determined that 292 of the 550 searched were small entities based on sales revenue data, which were needed to estimate the economic impact of the proposed rule. Since these 292 were a small entity subset of the random sample of 550 entity searches, they were considered statistically significant in the context of this research based on sales revenue information. Similar to Form I–129, DHS calculated the economic impact of this rule on entities that filed Form I–140 by estimating the total costs associated with the proposed fee increase for each entity and divided that amount by the sales revenue of that entity.[346]

Among the 292 small entities with reported revenue data, 98 percent experienced an economic impact of less than 1 percent, with the exception of 2 percent of the small entities. Using the above methodology, the greatest economic impact proposed by this fee change was 2.71 percent and the smallest was 0.006 percent per entity. Because of the fee increase, these small entities would see a cost increase per application in filing fees based on petitions. The average impact on all 292 small entities with revenue data was 0.16 percent.

Small Entity Classification

With an aggregated total of 379 out of a sample size of 550, DHS inferred that

[346] Total Impact to Entity = (Number of Petitions Submitted per Entity * $615 Fee amount Increase)/ Entity Sales Revenue. USCIS used the lower end of the sales revenue range for those entities where ranges were provided.

a majority, or 68.9 percent, of the entities filing Form I–140 petitions were small entities. Small entities filing petitions could be for-profit businesses or not-for-profit entities. To understand the extent to which not-for-profits were included in the samples selected for each form DHS categorized entities as for-profit or not-for-profit. The business data provider databases do not distinguish if entities are for-profit or not-for-profit, so DHS used the assumption that entities with NAICS codes 712 (Museums, Historical Sites, and Similar Institutions), 813 (Religious, Grantmaking, Civic, Professional, and Similar Organizations), and 6241 (Family Social Services) were not-for-profit. The NAICS code 611 (Educational Services) may have for-profit entities. Similar to the Form I–129 small entity types, the sample of Form I–140 consisted mainly of small businesses, with no small governmental jurisdictions in the sample and 15 small not-for-profits.

Cumulative Impact of Form I–129 and Form I–140 Petitions

In addition to the individual Form I–129 and Form I–140 analyses, USCIS analyzed any cumulative impacts of these form types to determine if there were any impacts to small entities when analyzed together. Based on the samples in the individual analyses, USCIS isolated those entities that overlapped in both samples of Forms I–129 and I–140 by EIN and revenue. Only 1 entity had an EIN that overlapped in both samples; this was a large entity that submitted 3 Form I–129 petitions and 1 Form I–140 petition. Due to little overlap in entities in the samples, and the relatively minor impacts on revenue of fee increases of Forms I–129 and I–140, USCIS does not expect the combined impact of these 2 forms to be an economically significant burden on a number of small entities.

3. Civil Surgeon Designation, Form I–910

DHS proposes to increase the fee for Civil Surgeon Designations, Form I–910, from $785 to $1,230, an increase of $445 (57 percent). To calculate the economic impact of this increase, USCIS estimated the total costs associated with the fee increase for each entity and divided that amount by the sales revenue of that entity.[347] Using a 12-month period of data from October 1, 2019, to September 31, 2020,[348] DHS collected internal data on filings of Form I–910. The total number of Form I–910 applications was 639, with 428 unique entities that filed applications. The third-party databases mentioned previously were used again to search for revenue and employee count information.

Using the same methodology as for the Forms I–129 and I–140, USCIS conducted the SEA based on a representative sample of the impacted population. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 203 entities, which included using a 95 percent confidence level and a 5 percent confidence interval on a population of 428 unique entities for Form I–910. USCIS conducted searches on 300 randomly selected entities from a population of 428 unique entities for Form I–910 petitions, a sample size approximately 48-percent larger than the minimum necessary.

Of the 300 searches for small entities that filed Form I–910 petitions, 244 searches successfully matched the name of the filing entity to names in the databases and 56 searches did not match the name of a filing entity. DHS assumes filing entities not found in the online databases are likely to be small entities. DHS also considers all of the non-matched entities as small entities for the purpose of this analysis. Among the 244 matches for Form I–910, DHS determined 207 to be small entities based on their revenue or employee count and according to their NAICS code. Therefore, DHS was able to classify 268 of 300 entities as small entities that filed Form I–910 petitions, including combined non-matches (5), matches missing data (56), and small entity matches (207). DHS also used the online databases mentioned above (Data Axle, Manta, Cortera, and Guidestar), and the five matches missing data that were found in the databases lacked revenue data and associated employment threshold.

DHS determined that 268 out of 300 (89.3 percent) entities filing Form I–910 applications were small entities. Furthermore, DHS determined that 207 of the 300 entities searched were small entities based on sales revenue data, which were needed to estimate the economic impact of the proposed rule. Since these 207 were a small entity subset of the random sample of 300 entity searches, they were considered statistically significant in the context of this research, based on sales revenue information.

Similar to the Forms I–129 and I–140, DHS calculated the economic impact of this rule on entities that filed Form I–910 by estimating the total impact associated with the proposed fee increase for each entity and divided that amount by the sales revenue of that entity. Among the 207 small entities with reported revenue data, 97.6 percent experienced an economic impact considerably less than 1 percent, with the exception of 2.4 percent of the small entities. The greatest economic impact imposed by this proposed fee change was 1.85 percent and the smallest was 0.004 percent per entity. The average impact on all 207 small entities with revenue data was 0.15 percent. The increased fee will increase individual applicants' cost by $445.

Small Entity Classification

With an aggregated total of 268 out of a sample size of 300, DHS inferred that a majority, or 89.3 percent, of the entities filing Form I–910 petitions were small entities. Small entities filing petitions could be for-profit businesses or not-for-profit entities. To understand the extent to which not-for-profits were included in the samples selected for each form DHS categorized entities as for-profit or not-for-profit. The business data provider databases do not distinguish if entities are for-profit or not-for-profit, so DHS used the assumption that entities with NAICS codes 712 (Museums, Historical Sites, and Similar Institutions), 813 (Religious, Grantmaking, Civic, Professional, and Similar Organizations), and 6241 (Family Social Services) were not-for-profit. The NAICS code 611 (Educational Services) may have for-profit entities. The sample of Form I–910 consisted mainly of small businesses, with no small governmental jurisdictions in the sample and 5 small not-for-profits.

4. Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360

DHS proposes to increase the fee for entities petitioning on behalf of foreign religious workers who file using Form I–360 from $435 to $515, an increase of $80 (18 percent), including entities who petition on behalf of foreign religious workers. To calculate the impact of the increase, DHS estimated the total costs

[347] Total Impact to Entity = (Number of Petitions Submitted per Entity * $445 Fee Amount Increase) Entity Sales Revenue. USCIS used the lower end of the sales revenue range for those entities where ranges were provided.

[348] DHS acknowledges the broad effects of the COVID–19 international pandemic on the United States and the populations affected by this rule. However, while most forms were impacted as a result of COVID, Form I–129 receipts increased in line with recent years. Thus, we decided to use the most recent fiscal year data from FY 20 for the samples to complete the supplemental Small Entity Analysis to maintain consistency across IRFAs regardless of the general effect of COVID–19 on filings, because that effect is not applicable to the forms discussed in this section.

associated with the fee increase for each entity and divided that amount by the sales revenue of that entity.[349]

Using a 12-month period of data on the number of Form I–360 petitions filed from October 1, 2019, to September 31, 2020, DHS collected internal data on filings of Form I–360 for religious workers. The total number of Form I–360 petitions was 2,388, with 489 unique entities that filed petitions. DHS used the same databases mentioned previously to search for information on revenue and employee count.

DHS used the same method as with Forms I–129 and I–140 to conduct the SEA based on a representative sample of the impacted population. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 215 entities, which included using a 95 percent confidence level and a 5 percent confidence interval on a population of 489 unique entities for Form I–360 petitions. To account for missing organizations in the online subscription and public databases, DHS selected a sample size that was approximately 95 percent larger than the necessary minimum to allow for non-matches (filing entities that could not be found in any of the four databases). Therefore, DHS conducted searches on 420 randomly selected entities from a population of 489 unique entities that filed Form I–360 petitions.

Of the 420 searches for small entities that filed Form I–360 petitions, 248 searches successfully matched the name of the filing entity to names in the databases and 172 searches did not match the name of a filing entity in the databases. DHS assumes that filing entities not found in the online databases are likely to be small entities. As a result, to prevent underestimating the number of small entities this rule would affect, DHS conservatively considers all of the non-matched entities as small entities for the purpose of this analysis. Among the 248 matches for Form I–360, DHS determined 208 to be small entities based on revenue or employee count and according to their NAICS code. Therefore, DHS was able to classify 399 of 420 entities as small entities that filed Form I–360 petitions, including combined non-matches (172), matches missing data (19), and small entity matches (208). DHS also used the online databases mentioned above (Data Axle, Manta, Cortera, and Guidestar), and the 19 matches missing data that were found in the databases lacked revenue or employee count data.

DHS determined that 399 out of 420 (95.0 percent) entities filing Form I–360 petitions were small entities. Furthermore, DHS determined that 208 of the 420 searched were small entities based on sales revenue data, which were needed to estimate the economic impact of the proposed rule. Since these 208 small entities were a subset of the random sample of 420 entity searches, they were considered statistically significant in the context of this research.

Similar to other forms analyzed in this IRFA, DHS calculated the economic impact of this rule on entities that filed Form I–360 on behalf of religious workers by estimating the total costs associated with the proposed fee increase for each entity. Among the 208 small entities with reported revenue data, 99.5 percent experienced an economic impact of less than 1 percent, with the exception of 0.5 percent of the small entities. The greatest economic impact imposed by this proposed fee change was 4.11 percent and the smallest was 0.0008 percent per entity. The average impact on all 208 small entities with revenue data was 0.08 percent.

DHS also analyzed the proposed costs of this rule on the petitioning entities relative to the costs of the typical employee's salary. Guidelines suggested by the SBA's Office of Advocacy indicate that the impact of a rule could be significant if the cost of the regulation exceeds 5 percent of the labor costs of the entities in the sector.[350] According to the Bureau of Labor Statistics (BLS), the mean annual salary is $57,230 for clergy,[351] $52,880 for directors of religious activities and education,[352] and $43,290 for other religious workers.[353] Based on an average of 1.59 religious workers [354] petitioned for per entity, the additional average annual cost would be $127.20 per entity.[355] The additional costs per entity proposed by this rule represent only 0.22 percent of the average annual salary for clergy, 0.24 percent of the average annual salary for directors of religious activities and education, and 0.29 percent of the average annual salary for all other religious workers.[356]

Small Entity Classification

With an aggregated total of 399 out of a sample size of 420, DHS inferred that a large majority, or 95.0 percent, of the entities filing Form I–360 petitions were small entities. Small entities filing petitions could be for-profit businesses or not-for-profit entities. To understand the extent to which not-for-profits were included in the samples selected for each form DHS categorized entities as for-profit or not-for-profit. The business data provider databases do not distinguish if entities are for-profit or not-for-profit, so DHS used the assumption that entities with NAICS codes 712 (Museums, Historical Sites, and Similar Institutions), 813 (Religious, Grantmaking, Civic, Professional, and Similar Organizations), and 6241 (Family Social Services) were not-for-profit. The NAICS code 611 (Educational Services) may have for-profit entities. The sample of Form I–360 consists of a majority not-for-profit entities, primarily composed of religious institutions. There were no small governmental jurisdictions in the sample and 221 small not-for-profits.

5. Genealogy Requests—Genealogy Index Search Request, Form G–1041, and Genealogy Records Request, Form G–1041A

In this proposed rule, DHS establishes an increase in the fee for the Genealogy Index Search Request, Form G–1041, from $65 to $120, an increase of $55 (85 percent) for those who mail in this request on paper. This proposed rule increases the fee for requestors who use the online electronic Form G–1041 version from the current $65 to $100, an increase of $35 (54 percent).

In this proposed rule, DHS establishes a fee for Form G–1041A that would increase from $65 to $260, an increase of $195 (300 percent) for those who mail

[349] Total Impact to Entity = (Number of Petitions Submitted per Entity * $80 Fee Amount Increase)/Entity Sales Revenue. USCIS used the lower end of the sales revenue range for those entities where ranges were provided.

[350] Office of Advocacy, Small Business Administration ''A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act,'' page 19: Available at *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf.*

[351] BLS, ''Occupational Employment Statistics, May 2021, ''Clergy'': *https://www.bls.gov/oes/2021/may/oes212011.htm.*

[352] BLS, ''Occupational Employment Statistics, May 2021, ''Directors of Religious Activities and Education'': Available at *https://www.bls.gov/oes/2021/may/oes212021.htm.*

[353] BLS, ''Occupational Employment Statistics, May 2021, ''Religious Workers, All Other'': Available at *https://www.bls.gov/oes/2021/may/oes212099.htm.*

[354] USCIS calculated the average filing per entity of 1.6 petitions, from the Form I–360 Sample with Petition Totals in Appendix E of the SEA for this NPRM. Calculation: (total number of petitions from each sample id)/(total number of sample Form I–360 petitions) = 667/420 = 1.59 average petitions filed per entity.

[355] Calculation: 1.59 average petitions per entity * $80 increase in petition fees = $127.20 additional total cost per entity.

[356] Calculation: $127.20 additional cost per entity/$57,230 clergy salary × 100 = 0.22 percent; $127.20 additional cost per entity/$52,880 directors of religious activities and education × 100 = 0.24 percent; $127.20 additional cost per entity/$43,290 other religious workers × 100 = 0.29 percent.

in this request on paper. In this proposed rule, the fee for requestors who use the online electronic Form G–1041A will increase from the current $65 to $240, an increase of $175 (269 percent).

Finally, DHS is proposing to charge a fee for requests for a Certificate of Non-Existence. Currently, USCIS allows individuals to request a Certificate of Non-Existence to document that USCIS has no records indicating that an individual became a naturalized citizen of the United States. This service is often used by individuals gathering genealogical records to claim the citizenship of another nation. USCIS operates the Certificate of Non-Existence request process informally and at no cost to individuals while absorbing the costs to provide this service.[357] DHS proposes a fee of $315 for individuals to recover the estimated full cost of processing these requests, which will require submission of Form G–1566, Request for a Certificate of Non-Existence, once approved by OMB.

The population affected by this provision includes individuals who use Form G–1041 to request a search of USCIS historical indices and individuals who use Form G–1041A to obtain copies of USCIS historical records found through an index request. The affected population also includes individuals who request a Certificate of Non-Existence to document that USCIS has no records indicating that an individual became a naturalized citizen of the United States. Based on the DHS records, Table 33 shows the estimated number of genealogy index search requests and historical records requests that were submitted to USCIS using Forms G–1041 and G–1041A for FY 2016 through FY 2020. DHS estimates that an annual average of 5,250 Form G–1041 index search requests and 3,352 Form G–1041A records requests were received during that time. For both forms, more than 90 percent of the requests were submitted electronically.

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[357] See 8 CFR 103.7(f) as of October 1, 2020, which provides that the Director of USCIS, or such officials as he or she may designate, may certify records when authorized under 5 U.S.C. 552 or any other law to provide such records.

Table 33. Receipts of Form G-1041, Genealogy Index Search Request, Form G-1041A, Genealogy Records Request and Form G-1566, Request for a Certificate of Non-Existence for FY 2016 through FY 2020

Fiscal Year	Form G-1041 (Paper Filing)	Form G-1041 (Online Filing)	Total	Percentage Filed Online
2016	321	5,192	5,513	94%
2017	274	3,036	3,310	92%
2018	228	3,602	3,830	94%
2019	218	5,295	5,513	96%
2020	318	7,764	8,082	96%
5-year Total	**1,359**	**24,889**	**26,248**	
5-year Annual Average	**272**	**4,978**	**5,250**	95%
Fiscal Year	**Form G-1041A (Paper Filing)**	**Form G-1041A (Online Filing)**	**Total**	**Percentage Filed Online**
2016	290	2,220	2,510	88%
2017	364	2,262	2,626	86%
2018	298	2,645	2,943	90%
2019	33	3,407	3,440	99%
2020	344	4,895	5,239	93%
5-year Total	**1,329**	**15,429**	**16,758**	
5-year Annual Average	**266**	**3,086**	**3,352**	92%
Fiscal Year	**Certificate of Non-Existence Form G-1566**			
2016	679			
2017	909			
2018	1,442			
2019	1,516			
2020	1,784			
5-year Total	**6,330**			
5-year Annual Average	**1,266**			

Source: USCIS, Immigration Records and Identity Services (IRIS) Directorate, Records Information Systems Branch (RISB). August 19, 2021.
Note: IRIS tracks the online percentage of index searches and records requests.

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Table 33 depicts the FY 2016 through FY 2020 filing receipts of the certificate of non-existence. DHS bases the estimate for the Form G–1566 on these receipts and estimates that the average annual receipts for Form G–1566 would be approximately 1,266.

DHS has previously determined that requests for historical records are usually made by individuals.[358] If professional genealogists and researchers submitted such requests in the past, they did not identify themselves as commercial requestors and, therefore, DHS could not separate these data from the dataset. Genealogists typically advise clients on how to submit their own requests. For those who submit requests on behalf of clients, DHS does not know the extent to which they can pass along the fee increases to their individual clients. DHS assumes genealogists have access to a computer and the internet. DHS is unable to estimate the online number of index searches and records requests; however, some will receive a reduced fee and cost savings, by filing online. Therefore, DHS currently does not have sufficient data to definitively assess the impact on small entities for these requests. However, DHS must still recover the full costs of this program. As stated in the preamble to this proposed rule, reducing the filing fee for any one benefit request submitted to DHS simply transfers the additional cost to process this request to other immigration and naturalization filing fees.

For this proposed rule, DHS is expanding the use of electronic genealogy requests to encourage requestors to use the electronic versions of Form G–1041 and Form G–1041A. DHS is also changing the search request process so that USCIS may provide requestors with electronic records, if they exist, in response to the initial index request. These changes may reduce the time it takes to request and receive genealogy records, and, in some cases, it will eliminate the need to make multiple search requests and submit separate fees. Moreover, DHS notes that providing digital records in response to a Form G–1041 request may reduce the number of Form G–1041A requests that

[358] *See Establishment of a Genealogy Program,* 73 FR 28026 (May 15, 2008).

will be filed since there would already be a copy of the record if it was previously digitized. DHS proposes to provide the requestor with those preexisting digital records, if they exist, via email in response to the initial search request. Electronic versions of the requests reduce the administrative burden on USCIS by eliminating the need to manually enter requestor data into its systems. Requestors that cannot submit the forms electronically may still submit paper copies of both forms with the required filing fees. DHS recognizes that some small entities may be impacted by these proposed increased fees but cannot determine how many or the exact impact. DHS requests comments from the public on the impacts to small entities of the proposed fee increases to the genealogy forms.

6. Application for Regional Center Designation Under the EB–5 Regional Center Pilot Program, Form I- 956 (Formerly Form I–924) and I–956G (Formerly Form I–924A)

Congress created the EB–5 program in 1990 to stimulate the U.S. economy through job creation and capital investment by immigrant investors. The EB–5 regional center program was later added in 1992 by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993. Public Law 102–395, sec. 610, 106 Stat 1828 (Oct. 6, 1992). As amended, the EB–5 program makes approximately 10,000 visas available annually to foreign nationals (and their dependents) who invest at least $1,050,00 or a discounted amount of $800,000 if the investment is in a targeted employment area (TEA) (which includes certain rural areas and areas of high unemployment) or infrastructure project in a U.S. business that will create at least 10 full-time jobs in the United States for qualifying employees. *See* INA sec. 203(b)(5), 8 U.S.C. 1153(b)(5); 8 U.S.C. 11538 U.S.C. 1153. Such investment amounts are not necessarily indicative of whether the regional center is appropriately characterized as a small entity for purposes of the RFA. Due to the lack of regional center revenue data, DHS assumes regional centers collect revenue primarily through the administrative fees charged to investors.

