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**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 [Insert date 60 days from the date of publication in the FEDERAL REGISTER].

**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](mailto: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:** Joseph D. Moore, Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529-2130, telephone (202) 272-1969.

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## **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 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-2016-0001 for this rulemaking. Providing comments is entirely voluntary. Regardless of how you submit your comment to DHS, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://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 DHS 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 <http://www.regulations.gov>.

Docket: For access to the docket, go to <http://www.regulations.gov> and enter this rulemaking's eDocket number: USCIS-2016-0001. 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) 2016/2017 Immigration Examinations Fee Account Fee Review Supporting Documentation; and
- Small Entity Analysis for Adjustment of the U.S. Citizenship and Immigration Services Fee Schedule notice of proposed rulemaking (NPRM).

You may review these documents on the electronic docket. The software<sup>1</sup> used in computing the immigration benefit request fees<sup>2</sup> and biometric fees<sup>3</sup> is a commercial product licensed to USCIS that may be accessed on-site, by appointment, by calling (202) 272-1969.<sup>4</sup>

## **II. Executive Summary.**

DHS proposes to adjust its fee schedule, which specifies the amount of the fee charged for each immigration and naturalization benefit request. The fee schedule was last adjusted on November 23, 2010. See 75 FR 58962 (Sept. 24, 2010) (final rule) (FY 2010/2011 Fee Rule).

U.S. Citizenship and Immigration Services (USCIS) is primarily funded by immigration and naturalization benefit request fees charged to applicants and petitioners.

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<sup>1</sup> USCIS uses commercially available activity-based costing software, SAP Business Objects Profitability and Cost Management, to create financial models to implement activity-based costing (ABC), as described in the ABC Methodology section.

<sup>2</sup> 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. 8 CFR 1.2.

<sup>3</sup> DHS uses the terms biometric fees, biometric services fees, and biometric fee synonymously in this rule to describe the process and fee for capturing, storing, or using biometrics.

<sup>4</sup> This rule describes the ABC model and key inputs to that model (total budget, workload estimates, staffing, and completion rates), both here and in the supporting documentation in the docket.

Fees collected from individuals and entities filing immigration benefit requests are deposited into the Immigration Examinations Fee Account (IEFA) and used to fund the cost of processing immigration benefit requests.

In accordance with the requirements and principles of the Chief Financial Officers Act of 1990, 31 U.S.C. 901-03, (CFO Act), and Office of Management and Budget (OMB) Circular A-25, USCIS reviews the fees deposited into the IEFA biennially and, if necessary, proposes adjustments to ensure recovery of costs necessary to meet national security, customer service, and adjudicative processing goals. USCIS completed a biennial fee review for FY 2016/2017 in 2015. The results indicate that current fee levels are insufficient to recover the full cost of activities funded by the IEFA.

USCIS calculates its fees to recover the full cost of USCIS operations, which do not include the limited appropriated funds provided by Congress. USCIS anticipates if it continues to operate at current fee levels, it will experience an average annual shortfall of \$560 million between IEFA revenues and costs. This projected shortfall poses a risk of degrading USCIS operations funded by IEFA revenue. The proposed rule would eliminate this risk by ensuring full cost recovery. DHS proposes to adjust fees by a weighted average increase of 21 percent. The weighted average increase is the percentage difference between the current and proposed fees by immigration benefit type.<sup>5</sup> USCIS discusses the overall increase proposed in this rule in terms of weighted

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<sup>5</sup> USCIS uses weighted average as opposed to a straight average because of the difference in volume by immigration benefit type and the resulting effect on fee revenue. See the FY 2016/2017 Immigration Examinations Fee Account Fee Review Supporting Documentation for further information. The 21% weighted average increase is a change in the average fee that must be paid per filing for a form that currently requires a fee as compared to the average that would have to be paid per form as proposed in this rule. The sum of the current fees multiplied by the projected FY 2016/2017 fee paying receipts by immigration benefit type, divided by the total fee paying receipts = \$332. The sum of the proposed fees

average, as opposed to a straight average, because the figure represents a more accurate depiction of the overall effect that this proposed rule would have on fee revenue.

