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8 CFR Parts 103 and 204

U.S. Citizenship and Immigration Services Fee Schedule; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103 and 204

[CIS No. 2577–15; DHS Docket No. USCIS–2016–0001]

RIN 1615–AC09

U.S. Citizenship and Immigration Services Fee Schedule

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 fee review, after refining its cost accounting process, and determined that current fees do not recover the full costs of the services it provides. Adjustment to the fee schedule is necessary to fully recover costs for USCIS services and to maintain adequate service. DHS proposes to increase USCIS fees by a weighted average of 21 percent and add one new fee. In addition, DHS proposes to clarify that persons filing a benefit request may be required to appear for biometrics services or an interview and pay the biometrics services fee, and make a number of other changes.

DATES: Written comments must be submitted on or before July 5, 2016.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2016–0001, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow this site's instructions for submitting comments.
- *Email:* You may email comments directly to USCIS at uscisfrcomment@dhs.gov. Include DHS Docket No. USCIS–2016–0001 in the subject line of the message.
- *Mail:* You may submit comments directly to USCIS by mailing them to Samantha Deshommes, Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. To ensure proper handling, please reference DHS Docket No. USCIS–2016–0001 on your correspondence. This mailing address may be used for paper or CD–ROM submissions.
- *Hand Delivery/Courier:* You may submit comments directly to USCIS by having them delivered to Samantha

Deshommes, Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. The contact telephone number is (202) 272–8377.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Public Participation
- II. Executive Summary
- III. Background
 - A. Legal Authority and Guidance
 - B. Full Cost Recovery
 - C. New Statutory Fees for Certain H–1B and L–1 Petitions
- IV. The Immigration Examinations Fee Account
 - A. General Background
 - B. Fee Review History
 - C. USCIS Initiatives Funded Under the 2010 Fee Adjustment
 - D. Processing Time Outlook
- V. FY 2016/2017 Immigration Examinations Fee Account Fee Review
 - A. Overall Approach
 - B. Basis for Fee Schedule
 1. Costs
 2. Revenue
 3. No Discretionary Appropriations for RAIO, SAVE, Office of Citizenship, or Military Naturalization Costs
 4. New Fee for Annual Certification of Regional Center, Form I–924A
 5. Summary
- VI. Fee Review Methodology
 - A. Background
 1. ABC Methodology
 2. Continuing Low Volume Reallocation From FY 2010/2011 Fee Rule
 3. Applying Cost Reallocation to Other Form Types
 4. Reduced Fee for Application for Naturalization
 5. Holding the Biometric Services Fee at Its Current Level
 6. Continuing To Hold the Refugee Travel Document Fee to the Department of State Passport Fee
 7. Holding the Fee for a Petition by Entrepreneur To Remove Conditions (Form I–829) at Its Current Level
 - B. Changes for the FY 2016/2017 Fee Review
 1. Interim Benefits
 2. I–485 Fee for Child Under 14, Filing With Parent
 3. One Fee for a Genealogy Records Request
 4. Dishonored Payments and Failure To Pay the Biometrics Services Fee
 5. Refunds
 - C. Fee-Related Issues Noted for Consideration
 1. Premium Processing

2. Accommodating E-Filing and Form Flexibility
3. Fee Waivers
- VII. Volume
 - A. Workload Volume and Volume Projection Committee
 - B. Fee-Paying Volume and Methodology
- VIII. Completion Rates
- IX. Proposed Fee Adjustments to Immigration Examinations Fee Account Immigration Benefits
- X. Statutory and Regulatory Reviews
 - A. Regulatory Flexibility Act
 - B. Unfunded Mandates Reform Act
 - C. Small Business Regulatory Enforcement Fairness Act
 - D. Congressional Review Act
 - E. Executive Orders 12866 and 13563 (Regulatory Planning and Review)
 - F. Executive Order 13132 (Federalism)
 - G. Executive Order 12988 (Civil Justice Reform)
 - H. Paperwork Reduction Act