On March 5, 2022, the President signed the EB–5 Reform and Integrity Act of 2022, Div. BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103). The EB–5 Reform and Integrity Act of 2022 immediately repealed the Regional Center (RC) Pilot Program created by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1993, Public Law 102–395, 106 Stat. 1828, sec. 610(b). The law also authorizes a new EB–5 Regional Center Program, which will become effective May 14, 2022 and is authorized through FY 2026 and makes various changes to the program. As discussed more fully in section VIII.N. of the NPRM, DHS proposes new fees for the forms used in the EB–5 program in this proposed rule.

DHS proposes changes to various fees for regional centers and related immigration benefit requests related to Employment-Based Immigrant Visa, Fifth Preference (EB–5). The EB–5 Reform and Integrity Act of 2022 immediately repealed and replaced the prior EB–5 ''regional center program.'' The EB–5 Reform and Integrity Act of 2022 has no immediate impact on the staffing levels of the USCIS Immigrant Investor Program Office, although each existing Regional Center will be required to submit a request to be re-approved under the law, which could greatly increase the program workload initially. Nevertheless, and despite the changes in the law and program, DHS has proposed fees in this rule based on the currently projected staffing needs to meet the adjudicative and administrative burden of the Immigrant Investor Program Office pending the fee study required by section 106(a) of the EB–5 Reform and Integrity Act of 2022. Thus, the annual filing volume projections in this rule are based on historical volumes and trends because the EB–5 Reform and Integrity Act of 2022 is too new for DHS to accurately estimate its impacts on filing volumes. DHS welcomes comments from the public on the number of forms for the EB–5 program that will be submitted annually and how that number will be changed by the recent legislation. DHS may adjust the estimated filing volumes in the final rule based on additional analysis and comments on this rule.

DHS is proposing a fee for Form I–956, Application for Regional Center Designation, is $47,695, a $29,900 (168 percent) increase from the $17,795 fee for Form I–924, Application for Regional Center Designation under the Immigrant Investor Program. *See* 8 CFR 103.7(b)(1)(i)(WW) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(64). DHS also proposes a $47,695 fee for Form I–956F, Application for Approval of Investment in a Commercial Enterprise, because its adjudicative burden is nearly identical to that of the Form I–956. The proposed fee for Form I–956G, Regional Center Annual Statement, is $4,470, a $1,435 (47 percent) increase from the current $3,035 fee Form I–924A, Annual Certification of Regional Center. *See* 8 CFR 103.7(b)(1)(i)(WW) (Oct. 1, 2020); proposed 8 CFR 106.2(a)(66). The EB–5 program encompasses Forms I–526, I–829, I–956, I–965F, and I–956G.[359]

DHS is creating these new forms as stated above, as part of the EB–5 Reform and Integrity Act of 2022. Since Form I–956/I–956A will be new forms and historical data does not exist. Because the immigration benefit adjudications previously performed using Form I–924 will now be administered using Forms I–956 and I–956G, DHS will use historical data of the previous Form I–956 (formerly Form I–924) Application for Regional Center Designation and Form I–956G (formerly Form I–924A), Annual Certification of Regional Center as a proxy for the analysis. Under the Regional Center Program, foreign nationals based their EB–5 petitions on investments in new commercial enterprises located within ''regional centers.'' DHS regulations define a regional center as an economic unit, public or private, that promotes economic growth, regional productivity, job creation, and increased domestic capital investment. *See* 8 CFR 204.6(e). Requests for regional center designation must be filed with USCIS on Form I–956 (formerly Form I–924), Application for Regional Center Designation Under the Immigrant Investor Program. *See* 8 CFR 204.6(m)(3) and (4). Once designated, regional centers must provide USCIS with updated information to demonstrate continued eligibility for the designation by submitting Form I–956G (formerly Form I–924A), Annual Certification of Regional Center on an annual basis or as otherwise requested. *See* 8 CFR 204.6(m)(6)(i)(B).

The application process would require the same information from applicants that is currently required. As shown in Table 34, during the 5-year period from FY 2016 through FY 2020, USCIS received a total of 951 annual Form I–956 (formerly Form I–924) regional centers applications and 4,091

[359] The Supplement to Form I–956G is used to certify a Regional Center's continued eligibility for the Regional Center designation through an annual certification. Each designated Regional Center entity must file a Form I–956G for each fiscal year within 90 days after the end of the fiscal year of the calendar year in which the fiscal year ended. DHS has also created Forms I–956H, Bona Fides of Persons Involved with Regional Center Program, and I–956K Registration for Direct and Third-Party Promoters, for the new EB–5 program. DHS proposes no fee for those forms in this proposed rule.

Form I–956G (formerly Form I–924A)	annual statements, with annual averages 190 and 818 respectively.

Table 34. Annual Receipts for Form I-956, Application For Regional Center Designation Under the Immigrant Investor Program, and Form I-956G, Annual Statements of Regional Center, for FY 2016 through FY 2020

Fiscal Year	Form I-956*	Form I-956G**
2016	436	863
2017	280	843
2018	122	887
2019	79	820
2020	34	678
5-year Total	**951**	**4,091**
5-year Annual Average	**190**	**818**

*Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division, CLAIMS 3 database, May 5, 2021.

**Source: USCIS, Immigrant Investor Office (IPO), INFACT database, January 6, 2022.

Note: I-956G are the annual statements to be submitted by these approved regional centers.

Regional centers are difficult to assess because there is a lack of official USCIS data on employment, income, and industry classification for these entities. It is difficult to determine the small entity status of regional centers without such data. Such a determination is also difficult because regional centers can be structured in a variety of different ways, and can involve multiple business and financial activities, some of which may play a direct or indirect role in linking investor funds to NCEs and job-creating projects or entities. Regional centers also pose a challenge for analysis as their structure is often complex and can involve many related business and financial activities not directly involved with EB–5 activities. Regional centers can be made up of several layers of business and financial activities that focus on matching foreign investor funds to development projects to capture above-market return differentials.

While DHS attempted to treat regional centers similar to the other entities in this analysis, DHS was not able to identify most of the entities in any of the public or private online databases. Furthermore, while regional centers are an integral component of the EB–5 program, DHS does not collect data on the administrative fees the regional centers charge to the foreign investors who are investing in one of their projects. DHS did not focus on the bundled capital investment amounts (either a discounted $500,000 if the investment is in a TEA project, which includes certain rural areas and areas of high unemployment, or $1 million for a non-TEA project per investor, in a U.S. business that will create or preserve at least 10 full-time jobs in the United States for qualifying employees) [360] that get invested into an NCE. Such investment amounts are not necessarily indicative of whether the regional center is appropriately characterized as a small entity for purposes of the RFA. Due to the lack of regional center revenue data, DHS assumes regional centers collect revenue primarily through the administrative fees charged to investors.

DHS did consider the information provided by regional center applicants as part of the Forms I–956 (formerly Form I–924) and I–956G (formerly Form I–924A); however, it does not include adequate data to allow DHS to reliably identify the small entity status of individual applicants. Although regional center applicants typically report the NAICS codes associated with the sectors they plan to direct investor funds toward, these codes do not necessarily apply to the regional centers themselves. In addition, information provided to DHS concerning regional centers generally does not include regional center revenues or employment.

DHS was able to obtain some information under some specific assumptions in an attempt to analyze the small entity status of regional centers. In the DHS proposed rule ''EB–5 Immigrant Investor Program Modernization,'' DHS analyzed estimated administrative fees and revenue amounts for regional centers.[361] DHS found both the mean and median for administrative fees to be $50,000 and the median revenue amount to be

[360] U.S. Department of Homeland Security, USCIS—EB–5 Immigrant Investor Program Modernization, Proposed rule. *See* 84 FR 35750 (July 24, 2019). Available at *https://www.govinfo.gov/content/pkg/FR-2019-07-24/pdf/2019-15000.pdf.* This amount by investor is determined between a designated Target Employment Area and non-Target Employment Area.

[361] Id.

$1,250,000 over the period FY 2017 through FY 2020. DHS does not know the extent to which these regional centers can pass along the fee increases to the individual investors. Passing along the costs from this proposed rule can reduce or eliminate the economic impacts to the regional centers. While DHS cannot definitively claim there is no significant economic impact to these small entities based on existing information, DHS would assume existing regional centers with revenues equal to or less than $447,000 per year (some of which DHS assumes would be derived from administrative fees charged to individual investors) could experience a significant economic impact if DHS assumes a fee increase that represents 1 percent of annual revenue is a ''significant'' economic burden under the RFA.[362]

DHS welcomes comments from the public on the impacts to small entities of the proposed fee increases to Form I–956G (formerly Form I–924A) and requests information from the public on data sources on the average revenues collected by regional centers in the form of administrative fees and the extent to which regional centers may pass along the fee increases to the individual investors.

d. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

The proposed rule does not directly impose any new or additional ''reporting'' or ''recordkeeping'' requirements on filers of Form I–129, I–140, I–910, I–360, G–1041, G–1041A, I–956 (formerly Form I–924), or I–956G (formerly I–924A). The proposed rule does not require any new professional skills for reporting.

e. An identification, to the extent practical, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

DHS is unaware of any duplicative, overlapping, or conflicting Federal rules, but invites any comment and information regarding any such rules.

f. Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities, including alternatives considered as:

(1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) Use of performance rather than design standards; and

(4) Any exemption from coverage of the rule, or any part thereof, for such small entities.

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants. In addition, DHS must fund the costs of providing services without charge by using a portion of the filing fees that are collected for other immigration benefits. Without an adjustment in fees, USCIS would not be able to sustain the current level of service for immigration and naturalization benefits. While most immigration benefit fees are paid by individuals, as described above, some also are paid by small entities. USCIS seeks to minimize the impact on all parties, and in particular small entities. An alternative to the increased economic burden of the proposed rule is to maintain fees at their current level for small entities. The strength of this alternative is that it assures no additional fee burden is placed on small entities; however, this alternative also would cause negative impacts to small entities.

Without the fee adjustments proposed in this proposed rule, significant operational changes would be necessary in order for USCIS to provide current immigration and naturalization benefits to the public. These changes would include reductions in Federal and contract staff, infrastructure spending on information technology and facilities, travel, and training. Depending on the actual level of workload received, these operational changes could result in longer application processing times, a degradation in service to applicants and petitioners, and reduced efficiency over time. DHS is therefore not proposing to exempt small entities from the fee increases outlined in this proposed rule.

g. Questions for Comment to Assist Regulatory Flexibility Analysis.

- DHS seeks comment on the numbers of small entities that may be impacted by this proposed rulemaking.
- DHS seeks comment on any or all of the provisions in the proposed rule with regard to the economic impact of this proposed rule, paying specific attention to the effect of the rule on small entities in light of the above analysis, as well as the full small entity analysis on regulations.gov.
- DHS seeks comment on any significant alternatives DHS should consider in lieu of the changes proposed by this proposed rule.
- DHS seeks ways in which the rule could be modified to reduce burdens for small entities consistent with the Immigration and Nationality Act and the Chief Financial Officers Act requirements.
- Please identify all relevant Federal, State, or local rules that may duplicate, overlap, or conflict with the proposed rule.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, that includes any Federal mandate that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector.[363]

While this proposed rule is expected to exceed the $100 million in 1995 expenditure in any one year when adjusted for inflation ($178 million in 2021 dollars based on the Consumer Price Index for All Urban Consumers (CPI–U)),[364] DHS does not believe this proposed rule would impose any unfunded Federal mandates on State, local, and Tribal governments, in the aggregate, or on the private sector. It does not contain a Federal mandate as

[362] Calculation: 1 percent of $447,000 = $4,470 (the new fee for Form I–956G; formerly Form I–924A).

[363] *See* 2 U.S.C. 1532(a).

[364] *See* U.S. Department of Labor, BLS, ''Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month,'' available at *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202112.pdf* (last visited Jan. 13, 2022). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2021); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2021 − Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)]*100=[(270.970 − 152.383)/152.383]*100=(118.587/152.383)*100=0.77821673*100=77.82 percent=78 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars*1.78=$178 million in 2021 dollars.

the term is defined under UMRA.[365] The requirements of Title II of UMRA, therefore, do not apply, and DHS has not prepared a written statement.

D. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)

The Congressional Review Act (CRA) was included as part of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) by section 804 of SBREFA, Public Law 104–121, 110 Stat. 847, 868, *et seq*. This proposed rule, if finalized, would be a major rule as defined by section 804 of SBREFA because the aggregate amount of additional fees to be collected will exceed $100 million. *See* 5 U.S.C. 804(2)(A) (providing that a rule is a major rule if it is likely to result in an annual effect on the economy of $100 million or more). Accordingly, absent exceptional circumstances, this proposed rule if enacted as a final rule would be effective at least 60 days after the date on which Congress receives a report submitted by DHS as required by 5 U.S.C. 801(a)(1).

E. Executive Order 13132 (Federalism)

This proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of E.O. 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This proposed rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities to minimize litigation and undue burden on the Federal court system. DHS has determined that this proposed rule meets the applicable standards provided in section 3(a) and 3(b)(2) of E.O. 12988.

G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule would not have ''Tribal implications'' under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

H. Paperwork Reduction Act

Under the PRA of 1995, 44 U.S.C. 3501–12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule, unless they are exempt. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instruments. Please see the accompanying PRA documentation for the full analysis. The Information Collection table below shows the summary of forms that are part of this rulemaking.

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Table 35: Information Collection

OMB Number	Form Number	Form Name	Type of PRA Action
1615-0096	G-1041	Genealogy Index Search Request	

[365] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

Table 35: Information Collection			
OMB Number	**Form Number**	**Form Name**	**Type of PRA Action**
	G-1041A	Genealogy Records Request (For each microfilm or hard copy file)	Revision of a Currently Approved Collection
1615-0156	G-1566	Request for a Certificate of Non-Existence	Revision of a Currently Approved Collection
1615-0079	I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	Revision of a Currently Approved Collection
1615-0009	I-129	Petition for a Nonimmigrant Worker	Revision of a Currently Approved Collection
1615-0111	I-129CW	Petition for a CNMI-Only Nonimmigrant Transitional Worker	Revision of a Currently Approved Collection
	I-129CWR	Semiannual Report for CW-1 Worker	
1615-0001	I-129F	Petition for Alien Fiancé(e)	Revision of a Currently Approved Collection
1615-0010	I-129S	Nonimmigrant Petition Based on Blanket L Petition	Revision of a Currently Approved Collection
1615-0012	I-130	Petition for Alien Relative	Revision of a Currently Approved Collection
	I-130A	Supplemental Information for Spouse Beneficiary	
1615-0013	I-131	Application for Travel Document	Revision of a Currently Approved Collection
1615-0135	I-131A	Application for Travel Document (Carrier Documentation)	Revision of a Currently Approved Collection
1615-0015	I-140	Immigrant Petition for Alien Worker	Revision of a Currently Approved Collection
1615-0016	I-191	Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	Revision of a Currently Approved Collection
1615-0017	I-192	Application for Advance Permission to Enter as Nonimmigrant	Revision of a Currently Approved Collection
1615-0018	I-212	Application for Permission to Reapply for Admission into the United States After Deportation or Removal	Revision of a Currently Approved Collection
1615-0095	I-290B	Notice of Appeal or Motion	Revision of a Currently Approved Collection
1615-0020	I-360	Petition for Amerasian, Widow(er), or Special Immigrant	Revision of a Currently Approved Collection
1615-0023	I-485	Application to Register Permanent Residence or Adjust Status	Revision of a Currently Approved Collection
	I-485A	Supplement A to Form I-485, Adjustment of Status Under Section 245(i)	
	I-485J	Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j)	
1615-0003	I-539	Application to Extend/Change Nonimmigrant Status	Revision of a Currently Approved Collection

Table 35: Information Collection			
OMB Number	**Form Number**	**Form Name**	**Type of PRA Action**
1615-0027	I-566	Interagency Record of Request – A, G or NATO Dependent Employment Authorization or Change/Adjustment to/from A, G or NATO Status	Revision of a Currently Approved Collection
1615-0028	I-600	Petition to Classify Orphan as an Immediate Relative	Revision of a Currently Approved Collection
	I-600A	Application for Advance Processing of an Orphan Petition	
	I-600/A Supp1	Form I-600A/I-600 Supplement 1, Listing of Adult Member of the Household	
	I-600/A Supp 2	Form I-600A/I-600 Supplement 2, Consent to Disclose Information	
	I-600/A Supp 3	Form I-600A/I-600 Supplement 3, Request for Action on Approved Form I-600A/I-600	
1615-0029	I-601	Application for Waiver of Grounds of Inadmissibility	Revision of a Currently Approved Collection
1615-0123	I-601A	Application for Provisional Unlawful Presence Waiver	Revision of a Currently Approved Collection
1615-0069	I-602	Application by Refugee for Waiver of Grounds of Inadmissibility	Revision of a Currently Approved Collection
1615-0030	I-612	Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	Revision of a Currently Approved Collection
1615-0032	I-690	Application for Waiver of Grounds of Inadmissibility	Revision of a Currently Approved Collection
1615-0035	I-698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	Revision of a Currently Approved Collection
1615-0038	I-751	Petition to Remove Conditions on Residence	Revision of a Currently Approved Collection
1615-0040	I-765	Application for Employment Authorization	Revision of a Currently Approved Collection
1615-0137	I-765V	Application for Employment Authorization for Abused Nonimmigrant Spouse	Revision of a Currently Approved Collection
1615-0005	I-817	Application for Family Unity Benefits	Revision of a Currently Approved Collection
1615-0043	I-821	Application for Temporary Protected Status	Revision of a Currently Approved Collection
1615-0124	I-821D	Consideration of Deferred Action for Childhood Arrivals	Revision of a Currently Approved Collection
1615-0044	I-824	Application for Action on an Approved Application or Petition	Revision of a Currently Approved Collection
1615-0046	I-854A	Inter-Agency Alien Witness and Informant Record	No material or nonsubstantive change to a currently approved collection
1615-0072	I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal	Revision of a Currently Approved Collection
1615-0082	I-90	Application to Replace Permanent Resident Card	Revision of a Currently Approved Collection

Table 35: Information Collection			
OMB Number	**Form Number**	**Form Name**	**Type of PRA Action**
1615-0048	I-907	Request for Premium Processing Service	Revision of a Currently Approved Collection
1615-0114	I-910	Application for Civil Surgeon Designation	Revision of a Currently Approved Collection
1615-0116	I-912	Application for Fee Waiver	Revision of a Currently Approved Collection
1615-0099	I-914	Application for T nonimmigrant status	Revision of a Currently Approved Collection
1615-0104	I-918	Application for U nonimmigrant status	Revision of a Currently Approved Collection
1615-0106	I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	Revision of a Currently Approved Collection
1615-0136	I-941	Application for Entrepreneur Parole	Revision of a Currently Approved Collection
1615-0050	N-336	Request for a Hearing on a Decision in Naturalization Proceedings	Revision of a Currently Approved Collection
1615-0052	N-400	Application for Naturalization	Revision of a Currently Approved Collection
1615-0056	N-470	Application to Preserve Residence for Naturalization Purposes	Revision of a Currently Approved Collection
1615-0091	N-565	Application for Replacement of Naturalization/Citizenship Document	Revision of a Currently Approved Collection
1615-0057	N-600	Application for Certification of Citizenship	Revision of a Currently Approved Collection
1615-0087	N-600K	Application for Citizenship and Issuance of Certificate under Section 322.	Revision of a Currently Approved Collection
1615-0144	OMB-64	H-1B Registration Tool	Revision of a Currently Approved Collection

BILLING CODE 9111–97–C

USCIS is consolidating all information related to Form fees, fee exemptions, and how to submit fee payments into Form G–1055, Fee Schedule. Most fee-related language, including language from sections *What is the Filing Fee, How To Check If the Fees Are Correct, Fee Waiver,* and *Premium Processing* content is being removed from individual Form Instructions documents, which results in a per-response hour burden reduction for many USCIS information collections and an overall total hour burden reduction for the USCIS information collection inventory. In accordance with the PRA, the information collection notice is published in the **Federal Register** and will include the proposed edits to the information collection instruments.