In addition to ensuring that fees for each specific benefit type are adequate to cover the USCIS costs associated with administering the benefit, the weighted average increase of 21 percent also accounts for USCIS costs for services that are not directly fee funded. For instance, DHS proposes certain changes to how USCIS funds the costs for fee-exempt benefit types through IEFA fee collections received from other fee-paying individuals seeking immigration benefits.<sup>6</sup> DHS also proposes to fund the costs of the Systematic Alien Verification for Entitlements (SAVE) program (to the extent not recovered from users),<sup>7</sup> and the Office of Citizenship<sup>8</sup> through the use of fees. The proposed fee schedule also accounts for increased costs to administer refugee processing. Revenues under the proposed rule would accommodate an anticipated increase in the refugee admissions ceiling to 100,000 for FY 2017. This is an increase of 30,000, or 43 percent, over the FY 2015 refugee admissions ceiling.

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multiplied by the projected FY 2016/2017 receipts by immigration benefit type, divided by the fee paying receipts = \$403. There is a \$71 difference between these two averages, or 21%.

<sup>6</sup> USCIS does not charge a fee for military naturalizations, as the Department of Defense (DOD) currently reimburses USCIS for costs related to such naturalizations. Accordingly, USCIS does not propose to increase fees to cover the costs of military naturalizations.

<sup>7</sup> The SAVE program was established in 1987 by the Immigration Reform and Control Act (IRCA), Pub. L. 99-603, § 121(c) (Nov. 6, 1986), which required the Commissioner of the Immigration and Naturalization Service (INS) to “implement a system for the verification of immigration status . . . so that the system is available to all States by not later than October 1, 1987.” SAVE uses an internet-based service to assist Federal, state and local benefit-issuing and licensing agencies, and other governmental entities, in determining the immigration status of benefit or license applicants, so that only those applicants entitled to benefits or licenses receive them.

<sup>8</sup> The USCIS Office of Citizenship was established by section 451(f) of the Homeland Security Act of 2002. Pub. L. 107-296, § 451(f) (2002). The statute tasks the office with “promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens.”

In addition to the overall increase to existing fees, DHS proposes to establish a new fee of \$3,035 to recover the full cost of processing the Employment Based Immigrant Visa, Fifth Preference (EB-5) Annual Certification of Regional Center, Form I-924A.<sup>9</sup> While approved EB-5 Regional Centers are required to file Form I-924A annually, there is currently no filing fee and as a result, DHS does not fully recover the processing costs associated with such filings. DHS therefore proposes to establish a filing fee for this form.

DHS also proposes to establish a three-level fee for the Application for Naturalization (Form N-400). First, DHS would increase the standard fee for Form N-400 from \$595 to \$640. Second, DHS would continue to charge no fee to an applicant who meets the requirements of sections 328 or 329 of the Immigration and Nationality Act of 1952 (INA) with respect to military service and applicants with approved fee waivers. Third, DHS would charge a reduced fee of \$320 for naturalization applicants with family income greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines. DHS is proposing this change to increase access to United States citizenship.

DHS also proposes to remove regulatory provisions that prevent USCIS from rejecting an immigration or naturalization benefit request paid with a dishonored check or lacking the required biometric services fee until the remitter has been provided an opportunity to correct the deficient payment. Finally, DHS proposes to clarify that

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<sup>9</sup> This rule proposes to change the title of Form I-924A from “Supplement to Form I-924” to “Annual Certification of Regional Center.”

persons filing any benefit request may be required to appear for biometrics services or an interview and may be required to pay the biometrics services fee.

### **III. Background.**

#### **A. Legal Authority and Guidance**

DHS issues this proposed rule consistent with INA section 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”<sup>10</sup>), 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. See OMB Circular A-25, available at [http://www.whitehouse.gov/omb/circulars\\_a025/](http://www.whitehouse.gov/omb/circulars_a025/), 58 FR 38142 (July 15, 1993) (establishing federal policy guidance regarding fees assessed by federal agencies for government services); Federal Accounting Standards Advisory Board (FASAB) Handbook, Version 14 (06/15), SFFAS 4, No. 37, available at [http://files.fasab.gov/pdf/files/handbook\\_sffas\\_4.pdf](http://files.fasab.gov/pdf/files/handbook_sffas_4.pdf) (generally describing cost accounting concepts and standards, and defining “full cost” to include “direct and indirect costs that contribute to the output, regardless of funding sources.”); id. at 33-42 (identifying various classifications of costs to be included and recommending various methods of cost