List of Acronyms and Abbreviations

- ABC Activity-Based Costing
 BLS Bureau of Labor Statistics
 CFO Chief Financial Officer
 CNMI Commonwealth of the Northern Mariana Islands
 CPI Consumer Price Index
 DACA Deferred Action for Childhood Arrivals
 DOD Department of Defense
 DHS Department of Homeland Security
 DOL Department of Labor
 DOS Department of State
 EB–5 Employment-Based Immigrant Visa, Fifth Preference
 EIN Employer Identification Number
 FASAB Federal Accounting Standards Advisory Board
 FBI Federal Bureau of Investigation
 FOIA Freedom of Information Act
 FY Fiscal Year
 GAO Government Accountability Office
 IEFA Immigration Examinations Fee Account
 INA Immigration and Nationality Act of 1952
 IPO Investor Program Office
 IOAA Independent Offices Appropriations Act
 NACARA Nicaraguan Adjustment and Central American Relief Act
 NAICS North American Industry Classification System
 OMB Office of Management and Budget
 RAIO Refugee, Asylum, and International Operations Directorate
 RFA Regulatory Flexibility Act
 SAVE Systematic Alien Verification for Entitlements
 SBA Small Business Administration
 TPS Temporary Protected Status
 UMRA Unfunded Mandates Reform Act
 USCIS U.S. Citizenship and Immigration Services
 USPHS U.S. Public Health Service
 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

TPS designations may be terminated.⁴⁵ INA section 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 to not be placed into removal proceedings or removed from the United States for a specified period unless terminated.⁴⁶ The DACA policy is an administrative exercise of prosecutorial discretion and it is implemented at the discretion of the agency. For NACARA, the eligible population will eventually be exhausted due to relevant eligibility requirements, including the date by which an applicant was required to have entered the United States. USCIS analyzes the distinct costs associated with processing these benefit types and excludes these costs from the ABC model. All fee revenue deposited into the IEFA is pooled and collectively used to finance USCIS operations. 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 model.

DHS excludes the costs and revenue associated with these programs because program eligibility is subject to the discretion of the Department. Given this discretion, 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, *i.e.*, that USCIS will not have enough revenue to recover full cost if the eligible populations diminish or cease to exist. As in prior fee reviews, USCIS has excluded both the cost and revenue associated with these programs from the fee review. By excluding programs that are temporary by definition, for which the population may diminish or cease to exist, DHS maintains the integrity of the ABC model, better ensures recovery of full costs, and mitigates revenue risk from unreliable sources.

2. Continuing Low Volume Reallocation From FY 2010/2011 Fee Rule

DHS uses its fee setting discretion to adjust certain immigration request fees that would be overly burdensome on applicants, petitioners, and requestors if set at recommended ABC model levels.

⁴⁵ Even though some TPS designations have been in place for a number of years, the Secretary could terminate them if the Secretary determines that the designation criteria are no longer met.

⁴⁶ See USCIS, Consideration of Deferred Action for Childhood Arrivals (DACA), <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>.

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 33461.⁴⁷ Any additional costs from these benefit request types beyond this calculated weighted average increase figure would be reallocated to other benefit types. In addition, as noted above, fees for the other benefit types would also be calculated to cover costs that are not directly supported by fees. This process is known as “Low Volume Reallocation.”

In the fee review for this proposed rule, the model output costs identified a weighted average 8 percent cost increase across all fee-paying benefit types. Accordingly, consistent with prior practice, DHS proposes to limit the fee adjustments for certain benefit types to this 8 percent weighted average increase. These immigration benefit requests do not receive any additional cost reallocation for fee waivers, refugee, asylum or other programs. DHS does not believe that using the calculated 8 percent weighted average increase figure as a basis for fee increases for these benefit types would result in fees for other benefit types that would be overly burdensome to the applicants, petitioners or requestors.

DHS proposes to subject specific benefit types to the 8 percent weighted average increase because the combined effect of cost, fee-paying volume, and methodology changes since the last Fee Rule would otherwise place an inordinate fee burden on individuals requesting these types of benefits. For example, without Low Volume Reallocation, the Petition to Classify Orphan as an Immediate Relative, Form I-600, would have a fee of at least \$2,258. DHS believes it would be contrary to the public interest to impose a fee of this amount on an estimated 15,000 potential adoptive parents each year. Similar reasoning led to the other forms chosen to be adjusted using Low Volume Reallocation. For this reason, DHS proposes to subject these benefit types to the calculated 8 percent weighted average increase. In other words, *consistent with past USCIS fee rules, DHS is proposing an 8 percent increase for each of these benefit types, based on the calculated 8 percent weighted average increase across all fee-paying benefit types as identified by the model.*

DHS recognizes that charging less than the full cost of adjudicating an

⁴⁷ This same methodology was used in the FY 2008/2009 Fee Rule. 72 FR 4910.

immigration benefit request requires USCIS to increase fees for other immigration benefit requests to ensure full cost recovery. This complies with INA section 286(m), which permits fees to cover those costs of providing applicants, petitioners, or requestors a service or part of a service “without charge.”