This rulemaking will also require non-substantive edits to some USCIS information collections, which are indicated in Table 35 as ''No material/non-substantive change to a currently approved collection'' in the Type of PRA Action column. The USCIS Form I–854A, Inter-Agency Alien Witness and Informant Record, edits include updating general instructions language. As stated previously in this preamble, DHS has recently created Forms I–526, Immigrant Petition by Alien Entrepreneur, and Form I–526E, Immigrant Petition by Regional Center Investor, Form I–956, Application for Regional Center Designation, Form I–956F, Application for Approval of Investment in a Commercial Enterprise, Form I–956G, Regional Center Annual Statement, Form I–956H, Bona Fides of Persons Involved with Regional Center Program, and Form I–956K Registration for Direct and Third-Party Promoters, to implement the EB–5 Reform and Integrity Act of 2022. USCIS continues to use Form I–829, Petition by Investor to Remove Conditions on Permanent Resident Status, to adjudicate requests from investors under the previous statute and regulations, and as authorized by the EB–5 Reform and Integrity Act of 2022. Those forms are not subject to the Paperwork Reduction Act. *See* Public Law 117–103, div. BB, sec. 106(d) (providing that for a 1-year period the requirements of the PRA do not apply to any collection of information required to implement the EB–5 Reform and Integrity Act of 2022). Thus, those forms are not discussed in this section although new fees are proposed for them in this rule. If the applicable forms are approved by OMB before the final rule is published, the final rule will be updated accordingly.

USCIS Form G–1041; G1041A

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information

collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0096 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Genealogy Index Search Request; Genealogy Records Request (For each microfilm or hard copy file).

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* G–1041; G–1041A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The Genealogy Program is necessary to provide a more timely response to requests for genealogical and historical records. Form G–1041 is provided as a convenient means for persons to provide data necessary to perform a search of historical agency indices. Form G–1041A provides a convenient means for persons to identify a particular record desired under the Genealogy Program. The forms provide rapid identification of such requests and ensures expeditious handling. Persons such as researchers, historians, and social scientists seeking ancestry information for genealogical, family history and their location purposes will use Forms G–1041 and G–1041A.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form G–1041 is 3,847 and the estimated hour burden per response is 0.317 hours; the estimated total number of respondents for Form G–1041A is 2,920 and the estimated hour burden per response is 0.317 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,146 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $25,376.

USCIS Form G–1566

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0156 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for a Certificate of Non-Existence.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* G–1566; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* Individuals or households. USCIS will use the information collected on Form G–1566 to determine whether any immigration records about the subject of record listed on the form exist. If no records about the subject of record exist, USCIS will provide a Certificate of Nonexistence. If USCIS finds records related to the subject of record, a Certificate of Non-Existence will not be issued, but the requestor will be notified that records were found.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1566 is 2,000 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $122,000.

USCIS Form I–102

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0079 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the

validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival/Departure Document.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–102; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Nonimmigrants temporarily residing in the United States can use this form to request a replacement of a lost, stolen, or mutilated Form I–94, Arrival/Departure Record, or to request a new Arrival/Departure Record, if one was not issued when the nonimmigrant was last admitted but the nonimmigrant is now in need of such a record. USCIS uses the information provided by the requester to verify eligibility, as well as his or her status, process the request, and issue a new or replacement Arrival/Departure Record. If the application is approved, USCIS will issue a Form I–94, Arrival/Departure Record.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–102 is 4,100 and the estimated hour burden per response is 0.567 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,325 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,182,440.

USCIS Form I–129

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0009 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for a Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–129; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine the eligibility of a business to petition for a nonimmigrant worker to come to the United States temporarily to perform services or labor, or to receive training, as an H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, or R–1 nonimmigrant worker. Petitioners may also use this form to request an extension of stay in or change of status to E–1, E–2, E–3, H–1B1 or TN, or one of the above classifications for an alien.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129 is 572,606 and the estimated hour burden per response is 2.157 hours; the estimated total number of respondents for the information collection E–1/E–2 Classification Supplement is 12,050 and the estimated hour burden per response is 0.67; the estimated total number of respondents for the information collection Trade Agreement Supplement to Form I–129 is 12,945 and the estimated hour burden per response is 0.67; the estimated total number of respondents for the information collection H Classification Supplement to Form I–129 is 471,983 and the estimated hour burden per response is 2; the estimated total number of respondents for the information collection H–1B and H–1B1 Data Collection and Filing Fee Exemption Supplement is 398,936 and the estimated hour burden per response is 1; the estimated total number of respondents for the information collection L Classification Supplement to Form I–129 is 40,358 and the estimated hour burden per response is 1.34; the estimated total number of respondents for the information collections O and P Classifications Supplement to Form I–129 is 28,434 and the estimated hour burden per response is 1; the estimated total number of respondents for the information collection Q–1 Classification Supplement to Form I–129 is 54 and the estimated hour burden per response is 0.34; the estimated total number of respondents for the information collection R–1 Classification Supplement to Form I–129 is 6,782 and the estimated hour burden per response is 2.34.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,693,162 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $294,892,090.

USCIS Form I–129CW; I–129CWR

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0079 in the body of the letter and the agency

name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for a CNMI-Only Nonimmigrant Transitional Worker; Semiannual Report for CW–1 Workers.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–129CW; I–129CWR; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business and other for-profit. USCIS uses the data collected on Form I–129CW to determine eligibility for the requested immigration benefits. An employer uses Form I–129CW to petition USCIS for a noncitizen to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CW–1 worker. An employer also uses Form I–129CW to request an extension of stay or change of status on behalf of the noncitizen worker. Form I–129CW serves the purpose of standardizing requests for these benefits and ensuring that the basic information required to determine eligibility is provided by the petitioners.

Form I–129CWR, Semiannual Report for CW–1 Employers, is used by employers to comply with the reporting requirements imposed by the Workforce Act. Form I–129CWR captures data USCIS requires to help verify the continuing employment and payment of the CW–1 worker. DHS may provide such semiannual reports to other Federal partners, including the U.S. Department of Labor (DOL) for investigative or other use as DOL may deem appropriate. Congress expressly provided for these semiannual reports to be shared with DOL. 48 U.S.C. 1806(d)(3)(D)(ii).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129CW is 5,975 and the estimated hour burden per response is 3.317 hours; the estimated total number of respondents for the information collection Form I–129CWR is 5,975 and the estimated hour burden per response is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 34,757 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,809,063.

USCIS Form I–129F

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0001 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Alien Fiancé(e).

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–129F; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. Form I–129F must be filed with U.S. Citizenship and Immigration Services (USCIS) by a citizen of the United States in order to petition for an alien spouse, fiancé(e), or child.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129F is 47,700 and the estimated hour burden per response is 3.067 hours; the estimated total number of respondents for biometrics processing is 47,700 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 202,105 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $5,412,004.

USCIS Form I–129S

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0010 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Nonimmigrant Petition Based on Blanket L Petition.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–129S; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Employers seeking to classify employees outside the United States as executives, managers, or specialized knowledge professionals, as nonimmigrant intra-company transferees pursuant to a previously approved blanket petition under sections 214(c)(2) and 101(a)(15)(L) of the Act, may file this form. USCIS uses the information provided through this form to assess whether the employee meets the requirements for L–1 classification under blanket L petition approval. Submitting this information to USCIS is voluntary. USCIS may provide the information provided through this form to other Federal, State, local, and foreign government agencies and authorized organizations, and may also be made available, as appropriate, for law enforcement purposes or in the interest of national security.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129S is 75,000 and the estimated hour burden per response is 2.817 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 211,275 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $36,750,000.

USCIS Form I–130; I–130A

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0012 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Alien Relative; Supplemental Information for Spouse Beneficiary.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–130; I–130A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–130 allows U.S. citizens or lawful permanent residents of the United States to petition on behalf of certain alien relatives who wish to immigrate to the United States. Form I–130A allows for the collection of additional information for spouses of the petitioners necessary to facilitate a decision.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–130 paper filing is 437,500 and the estimated hour burden per response is 1.817 hours; the estimated total number of respondents for the information collection Form I–130A is 40,775 and the estimated hour burden per response is 0.833 hours; and the estimated total number of respondents for the information collection Form I–130 online filing is 437,500 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,485,154 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $350,000,000.

USCIS Form I–131

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0013 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Travel Document, Form I–131; Extension, Without Change, of a Currently Approved Collection.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–131; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Certain noncitizens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, noncitizens in TPS, DACA recipients, and noncitizens abroad seeking humanitarian parole who need to apply for a travel document to lawfully enter or re-enter the United States. Lawful permanent residents may now file requests for travel permits (transportation letter or boarding foil).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–131 is 483,920 and the estimated hour burden per response is 1.717 hours; the estimated total number of respondents for biometrics processing is 84,000 and the estimated hour burden per response is 1.17 hours, the estimated total number of respondents for passport-style photos is 380,000 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,119,171 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $146,072,480.

USCIS Form I–131A

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0135 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Carrier Documentation.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–131A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the information provided on Form I–131A to verify the status of permanent or conditional residents and determine whether the applicant is eligible for the requested travel document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–131A is 5,100 and the estimated hour burden per response is 0.837 hours; biometrics processing is 5,100 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 10,236 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $919,275.

USCIS Form I–140

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0015 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigrant Petition for Alien Workers.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–140; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit; Not-for-profit institutions. The information collected on this form will be used by USCIS to determine eligibility for the requested immigration benefits under section 203(b)(1), 203(b)(2), or 203(b)(3) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–140 is 143,000 and the estimated hour burden per response is 0.897 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 128,223 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $62,598,250.

USCIS Form I–191

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0016 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–191; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS and EOIR use the information on the form to properly assess and determine whether the applicant is eligible for a waiver under former section 212(c) of INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–191 is 116 and the estimated hour burden per response is 1.567 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 182 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $59,740.

USCIS Form I–192

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0017 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Enter as Nonimmigrant (Pursuant to Section 212(d)(3)(A)(ii) of the INA).

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–192; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected will be used by CBP and USCIS to determine whether the applicant is eligible to enter the United States temporarily under the provisions of section 212(d)(3), 212(d)(13), and 212(d)(14) of the INA. The respondents for this information collection are certain inadmissible nonimmigrant aliens who wish to apply for permission to enter the United States and applicants for T nonimmigrant status or petitioners for U nonimmigrant status. CBP has developed an electronic filing system, called Electronic Secured Adjudication Forms Environment (e-SAFE), through which Form I–192 can be submitted when filed with CBP.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–192 is 61,050 and the estimated hour burden per response is 1.317 hours; the estimated total number of respondents for the information collection e-SAFE is 7,000 and the estimated hour burden per response is 1.25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 89,153 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $17,522,875.

USCIS Form I–212

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0018 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the

collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–212; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the data collected on Form I–212 to determine whether an alien is eligible for and should be granted the benefit of consent to reapply for admission into the United States. This form standardizes requests for consent to reapply and its data collection requirements ensure that, when filing the application, the alien provides the basic information that is required to assess eligibility for consent to reapply.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–212 paper filing is 7,000 and the estimated hour burden per response is 1.817 hours. The estimated total number of respondents for the information collection I–212 (online filing via CBP e-SAFE) is 1,200 and the estimated hour burden per response is 1.817 hours. The estimated total number of respondents for the information collection biometric submission is 350 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 15,309 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $370,650.

USCIS Form I–290B

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0095 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Appeal or Motion.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–290B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–290B standardizes requests for appeals and motions and ensures that the basic information required to adjudicate appeals and motions is provided by applicants and petitioners, or their attorneys or representatives. USCIS uses the data collected on Form I–290B to determine whether an applicant or petitioner is eligible to file an appeal or motion, whether the requirements of an appeal or motion have been met, and whether the applicant or petitioner is eligible for the requested immigration benefit. Form I–290B can also be filed with ICE by schools appealing decisions on Form I–17 filings for certification to ICE's Student and Exchange Visitor Program (SEVP).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–290B is 28,000 and the estimated hour burden per response is 1.317 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 36,876 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $8,652,000.

USCIS Form I–360

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0020 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow(er), or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–360; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The Form I–360 may be used by an Amerasian; a widow or widower; a battered or abused spouse or child of a U.S. citizen or lawful permanent resident; a battered or abused parent of a U.S. citizen son or daughter; or a special immigrant (religious worker, Panama Canal company employee, Canal Zone government employee, U.S. Government employee in the Canal Zone; physician, international organization employee or family member, juvenile court dependent; armed forces member; Afghanistan or Iraq national who supported the U.S. Armed Forces as a translator; Iraq national who worked for the or on behalf of the U.S. Government in Iraq; or Afghan national who worked for or on behalf of the U.S. Government or the International Security Assistance Force [ISAF] in Afghanistan) who intend to establish their eligibility to immigrate to the United States. The data collected on this form is reviewed by U.S. Citizenship and Immigration Services (USCIS) to determine if the petitioner may be qualified to obtain the benefit. The data collected on this form will also be used to issue an employment authorization document upon approval of the petition for battered or abused spouses, children, and parents, if requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Petition for Amerasian, Widower, or Special Immigration (Form I–360): *Iraqi & Afghan Petitioners* is 1,916 and the estimated hour burden per response is 2.917 hours; the estimated total number of respondents for the information collection Petition for Amerasian, Widower, or Special Immigration (Form I–360): *Religious Workers* is 2,393 and the estimated hour burden per response is 2.167 hours; the estimated total number of respondents for the information collection Petition for Amerasian, Widower, or Special Immigration (Form I–360): *All Others* is 14,362 and the estimated hour burden per response is 1.917 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 38,307 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $2,287,320.

USCIS Form I–485; I–485A; I–485J

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0023 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status; Supplement A to Form I–485, Adjustment of Status Under Section 245(i); Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j).

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–485; I–485A; I–485J; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–485 is used by all applicants seeking to adjust status to lawful permanent resident under INA section 245(a). Supplement A to Form I–485 is used by a subset of applicants seeking to adjust status under INA section 245(i). Supplement J is used by applicants whose adjustment of status is based on an approved employment-based immigrant visa petition that requires a job offer.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–485 is 690,837 and the estimated hour burden per response is 7.087 hours; the estimated total number of respondents for the information collection Form I–485A is 29,213 and the estimated hour burden per response is 1.067 hours; the estimated total number of respondents for the information collection Form I–485J is 37,358 and the estimated hour burden per response is 0.917; the estimated total number of respondents for the information collection biometrics submission is 690,837 and the estimated hour burden per response is 1.17.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 5,700,585 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,093,101,980.

USCIS Form I–539; I–539A

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0003 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the

validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status; Supplement A to Form I–539A.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–539; I–539A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This form is used by nonimmigrants to apply for an extension of stay, for a change to another nonimmigrant classification, or to obtain V nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–539 (paper) is 174,289 and the estimated hour burden per response is 1.817 hours, the estimated total number of respondents for the information collection I–539 (electronic) is 74,696 and the estimated hour burden per response is 1.083 hours; and the estimated total number of respondents for the information collection I–539A is 54,375 and the estimated hour burden per response is 0.5 hours; biometrics processing is 186,738 total respondents requiring an estimated 1.17 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 643,250 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $42,700,928.

USCIS Form I–566

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0027 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Interagency Record of Request—A, G or NATO Dependent Employment Authorization or Change/Adjustment to/from A, G or NATO Status.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–566; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The data on this form is used by Department of State (DOS) to certify to USCIS eligibility of dependents of A or G principals requesting employment authorization, as well as for NATO/Headquarters, Supreme Allied Commander Transformation (NATO/HQ SACT) to certify to USCIS similar eligibility for dependents of NATO principals. DOS also uses this form to certify to USCIS that certain A, G, or NATO nonimmigrants may change their status to another nonimmigrant status. USCIS, on the other hand, uses data on this form in the adjudication of change or adjustment of status applications from aliens in A, G, or NATO classifications and following any such adjudication informs DOS of the results by use of this form. The information provided on this form continues to ensure effective interagency communication among the three governmental departments—the Department of Homeland Security (DHS), DOS, and the Department of Defense (DOD)—as well as with NATO/HQ SACT. These departments and organizations utilize this form to facilitate the uniform collection and review of information necessary to determine an alien's eligibility for the requested immigration benefit. This form also ensures that the information collected is communicated among DHS, DOS, DOD, and NATO/HQ SACT regarding each other's findings or actions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–566 is 5,800 and the estimated hour burden per response is 1.337 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 7,755 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $710,500.

USCIS Form I–600; I–600A; Supplement 1; Supplement 2; Supplement 3

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0028 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household; Supplement 2, Consent to Disclose Information; and Supplement 3, Request for Action on Approved Form I–600A/I–600.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* Form I–600, Form I–600A, Form I–600A/I–600 Supplement 1, Form I–600A/I–600 Supplement 2, Form I–600A/I–600 Supplement 3; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. A U.S. citizen adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA. A U.S. citizen prospective adoptive parent may file Form I–600A in advance of the Form I–600 filing and USCIS will determine the prospective adoptive parent's eligibility to file Form I–600A and their suitability and eligibility to properly parent an orphan. If there are other adult members of the U.S. citizen prospective/adoptive parent's household, as defined at 8 CFR 204.301, the prospective/adoptive parent must include Form I–600A/I–600 Supplement 1 when filing both Form I–600A and Form I–600. A Form I–600A/I–600 Supplement 2, Consent to Disclose Information, is an optional form that a U.S. citizen prospective/adoptive parent may file to authorize USCIS to disclose case-related information that would otherwise be protected under the Privacy Act, 5 U.S.C. 552a, to adoption service providers or other individuals. Form I–600A/I–600 authorized disclosures will assist USCIS in the adjudication of Forms I–600A and I–600. USCIS has created a new Form I–600A/I–600 Supplement 3, Request for Action on Approved Form I–600A/I–600, for this information collection. Form I–600A/I–600 Supplement 3 is a form that prospective/adoptive parents must use if they need to request action such as an extended suitability determination; updated suitability determination based upon a significant change in their circumstances or change in the number or characteristics of the children they intend to adopt or a change in their intended country of adoption; or a request for a duplicate notice of their approved Form I–600A suitability determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–600 is 1,200 and the estimated hour burden per response is 0.817 hours; the estimated total number of respondents for the information collection Form I–600A is 2,000 and the estimated hour burden per response is 0.817 hours; the estimated total number of respondents for the information collection Form I–600/I–600A Supplement 1 is 301 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600/I–600A Supplement 2 is 1,260 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the information collection Form I–600/I–600A Supplement 3 is 1,286 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the Home Study information collection is 2,500 and the estimated hour burden per response is 25 hours; the estimated total number of respondents for the Biometrics information collection is 2,520 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the Biometrics—DNA information collection is 2 and the estimated hour burden per response is 6 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 69,977 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $7,759,232.

USCIS Form I–601

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0029 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–601; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. Form I–601 is necessary for USCIS to determine whether the applicant is eligible for a waiver of inadmissibility under section 212 of the Act. Furthermore, this information collection is used by individuals who are seeking Temporary Protected Status (TPS).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–601 is 17,000 and the estimated hour burden per response is 1.567 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 26,639 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $6,311,250.