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<sup>10</sup> 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.

assignment); see also OMB Circular A-11, Preparation, Submission, and Execution of the Budget, section 20.7(d), (g) (June 30, 2015)), available at [www.whitehouse.gov/sites/default/files/omb/assets/a11\\_current\\_year/a11\\_2015.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/a11_2015.pdf) (providing guidance on the FY 2017 Budget and instructions on budget execution, offsetting collections, and user fees). DHS uses OMB Circular A-25 as general policy guidance for determining user fees for immigration benefit requests, with exceptions as outlined below. DHS also follows the annual guidance in OMB Circular A-11 if it requests appropriations to offset a portion of IEFA costs.<sup>11</sup>

Finally, this rule accounts for and is consistent with congressional appropriations for specific USCIS programs. Appropriated funding for USCIS for FY 2016 provided funding only for the E-Verify employment eligibility verification program in the amount of \$119.7 million. See Consolidated Appropriations Act, 2016, Pub. L. 114-113, div. F, tit. IV (Dec. 18, 2015) (DHS Appropriations Act 2016).

### **B. Full Cost Recovery**

Consistent with the aforementioned authorities and sources, this proposed rule would ensure that USCIS recovers the full costs for its services and maintains an adequate level of service. The proposed rule would do this in two ways. First, where possible, the proposed rule would set fees at levels sufficient to cover the full cost of the corresponding services.<sup>12</sup> DHS works with OMB and generally follows OMB Circular

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<sup>11</sup> 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 (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 used the activity-based costing (ABC) methodology supported in Circulars A-25 and A-11 to develop the proposed fee schedule.

<sup>12</sup> INA section 286(m), 8 U.S.C. 1356(m), provides broader fee-setting authority and is an exception from the stricter costs-for-services-rendered requirements of the Independent Offices Appropriations Act, 1952, 31 U.S.C. 9701(c) (IOAA). See Seafarers Int'l Union of N. Am. v. U.S. Coast Guard, 81 F.3d 179 (D.C.

A-25, which “establishes federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources.” See OMB Circular A-25, User Charges (Revised), para. 6, 58 FR 38142 (July 15, 1993). 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., para. 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
- The costs of enforcement, collection, research, establishment of standards, and regulation. Id.

Second, this proposed rule would set fees at a level sufficient to fund overall requirements and general operations when no annual appropriations are received, fees are statutorily set at a level that does not recover costs, or DHS determines that a type of immigration benefit request should be exempt, in whole or in part, from payment of fees.

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Cir. 1996) (IOAA provides that expenses incurred by agency to serve some independent public interest cannot be included in cost basis for a user fee, although agency is not prohibited from charging applicant full cost of services rendered to applicant which also results in some incidental public benefits). Congress initially enacted immigration fee authority under the IOAA. See Ayuda, Inc. v. Attorney General, 848 F.2d 1297 (D.C. Cir. 1988). Congress thereafter amended the relevant provision of law to require deposit of the receipts into the separate Immigration Examinations Fee Account of the Treasury as offsetting receipts to fund operations, and broadened the fee-setting authority. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Pub. L. 101-515, sec. 210(d), 104 Stat. 2101, 2111 (Nov. 5, 1990). Additional values are considered in setting Immigration Examinations Fee Account fees that would not be considered in setting fees under the IOAA. See 72 FR at 29866-7.

As noted, Congress has 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 section 286(m), 8 U.S.C. 1356(m).<sup>13</sup> DHS has interpreted this statutory fee-setting authority, including the authorization for DHS 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, para. 6d1; INA section 286(m), 8 U.S.C. 1356(m). 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.<sup>14</sup>

Consistent with this historical position, this proposed rule would set fees at a level that will ensure recovery of the full operating costs of USCIS, the entity within DHS that provides almost all immigration adjudication and naturalization services. See Homeland Security Act (HSA), Pub. L. 107-296, sec. 451, 116 Stat. 2142 (Nov. 26, 2002) (6 U.S.C. 271). The statute authorizes recovery of the full costs of providing immigration adjudication and naturalization services. Congress has historically relied on this authority

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<sup>13</sup> Congress has provided separate but similar authority for establishing USCIS genealogy program fees. See INA section 286(t), 8 U.S.C. 1356(t). The statute requires that genealogy program fees be deposited into the Examinations Fee Account 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.