DHS proposes to apply the Low Volume Reallocation methodology to the following USCIS forms:

- Notice of Appeal or Motion, Form I-290B
- Petition for Amerasian, Widow(er) or Special Immigrant, Form I-360
- Petition to Classify Orphan as an Immediate Relative, Form I-600
- Application for Advance Processing of an Orphan Petition, Form I-600A
- Petition to Classify Convention Adoptee as an Immediate Relative, Form I-800
- Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I-800A
- Request for Action on Approved Form I-800A, Form I-800A, Supplement 3
- Petition for Qualifying Family Member of a U-1 Nonimmigrant Form I-929
- Application to File Declaration of Intention, Form N-300
- Request for Hearing on a Decision in Naturalization Proceedings, Form N-336
- Application to Preserve Residence for Naturalization Purposes, Form N-470.

3. Applying Cost Reallocation to Other Form Types

As described below, DHS also proposes to limit fee increases for additional benefit types at the calculated 8 percent weighted average increase, even though the potential fee increases for these benefit types would not have imposed the same level of burden on affected requestors as the benefit types described in the preceding section.

First, DHS proposes to increase the Application for Naturalization, Form N-400, fee by the 8 percent weighted average increase described above.⁴⁸ **As DHS stated in 2010, “DHS has determined that the act of requesting and obtaining U.S. citizenship deserves special consideration given the unique nature of this benefit to the individual applicant, the significant public benefit to the Nation, and the Nation’s proud tradition of welcoming new citizens.” 75 FR 33461. This rationale still holds**

⁴⁸ See the 2016/2017 Fee Rule Supporting Documentation in the rulemaking docket for an explanation of how the weighted average is calculated.

true. DHS believes that by limiting the adjustment of the naturalization fee to the 8 percent weighted average increase, it would reinforce these principles by encouraging more immigrants to naturalize and fully participate in civic life. **This proposal is also consistent with other DHS efforts to promote citizenship and immigrant integration.**⁴⁹

DHS also proposes to limit the adjustment of the fee for Application for Provisional Unlawful Presence Waiver, Form I-601A, and the Application for Employment Authorization, Form I-765. The current Form I-601A fee was not established by the 2010/2011 Fee Rule because it did not exist at that time. USCIS unfortunately has insufficient data on Form I-601A volumes and completion rates with which to use its fee calculation model to identify an appropriate fee with a sufficient level of confidence. Therefore, DHS has decided that proposing a weighted average increase at 8 percent of the current fee amount is appropriate until sufficient data becomes available. DHS will consider setting the fee for Form I-601A at the amount the model calculates if sufficient data are collected before the final rule is published.

DHS also proposes to apply the same 8 percent weighted average increase to the Form I-765 for humanitarian and practical reasons. Many individuals seeking immigration benefits face financial obstacles and cannot earn money through lawful employment in the United States until they receive an Employment Authorization Document (EAD).

Finally, as noted above, in the 2010 fee rule, DHS held fee increases for a number of benefit requests to the weighted average fee increase for all fee-paying immigration benefits. 75 FR 33461. In this rule, DHS proposes to not apply the 8 percent weighted average increase to a subset of those benefit requests, both because DHS has better data upon which to base proposed fees for those benefit requests, and because DHS believes the calculated fee is appropriate. Therefore, DHS no longer believes it is necessary to limit fee increases to the weighted average for the following USCIS forms:

- Application for Waiver of Grounds of Inadmissibility, Form I-690
 - Waiver Forms, Forms I-191, I-192, I-193, I-212, I-601, I-602, I-612.
- Proposed 8 CFR 103.7(b)(1)(i)(O), (P), (Q), (R), (AA), (BB), (CC) & (EE).

⁴⁹ As noted later in this preamble, this rule proposes an option for naturalization applicants with family incomes greater than 150% and not more than 200% of the Federal Poverty Guidelines to pay a fee of \$320 plus an additional \$85 for biometric services, for a total of \$405.