USCIS Form I–601A

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0123 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Provisional Unlawful Presence Waiver.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–601A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. Section 212(a)(9)(B)(i)(I) and (II) of the Immigration and Nationality Act (INA or the Act) provides for the inadmissibility of certain individuals who have accrued unlawful presence in the United States. There is also a waiver provision incorporated into section 212(a)(9)(B)(v) of the Act, which allows the Secretary of Homeland Security to exercise discretion to waive the unlawful presence grounds of inadmissibility on a case-by-case basis. The information collected from an applicant on an Application for Provisional Unlawful Presence Waiver of Inadmissibility, Form I–601A, is necessary for U.S. Citizenship and Immigration Services (USCIS) to determine not only whether the applicant meets the requirements to participate in the streamlined waiver process provided by regulation, but also whether the applicant is eligible to receive the provisional unlawful presence waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–601A is 63,000 and the estimated hour burden per response is 1.317 hours: the estimated total number of respondents for the collection of biometrics is 63,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 156,681 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,212,390.

USCIS Form I–602

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0069 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application by Refugee for Waiver of Grounds of Excludability.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–602; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The data collected on the Application by Refugee for Waiver of Inadmissibility Grounds, Form I–602, will be used by USCIS to determine eligibility for waivers, and to report to Congress the reasons for granting waivers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–602 is 240 and the estimated hour burden per response is 7.917 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,900 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $30,900.

USCIS Form I–612

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0030 in the body of the letter and the agency name. Comments on this information

collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended).

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–612; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This information collection is necessary and may be submitted only by an alien who believes that compliance with foreign residence requirements would impose exceptional hardship on his or her spouse or child who is a citizen of the United States, or a lawful permanent resident; or that returning to the country of his or her nationality or last permanent residence would subject him or her to persecution on account of race, religion, or political opinion. Certain aliens admitted to the United States as exchange visitors are subject to the foreign residence requirements of section 212(e) of the Immigration and Nationality Act (the Act). Section 212(e) of the Act also provides for a waiver of the foreign residence requirements in certain instances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–612 is 7,200 and the estimated hour burden per response is 0.15 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,080 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $882,000.

USCIS Form I–690; Supplement A

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0032 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility; Supplement A: Applicants with a Class A Tuberculosis Condition (As Defined by HHS Regulations).

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–690; Supplement A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. Applicants for lawful permanent residence under INA sections 210 or 245A who are inadmissible under certain grounds of inadmissibility at INA section 212(a) would use Form I–690 to seek a waiver of inadmissibility. USCIS uses the information provided through Form I–690 to adjudicate waiver requests from individuals who are inadmissible to the United States. Based upon the instructions provided, a respondent can gather and submit the required documentation to USCIS for consideration of an inadmissibility waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–690 is 30 and the estimated hour burden per response is 2.817 hours; the estimated total number of respondents for the information collection Supplement A is 11 and the estimated hour burden per response is 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 107 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $4,523.

USCIS Form I–698

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0035 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA).

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–698; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The data collected on Form I–698 is used by USCIS to determine the eligibility to adjust an applicant's residence status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–698 is 100 and the estimated hour burden per response is 1.067 hours; the estimated total number of respondents for biometrics processing is 100 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 224 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $49,000.

USCIS Form I–751

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0038 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Remove Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–751; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The information collected on Form I–751 is used by U.S. Citizenship and Immigration Services (USCIS) to verify the alien's status and determine whether he or she is eligible to have the conditions on his or her status removed. Form I–751 serves the purpose of standardizing requests for benefits and ensuring that basic information required to assess eligibility is provided by petitioners.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–751 is 153,000 and the estimated hour burden per response is 4.387 hours; the estimated total number of respondents for the information collection biometrics is 306,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,029,231 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $19,698,750.

USCIS Form I–765; I–765WS

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0040 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization; I–765 Worksheet.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–765; I–765WS; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses Form I–765 to collect information needed to determine if a noncitizen is eligible for an initial EAD, a new replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Noncitizens in many immigration statuses are required to possess an EAD as evidence of work authorization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: The estimated total number of respondents for the information collection I–765 paper filing is 1,830,347 and the estimated hour burden per response is 4.317 hours; the estimated total number of respondents for the information collection I–765 online filing is 455,653 and the estimated hour burden per response is 4 hours; the estimated total number of respondents for the information collection I–765WS is 302,000 and the estimated hour burden per response is 0.5 hours; the estimated total number of respondents for the information collection biometrics submission is 302,535 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection passport photos is 2,286,000 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 11,372,186 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $400,895,820.

USCIS Form I–765V

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0137 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization for Abused Nonimmigrant Spouse.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–765V; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. U.S. Citizenship and Immigration Services (USCIS) will use Form I–765V, Application for Employment Authorization for Abused Nonimmigrant Spouse, to collect the information that is necessary to determine if the applicant is eligible for an initial EAD or renewal EAD as a qualifying abused nonimmigrant spouse. Aliens are required to possess an EAD as evidence of work authorization. To be authorized for employment, an alien must be lawfully admitted for permanent residence or authorized to be so employed by the INA or under regulations issued by DHS. Pursuant to statutory or regulatory authorization, certain classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States. USCIS also collects biometric information from EAD applicants to verify the applicant's identity, check or update their background information, and produce the EAD card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–765V is 350 and the estimated hour burden per response is 3.567 hours; the estimated total number of respondents for the information collection biometric submission is 350 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,658 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $87,500.

USCIS Form I–817

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0005 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Benefits Under the Family Unity Program Application.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–817; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 236.14 and 245a.33.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I–817 is 1,000 and the estimated hour burden per response is 1.817 hours; the estimated number of respondents providing biometrics is 1,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,987 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $122,500.

USCIS Form I–821

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0043 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Temporary Protected Status.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–821; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. Form I–821 used by USCIS to gather information necessary to determine if an applicant is eligible for Temporary Protected Status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–821 (paper filed) is 453,600 and the estimated hour burden per response is 2.227 hours; the estimated total number of respondents for the information collection Form I–821 (online filed) is 113,400 and the estimated hour burden per response is 1.92 hours; the estimated total number of respondents for the information collection Biometrics Submission is 567,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,891,285 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $69,457,500.

USCIS Form I–821D

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0124 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Consideration of Deferred Action for Childhood Arrivals.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* Form I–821D; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. As part of the administration of its programs, certain noncitizens may use this form to request that USCIS exercise its prosecutorial discretion on a case-by-case basis to defer action in their case.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–821D Initial Request (paper) is 112,254 and the estimated hour burden per response is 2.817 hours. The estimated total number of respondents for the information collection I–821D Renewal Request (paper) is 221,167 and the estimated hour burden per response is 2.817 hours. The estimated total number of respondents for the information collection I–821D Renewal Request (Online) is 55,292 and the estimated hour burden per response is 2.482 hours. The estimated total number of respondents for the information collection I–821D Biometrics submission is 388,713 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,531,259 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $33,040,605.

USCIS Form I–824

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed

collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0044 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–824; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This information collection is used to request a duplicate approval notice, as well as to notify and to verify with the U.S. Consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–824 is 10,571 and the estimated hour burden per response is 0.237 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,505 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,361,016.

USCIS Form I–881

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0072 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

OVERVIEW OF INFORMATION COLLECTION:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Sec. 203 of Pub. L. 105–100).

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–881; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The data collected on the Form I–881 is used by Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) asylum officers, Department of Justice (DOJ), EOIR immigration judges, and Board of Immigration Appeals board members. The Form I–881 is used to determine eligibility for suspension of deportation or special rule cancellation of removal under Section 203 of NACARA. The form serves the purpose of standardizing requests for the benefits and ensuring that basic information required for assessing eligibility is provided by the applicants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–881 is 520 and the estimated hour burden per response is 11.817 hours; the estimated total number of respondents for the information collection Biometrics Submission is 858 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 7,149 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $258,505.

USCIS Form I–90

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0082 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Replace Permanent Resident Card.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–90; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. Form I–90 is used by USCIS to determine eligibility to replace a Lawful Permanent Resident Card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–90 (paper filed) is 444,601 and the estimated hour burden per response is 1.817 hours; the estimated total number of respondents for the information collection I–90 (electronic) is 296,400 and the estimated hour burden per response is 1.59 hours; and the estimated total number of respondents for the information collection biometrics is 741,001 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with Form I–90 is 2,146,087 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $254,163,343.

USCIS Form I–907

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0048 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–907; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. USCIS uses the data collected through this form to process a request for premium processing. The form serves the purpose of standardizing requests for premium processing and will ensure that basic information required to assess eligibility is provided by the employers/petitioners.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–907 is 815,773 and the estimated hour burden per response is 0.397 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 323,862 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $202,923,534.

USCIS Form I–910

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0114 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Civil Surgeon Designation.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–910; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Businesses or nonprofits. This information collection is required to determine whether a physician meets the statutory and regulatory requirements for civil surgeon designation. For example, all documents are reviewed to determine whether the physician has a currently valid medical license and whether the physician has had any disciplinary action taken against him or her by the medical licensing authority of the U.S. state(s) or U.S. territories in which he or she practices. If the Application for Civil Surgeon Designation (Form I–910) is approved, the physician is included in USCIS's public Civil Surgeon Locator and is authorized to complete Form I–

693 (OMB Control Number 1615–0033) for an applicant's adjustment of status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–910 is 470 and the estimated hour burden per response is 1.817 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 854 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $24,205.

USCIS Form I–912

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0116 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Fee Waiver.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–912; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the data collected on this form to verify that the applicant is unable to pay for the immigration benefit being requested. USCIS will consider waiving a fee for an application or petition when the applicant or petitioner demonstrates that they are unable to pay the fee. Form I–912 standardizes the collection and analysis of statements and supporting documentation provided by the applicant with the fee waiver request. Form I–912 also streamlines and expedites USCIS' review, approval, or denial of the fee waiver request by clearly laying out the most salient data and evidence necessary for the determination of inability to pay. Officers evaluate all factors, circumstances, and evidence supplied in support of a fee waiver request when making a final determination. Each case is unique and is considered on its own merits. If the fee waiver is granted, the application will be processed. If the fee waiver is not granted, USCIS will notify the applicant and instruct them to file a new application with the appropriate fee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–912 is 602,400 and the estimated hour burden per response is 1.17. The estimated total number of respondents for the information collection 8 CFR 103.7(d) Director's Exception Request is 128 and the estimated hour burden per response is 1.17.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 704,958 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $2,259,480.

USCIS Form I–914; I–914A; I–914B

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0099 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for T nonimmigrant status; Supplement A, Application for Family Member of T–1 Recipient; Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–914; I–914A; I–914B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Federal Government; State, local or Tribal Government. The information on all three parts of the form will be used to determine whether applicants meet the eligibility requirements for benefits. This application incorporates information pertinent to eligibility under the Victims of Trafficking and Violence Protection Act (VTVPA), Public Law 106–386, and a request for employment authorization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–914 is 1,310 and the estimated hour burden per response is 2.63 hours; the estimated total number of respondents for the information

collection Form I–914A is 1,120 and the estimated hour burden per response is 1.083 hour; the estimated total number of respondents for the information collection Form I–914B Law Enforcement Officer completion activity is 459 and the estimated hour burden per response is 3.58 hour; the estimated total number of respondents for the information collection Form I–914B Contact by Respondent to Law Enforcement is 459 and the estimated hour burden per response is 0.25 hour; the estimated total number of respondents for the information collection biometrics submission is 2,430 and the estimated hour burden per response is 1.17 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 9,259 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

USCIS Form I–918; I–918A; I–918B

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0104 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for U Nonimmigrant Status; Supplement A, Petition for Qualifying Family Member of a U–1 Recipient; Supplement B, U Nonimmigrant Status Certification.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–918; I–918A; I–918B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Federal Government; or State, local or Tribal Government. This petition permits victims of certain qualifying criminal activity and their immediate family members to apply for temporary nonimmigrant classification. This nonimmigrant classification provides temporary immigration benefits, potentially leading to permanent resident status, to certain victims of criminal activity who: suffered substantial mental or physical abuse as a result of having been a victim of criminal activity; have information regarding the criminal activity; and assist Government officials in investigating and prosecuting such criminal activity.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–918 is 29,400 and the estimated hour burden per response is 5 hours. The estimated total number of respondents for the information collection I–918A is 17,900 and the estimated hour burden per response is 1.5 hour. The estimated total number of respondents for the information collection I–918B is 29,400 and the estimated hour burden per response is 1 hour. The estimated total number of respondents for the information collection biometrics submission is 47,300 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 258,591 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $201,025.

USCIS Form I–929

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0106 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Qualifying Family Member of a U–1 Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–929; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. Section 245(m) of the Immigration and Nationality Act (Act) allows certain qualifying family members who have never held U nonimmigrant status to seek lawful permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of status or seek immigrant visas, the U–1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I–929. Form I–929 is necessary for USCIS

to determine whether the eligibility requirements and conditions for a qualifying family member are met.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–929 is 1,500 and the estimated hour burden per response is 0.817 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,226 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $183,750.

USCIS Form I–941

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0136 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Entrepreneur Parole.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–941; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Entrepreneurs can use this form to make an initial request for parole based upon significant public benefit; make a subsequent request for parole for an additional period; or file an amended application to notify USCIS of a material change.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–941 is 2,940 and the estimated hour burden per response is 4.517 hours; the estimated total number of respondents for the information collection biometrics submission is 2,940 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 16,720 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,440,600.

USCIS Form N–336

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0050 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for a Hearing on a Decision in Naturalization Proceedings Under Section 336.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* N–336; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form N–336 is used by an individual whose Form N–400, Application for Naturalization was denied, to request a hearing before an immigration officer on the denial of the N–400. USCIS uses the information submitted on Form N–336 to locate the requestor's file and schedule a hearing in the correct jurisdiction. It allows USCIS to determine if there is an underlying Form N–400, Application for Naturalization that was denied, to warrant the filing of Form N–336. The information collected also allows USCIS to determine if a member of the U.S. armed forces has filed the appeal.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form N–336 (paper filed) is 3,788 and the estimated hour burden per response is 2.567 hours; the estimated total number of respondents for the information collection Form N–336 (online filed) is 1,263 and the estimated hour burden per response is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 12,882 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $2,601,265.

USCIS Form N–400

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance

with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0052 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* N–400; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form N–400, Application for Naturalization, allows USCIS to fulfill its mission of fairly adjudicating naturalization applications and only naturalizing statutorily eligible individuals. Naturalization is the process by which U.S. citizenship is granted to a foreign citizen or national after he or she fulfills the requirements established by Congress in the INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form N–400 (paper filed) is 567,314 and the estimated hour burden per response is 8.987 hours; the estimated total number of respondents for the information collection N–400 (online filed) is 214,186 and the estimated hour burden per response is 3.5 hours; the estimated total number of respondents for the information collection biometrics submission is 778,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 6,758,362 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $346,768,928.

USCIS Form N–470

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0056 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Preserve Residence for Naturalization Purposes.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* N–470; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The information collected on Form N–470 will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form N–470 is 120 and the estimated hour burden per response is 0.417 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 50 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $14,700.

USCIS Form N–565

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0091 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Replacement of Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* N–565; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. U.S. Citizenship and Immigration Services (USCIS) uses Form N–565 to determine the applicant's eligibility for a replacement document. An applicant may file for a replacement if they were issued one of the documents described above and it was lost, mutilated, or destroyed; if the document is incorrect due to a typographical or clerical error by USCIS; if the applicant's name was changed by a marriage, divorce, annulment, or court order after the document was issued and the applicant now seeks a document in the new name; or if the applicant is seeking a change of the gender listed on their document after obtaining a court order, a government-issued document, or a letter from a licensed health care professional recognizing that the applicant's gender is different from that listed on their current document. The only document that can be replaced on the basis of a change to the applicant's date of birth, as evidenced by a court order or a document issued by the U.S. Government or the government of a U.S. state, is the Certificate of Citizenship. If the applicant is a naturalized citizen who desires to obtain recognition as a citizen of the United States by a foreign country, he or she may apply for a special certificate for that purpose.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–565 (paper-filed) is 13,270 and the estimated hour burden per response is 1.147 hours; the estimated total number of respondents for the information collection N–565 (online filed) is 13,270 and the estimated hour burden per response is 0.917 hours; the estimated total number of respondents for the photograph appointment is 26,340 (accounts for an estimated 200 respondents that file from overseas and do not need to attend a photo appointment) and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 58,207 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,417,026.

USCIS Form N–600

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0057 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Certification of Citizenship.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* N–600; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. Form N–600 collects information from applicants who are requesting a Certificate of Citizenship because they acquired United States citizenship either by birth abroad to a U.S. citizen parent(s), adoption by a U. S. citizen parent(s), or after meeting eligibility requirements including the naturalization of a foreign-born parent. Form N–600 can also be filed by a parent or legal guardian on behalf of a minor child. The form standardizes requests for the benefit and ensures that basic information required to assess eligibility is provided by applicants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–600 (paper filing) is 27,500 and the estimated hour burden per response is 1.397 hours; the estimated total number of respondents for the information collection N–600 (online filed) is 27,500 and the estimated hour burden per response is 0.75 hours; the estimated total number of respondents for the information collection biometrics submission is 36,500 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 101,748 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $7,081,250.

USCIS Form N–600K

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0087 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate under Section 322.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* N–600K; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. Form N–600K is used by children who regularly reside in a foreign country to claim U.S. citizenship based on eligibility criteria met by their U.S. citizen parent(s) or grandparent(s). The form may be used by children under age 18. USCIS uses information collected on this form to determine that the child has met all of the eligibility requirements for naturalization under section 322 of the Immigration and Nationality Act (INA). If determined eligible, USCIS will naturalize and issue the child a Certificate of Citizenship before the child reaches age 18.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form N–600K (paper filed) is 1,300 and the estimated hour burden per response is 1.897 hours; the estimated total number of respondents for the information collection Form N–600K (online filed) is 1,700 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 5,016 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $386,250.

USCIS Form OMB–64

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0144 in the body of the letter and the agency name. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* H–1B Registration Tool.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* OMB–64; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS will use the data collected through the H–1B Registration Tool to select a sufficient number of registrations projected to meet the applicable H–1B cap allocations and to notify registrants whether their registration was selected.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of business or other for-profit respondents for the information collection H–1B Registration Tool is 35,500 with an estimated 3 responses per respondents and an estimated hour burden per response of 0.5167 hours. The estimated total number of attorney respondents for the information collection H–1B Registration Tool is 4,500 with an estimated 38 responses per respondents and an estimated hour burden per response of 0.5167 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 143,384 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.00. Any costs to respondents are captured in the Form I–129 information collection (OMB control number 1615–009).

Differences in Information Collection Request Respondent Volume and Fee Model Filing Volume Projections

DHS notes that the estimates of annual filing volume in the PRA section of this preamble are not the same as those used in the model used to calculate the fee amounts proposed in this rule. For example, the fee calculation model projects 1,666,500 Form I–765 filings while the estimated total number of respondents for the information collection I–765 is 2,179,494. As stated in section V.B.1.a of this preamble, the VPC forecasts USCIS workload volume based on short- and long-term volume trends and time series models, historical receipts data, patterns (such as level, trend, and seasonality), or correlations with historical events to forecast receipts. Workload volume is used to determine the USCIS resources needed to process benefit requests and is the primary cost driver for assigning activity costs to immigration benefits and biometric services in the USCIS ABC model. DHS uses a different method for estimating the average annual number of respondents for the information collection over the 3-year OMB approval of the control number, generally basing the estimate on the average filing volumes in the previous 3 of 5-year period, with less consideration of the volume effects on planned or past policy changes. Nevertheless, when the information collection request is nearing expiration USCIS will update the estimates of annual respondents based on actual results in the submission to OMB. The PRA burden estimates are generally updated at least every 3 years. Thus, DHS expects that the PRA estimated annual respondents will be updated to reflect the actual effects of this proposed rule within a relatively short period after a final rule takes effect.