<sup>14</sup> Congress has not defined either term with any degree of specificity for purposes of subsections (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.”); see also King v. Burwell, 135 S. Ct. 2480, 2489 (2015) (“[O]ftentimes the ‘meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.’ So when deciding whether the language is plain, we must read the words ‘in their context and with a view to their place in the overall statutory scheme.’”) (quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 132-33 (2000)).

to support the vast majority of USCIS programs and operations, which are conducted as part of adjudication and naturalization service delivery. This conclusion is supported by Congress' historical appropriations to USCIS. USCIS receives only a small amount of appropriated funds annually, and the agency must use other means to fund, as a matter of both discretion and necessity, all other USCIS operations.

Thus, for example, certain functions (such as SAVE<sup>15</sup> and the Office of Citizenship<sup>16</sup>), that USCIS has administered since DHS's inception as an integrated part of fulfilling USCIS's statutory responsibility to provide immigration adjudication and naturalization services, are not associated with specific fees, but may be IEFA-funded. Similarly, when a filing fee for a benefit such as Temporary Protected Status (TPS), capped by statute at \$50, does not cover the cost of adjudicating these benefit requests, DHS may recover the difference with fees charged to other benefit requests. See INA section 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B); 8 CFR 103.7(b)(1)(i)(MM); proposed 8 CFR 103.7(b)(1)(i)(NN). Finally, when DHS exempts certain foreign nationals from visa fees -- for example, victims who assist law enforcement in the investigation or prosecution of acts of human trafficking (T nonimmigrant status) or certain other crimes (U nonimmigrant status) -- the cost of processing those fee-exempt visas must be

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<sup>15</sup> SAVE has been funded almost exclusively 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 sections 286(m) and (n) of the INA to Federal, state and local agencies who require immigration adjudication information in administering their benefits.

<sup>16</sup> The Office of Citizenship was created in the HSA 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 sections 286(m) and (n) of the INA. An integral part of providing such services, as Congress recognized in creating the Citizenship office in section 451(f) of the INA, includes providing information to potential applicants for naturalization regarding the process of naturalization and related activities.

recovered by fees charged to other benefit requests. See, e.g., proposed 8 CFR 103.7(b)(1)(i)(UU)-(VV).

In short, the full costs of USCIS operations cannot be as directly correlated or connected to a specific fee as OMB Circular A-25 advises. Nonetheless, DHS follows OMB Circular A-25 to the extent appropriate, including its direction 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. Id. DHS therefore applies the discretion provided in INA section 286(m), 8 U.S.C. 1356(m), to: (1) use ABC to establish a model for assigning costs to specific benefit requests in a manner reasonably consistent with OMB Circular A-25; (2) distribute costs that are not attributed to or driven by specific adjudication and naturalization services;<sup>17</sup> and (3) make additional adjustments to effectuate specific policy objectives.<sup>18</sup>

By approving the DHS annual appropriations that provide very limited funds to USCIS, Congress has consistently recognized that the "full" cost of operating USCIS, including SAVE and the Office of Citizenship, less any appropriated funding, is the appropriate cost basis for establishing IEFA fees. Nevertheless, in each biennial review, DHS adds refinements to its determination of immigration benefit fees, including the level by which fees match directly assignable, associated, and indirect costs.

### **C. New Statutory Fees for Certain H-1B and L-1 Petitions**

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<sup>17</sup> The ABC model distributes 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 model. For example, the model determines the direct and indirect costs for refugee and asylum workload. The costs associated with processing the refugee and asylum workload are reallocated outside the model to other fee-paying immigration benefit requests.

<sup>18</sup> DHS may reasonably adjust fees based on value judgments and public policy reasons 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).

The James Zadroga 9/11 Victim Compensation Fund Reauthorization Act increased Fees For Certain H-1B<sup>19</sup> And L-1<sup>20</sup> Visa Petitioners. See Consolidated Appropriations Act, 2016, Pub. L. 114-113, div. O, tit. IV, sec. 402 (Dec. 18, 2015). These petitioners must submit an additional fee of \$4,000 for certain H-1B petitions and \$4,500 for certain L-1A and L-1B petitions postmarked on or after December 18, 2015. Proposed 8 CFR 103.7(b)(1)(i)(III)–(JJJ).