Accordingly, the fees for these USCIS forms are proposed to be set at the level calculated in the ABC model, with adjustments.

4. Reduced Fee for Application for Naturalization

DHS proposes to establish a three-level fee for the Application for Naturalization, Form N-400. See 8 CFR 103.7(b)(1)(i)(AAA). First, as explained earlier in this preamble, DHS is proposing a fee for Form N-400 of \$640, plus \$85 for biometrics, for a total of \$725. *Id.* Second, no fee is charged to an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, or to an applicant who applies for and receives a full fee waiver. *Id.* at 103.7(b)(1)(i)(AAA)(2)-(c)(2).⁵⁰ Third, DHS proposes to permit naturalization applicants with household incomes greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines⁵¹ to pay a fee of \$320 plus an additional \$85 for biometrics, for a total of \$405. DHS has created a proposed new form, USCIS Form I-942, Request for Reduced Fee, that would be filed with the N-400. The form would provide a convenient guide for applicants to demonstrate that their income meets the level required to pay the reduced fee. The Paperwork Reduction Act section of this preamble provides information on how to comment on the proposed form.

DHS proposes the new reduced fee option to limit potential economic disincentives some eligible applicants may face when deciding whether or not to apply for naturalization. The proposed reduced fee option for low-income applicants supports the Administration's immigration integration policies⁵² and the USCIS mission to support aspiring citizens. Nevertheless, USCIS is funded mainly from fees and we must collect a fee to recover at least some of the costs

⁵⁰ As described elsewhere in this preamble, an applicant with a household income at or below 150 percent of the Federal Poverty Guidelines qualifies for a waiver of their entire fee under current USCIS policy.

⁵¹ The guidelines are issued each year by the Department of Health and Human Services and updated periodically in the *Federal Register* under 42 U.S.C. 9902(2). The poverty guidelines are used as an eligibility criterion for a number of Federal programs. For further information on how the guidelines are used or how income is defined, see "Annual Update of the HHS Poverty Guidelines" at 81 FR 4036 (Jan. 25, 2016).

⁵² See The White House Task Force on New Americans, Strengthening Communities by Welcoming All Residents, at 28-29 (2015), available at https://www.whitehouse.gov/sites/default/files/docs/final_tf_newamericans_report_4-14-15_clean.pdf.

associated with naturalization. **DHS believes the reduced fee would help ensure that those immigrants whose goal it is to apply for naturalization are not unnecessarily limited by their economic means. DHS realizes that other fee payers would be required to bear the cost of the reduced fee, but believes the importance of naturalization justifies this slight shift of burden.**⁵³

USCIS is uncertain exactly how many new N-400 applicants would be eligible and apply for naturalization as a result of the reduced fee. In addition, DHS has no reliable data indicating how demand for filing an N-400 may change due to adjustments in the fee amount.

Nonetheless, research on barriers to naturalization indicates a correlation between the N-400 filing fee and the number of applications submitted to USCIS. As the Center for the Study of Immigrant Integration stated:

Some evidence of price sensitivity was shown when USCIS increased the cost to naturalize from \$400 to \$595 (plus the costs of biometrics) in the middle of 2007: the result was a surge of applications just prior to the fee increase. As a result, there were nearly 1.4 million naturalization applications filed in 2007 but just over 500,000 in 2008.⁵⁴

In addition, USCIS analyzed the 2012 American Community Survey and determined that 10 percent of new citizens who naturalized since 2000 reported incomes between 150 percent and 200 percent of the Federal Poverty Guidelines.⁵⁵ Independent university

⁵³ 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.

⁵⁴ Manuel Pastor & Justin Scoggins, Center for the Study of Immigrant Integration, *Citizen Gain: The Economic Benefits of Naturalization for Immigrants and the Economy* 20 (Dec. 2012), available at http://dornsife.usc.edu/assets/sites/731/docs/citizen_gain_web.pdf.

⁵⁵ USCIS analyzed immigrants who reported naturalization since the year 2000. These represent people who recently became U.S. citizens. Approximately 24.7% were eligible for a fee waiver based on current criteria (2.2 million out of 8.9 million) because their household income is below 150% of the federal poverty guidelines. A further 10.3% (923,901 out of 8.9 million) would have been eligible for a partial fee waiver, since their income