I. National Environmental Policy Act

DHS Directive 023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the policies and procedures that DHS and its components use to comply with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') that experience has shown do not have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1507.3(e)(2)(ii), 1501.4.

The Instruction Manual establishes categorical exclusions that DHS has found to have no such effect. *See* Appendix A, Table 1. Under DHS NEPA implementing procedures, for a proposed action to be categorically excluded it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)–(c).

This proposed rule implements the authority in the INA to establish fees to fund immigration and naturalization services of USCIS.

DHS has determined that this proposed rule does not individually or cumulatively have a significant effect on the human environment because it clearly fits within categorical exclusions A3(a) and (d) in Appendix A of the Instruction Manual established for rules of a strictly administrative or procedural nature and actions that interpret or amend an existing regulation without changing its environmental effect.

This proposed rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review.

J. Family Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Agencies must assess whether the regulatory action: (1) Impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) if the regulatory action financially impacts families, are justified; (6) may be carried out by State or local government or by the family; and (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the determination is affirmative, then the Agency must prepare an impact assessment to address criteria specified in the law. DHS has no data that indicate that this proposed rule will have any impacts on disposable income or the poverty of certain families and children, including U.S. citizen children. DHS acknowledges that this proposal would increase the fees that families must submit and thus it may affect the disposable income for certain families. DHS has provided a process to waive fees for immigration benefits when the person submitting the request is unable to pay the fee. In addition, the proposed rule may provide USCIS with the funds necessary to provide free services to certain disadvantaged populations, including abused children and spouses, refugees, and victims of criminal activity or human trafficking. DHS believes that the benefits of the new fees justify the financial impact on the family, that this rulemaking's impact is justified, and no further actions are required. DHS also determined that this proposed rule will not have any impact on the autonomy or integrity of the family as an institution.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 106

Immigration, User fees.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 240

Administrative practice and procedure, Aliens.

8 CFR Part 244

Administrative practice and procedure, Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103—IMMIGRATION BENEFIT REQUESTS; USCIS FILING REQUIREMENTS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1356b, 1372; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 *et seq.*); Pub. L. 112–54, 125 Stat 550 (8 U.S.C. 1185 note); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 2. Section 103.2 is amended by revising the fourth sentence of paragraph (a)(1) and paragraphs (a)(7)(ii)(D) and (b)(19)(iii)(A) to read as follows:

§ 103.2 Submission and adjudication of benefit requests.

(a) * * *

(1) * * * Filing fees generally are non-refundable regardless of the outcome of the benefit request, or how much time the adjudication requires, and any decision to refund a fee is at the discretion of USCIS. * * *

* * * * *

(7) * * *

(ii) * * *

(D) Submitted with the correct fee(s). If a check or other financial instrument used to pay a fee is returned as unpayable because of insufficient funds, USCIS will resubmit the payment to the remitter institution one time. If the instrument used to pay a fee is returned as unpayable a second time, the filing may be rejected. Financial instruments returned as unpayable for a reason other than insufficient funds will not be redeposited. Credit cards that are declined will not be submitted a second time. If a check or other financial instrument used to pay a fee is dated more than one year before the request is received, the payment and request may be rejected.

* * * * *

(b) * * *

(19) * * *

(iii) * * *

(A) USCIS will send secure identification documents, such as a Permanent Resident Card or Employment Authorization Document, only to the applicant or self-petitioner unless the applicant or self-petitioner specifically consents to having his or her secure identification document sent to a designated agent or their attorney or accredited representative of record, as specified on the form instructions.

* * * * *

■ 3. Section 103.7 is revised and republished to read as follows:

§ 103.7 Fees.

(a) *Department of Justice (DOJ) fees.* Fees for proceedings before immigration judges and the Board of Immigration Appeals are described in 8 CFR 1003.8, 1003.24, and 1103.7.

(1) *USCIS may accept DOJ fees.* Except as provided in 8 CFR 1003.8, or as the Attorney General otherwise may provide by regulation, any fee relating to any EOIR proceeding may be paid to USCIS. Payment of a fee under this section does not constitute filing of the document with the Board or with the immigration court. DHS will provide the payer with a receipt for a fee and return any documents submitted with the fee relating to any immigration court proceeding.

(2) *DHS–EOIR biometric services fee.* Fees paid to and accepted by DHS relating to any immigration proceeding as provided in 8 CFR 1103.7(a) must include an additional $30 for DHS to collect, store, and use biometric information.

(3) *Waiver of court fees.* An immigration judge may waive any fees prescribed under this chapter for cases under their jurisdiction to the extent provided in 8 CFR 1003.8, 1003.24, and 1103.7.

(b) *USCIS fees.* USCIS fees will be required as provided in 8 CFR part 106.

(c) *Remittances.* Remittances to the Board of Immigration Appeals must be made payable to the ''United States Department of Justice,'' in accordance with 8 CFR 1003.8.

(d) *Non-USCIS DHS immigration fees.* The following fees are applicable to one or more of the immigration components of DHS:

(1) *DCL system costs fee.* For use of a Dedicated Commuter Lane (DCL) located at specific U.S. ports-of-entry by an approved participant in a designated vehicle:

(i) $80.00; or

(ii) $160.00 for a family (applicant, spouse and minor children); plus,

(iii) $42 for each additional vehicle enrolled.

(iv) The fee is due after approval of the application but before use of the DCL.

(v) This fee is non-refundable, but may be waived by DHS.

(2) *Petition for Approval of School for Attendance by Nonimmigrant Student* (*Form I–17*). (i) For filing a petition for school certification: $3,000 plus, a site visit fee of $655 for each location required to be listed on the form.

(ii) For filing a petition for school recertification: $1,250, plus a site visit fee of $655 for each new location required to be listed on the form.

(3) *Form I–68.* For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act:

(i) $16.00; or

(ii) $32 for a family (applicant, spouse, and unmarried children under 21 years of age, and parents of either spouse).

(4) *Form I–94.* For issuance of Arrival/Departure Record at a land border port-of-entry: $6.00.

(5) *Form I–94W.* For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border port-of-entry under section 217 of the Act: $6.00.

(6) *Form I–246.* For filing application for stay of deportation under 8 CFR part 243: $155.00. The application fee may be waived by DHS.

(7) *Form I–823.* For application to a PORTPASS program under section 286 of the Act:

(i) $25.00; or

(ii) $50.00 for a family (applicant, spouse, and minor children).

(iii) The application fee may be waived by DHS.

(iv) If fingerprints are required, the inspector will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks before accepting the application fee.

(v) The application fee (if not waived) and fingerprint fee must be paid to CBP before the application will be processed. The fingerprint fee may not be waived.

(vi) For replacement of PORTPASS documentation during the participation period: $25.00.

(8) *Fee Remittance for F, J, and M Nonimmigrants (Form I–901).* The fee for Form I–901 is:

(i) For F and M students: $350.

(ii) For J–1 au pairs, camp counselors, and participants in a summer work or travel program: $35.

(iii) For all other J exchange visitors (except those participating in a program sponsored by the Federal Government): $220.

(iv) There is no Form I–901 fee for J exchange visitors in federally funded programs with a program identifier designation prefix that begins with G–1, G–2, G–3, or G–7.

(9) *Special statistical tabulations.* The DHS cost of the work involved.

(10) *Monthly, semiannual, or annual ''Passenger Travel Reports via Sea and Air'' tables.* (i) For the years 1975 and before: $7.00.

(ii) For after 1975: Contact: U.S. Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

(11) *Request for Classification of a citizen of Canada to engage in professional business activities pursuant to section 214(e) of the Act (Chapter 16 of the North American Free Trade Agreement).* $50.00.

(12) *Request for authorization for parole of an alien into the United States.* $65.00.

(13) *Global Entry.* Application for Global Entry: $100.

(14) *U.S. Asia-Pacific Economic Cooperation (APEC) Business Travel Card.* Application fee: $70.

(15) *Notice of Appeal or Motion (Form I–290B) filed with ICE SEVP.* For a Form I–290B filed with the Student and Exchange Visitor Program (SEVP): $675.

■ 4. Section 103.17 is revised and republished to read as follows:

§ 103.17 Biometric services fee.

DHS may charge a fee to collect biometric information, to provide biometric collection services, to conduct required national security and criminal history background checks, to verify an individual's identity, and to store and maintain this biometric information for reuse to support other benefit requests. When a biometric services fee is required, USCIS may reject a benefit request submitted without the correct biometric services.

■ 5. Section 103.40 is revised and republished to read as follows:

§ 103.40 Genealogical research requests.

(a) *Nature of requests.* Genealogy requests are requests for searches and/or copies of historical records relating to a deceased person, usually for genealogy and family history research purposes.

(b) *Forms.* USCIS provides on its website at *https://www.uscis.gov/records/genealogy* the required forms in electronic versions: Genealogy Index Search Request or Genealogy Records Request.

(c) *Required information.* Genealogical research requests may be submitted to request one or more separate records relating to an individual. A separate request must be submitted for each individual searched. All requests for records or index searches must include the individual's:

(1) Full name (including variant spellings of the name and/or aliases, if any).

(2) Date of birth, at least as specific as a year.

(3) Place of birth, at least as specific as a country and preferably the country name at the time of the individual's immigration or naturalization.

(d) *Optional information.* To better ensure a successful search, a genealogical research request may include each individual's:

(1) Date of arrival in the United States.

(2) Residence address at time of naturalization.

(3) Names of parents, spouse, and children if applicable and available.

(e) *Additional information required to retrieve records.* For a Genealogy Records Request, requests for copies of historical records or files must identify the record by number or other specific data used by the Genealogy Program Office to retrieve the record as follows:

(1) C-Files must be identified by a naturalization certificate number.

(2) Forms AR–2 and A-Files numbered below 8 million must be identified by Alien Registration Number.

(3) Visa Files must be identified by the Visa File Number. Registry Files must be identified by the Registry File Number (for example, R–12345).

(f) *Information required for release of records.* (1) Documentary evidence must be attached to a Genealogy Records Request or submitted in accordance with the instructions on the Genealogy Records Request form.

(2) Search subjects will be presumed deceased if their birth dates are more than 100 years before the date of the request. In other cases, the subject is presumed to be living until the requestor establishes to the satisfaction of USCIS that the subject is deceased.

(3) Documentary evidence of the subject's death is required (including but not limited to death records, published obituaries or eulogies, published death notices, church or bible records, photographs of gravestones, and/or copies of official documents relating to payment of death benefits).

(g) *Index search.* Requestors who are unsure whether USCIS has any record of their ancestor, or who suspect a record exists but cannot identify that record by number, may submit a request for index search. An index search will determine the existence of responsive historical records. If no record is found, USCIS will notify the requestor accordingly. If records are found, USCIS will give the requestor electronic copies of records stored in digital format for no additional fee. For records found that are stored in paper format, USCIS will give the requestor the search results, including the type of record found and the file number or other information identifying the record. The requestor can use index search results to submit a Genealogy Records Request.

(h) *Processing of paper record copy requests.* This service is designed for requestors who can identify a specific record or file to be retrieved, copied, reviewed, and released. Requestors may identify one or more files in a single request.

■ 6. Part 106 is revised and republished to read as follows:

PART 106—USCIS FEE SCHEDULE

Authority: 8 U.S.C. 1101, 1103, 1254a, 1254b, 1304, 1356; 48 U.S.C. 1806; Pub. L. 107- 296, 116 Stat. 2135 (6 U.S.C. 101 note); Pub. L. 115–218, 132 Stat. 1547; Pub. L. 116–159, 134 Stat. 709.

§ 106.1 Fee requirements.

(a) Fees must be submitted with any USCIS request in the amount and subject to the conditions provided in this part and remitted in the manner prescribed in the relevant form instructions, on the USCIS website, or in a **Federal Register** document. The fees established in this part are associated with the benefit, the adjudication, or the type of request and not solely determined by the form number listed in § 106.2.

(b) Fees must be remitted from a bank or other institution located in the United States and payable in U.S. currency. The fee must be paid using the method that USCIS prescribes for the request, office, filing method, or filing location, as provided in the form instructions or by individual notice.

(c) If a remittance in payment of a fee or any other matter is not honored by the bank or financial institution on which it is drawn:

(1) The provisions of 8 CFR 103.2(a)(7)(ii) apply, no receipt will be issued, and if a receipt was issued, it is void and the benefit request loses its receipt date; and

(2) If the benefit request was approved, the approval may be revoked upon notice. If the approved benefit request requires multiple fees, this paragraph (c) would apply if any fee submitted is not honored. Other fees that were paid for a benefit request that is revoked under this paragraph (c) will be retained and not refunded. A revocation of an approval because the fee submitted is not honored may be appealed to the USCIS Administrative Appeals Office, in accordance with 8 CFR 103.3 and the applicable form instructions.

(d) DHS is not responsible for financial instruments that expire before they are deposited. USCIS may reject any filing for which required payment cannot be processed due to expiration of the financial instrument.

(e) Fees paid to USCIS using a credit card are not subject to dispute, chargeback, forced refund, or return to the cardholder for any reason except at the discretion of USCIS.

§ 106.2 Fees.

(a) *I Forms*—(1) *Application to Replace Permanent Resident Card, Form I–90.* For filing an application for a Permanent Resident Card, Form I–551, to replace an obsolete card or to replace one lost, mutilated, or destroyed, or for a change in name.

(i) When filed online: $455.

(ii) When filed on paper: $465.

(iii) If the applicant was issued a card but never received it: No fee.

(iv) If the applicant's card was issued with incorrect information because of DHS error and the applicant is filing for a replacement: No fee.

(v) If the applicant has reached their 14th birthday and their existing card will expire after their 16th birthday: No fee.

(2) *Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, Form I–102.* For filing an application for Arrival/Departure Record Form I–94, or Crewman's Landing Permit Form I–95, to replace one lost, mutilated, or destroyed: $680.

(i) For nonimmigrant member of the U.S. armed forces: No fee for initial filing;

(ii) For a nonimmigrant member of the North Atlantic Treaty Organization (NATO) armed forces or civil component: No fee for initial filing;

(iii) For nonimmigrant member of the Partnership for Peace military program under the Status of Forces Agreement (SOFA): No fee for initial filing; and

(iv) For replacement for DHS error: No fee.

(3) *Petition or Application for a Nonimmigrant Worker, Form I–129.* For filing a petition or application for a nonimmigrant worker:

(i) Petition for H–1B Nonimmigrant Worker or H–1B1 Free Trade Nonimmigrant Worker: $780.

(ii) Petition for H–2A Nonimmigrant Worker with 1 to 25 named beneficiaries: $1,090.

(iii) Petition for H–2A Nonimmigrant Worker with only unnamed beneficiaries: $530.

(iv) Petition for H–2B Nonimmigrant Worker with 1 to 25 named beneficiaries: $1,080.

(v) Petition for H–2B Nonimmigrant Worker with only unnamed beneficiaries: $580.

(vi) Petition for L Nonimmigrant Worker: $1,385.

(vii) Petition for O Nonimmigrant Worker with 1 to 25 named beneficiaries: $1,055.

(viii) Petition or Application for E, H–3, P, Q, R, or TN Nonimmigrant Worker with 1 to 25 named beneficiaries: $1,015.

(4) *Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW.* For an employer to petition on behalf of beneficiaries in the Commonwealth of the Northern Mariana Islands (CNMI): $1,015.

(i) Additional fees in paragraph (c) of this section may apply.

(ii) Semiannual Report for CW–1 Employers (Form I–129CWR): No fee.

(5) *Petition for Alien Fiancé(e), Form I–129F.* (i) For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: $720.

(ii) For a K–3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a U.S. citizen on a ''Petition for Alien Relative,'' Form I–130: No fee.

(6) *Petition for Alien Relative, Form I–130.* For filing a petition to classify status of a foreign national relative for issuance of an immigrant visa under section 204(a) of the Act.

(i) When filed online: $710.

(ii) When filed on paper: $820.

(7) *Application for Travel Document, Form I–131.* (i) Refugee Travel Document for asylee and lawful permanent resident who obtained such status as an asylee 16 years or older: $165.

(ii) Refugee Travel Document for asylee and lawful permanent resident who obtained such status as an asylee under the age of 16: $135.

(iii) Advance Parole, Reentry Permit, and other travel documents: $630.

(iv) There are no fees for a travel document for applicants who filed USCIS Form I–485 on or after July 30, 2007, and before [EFFECTIVE DATE OF THE FINAL RULE], and paid the Form I–485 fee.

(v) There are no fees for parole requests from current or former U.S. armed forces service members.

(8) *Application for Carrier Documentation, Form I–131A.* For filing an application to allow a lawful permanent resident to apply for a travel document (carrier documentation) to board an airline or other transportation carrier to return to the United States: $575.

(9) *Declaration of Financial Support, Form I–134.* No fee.

(10) *Immigrant Petition for Alien Worker, Form I–140.* For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act: $715.

(11) *Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA), Form I–191.* For filing an application for discretionary relief under section 212(c) of the Act: $930.

(12) *Application for Advance Permission to Enter as a Nonimmigrant, Form I–192.* For filing an application for discretionary relief under section 212(d)(3), (13), or (14) of the Act, except in an emergency case or where the approval of the application is in the interest of the U.S. Government: $1,100.

(13) *Application for Waiver of Passport and/or Visa, Form I–193.* For filing an application for waiver of passport and/or visa: $695.

(14) *Application for Permission to Reapply for Admission into the United States After Deportation or Removal, Form I–212.* For filing an application for permission to reapply for admission by an excluded, deported, or removed alien; an alien who has fallen into distress; an alien who has been removed as an alien enemy; or an alien who has been removed at Government expense: $1,395.

(15) *Notice of Appeal or Motion, Form I–290B.* For appealing a decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction, and for filing a motion to review or reconsider a USCIS decision: $800. The fee will be the same for appeal of or motion on a denial of a benefit request with one or multiple beneficiaries. There is no fee for conditional permanent residents who filed a waiver of the joint filing requirement based on battery or extreme cruelty and filed a ''Notice of Appeal or Motion (Form I–290B) when their Petition to Remove the Conditions on Residence'' (Form I–751) was denied.

(16) *Petition for Amerasian, Widow(er), or Special Immigrant, Form I–360.* $515. There is no fee for the following:

(i) A petition seeking classification as an Amerasian;

(ii) A petition seeking immigrant classification as a Violence Against Women Act (VAWA) self-petitioner;

(iii) A petition for Special Immigrant Juvenile classification;

(iv) A petition seeking special immigrant classification as Afghan or Iraqi translator or interpreter, Iraqi national employed by or on behalf of the U.S. Government, or Afghan national employed by or on behalf of the U.S. Government or employed by the International Security Assistance Force (ISAF); or a surviving spouse or child of such a person; or

(v) A petition for a person who served honorably on active duty in the U.S. armed forces filing under section 101(a)(27)(K) of the Act.

(17) *Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian, Form I–361.* No fee.

(18) *Request to Enforce Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian, Form I–363.* No fee.

(19) *Record of Abandonment of Lawful Permanent Resident Status, Form I–407.* No fee.

(20) *Application to Register Permanent Residence or Adjust Status, Form I–485.* For filing an application for permanent resident status or creation of a record of lawful permanent residence: $1,540. There is no fee for the following:

(i) An applicant who is in deportation, exclusion, or removal proceedings before an immigration judge, and the court waives the application fee.

(ii) An applicant who served honorably on active duty in the U.S. armed forces who is filing under section 101(a)(27)(K) of the Act.