The additional fees apply to petitioners who employ 50 or more employees in the United States, with more than 50 percent of those employees in H-1B or L-1 (including L-1A and L-1B) nonimmigrant status. These petitioners must submit the additional fees with an H-1B or L-1 petition filed:

- Initially to grant status to a nonimmigrant described in subparagraph (H)(i)(b) or (L) of section 101(a)(15) of the Immigration and Nationality Act; or
- To obtain authorization for a nonimmigrant in such status to change employers.

USCIS began rejecting petitions after February 11, 2016 that do not include the additional Public Law 114-113 fee, if applicable. This fee is in addition to the Petition for a Nonimmigrant Worker (Form I-129) fee, the Fraud Prevention and Detection Fee, and the American Competitiveness and Workforce Improvement Act of 1998 fee (when required), as well as the premium processing fee (if applicable). These fees, when

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<sup>19</sup> The H-1B nonimmigrant classification allows U.S. employers to temporarily employ foreign workers in the United States to perform services in a specialty occupation, services of an exceptional nature relating to a Department of Defense cooperative research and development project, or services as a fashion model of distinguished merit or ability. INA section 101(a)(15)(H), 8 U.S.C. 1101(a)(15)(H).

<sup>20</sup> L-1 petitions are filed to transfer individuals who are employed outside the United States as executives or managers, or in positions that require specialized knowledge, to a position with the same or a related entity inside the United States. INA section 101(a)(15)(L), 8 U.S.C. 1101(a)(15)(L).

applicable, may not be waived. Public Law 114-113 fees will remain effective through September 30, 2025.

USCIS collects this revenue, but does not spend it. One half of the revenue collected from such fees goes to the General Fund of the Treasury. The other half is deposited by DHS into the 9-11 Response and Biometric Exit Account to fund a biometric entry-exit data system to track the lawful entrance and departure of all noncitizens at U.S. airports and land border crossings. After a total of \$1,000,000,000 is deposited into the 9-11 Response and Biometric Exit Account, further revenue will be deposited in the general fund of the Treasury. The funds in the 9-11 Response and Biometric Exit Account will remain available until expended to U.S. Customs and Border Protection and/or other DHS components to implement the biometric entry-exit data system.

USCIS is already collecting these new statutory fees and is in the process of revising the instructions for the Petition for a Nonimmigrant Worker, Form I-129, and the Nonimmigrant Petition Based on Blanket L Petition, Form I-129S, to include them. DHS is required to charge these fees and has no authority to change them. DHS is proposing to publish these new statutory fees in the interest of transparency, information and clarity.

#### **IV. The Immigration Examinations Fee Account.**

##### **A. General Background.**

In 1988, Congress established the IEFA in the Treasury of the United States. See Pub. L. 100-459, sec. 209, 102 Stat. 2186 (Oct. 1, 1988) (codified as amended at INA sections 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 also fund the cost of asylum processing and other services provided to immigrants at no charge. See Pub. L. 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).

### **B. Fee Review History.**

Most recently, DHS published a revised USCIS fee schedule in its 2010/2011 Fee Rule that amended many USCIS fees to more accurately reflect the costs of services provided by USCIS. 75 FR 58962 (Sept. 24, 2010).<sup>21</sup> The rule was effective on November 23, 2010. The Department of Justice<sup>22</sup> also adjusted fees incrementally in 1994, and DHS adjusted fees in 2002, 2004, and 2005. See 59 FR 30520 (June 14, 1994); 66 FR 65811 (Dec. 21, 2001); 69 FR 20528 (Apr. 15, 2004); 70 FR 56182 (Sept. 26, 2005). After a decade of incremental changes, DHS published a comprehensive Fee Rule in 2007. See 72 FR 29851 (May 30, 2007). The documentation accompanying this proposed rule in the rulemaking docket at [www.regulations.gov](http://www.regulations.gov) contains a historical fee schedule that shows the immigration benefit fee history since FY 1985.