(21) *Application to Adjust Status under Section 245(i) of the Act, Form I–485 Supplement A.* Supplement A to Form I–485 for persons seeking to adjust status under the provisions of section 245(i) of the Act: A sum of $1,000 must

be paid while the applicant's ''Application to Register Permanent Residence or Adjust Status'' is pending, unless payment of the additional sum is not required under section 245(i) of the Act, including:

(i) If applicant is unmarried and under 17 years of age: No fee.

(ii) If the applicant is the spouse or unmarried child under 21 years of age of a legalized alien and attaches a copy of a USCIS receipt or approval notice for a properly filed Form I–817, ''Application for Family Unity Benefits'': No fee.

(22) *Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j), Form I–485J.* No fee.

(23) *Request for Waiver of Certain Rights, Privileges, Exemptions, and Immunities, Form I–508.* No fee.

(24) *Immigrant Petition by Standalone or Regional Center Investor, Forms I–526 and I–526E.* (i) Immigrant Petition by Standalone Investor, Form I–526: $11,160.

(ii) Immigrant Petition by Regional Center Investor, Form I–526E: $11,160.

(25) *Application To Extend/Change Nonimmigrant Status, Form I–539.* (i) When filing online: $525.

(ii) When filing on paper: $620.

(iii) There is no fee for the following:

(A) Nonimmigrant A, G, and NATO;

(B) T nonimmigrant; and

(C) U nonimmigrant if filed before the petitioner files an Application to Register Permanent Residence or Adjust Status (Form I–485).

(26) *Interagency Record of Request—A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status, Form I–566.* No fee.

(27) *Application for Asylum and for Withholding of Removal, Form I–589.* No fee.

(28) *Registration for Classification as a Refugee, Form I–590.* No fee.

(29) *Petition to Classify Orphan as an Immediate Relative, Form I–600.* For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa: $920.

(i) There is no fee for the first Form I–600 filed for a child on the basis of an approved Application for Advance Processing of an Orphan Petition, Form I–600A, during the Form I–600A approval or extended approval period.

(ii) Except as specified in paragraph (a)(29)(iii) of this section, if more than one Form I–600 is filed during the Form I–600A approval period, the fee is $920 for the second and each subsequent Form I–600 petition submitted.

(iii) If more than one Form I–600 is filed during the Form I–600A approval period on behalf of beneficiary birth siblings, no additional fee is required.

(30) *Application for Advance Processing of an Orphan Petition, Form I–600A.* For filing an application for determination of suitability and eligibility to adopt an orphan: $920.

(31) *Request for Action on Approved Form I–600A/I–600, Form I–600A/I–600 Supplement 3.* $455.

(i) This filing fee:

(A) Is not charged if Form I–600A/I–600 Supplement 3 is filed to obtain a first-time extension of the approval of the Form I–600A or to obtain a first-time change of non-Hague Adoption Convention country during the Form I–600A approval period.

(B) Is charged if Form I–600A/I–600 Supplement 3 is filed to request a new approval notice based on a significant change and updated home study unless a first-time extension of the Form I–600A approval or first-time change of non-Hague Adoption Convention country is also being requested on the same Supplement 3.

(C) Is charged for second or subsequent extensions of the approval of the Form I–600A, second or subsequent changes of non-Hague Adoption Convention country, requests for a new approval notice based on a significant change and updated home study, and requests for a duplicate approval notice permitted with Form I–600A/I–600 Supplement 3 with the filing fee.

(ii) Form I–600A/I–600 Supplement 3 cannot be used to:

(A) Extend eligibility to proceed as a Hague Adoption Convention transition case beyond the first extension once the Convention enters into force for the new Convention country.

(B) Request a change of country to a Hague Adoption Convention transition country for purposes of becoming a transition case if another country was already designated on the Form I–600A or the applicant previously changed countries.

(iii) Form I–600A/I–600 Supplement 3 may only be used to request an increase in the number of children the applicant/petitioner is approved to adopt from a transition country if the additional child is a birth sibling of a child whom the applicant/petitioner has adopted or is in the process of adopting, as a transition case, and is identified and petitioned for while the Form I–600A approval is valid, unless the new Convention country prohibits such birth sibling cases from proceeding as transition cases.

(32) *Application for Waiver of Ground of Inadmissibility, Form I–601.* $1,050. No fee is required for filing an application to overcome the grounds of inadmissibility of the Act if filed concurrently with an application for adjustment of status under the provisions of the Act of October 28, 1977, and of this part.

(33) *Application for Provisional Unlawful Presence Waiver, Form I–601A.* $1,105.

(34) *Application by Refugee for Waiver of Grounds of Inadmissibility, Form I–602.* No fee.

(35) *Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended), Form I–612.* $1,100.

(36) *Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, Form I–687.* $1,240.

(37) *Application for Waiver of Grounds of Inadmissibility, Form I–690.* For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under section 210 or 245A of the Act, or a petition under section 210A of the Act: $985.

(38) *Report of Medical Examination and Vaccination Record (Form I–693).* No fee.

(39) *Notice of Appeal of Decision under Sections 245A or 210 of the Immigration and Nationality Act (or a petition under section 210A of the Act), Form I–694.* For appealing the denial of an application under section 210 or 245A of the Act, or a petition under section 210A of the Act: $1,155.

(40) *Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA), Form I–698.* For filing an application to adjust status from temporary to permanent resident (under section 245A of Pub. L. 99–603): $1,670. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

(41) *Refugee/Asylee Relative Petition, Form I–730.* No fee.

(42) *Petition to Remove Conditions on Residence, Form I–751.* For filing a petition to remove the conditions on residence based on marriage: $1,195.

(43) *Application for Employment Authorization, Form I–765.* (i) When filed online: $555.

(ii) When filed on paper: $650.

(iii) There is no fee for an initial Employment Authorization Document for the following:

(A) An applicant who filed USCIS Form I–485 on or after July 30, 2007, and before [EFFECTIVE DATE OF THE FINAL RULE], and paid the Form I–485 fee;

(B) Dependents of certain government and international organizations or NATO personnel;

(C) N–8 (Parent of alien classed as SK3) and N–9 (Child of N–8) nonimmigrants;

(D) Persons granted asylee status (AS1, AS6);

(E) Citizen of Micronesia, Marshall Islands, or Palau;

(F) Granted Withholding of Deportation or Removal;

(G) Applicant for Asylum and Withholding of Deportation or Removal including derivatives;

(H) Taiwanese dependents of Taipei Economic and Cultural Representative Office (TECRO) E–1 employees; and

(I) Current or former U.S. armed forces service members.

(iv) Request for replacement Employment Authorization Document based on USCIS error: No fee.

(v) There is no fee for a renewal or replacement Employment Authorization Document for the following:

(A) Any current Adjustment of Status or Registry applicant who filed for adjustment of status on or after July 30, 2007, and before [EFFECTIVE DATE OF THE FINAL RULE], and paid the appropriate Form I–485 filing fee;

(B) Dependent of certain foreign government, international organization, or NATO personnel;

(C) Citizen of Micronesia, Marshall Islands, or Palau; and

(D) Granted withholding of deportation or removal.

(vi) There is no fee for the *Application for Employment Authorization for Abused Nonimmigrant Spouse,* Form I–765V.

(44) *Petition to Classify Convention Adoptee as an Immediate Relative, Form I–800.* For filing a petition to classify a Hague Convention adoptee as an immediate relative for issuance of an immigrant visa.

(i) There is no fee for the first Form I–800 filed for a child on the basis of an approved *Application for Determination of Suitability to Adopt a Child from a Convention Country,* Form I–800A, during the Form I–800A approval period.

(ii) Except as specified in paragraph (a)(44)(iii) of this section, if more than one Form I–800 is filed during the Form I–800A approval period, the fee is $920 for the second and each subsequent Form I–800 petition submitted.

(iii) If more than one Form I–800 is filed during the Form I–800A approval period on behalf of beneficiary birth siblings, no additional fee is required.

(45) *Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I–800A.* For filing an application for determination of suitability and eligibility to adopt a child from a Hague Adoption Convention country: $920.

(46) *Request for Action on Approved Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I–800A, Supplement 3.* $455. This filing fee:

(i) Is not charged if Form I–800A Supplement 3 is filed to obtain a first-time extension of the approval of the Form I–800A or to obtain a first-time change of Hague Adoption Convention country during the Form I–800A approval period.

(ii) Is charged if Form I–800A Supplement 3 is filed to request a new approval notice based on a significant change and updated home study unless a first-time extension of the Form I–800A approval or first-time change of Hague Adoption Convention country is also being requested on the same Supplement 3.

(iii) Is $455 for second or subsequent extensions of the Form I–800A approval, second or subsequent changes of Hague Adoption Convention country, requests for a new approval notice based on a significant change and updated home study, and requests for a duplicate approval notice, permitted with the filing of a Form I–800A, Supplement 3 and the required filing fee.

(47) *Application for Family Unity Benefits, Form I–817.* For filing an application for voluntary departure under the Family Unity Program: $875.

(48) *Application for Temporary Protected Status, Form I–821.* (i) For first time applicants: $50 or the maximum permitted by section 244(c)(1)(B) of the Act.

(ii) There is no fee for re-registration.

(iii) A Temporary Protected Status (TPS) applicant or re-registrant must pay $30 for biometric services.

(49) *Consideration of Deferred Action for Childhood Arrivals, Form I–821D.* $85.

(50) *Application for Action on an Approved Application or Petition, Form I–824.* $675.

(51) *Petition by Investor to Remove Conditions on Permanent Resident Status, Form I–829.* $9,525.

(52) *Inter-Agency Alien Witness and Informant Record, Form I–854.* No fee.

(53) *Affidavit of Support Under Section 213A of the INA, Form I–864.* No fee.

(i) *Contract Between Sponsor and Household Member, Form I–864A.* No fee.

(ii) *Affidavit of Support Under Section 213A of the INA, Form I–864EZ.* No fee.

(iii) *Request for Exemption for Intending Immigrant's Affidavit of Support, Form I–864W.* No fee.

(iv) *Sponsor's Notice of Change of Address, Form I–865.* No fee.

(54) *Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100), Form I–881.* (i) $340 for adjudication by DHS.

(ii) $165 for adjudication by EOIR. If the Form I–881 is referred to the immigration court by DHS: No fee.

(iii) If filing Form I–881 as a VAWA self-petitioner, including derivatives, as defined under section 101(a)(51)(F) of the Act: No fee.

(55) *Application for Authorization to Issue Certification for Health Care Workers, Form I–905.* $230.

(56) *Request for Premium Processing Service, Form I–907.* The *Request for Premium Processing Service* fee will be as provided in § 106.4.

(57) *Request for Civil Surgeon Designation, Form I–910.* $1,230.

(58) *Request for Fee Waiver, Form I–912.* No fee.

(59) *Application for T Nonimmigrant Status, Form I–914.* No fee.

(i) *Supplement A to Form I–914, Application for Immigrant Family Member of a T–1 Recipient.* No fee.

(ii) *Supplement B to Form I–914, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.* No fee.

(60) *Petition for U Nonimmigrant Status, Form I–918.* No fee.

(i) *Supplement A to Form I–918, Petition for Qualifying Family Member of U–1 Recipient.* No fee.

(ii) *Supplement B to Form I–918, U Nonimmigrant Status Certification.* No fee.

(61) *Petition for Qualifying Family Member of a U–1 Nonimmigrant, Form I–929.* For a principal U–1 nonimmigrant to request immigration benefits on behalf of a qualifying family member who has never held U nonimmigrant status: $270.

(62) *Application for Entrepreneur Parole, Form I–941.* For filing an application for parole for an entrepreneur: $1,200.

(63) *Request for Reduced Fee, Form I–942.* Requesting a reduced fee for the naturalization application Form N–400: No fee.

(64) *Application for Regional Center Designation, Form I–956.* $47,695.

(65) *Application for Approval of Investment in a Commercial Enterprise, Form I–956F.* $47,695.

(66) *Regional Center Annual Statement, Form I–956G.* To provide updated information and certify that a Regional Center under the Immigrant

Investor Program has maintained its eligibility: $4,470.

(b) *N Forms*—(1) *Monthly Report on Naturalization Papers, Form N–4.* No fee.

(2) *Application to File Declaration of Intention, Form N–300.* $320.

(3) *Request for a Hearing on a Decision in Naturalization Proceedings (under section 336 of the Act), Form N–336.* $830. There is no fee for an applicant who has filed an *Application for Naturalization* under section 328 or 329 of the Act with respect to military service and whose application has been denied.

(4) *Application for Naturalization, Form N–400.* $760. With the following exceptions:

(i) No fee is charged an applicant who meets the requirements of section 328 or 329 of the Act with respect to military service.

(ii) The fee for an applicant with an approved *Request for Reduced Fee,* Form I–942, whose documented income is less than 200 percent of the Federal poverty level: $380.

(5) *Request for Certification of Military or Naval Service, Form N–476.* No fee.

(6) *Application to Preserve Residence for Naturalization Purposes, Form N–470.* $420.

(7) *Application for Replacement Naturalization/Citizenship Document, Form N–565.* $555. There is no fee when this application is submitted under 8 CFR 338.5(a) or 343a.1 to request correction of a certificate that contains an error.

(8) *Application for Certificate of Citizenship, Form N–600.* $1,385. There is no fee for any application filed by a current or former member of any branch of the U.S. armed forces on their own behalf.

(9) *Application for Citizenship and Issuance of Certificate Under Section 322, Form N–600K.* $1,385.

(10) *Application for Posthumous Citizenship, Form N–644.* No fee.

(11) *Medical Certification for Disability Exceptions, Form N–648.* No fee.

(c) *G Forms, statutory fees, and non-form fees*—(1) *Genealogy Index Search Request, Form G–1041.* The fee is due regardless of the search results.

(i) When filed online: $100.

(ii) When filed on paper: $120.

(2) *Genealogy Records Request, Form G–1041A.* USCIS will refund the records request fee when it is unable to locate any file previously identified in response to the index search request.

(i) When filed online: $240.

(ii) When filed on paper: $260.

(3) *USCIS immigrant fee.* For DHS domestic processing and issuance of required documents after an immigrant visa is issued by the U.S. Department of State: $235.

(4) *American Competitiveness and Workforce Improvement Act (ACWIA) fee.* For filing certain H–1B petitions as described in 8 CFR 214.2(h)(19) and USCIS form instructions: $1,500 or $750.

(5) *Fraud detection and prevention fee.* (i) For filing certain H–1B and L petitions as described in 8 U.S.C. 1184(c) and USCIS form instructions: $500.

(ii) For filing certain H–2B petitions as described in 8 U.S.C. 1184(c) and USCIS form instructions: $150.

(6) *Fraud detection and prevention fee for CNMI.* For employer petitions in CNMI as described in Public Law 115–218 and USCIS form instructions: $50.

(7) *CNMI education funding fee.* The fee amount will be as prescribed in the form instructions and:

(i) The fee amount must be paid in addition to, and in a separate remittance from, other filing fees;

(ii) Every employer who is issued a permit must pay the education funding fee every year;

(iii) An employer who is issued a permit with a validity period of longer than 1 year must pay the fee for each year of requested validity at the time the permit is requested; and

(iv) Beginning in FY 2020, the fee may be adjusted once per year by notice in the **Federal Register** based on the amount of inflation according to the Consumer Price Index for All Urban Consumers (CPI–U) since the fee was set by law at $200 on July 24, 2018.

(8) *9–11 response and biometric entry-exit fee for H–1B Visa.* For certain petitioners who employ 50 or more employees in the United States if more than 50 percent of the petitioner's employees are in H–1B, L–1A, or L–1B nonimmigrant status: $4,000. Collection of this fee is scheduled to end on September 30, 2027.

(9) *9–11 response and biometric entry-exit fee for L–1 Visa.* For certain petitioners who employ 50 or more employees in the United States, if more than 50 percent of the petitioner's employees are in H–1B, L–1A, or L–1B nonimmigrant status: $4,500. This fee will be collected through September 29, 2027.

(10) *Claimant under section 289 of the Act.* No fee.

(11) *Registration requirement for petitioners seeking to file H–1B petitions on behalf of cap-subject aliens.* For each registration submitted to register for the H–1B cap or advanced degree exemption selection process: $215. This fee will not be refunded if the registration is not selected or is withdrawn.

(12) *Request for Certificate of Non-Existence, G–1566.* $330. For a certification of non-existence of a naturalization record.

(13) *Asylum Program Fee.* $600. The Asylum Program Fee must be paid by any petitioner filing a *Petition or Application for a Nonimmigrant Worker,* Form I–129, *Petition for a CNMI-Only Nonimmigrant Transitional Worker,* Form I–129CW, or an *Immigrant Petition for Alien Worker,* Form I–140.

(d) *Inflationary adjustment.* The fees prescribed in this section may be adjusted once per year by publication of a rule in the **Federal Register** based on the amount of inflation as measured by the difference in the CPI–U as published by the U.S. Department of Labor, U.S. Bureau of Labor Statistics in [MONTH FINAL RULE IS EFFECTIVE] of the year of the last fee rule and the year of the adjustment under this section. The fee calculated under this paragraph (d) will be rounded to the nearest $5 increment.

§ 106.3 Fee waivers and exemptions.

(a) *Waiver of fees*—(1) *Eligibility for a fee waiver.* Discretionary waiver of the fees provided in paragraph (b)(1)(i) of this section are limited as follows:

(i) The party requesting the benefit is unable to pay the prescribed fee.

(ii) A waiver based on inability to pay is consistent with the status or benefit sought, including benefits that require demonstration of the applicant's ability to support himself or herself, or individuals who seek immigration status based on a substantial financial investment.

(2) *Requesting a fee waiver.* A person must submit a request for a fee waiver on the form prescribed by USCIS in accordance with the instructions on the form.

(3) *USCIS fees that may be waived.* Only the following fees may be waived:

(i) The following fees for the following forms may be waived without condition:

(A) Application to Replace Permanent Resident Card (Form I–90);

(B) Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (Form I–191);

(C) Petition to Remove the Conditions of Residence (Form I–751);

(D) Application for Family Unity Benefits (Form I–817);

(E) Application for Temporary Protected Status (Form I–821);

(F) Application for Suspension of Deportation or Special Rule Cancellation of Removal (Form I–881)

(pursuant to section 203 of Pub. L. 105–110);

(G) Application to File Declaration of Intention (Form N–300);

(H) Request for a Hearing on a Decision in Naturalization Proceedings (Form N–336) (under section 336 of the INA);

(I) Application for Naturalization (Form N–400);

(J) Application to Preserve Residence for Naturalization Purposes (N–470);

(K) Application for Replacement Naturalization/Citizenship Document (N–565);

(L) Application for Certificate of Citizenship (N–600); and

(M) Application for Citizenship and Issuance of Certificate under section 322 of the Act (N–600K).

(ii) The following form fees may be waived based on the conditions described in paragraphs (a)(3)(ii)(A) through (F) of this section:

(A) Petition for a CNMI-Only Nonimmigrant Transitional Worker, or an Application to Extend/Change Nonimmigrant Status (Form I–539), only in the case of a noncitizen applying for CW–2 nonimmigrant status;

(B) Application for Travel Document (Form I–131), when filed to request humanitarian parole;

(C) Notice of Appeal or Motion (Form I–290B), when there is no fee for the underlying application or petition or that fee may be waived;

(D) Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act (Form I–694), if the underlying application or petition was fee exempt, the filing fee was waived, or was eligible for a fee waiver;

(E) Application for Employment Authorization (Form I–765), except persons filing under category (c)(33), Deferred Action for Childhood Arrivals (DACA); and

(F) Petition for Nonimmigrant Worker (Form I–129) or Application to Extend/Change Nonimmigrant Status (Form I–539), only in the case of an alien applying for E–2 CNMI Investor for an extension of stay.