USCIS reviews the IEFA every 2 years as required by the CFO Act and consistent with guidance in OMB Circular A-25. 31 U.S.C. 902(a)(8); OMB Circular A-25, section 8e. The CFO Act and OMB Circular A-25 require that fees be reviewed biennially so that fee-funded agencies monitor and adjust their fees in light of actual and projected

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<sup>21</sup> The phrase “FY 2010/2011 Fee Rule,” as used in this proposed rule, encompasses the proposed rule, final rule, fee study, and all supporting documentation associated with the regulations effective as of November 23, 2010.

<sup>22</sup> The Homeland Security Act of 2002 abolished the Immigration and Naturalization Service (INS) and transferred the INS’s immigration administration and enforcement responsibilities from the Department of Justice 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 Pub. L. 107-296, § 451; 6 U.S.C. 271.

expenses. Id.

Table 1 sets out the IEFA and biometric services fee schedule that took effect on November 23, 2010. DHS is proposing to change the fee schedule as a result of the 2016/2017 Fee Review. The table excludes statutory fees that DHS cannot adjust.

<b>Table 1 – Current Non-Statutory IEFA Immigration Benefit Request Fees</b>		
<b>Form No.</b> <sup>23</sup>	<b>Title</b>	<b>Fee</b>
G-1041	Genealogy Index Search Request	\$20
G-1041A	Genealogy Records Request (Copy from Microfilm)	\$20
G-1041A	Genealogy Records Request (Copy from Textual Record)	\$35
I-90	Application to Replace Permanent Resident Card	\$365
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	\$330
I-129	Petition for a Nonimmigrant Worker	\$325
I-129F	Petition for Alien Fiancé(e)	\$340
I-130	Petition for Alien Relative	\$420
I-131	Application for Travel Document <sup>24</sup>	\$360
I-140	Immigrant Petition for Alien Worker	\$580
I-191	Application for Advance Permission to Return to Unrelinquished Domicile	\$585
I-192	Application for Advance Permission to Enter as Nonimmigrant	\$585
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	\$585
I-290B	Notice of Appeal or Motion	\$630
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	\$405
I-485	Application to Register Permanent Residence or Adjust Status	\$985
I-485	Application to Register Permanent Residence or Adjust Status <sup>25</sup>	\$635

<sup>23</sup> 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 Internet 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 Internet website. See 8 CFR 1.2 and 299.1. Therefore, the word “form” is used in this rule in both the specific and general sense.

<sup>24</sup> As described more fully below, the fees for an Application for Travel Document to request a Refugee Travel Document are guided by the United States’ obligations under the 1967 Protocol relating to the Status of Refugees (incorporating by reference Article 28 of the 1951 U.N. Convention relating to the Status of Refugees) and not calculated by the USCIS fee model. 8 CFR 103.7(b)(1)(i)(M)(2) and (3).

<b>Table 1 – Current Non-Statutory IEFA Immigration Benefit Request Fees</b>		
<b>Form No.<sup>23</sup></b>	<b>Title</b>	<b>Fee</b>
I-526	Immigrant Petition by Alien Entrepreneur	\$1,500
I-539	Application to Extend/Change Nonimmigrant Status	\$290
I-600	Petition to Classify Orphan as an Immediate Relative	\$720
I-600A	Application for Advance Processing of Orphan Petition	\$720
I-601	Application for Waiver of Ground of Excludability	\$585
I-601A	Application for Provisional Unlawful Presence Waiver	\$585
I-612	Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	\$585
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	\$200
I-694	Notice of Appeal of Decision under Section 210 or 245A	\$755
I-698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Pub. L. 99-603)	\$1,020
I-751	Petition to Remove the Conditions of Residence	\$505
I-765	Application for Employment Authorization	\$380
I-800	Petition to Classify Convention Adoptee as an Immediate Relative	\$720
I-800A	Application for Determination of Suitability to Adopt a Child from a Convention Country	\$720
I-817	Application for Family Unity Benefits	\$435
I-824	Application for Action on an Approved Application or Petition	\$405
I-829	Petition by Entrepreneur to Remove Conditions	\$3,750
I-910	Application for Civil Surgeon Designation	\$615
I-924	Application for Regional Center Designation Under the Immigrant Investor Program <sup>26</sup>	\$6,230
I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	\$215
N-300	Application to File Declaration of Intention	\$250
N-336	Request for Hearing on a Decision in Naturalization Proceedings	\$650

<sup>25</sup> 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).