(iii) Any fees associated with the filing of any benefit request under 8 U.S.C. 1101(a)(51) and those otherwise self-petitioning under 8 U.S.C. 1154(a)(1) (VAWA self-petitioners), 8 U.S.C. 1101(a)(15)(T) (T visas), 8 U.S.C. 1101(a)(15)(U) (U visas), 8 U.S.C. 1105a (battered spouses of A, G, E–3, or H nonimmigrants), 8 U.S.C. 1229(b)(2) (special rule cancellation for battered spouse or child), and 8 U.S.C. 1254a(a) (Temporary Protected Status).

(iv) The following fees may be waived only if the person is exempt from the public charge grounds of inadmissibility under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4):

(A) Application for Advance Permission to Enter as Nonimmigrant (Form I–192);

(B) Application for Waiver for Passport and/or Visa (Form I–193);

(C) Application to Register Permanent Residence or Adjust Status (Form I–485); and

(D) Application for Waiver of Grounds of Inadmissibility (Form I–601).

(4) *Immigration Court fees.* The provisions relating to the authority of the immigration judges or the Board to waive fees prescribed in paragraph (b) of this section in cases under their jurisdiction can be found at 8 CFR 1003.8 and 1003.24.

(5) *Fees under the Freedom of Information Act (FOIA).* FOIA fees may be waived or reduced if DHS determines that such action would be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(b) *Humanitarian fee exemptions.* Persons in the following categories are exempt from paying certain fees as follows:

(1) Persons seeking or granted Special Immigrant Juvenile classification who file the following forms related to the Special Immigrant Juvenile classification or adjustment of status pursuant to section 245(h) of the Act, 8 U.S.C. 1255(h):

(i) Application for Travel Document (Form I–131).

(ii) Notice of Appeal or Motion (Form I–290B), if filed for any benefit request filed before adjustment of status or a motion filed for an Application to Register Permanent Residence or Adjust Status (Form I–485).

(iii) Application to Register Permanent Residence or Adjust Status (Form I–485).

(iv) Application for Waiver of Ground of Inadmissibility (Form I–601).

(v) Application for Employment Authorization (Form I–765).

(2) Persons seeking or granted T nonimmigrant status who file the following forms related to the T nonimmigrant classification or adjustment of status pursuant to INA section 245(l), 8 U.S.C. 1255(l):

(i) Application for Travel Document (Form I–131).

(ii) Application for Advance Permission to Enter as a Nonimmigrant (Form I–192).

(iii) Application for Waiver of Passport and/or Visa (Form I–193).

(iv) Notice of Appeal or Motion (Form I–290B), if filed for any benefit request filed before adjustment of status or a motion or appeal filed for an Application to Register Permanent Residence or Adjust Status (Form I–485) if applicable.

(v) Application to Register Permanent Residence or Adjust Status (Form I–485).

(vi) Application to Extend/Change Nonimmigrant Status (Form I–539).

(vii) Application for Waiver of Ground of Inadmissibility (Form I–601).

(viii) Application for Employment Authorization (Form I–765).

(3) Persons seeking or granted special immigrant visa or status as Afghan or Iraqi translators or interpreters, Iraqi nationals employed by or on behalf of the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the ISAF and their derivative beneficiaries, who file the following forms related to the Special Immigrant classification or adjustment of status pursuant to such classification:

(i) Application for Travel Document (Form I–131).

(ii) Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal (Form I–212).

(iii) Notice of Appeal or Motion (Form I–290B), if filed for any benefit request filed before adjustment of status or a motion filed for an Application to Register Permanent Residence or Adjust Status (Form I–485).

(iv) Application to Register Permanent Residence or Adjust Status (Form I–485).

(v) Application for Waiver of Ground of Inadmissibility (Form I–601).

(vi) Application for initial Employment Authorization (Form I–765).

(4) Persons seeking or granted adjustment of status as abused spouses and children under the Cuban Adjustment Act (CAA) and the Haitian Refugee Immigration Fairness Act (HRIFA) are exempt from paying the following fees for forms related to those benefits:

(i) Application for Travel Document (Form I–131).

(ii) Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal (Form I–212).

(iii) Notice of Appeal or Motion (Form I–290B), if filed for any benefit request filed before adjustment of status or a motion filed for an Application to Register Permanent Residence or Adjust Status (Form I–485).

(iv) Application to Register Permanent Residence or Adjust Status (Form I–485).

(v) Application for Waiver of Ground of Inadmissibility (Form I–601).

(vi) Application for Employment Authorization (Form I–765).

(5) Persons seeking U nonimmigrant status who file the following forms related to the U nonimmigrant status are exempt from paying fees if filed before the petitioner files an Application to Register Permanent Residence or Adjust Status (Form I–485):

(i) Application for Advance Permission to Enter as a Nonimmigrant (Form I–192).

(ii) Application for Waiver of Passport and/or Visa (Form I–193).

(iii) Notice of Appeal or Motion (Form I–290B).

(iv) Application to Extend/Change Nonimmigrant Status (Form I–539).

(v) Application for Employment Authorization (Form I–765) for their initial request for principals and derivatives submitted under 8 CFR 274a.12(a)(19) and (20) and (c)(14).

(6) Person seeking or granted immigrant classification as VAWA self-petitioners and derivatives as defined in section 101(a)(51)(A) and (B) of the Act or those otherwise self-petitioning for immigrant classification under section 204(a)(1) of the Act, 8 U.S.C. 1154(a)(1), are exempt from paying the following fees for forms related to the benefit:

(i) When the Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360) and Application to Register Permanent Residence or Adjust Status (Form I–485) are concurrently filed or pending:

(A) Application for Travel Document (Form I–131).

(B) Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal (Form I–212).

(C) Notice of Appeal or Motion (Form I–290B) if filed for any benefit request filed before adjustment of status or a motion filed for an Application to Register Permanent Residence or Adjust Status (Form I–485).

(D) Application for Waiver of Grounds of Inadmissibility (Form I–601).

(E) Application for Employment Authorization (Form I–765) for initial requests submitted under 8 CFR 274a.12(c)(9) and (14) and section 204(a)(1)(K) of the Act.

(ii) When the Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360) is filed as a standalone self-petition:

(A) Notice of Appeal or Motion (Form I–290B) for a motion or appeal of a Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360).

(B) Application for Employment Authorization (Form I–765) for initial requests submitted under 8 CFR 274a.12(c)(14) and section 204(a)(1)(K) of the Act, 8 U.S.C 1154(a)(1)(K).

(7) Abused spouses and children applying for benefits under the Nicaraguan Adjustment and Central American Relief Act (NACARA) are exempt from paying the following fees for forms related to the benefit:

(i) Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100 (NACARA)) (Form I–881).

(ii) Application for Waiver of Grounds of Inadmissibility (Form I–601).

(iii) Application for Employment Authorization (Form I–765) submitted under 8 CFR 274a.12(c)(10).

(8) Battered spouses and children of a lawful permanent resident (LPR) or U.S. citizen applying for cancellation of removal and adjustment of status under section 240A(b)(2) of the Act are exempt from paying the following fees for forms related to the benefit:

(i) Application for Waiver of Ground of Inadmissibility (Form I–601).

(ii) Application for Employment Authorization (Form I–765) for their initial request under 8 CFR 274a.12(c)(10).

(9) Refugees, persons paroled as refugees, or lawful permanent residents who obtained such status as refugees in the United States are exempt from paying the following fees:

(i) Application for Travel Document (Form I–131).

(ii) Application for Carrier Documentation (Form I–131A).

(iii) Application for Employment Authorization (Form I–765).

(iv) Application to Register Permanent Residence or Adjust Status (Form I–485).

(c) *Director's waiver or exemption exception.* The Director of USCIS may authorize the waiver of or exemption from, in whole or in part, a form fee required by § 106.2 that is not otherwise waivable under this section, if the Director determines that such action is in the public interest and consistent with the applicable law. This discretionary authority may be delegated only to the USCIS Deputy Director.

§ 106.4 Premium processing service.

(a) *General.* A person may submit a request to USCIS for premium processing of certain immigration benefit requests, subject to processing timeframes and fees, as described in this section.

(b) *Submitting a request.* A request must be submitted on the form and in the manner prescribed by USCIS in the form instructions. If the request for premium processing is submitted together with the underlying immigration benefit request, all required fees in the correct amount must be paid. The fee to request premium processing service may not be waived and must be paid in addition to other filing fees. USCIS may require the premium processing service fee be paid in a separate remittance from other filing fees and preclude combined payments in the applicable form instructions.

(c) *Designated benefit requests and fee amounts.* Benefit requests designated for premium processing and the corresponding fees to request premium processing service are as follows:

(1) Application for classification of a nonimmigrant described in section 101(a)(15)(E)(i), (ii), or (iii) of the INA, 8 U.S.C. 1101(a)(15)(E)(i), (ii), or (iii): $2,500.

(2) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(i)(b) of the INA, 8 U.S.C. 1101(a)(15)(H)(i)(b), or section 222(a) of the Immigration Act of 1990, Public Law 101–649: $2,500.

(3) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(ii)(b) of the INA, 8 U.S.C. 1101(a)(15)(H)(ii)(b): $1,500.

(4) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(iii) of the INA, 8 U.S.C. 1101(a)(15)(H)(iii): $2,500.

(5) Petition for classification of a nonimmigrant described in section 101(a)(15)(L) of the INA, 8 U.S.C. 1101(a)(15(L): $2,500.

(6) Petition for classification of a nonimmigrant described in section 101(a)(15)(O)(i) or (ii) of the INA, 8 U.S.C. 1101(a)(15)(O)(i): $2,500.

(7) Petition for classification of a nonimmigrant described in section 101(a)(15)(P)(i), (ii), or (iii) of the INA, 8 U.S.C. 1101(a)(15)(P)(i): $2,500.

(8) Petition for classification of a nonimmigrant described in section 101(a)(15)(Q) of the INA, 8 U.S.C. 1101(a)(15)(Q): $2,500.

(9) Petition for classification of a nonimmigrant described in section 101(a)(15)(R) of the INA, 8 U.S.C. 1101(a)(15)(R): $1,500.

(10) Application for classification of a nonimmigrant described in section 214(e) of the INA, 8 U.S.C. 1184(e): $2,500.

(11) Petition for classification under section 203(b)(1)(A) of the INA, 8 U.S.C. 1153(b)(1)(A): $2,500.

(12) Petition for classification under section 203(b)(1)(B) of the INA, 8 U.S.C. 1153(b)(1)(B): $2,500.

(13) Petition for classification under section 203(b)(2)(A) of the INA, 8 U.S.C. 1153(b)(2)(A) not involving a waiver under section 203(b)(2)(B) of the INA, 8 U.S.C. 1153(b)(2)(B): $2,500.

(14) Petition for classification under section 203(b)(3)(A)(i) of the INA, 8 U.S.C. 1153(b)(3)(A)(i): $2,500.

(15) Petition for classification under section 203(b)(3)(A)(ii) of the INA, 8 U.S.C. 1153(b)(3)(A)(ii): $2,500.

(16) Petition for classification under section 203(b)(3)(A)(iii) of the INA, 8 U.S.C. 1153(b)(3)(A)(iii): $2,500.

(17) Petition for classification under section 203(b)(1)(C) of the INA, 8 U.S.C. 1153(b)(1)(C): $2,500.

(18) Petition for classification under section 203(b)(2) of the INA, 8 U.S.C. 1153(b)(2), involving a waiver under section 203(b)(2)(B) of the INA, 8 U.S.C. 1153(b)(2)(B): $2,500.

(19) Application under section 248 of the INA, 8 U.S.C. 1258, to change status to a classification described in section 101(a)(15)(F), (J), or (M) of the INA, 8 U.S.C. 1101(a)(15)(F), (J), or (M): $1,750.

(20) Application under section 248 of the INA, 8 U.S.C. 1258, to change status to be classified as a dependent of a nonimmigrant described in section 101(a)(15)(E), (H), (L), (O), (P), or (R) of the INA, 8 U.S.C. 1101(a)(15)(E), (H), (L), (O), (P), or (M), or to extend stay in such classification: $1,750.

(21) Application for employment authorization: $1,500.

(d) *Fee adjustments.* The fee to request premium processing service may be adjusted by notification in the **Federal Register** on a biennial basis based on the percentage by which the Consumer Price Index for All Urban Consumers for the month of June preceding the date on which such adjustment takes effect exceeds the Consumer Price Index for All Urban Consumers for the same month of the second preceding calendar year.

(e) *Processing timeframes.* The processing timeframes for a request for premium processing are as follows:

(1) Application for classification of a nonimmigrant described in section 101(a)(15)(E)(i), (ii), or (iii) of the INA: 15 business days.

(2) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(i)(b) of the INA or section 222(a) of the Immigration Act of 1990, Public Law 101–649: 15 business days.

(3) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(ii)(b) of the INA: 15 business days.

(4) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(iii) of the INA: 15 business days.

(5) Petition for classification of a nonimmigrant described in section 101(a)(15)(L) of the INA: 15 business days.

(6) Petition for classification of a nonimmigrant described in section 101(a)(15)(O)(i) or (ii) of the INA: 15 business days.

(7) Petition for classification of a nonimmigrant described in section 101(a)(15)(P)(i), (ii), or (iii) of the INA: 15 business days.

(8) Petition for classification of a nonimmigrant described in section 101(a)(15)(Q) of the INA: 15 business days.

(9) Petition for classification of a nonimmigrant described in section 101(a)(15)(R) of the INA: 15 business days.

(10) Application for classification of a nonimmigrant described in section 214(e) of the INA: 15 business days.

(11) Petition for classification under section 203(b)(1)(A) of the INA: 15 business days.

(12) Petition for classification under section 203(b)(1)(B) of the INA: 15 business days.

(13) Petition for classification under section 203(b)(2)(A) of the INA not involving a waiver under section 203(b)(2)(B) of the INA: 15 business days.

(14) Petition for classification under section 203(b)(3)(A)(i) of the INA: 15 business days.

(15) Petition for classification under section 203(b)(3)(A)(ii) of the INA: 15 business days.

(16) Petition for classification under section 203(b)(3)(A)(iii) of the INA: 15 business days.

(17) Petition for classification under section 203(b)(1)(C) of the INA: 45 business days.

(18) Petition for classification under section 203(b)(2) of the INA involving a waiver under section 203(b)(2)(B) of the INA: 45 business days.

(19) Application under section 248 of the INA to change status to a classification described in section 101(a)(15)(F), (J), or (M) of the INA: 30 business days.

(20) Application under section 248 of the INA to change status to be classified as a dependent of a nonimmigrant described in section 101(a)(15)(E), (H), (L), (O), (P), or (R) of the INA, or to extend stay in such classification: 30 business days.

(21) Application for employment authorization: 30 business days.

(22) For the purpose of this section a business day is a day that the Federal Government is open for business, and does not include weekends, federally observed holidays, or days on which Federal Government offices are closed, such as for weather-related or other reasons. The closure may be nationwide or in the region where the adjudication of the benefit for which premium processing is sought will take place.

(f) *Processing requirements and refunds.* (1) USCIS will issue an approval notice, denial notice, a notice of intent to deny, or a request for evidence within the premium processing timeframe.

(2) Premium processing timeframes will commence:

(i) For those benefits described in paragraphs (e)(1) through (16) of this section, on the date the form prescribed by USCIS, together with the required fee(s), are received by USCIS.

(ii) For those benefits described in paragraphs (e)(17) through (21) of this section, on the date that all prerequisites for adjudication, the form prescribed by USCIS, and fee(s) are received by USCIS.

(3) In the event USCIS issues a notice of intent to deny or a request for evidence, the premium processing timeframe will stop and will recommence with a new timeframe as specified in paragraphs (e)(1) through (21) of this section on the date that USCIS receives a response to the notice of intent to deny or the request for evidence.

(4) Except as provided in paragraph (f)(5) of this section, USCIS will refund the premium processing service fee but continue to process the case if USCIS does not take adjudicative action described in paragraph (f)(1) of this section within the applicable processing timeframe as required in paragraph (e) of this section.

(5) USCIS may retain the premium processing fee and not take an adjudicative action described in paragraph (f)(1) of this section on the request within the applicable processing timeframe, and not notify the person who filed the request, if USCIS opens an investigation for fraud or misrepresentation relating to the immigration benefit request.

(g) *Availability.* (1) USCIS will announce by its official internet website, currently *https://www.uscis.gov,* the benefit requests described in paragraph (c) of this section for which premium processing may be requested, the dates upon which such availability commences or ends, or any conditions that may apply.

(2) USCIS may suspend the availability of premium processing for immigration benefit requests designated for premium processing if circumstances prevent the completion of processing of a significant number of such requests within the applicable processing timeframe.

§ 106.5 Authority to certify records.

The Director of USCIS, or such officials as he or she may designate, may certify records when authorized under 5 U.S.C. 552 or any other law to provide such records.

§ 106.6 DHS severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions will continue in effect.

PART 204—IMMIGRANT PETITIONS

■ 7. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1324a, 1641; 8 CFR part 2.

■ 8. Section 204.3 is amended by:
■ a. Revising and republishing the definitions of ''Advanced processing application'' and ''Orphan petition'' in paragraph (b);
■ b. Revising and republishing paragraph (d) introductory text; and
■ c. Revising paragraphs (h)(3), (7), (13), and (14).

The revisions and republications read as follows:

§ 204.3 Orphan cases under section 101(b)(1)(F) of the Act (non-Hague Adoption Convention cases).

* * * * *

(b) * * *

Advanced processing application means Form I–600A (Application for Advanced Processing of Orphan Petition) completed in accordance with the form's instructions and submitted with the required supporting documentation and the fee as required in 8 CFR 106.2. The application must be signed in accordance with the form's instructions by the married petitioner and spouse, or by the unmarried petitioner.

* * * * *

Orphan petition means Form I–600 (Petition to Classify Orphan as an Immediate Relative). The petition must be completed in accordance with the form's instructions and submitted with the required supporting documentation and, if there is not a pending, or currently valid and approved advanced processing application, the fee as required in 8 CFR 106.2. The petition must be signed in accordance with the form's instructions by the married petitioner and spouse, or the unmarried petitioner.

* * * * *

(d) *Supporting documentation for a petition for an identified orphan.* Any document not in the English language must be accompanied by a certified English translation. If an orphan has been identified for adoption and the advanced processing application is pending, the prospective adoptive parents may file the orphan petition at the USCIS office where the application is pending. The prospective adoptive parents who have an approved advanced processing application must file an orphan petition and all supporting documents within 15 months of the date of the approval of the advanced processing application. If the prospective adoptive parents fail to file the orphan petition within the approval validity period of the advanced processing application, the advanced processing application will be deemed abandoned pursuant to paragraph (h)(7) of this section. If the prospective adoptive parents file the orphan petition after the approval period of the advanced processing application has expired, the petition will be denied pursuant to paragraph (h)(13) of this section. Prospective adoptive parents who do not have an advanced processing application approved or pending may file the application and petition concurrently on one Form I–600 if they have identified an orphan for adoption. An orphan petition must be accompanied by full documentation as follows:

* * * * *

(h) * * *

(3) *Advanced processing application approved.* If the advanced processing application is approved:

(i) The prospective adoptive parents will be advised in writing. A notice of approval expires 15 months after the date on which USCIS received the Federal Bureau of Investigation (FBI) response on the applicant's, and any additional adult member of the household's, biometrics, unless approval is revoked. If USCIS received the responses on different days, the 15-month period begins on the earliest response date. The notice of approval will specify the expiration date.

(ii) USCIS may extend the validity period for the approval of a Form I–600A if requested in accordance with 8 CFR 106.2(a)(31). An applicant may not file a Form I–600A Supplement 3 seeking extension of an approval notice more than 90 days before the expiration of the validity period for the Form I–600A approval but must do so on or before the date on which the validity period expires if the applicant seeks an extension.