<sup>26</sup> DHS proposes to remove the word “Pilot” from the form title.

<b>Form No.<sup>23</sup></b>	<b>Title</b>	<b>Fee</b>
N-400	Application for Naturalization	\$595
N-470	Application to Preserve Residence for Naturalization Purposes	\$330
N-565	Application for Replacement Naturalization/Citizenship Document	\$345
N-600/ 600K	Application for Certification of Citizenship/Application for Citizenship and Issuance of Certificate under Section 322	\$600
	Immigrant visa DHS domestic processing fee <sup>27</sup>	\$165
Biometrics Fee	Biometric services	\$85

### **C. USCIS Initiatives Funded Under the 2010 Fee Adjustment.**

In the FY 2010/2011 fee rule, USCIS committed to a set of goals and performance improvements that were aimed at increasing accountability, providing better customer service, and increasing efficiency. See 75 FR 33457-8. These performance enhancements were:

- Deployment of Transformed Processes and System. USCIS deployed the first release of its new electronic case management system, the Electronic Immigration System (ELIS), in the third quarter of FY 2012. ELIS was subsequently rebuilt using an agile software development methodology and simplified technology architecture. As a result of this effort, USCIS is able to deploy increased electronic processing capability to the system more quickly than the traditional software development approach. USCIS processed approximately 17 percent of agency intake of benefit requests in ELIS in fiscal year 2015. USCIS anticipates that approximately 30 percent of agency intake will be processed through ELIS by the end of fiscal year 2016; additional increased processing through ELIS is likely in fiscal year 2017.

<sup>27</sup> DHS proposes to change the fee name to “USCIS Immigrant Fee.” See proposed 8 CFR 103.7(b)(1)(i)(D).

- Expanding the Use of Systems Qualified Adjudication to a Larger Share of USCIS Workload. The term Systems Qualified Adjudication is now referred to as System Assisted Processing. This is a form of electronic pre-adjudication that improves the efficiency of processing benefit requests and affords immigration service officers more time to focus on complex adjudications. USCIS will continue to expand this approach where it is determined feasible as part of its business transformation initiative.

- Integration of Productivity Measures in Future Fee Review Methodology. DHS has stated in past fee rules that USCIS would integrate productivity measures into the underlying methodology it uses to conduct fee reviews. See, e.g., 72 FR 29857 (“Future productivity enhancements will produce lower costs per unit that will be reflected in future price adjustments.”). USCIS has done this and plans to continue to identify efficiency gains resulting from information technology investments and process improvements, including the cost savings that occur due to these changes, and ensure that those savings are incorporated into new fee amounts derived from future fee reviews.

#### **D. Processing Time Outlook.**

USCIS acknowledges that since it last adjusted fees in FY 2010, the agency has experienced elevated processing times compared to the goals established in FY 2007. These processing delays have contributed to case processing backlogs. This can partially be attributed to having removed the surcharge previously applied to the IEFA fee schedule to recover costs related to the USCIS Refugee, Asylum, and International Operations Directorate (RAIO), SAVE, and the Office of Citizenship. This was done in anticipation of Congress granting the request for annual discretionary appropriations to fund these programs that was in the President’s Budget. Those resources did not fully

materialize and since FY 2012 USCIS has used other fee revenue to support these programs. DHS is proposing to adjust fees by a total weighted average increase of 21 percent; the total 21 percent weighted average increase would be allocated as follows:

- Reinstatement of a surcharge in the fee schedule to fully fund RAIO, SAVE, and the Office of Citizenship (approximately 8 percent);
- Account for reduced revenue stemming from an increase in fee waivers granted since FY 2010 (approximately 9 percent); and
- Recover the costs needed to sustain current operating levels while allowing for limited, strategic investments necessary to ensure the agency's information technology infrastructure is strengthened to protect against potential cyber intrusions, and to build the necessary disaster recovery and back-up capabilities required to effectively deliver the USCIS mission (approximately 4 percent).