(iii) If the Form I–600A approval is for more than one orphan, the prospective adoptive parents may file a petition for each of the additional children, to the maximum number approved.

(iv) It does not guarantee that the orphan petition will be approved.

* * * * *

(7) *Advanced processing application deemed abandoned for failure to file orphan petition within the approval validity period of the advanced processing application.* If an orphan petition is not properly filed within 15 months of the approval date of the advanced processing application:

(i) The application will be deemed abandoned;

(ii) Supporting documentation will be returned to the prospective adoptive parents, except for documentation submitted by a third party which will be returned to the third party, and documentation relating to the biometric checks;

(iii) The director will dispose of documentation relating to biometrics checks in accordance with current policy; and

(iv) Such abandonment will be without prejudice to a new filing at any time with fee.

* * * * *

(13) *Orphan petition denied: petitioner files orphan petition after the approval of the advanced processing application has expired.* If the petitioner files the orphan petition after the advanced processing application has expired, the petition will be denied. This action will be without prejudice to a new filing at any time with fee.

(14) *Revocation.* (i) The approval of an advanced processing application or an orphan petition shall be automatically revoked in accordance with 8 CFR 205.1 if an applicable reason exists. The approval of an advanced processing application or an orphan petition shall be revoked if the director becomes aware of information that would have resulted in denial had it been known at the time of adjudication. Such a revocation or any other revocation on notice shall be made in accordance with 8 CFR 205.2.

(ii) The approval of a Form I–600A or Form I–600 combination filing is automatically revoked if before the final decision on a beneficiary's application for admission with an immigrant visa or for adjustment of status:

(A) The marriage of the applicant terminates; or

(B) An unmarried applicant marries.

(iii) Revocation is without prejudice to the filing of a new Form I–600A or Form I–600 combination filing, with fee, accompanied by a new or updated home study, reflecting the change in marital status. If a Form I–600 had already been

filed based on the approval of the prior Form I–600A, a new Form I–600 must also be filed with the new Form I–600A under this paragraph (h)(14). The new Form I–600 will be adjudicated only if the new Form I–600A is approved.

* * * * *

■ 9. Section 204.5 is amended by republishing paragraphs (p)(4) heading and (p)(4)(i) to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(p) * * *

(4) *Application for employment authorization.* (i) To request employment authorization, an eligible applicant described in paragraph (p)(1), (2), or (3) of this section must:

(A) File an application for employment authorization (Form I–765), with USCIS, in accordance with 8 CFR 274a.13(a) and the form instructions.

(B) Submit biometric information as may be provided in the applicable form instructions.

* * * * *

■ 10. Section 204.312 is amended by revising and republishing paragraph (e)(3)(i) and paragraph (e)(3)(ii) introductory text to read as follows:

§ 204.312 Adjudication of the Form I–800A.

* * * * *

(e) * * *

(3)(i) If the 15-month validity period for a Form I–800A approval is about to expire, the applicant:

(A) May file Form I–800A Supplement 3 as described in 8 CFR 106.2(a)(31) to request an extension.

(B) May not file a Form I–800A Supplement 3 seeking extension of an approval notice more than 90 days before the expiration of the validity period for the Form I–800A approval, but must do so on or before the date on which the validity period expires if the applicant seeks an extension.

(ii) Any Form I–800A Supplement 3 that is filed to obtain an extension or update of the approval of a Form I–800A or to change of Hague Convention countries must be accompanied by:

* * * * *

■ 11. Section 204.313 is amended by revising and republishing paragraph (a) to read as follows:

§ 204.313 Filing and adjudication of a Form I–800.

(a) *When to file.* Once a Form I–800A has been approved and the Central Authority has proposed placing a child for adoption by the petitioner, the petitioner may file the Form I–800. The petitioner must complete the Form I–800 in accordance with the instructions that accompany the Form I–800 and sign the Form I–800 personally. In the case of a married petitioner, one spouse cannot sign for the other, even under a power of attorney or similar agency arrangement. The petitioner may then file the Form I–800 with the stateside or overseas USCIS office or the visa issuing post that has jurisdiction under § 204.308(b) to adjudicate the Form I–800, together with the evidence specified in this section and the filing fee specified in 8 CFR 106.2, if more than one Form I–800 is filed for children who are not birth siblings.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 12. The authority citation for part 212 is revised to read as follows:

Authority: 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185 note (sec. 7209, Pub. L. 108–458, 118 Stat. 3638), 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 CFR part 2. Section 212.1(q) also issued under sec. 702, Pub. L. 110–229, 122 Stat. 754, 854.

■ 13. Section 212.19 is amended by revising and republishing paragraphs (b)(1), (c)(1), (e), (h)(1), and (j) to read as follows:

§ 212.19 Parole for entrepreneurs.

* * * * *

(b) * * *

(1) *Filing of initial parole request form.* An alien seeking an initial grant of parole as an entrepreneur of a start-up entity must file Form I–941, Application for Entrepreneur Parole, with USCIS, with the required fee, and supporting documentary evidence in accordance with this section and the form instructions, demonstrating eligibility as provided in paragraph (b)(2) of this section.

* * * * *

(c) * * *

(1) *Filing of re-parole request form.* Before expiration of the initial period of parole, an entrepreneur parolee may request an additional period of parole based on the same start-up entity that formed the basis for his or her initial period of parole granted under this section. To request such parole, an entrepreneur parolee must timely file an application for entrepreneur parole with USCIS on the form prescribed by USCIS with the required fee and supporting documentation in accordance with the form instructions, demonstrating eligibility as provided in paragraph (c)(2) of this section.

* * * * *

(e) *Collection of biometric information.* An alien seeking an initial grant of parole or re-parole will be required to submit biometric information. An alien seeking re-parole may be required to submit biometric information.

* * * * *

(h) * * *

(1) The entrepreneur's spouse and children who are seeking parole as derivatives of such entrepreneur must individually file Form I–131, Application for Travel Document. Such application must also include evidence that the derivative has a qualifying relationship to the entrepreneur and otherwise merits a grant of parole in the exercise of discretion. Such spouse or child will be required to appear for collection of biometrics in accordance with the form instructions or upon request.

* * * * *

(j) *Reporting of material changes.* An alien granted parole under this section must immediately report any material change(s) to USCIS. If the entrepreneur will continue to be employed by the start-up entity and maintain a qualifying ownership interest in the start-up entity, the entrepreneur must submit a form prescribed by USCIS, with any applicable fee in accordance with the form instructions to notify USCIS of the material change(s). The entrepreneur parolee must immediately notify USCIS in writing if they will no longer be employed by the start-up entity or ceases to possess a qualifying ownership stake in the start-up entity.

* * * * *

PART 214—NONIMMIGRANT CLASSES

■ 14. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1357, and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

■ 15. Section 214.1 is amended by republishing paragraph (c)(5) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(c) * * *

(5) *Decision on application for extension or change of status.* Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of USCIS. The denial of an application for extension of stay may not be appealed.

* * * * *

■ 16. Section 214.2 is amended by:

■ a. Revising and republishing paragraphs (e)(8)(iii) through (v), (e)(23)(viii), (h)(2)(i)(A), (h)(2)(ii), (h)(5)(i)(B), and (h)(19)(i) introductory text;

■ b. Revising paragraph (m)(14)(ii) introductory text;

■ c. Revising and republishing paragraphs (o)(2)(iv)(F), (p)(2)(iv)(F), and (q)(5)(ii);

■ d. Republishing the definition for ''Petition'' in paragraph (r)(3);

■ e. Revising paragraph (r)(5);

■ f. Republishing paragraph (w)(5) and (w)(15)(iii); and

■ g. Revising paragraph (w)(16).

The revisions and republications read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(e) * * *

(8) * * *

(iii) *Substantive changes.* Approval of USCIS must be obtained where there will be a substantive change in the terms or conditions of E status. The treaty alien must file a new application in accordance with the instructions on the form prescribed by USCIS requesting extension of stay in the United States, plus evidence of continued eligibility for E classification in the new capacity. Or the alien may obtain a visa reflecting the new terms and conditions and subsequently apply for admission at a port-of-entry. USCIS will deem there to have been a substantive change necessitating the filing of a new application where there has been a fundamental change in the employing entity's basic characteristics, such as a merger, acquisition, or sale of the division where the alien is employed.

(iv) *Non-substantive changes.* Neither prior approval nor a new application is required if there is no substantive, or fundamental, change in the terms or conditions of the alien's employment that would affect the alien's eligibility for E classification. Further, prior approval is not required if corporate changes occur which do not affect the previously approved employment relationship, or are otherwise non-substantive. To facilitate admission, the alien may:

(A) Present a letter from the treaty-qualifying company through which the alien attained E classification explaining the nature of the change;

(B) Request a new approval notice reflecting the non-substantive change by filing an application with a description of the change; or

(C) Apply directly to Department of State for a new E visa reflecting the change. An alien who does not elect one of the three options contained in paragraphs (e)(8)(iv)(A) through (C) of this section, is not precluded from demonstrating to the satisfaction of the immigration officer at the port-of-entry in some other manner, his or her admissibility under section 101(a)(15)(E) of the Act.

(v) *Advice.* To request advice from USCIS as to whether a change is substantive, an alien may file an application with a complete description of the change. In cases involving multiple employees, an alien may request that USCIS determine if a merger or other corporate restructuring requires the filing of separate applications by filing a single application and attaching a list of the related receipt numbers for the employees involved and an explanation of the change or changes.

* * * * *

(23) * * *

(viii) *Information for background checks.* USCIS may require an applicant for E–2 CNMI Investor status, including but not limited to any applicant for derivative status as a spouse or child, to submit biometrics as required under 8 CFR 103.16.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(A) *General.* A United States employer seeking to classify an alien as an H–1B, H–2A, H–2B, or H–3 temporary employee must file a petition on the form prescribed by USCIS in accordance with the form instructions.

* * * * *

(ii) *Multiple beneficiaries.* Up to 25 named beneficiaries may be included in an H–1C, H–2A, H–2B, or H–3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period, and in the same location. If more than 25 named beneficiaries are being petitioned for, an additional petition is required. Petitions for H–2A and H–2B workers from countries not designated in accordance with paragraph (h)(6)(i)(E) of this section must be filed separately.

* * * * *

(5) * * *

(i) * * *

(B) *Multiple beneficiaries.* The total number of beneficiaries of a petition or series of petitions based on the same temporary labor certification may not exceed the number of workers indicated on that document. A single petition can include more than one named beneficiary if the total number is 25 or less and does not exceed the number of positions indicated on the relating temporary labor certification.

* * * * *

(19) * * *

(i) A United States employer (other than an exempt employer defined in paragraph (h)(19)(iii) of this section, or an employer filing a petition described in paragraph (h)(19)(v) of this section) who files a petition or application must include the additional American Competitiveness and Workforce Improvement Act (ACWIA) fee referenced in 8 CFR 106.2, if the petition is filed for any of the following purposes:

* * * * *

(m) * * *

(14) * * *

(ii) *Application.* An M–1 student must apply for permission to accept employment for practical training on Form I–765, with fee as contained in 8 CFR part 106, accompanied by a properly endorsed Form I–20 by the designated school official for practical training. The application must be submitted before the program end date listed on the student's Form I–20 but not more than 90 days before the program end date. The designated school official must certify on Form I–538 that:

* * * * *

(o) * * *

(2) * * *

(iv) * * *

(F) *Multiple beneficiaries.* More than one O–2 accompanying alien may be included on a petition if they are assisting the same O–1 alien for the same events or performances, during the same period, and in the same location. Up to 25 named beneficiaries may be included per petition.

* * * * *

(p) * * *

(2) * * *

(iv) * * *

(F) *Multiple beneficiaries.* More than one beneficiary may be included in a P petition if they are members of a team or group, or if they will provide essential support to P–1, P–2, or P–3

beneficiaries performing in the same location and in the same occupation. Up to 25 named beneficiaries may be included per petition.

* * * * *

(q) * * *

(5) * * *

(ii) *Petition for multiple participants.* The petitioner may include up to 25 named participants on a petition. The petitioner shall include the name, date of birth, nationality, and other identifying information required on the petition for each participant. The petitioner must also indicate the United States consulate at which each participant will apply for a Q–1 visa. For participants who are visa-exempt under 8 CFR 212.1(a), the petitioner must indicate the port of entry at which each participant will apply for admission to the United States.

* * * * *

(r) * * *

(3) * * *

Petition means the form or as may be prescribed by USCIS, a supplement containing attestations required by this section, and the supporting evidence required by this part.

* * * * *

(5) *Extension of stay or readmission.* An R–1 alien who is maintaining status or is seeking readmission and who satisfies the eligibility requirements of this section may be granted an extension of R–1 stay or readmission in R–1 status for the validity period of the petition, up to 30 months, provided the total period of time spent in R–1 status does not exceed a maximum of 5 years. A Petition for a Nonimmigrant Worker to request an extension of R–1 status must be filed by the employer with a supplement prescribed by USCIS containing attestations required by this section, the fee specified in 8 CFR part 106, and the supporting evidence, in accordance with the applicable form instructions.

* * * * *

(w) * * *

(5) *Petition requirements.* An employer who seeks to classify an alien as a CW–1 worker must file a petition with USCIS and pay the requisite petition fee plus the CNMI education funding fee and the fraud prevention and detection fee as prescribed in the form instructions and 8 CFR part 106. If the beneficiary will perform services for more than one employer, each employer must file a separate petition with fees with USCIS.

* * * * *

(15) * * *

(iii) If the eligible spouse and/or minor child(ren) are present in the CNMI, the spouse or child(ren) may apply for CW–2 dependent status on Form I–539 (or such alternative form as USCIS may designate) in accordance with the form instructions. The CW–2 status may not be approved until approval of the CW–1 petition.

(16) *Biometrics and other information.* The beneficiary of a CW–1 petition or the spouse or child applying for a grant or extension of CW–2 status, or a change of status to CW–2 status, must submit biometric information as requested by USCIS.

* * * * *

■ 17. Section 214.14 is amended by revising and republishing paragraph (c)(1) introductory text to read as follows:

§ 214.14 Alien victims of certain qualifying criminal activity.

* * * * *

(c) * * *

(1) *Filing a petition.* USCIS has sole jurisdiction over all petitions for U nonimmigrant status. An alien seeking U–1 nonimmigrant status must submit a Petition for U Nonimmigrant Status on the form prescribed by USCIS, and initial evidence to USCIS in accordance with this paragraph (c)(1) and the form instructions. A petitioner who received interim relief is not required to submit initial evidence with a Petition for U Nonimmigrant Status if he or she wishes to rely on the law enforcement certification and other evidence that was submitted with the request for interim relief.

* * * * *

PART 240—VOLUNTARY DEPARTURE, SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL

■ 18. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

■ 19. Section 240.63 is amended by revising and republishing paragraph (a) to read as follows:

§ 240.63 Application process.

(a) *Form and fees.* Except as provided in paragraph (b) of this section, the application must be made on the form prescribed by USCIS for this program and filed in accordance with the instructions for that form. An applicant who submitted to EOIR a completed, Application for Suspension of Deportation, before the effective date of the form prescribed by USCIS may apply with USCIS by submitting the completed Application for Suspension of Deportation attached to a completed first page of the application. Each application must be filed with the required fees as provided in 8 CFR 106.2.

* * * * *

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

■ 20. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

■ 21. Section 244.6 is revised and republished to read as follows:

§ 244.6 Application.

(a) An application for Temporary Protected Status must be submitted in accordance with the form instructions, the applicable country-specific **Federal Register** notice that announces the procedures for TPS registration or re-registration and, except as otherwise provided in this section, with the appropriate fees as described in 8 CFR part 106.

(b) An applicant for TPS may also request an employment authorization document pursuant to 8 CFR part 274a by filing an Application for Employment Authorization in accordance with the form instructions and in accordance with 8 CFR 106.2 and 106.3.

■ 22. Section 244.17 is amended by republishing paragraph (a) to read as follows:

§ 244.17 Periodic registration.

(a) Aliens granted Temporary Protected Status must re-register periodically in accordance with USCIS instructions. Such registration applies to nationals of those foreign states designated for more than one year by DHS or where a designation has been extended for a year or more. Applicants for re-registration must apply during the period provided by USCIS. Re-registration applicants do not need to pay the fee that was required for initial registration except the biometric services fee, unless that fee is waived in the applicable form instructions, and if requesting an employment authorization document, the application fee for an Application for Employment Authorization. By completing the application, applicants attest to their continuing eligibility. Such applicants do not need to submit additional

supporting documents unless USCIS requests that they do so.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 23. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1252, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

■ 24. Section 245.1 is amended by:
■ a. Revising paragraph (f); and
■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 245.1 Eligibility.

* * * * *

(f) *Concurrent applications to overcome grounds of inadmissibility.* Except as provided in 8 CFR parts 235 and 249, an application under this part shall be the sole method of requesting the exercise of discretion under sections 212(g), (h), (i), and (k) of the Act, as they relate to the inadmissibility of an alien in the United States.

* * * * *

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

■ 25. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

■ 26. Section 245a.2 is amended by republishing paragraph (e)(3) to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(e) * * *

(3) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

* * * * *

■ 27. Section 245a.3 is amended by republishing paragraph (d)(3) to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

* * * * *

(d) * * *

(3) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

* * * * *

■ 28. Section 245a.4 is amended by republishing paragraph (b)(5)(iii) to read as follows:

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

* * * * *

(b) * * *

(5) * * *

(iii) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

* * * * *

■ 29. Section 245a.12 is amended by republishing paragraph (d) introductory text to read as follows:

§ 245a.12 Filing and applications.

* * * * *

(d) *Application and supporting documentation.* Each applicant for LIFE Legalization adjustment of status must submit the form prescribed by USCIS completed in accordance with the form instructions accompanied by the required evidence.

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

■ 30. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303–1305; 8 CFR part 2.

■ 31. Section 264.5 is amended by revising and republishing paragraph (a) to read as follows:

§ 264.5 Application for a replacement Permanent Resident Card.

(a) *Filing instructions.* A request to replace a Permanent Resident Card must be filed in accordance with the appropriate form instructions and with the fee specified in 8 CFR 106.2.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 32. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 2461 note); 8 CFR part 2.

■ 33. Section 274a.12 is amended by revising and republishing paragraphs (b)(9), (13), and (14) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(9) A temporary worker or trainee (H–1, H–2A, H–2B, or H–3), pursuant to 8 CFR 214.2(h), or a nonimmigrant specialty occupation worker pursuant to section 101(a)(15)(H)(i)(b)(1) of the Act. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional H–2B athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new petition for H–2B classification. If a new petition is not filed within 30 days, employment authorization will cease. If a new petition is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease. In the case of a nonimmigrant with H–1B status, employment authorization will automatically continue upon the filing of a qualifying petition under 8 CFR 214.2(h)(2)(i)(H) until such petition is adjudicated, in accordance with section 214(n) of the Act and 8 CFR 214.2(h)(2)(i)(H).

* * * * *

(13) An alien having extraordinary ability in the sciences, arts, education, business, or athletics (O–1), and an accompanying alien (O–2), pursuant to 8 CFR 214.2(o). An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional O–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new petition for O nonimmigrant classification. If a new petition is not filed within 30 days, employment authorization will cease. If a new petition is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(14) An athlete, artist, or entertainer (P–1, P–2, or P–3), pursuant to 8 CFR 214.2(p). An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional P–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new

organization, within which time the new organization is expected to file a new petition for P–1 nonimmigrant classification. If a new petition is not filed within 30 days, employment authorization will cease. If a new petition is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

* * * * *

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

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