Through this rule, USCIS expects to collect sufficient fee revenue to fully support RAIO, SAVE and the Office of Citizenship. This would allow USCIS to discontinue diverting fee revenue to fund these programs, thereby increasing resources to fund the personnel needed to improve case processing, reduce backlogs, and achieve processing times that are in line with the commitments in the FY 2007 Fee Rule, which USCIS is still committed to achieving.

In addition, to make current published processing time information more transparent and easier for customers to interpret, USCIS is evaluating the feasibility of calculating processing times using data generated directly from case management systems, rather than with self-reported performance data provided by Service Centers and Field Offices. Preliminary findings suggest that USCIS will be able to publish processing

times sooner and with greater transparency by showing different processing times for each office and form type. USCIS is also considering publishing processing times using a range rather than using one number or date. This approach would show that, for example, half of cases are decided in between X and Y number of months.

USCIS also expects to improve the customer experience as we continue to transition to online filing and electronic processing of immigration applications and petitions. With the new person-centric electronic case processing environment, USCIS will possess the data needed to provide near-real-time processing updates to the customer that will identify the case status and time period lapsed between actions for each individual case. This will allow greater transparency to the public on how long it will take to process each case as it moves from stage to stage (e.g., from biometrics collection, to interview, to decision).

USCIS is committed to giving stakeholders and customers the information they need, when they need it. To that end, it is transforming how it calculates and posts processing time information to improve the timeliness of such postings, but more importantly, to achieve greater transparency of USCIS case processing.

## **V. FY 2016/2017 Immigration Examinations Fee Account Fee Review.**

### **A. Overall Approach.**

USCIS manages three fee accounts:

1. The IEFA (which includes premium processing revenues),<sup>28</sup>
2. The Fraud Prevention and Detection Account,<sup>29</sup> and

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<sup>28</sup> INA secs. 286(m), (n) & (u), 8 U.S.C. 1356(m), (n) & (u).

<sup>29</sup> INA secs. 214(c)(12)-(13), 286(v), 8 U.S.C. 1184(c)(12)-(13) 1356(v).

3. The H-1B Nonimmigrant Petitioner Account.<sup>30</sup>

The Fraud Prevention and Detection Account and the H-1B Nonimmigrant Petitioner Account are both funded by statutorily set fees. The proceeds of these fees are divided among USCIS to use for fraud detection and prevention activities and for the National Science Foundation and the Department of Labor. DHS has no authority to adjust fees for these accounts.

The IEFA comprised approximately 94 percent of total funding for USCIS in FY 2015 and is the focus of this proposed rule. The FY 2016/2017 Fee Review encompasses three core elements:

- **Cost Projections** -- The cost baseline is the estimated level of funding necessary to maintain an adequate level of operations and does not include program increases for new development, modernization, or acquisition. Proposed program increases are considered outside of the baseline. Cost projections for FY 2016/2017 are derived from the USCIS annual operating plan for FY 2015.

- **Revenue Status and Projections** -- Actual revenue collections for a set 12-month period (June 2013 – May 2014) are used to derive projections for the 2-year period of the fee review based on current and anticipated trends.

- **Cost and Revenue Differential** -- The difference between anticipated costs and revenue, assuming no change in fees, is identified.

The primary objective of this fee review was to ensure that fee revenue provides sufficient funding to meet ongoing operating costs, including national security, customer service, and adjudicative processing needs.

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<sup>30</sup> INA secs. 214(c)(9), (11), 286(s), 8 U.S.C. 1184(c)(9), (11), 1356(s).

## **B. Basis for Fee Schedule.**

When conducting the comprehensive fee review, USCIS reviewed its recent cost history, operating environment, and current service levels to determine the appropriate method to assign costs to particular form types. Overall, USCIS kept costs as low as possible and minimized non-critical program changes that would have increased costs.

### **1. Costs.**

The cost baseline is comprised of the resources (including both personnel and non-personnel expenses) necessary for each USCIS office to sustain operations. The baseline excludes new or expanded programs and significant policy changes. A detailed annual operating plan is the starting point for baseline estimates.

In developing estimates for program needs in FY 2016/2017, USCIS used the FY 2015 annual operating plan as the starting point and made necessary adjustments, including:

- Pay inflation (\$11.3 million in FY 2016 and \$23.1 million in FY 2017). The assumed government-wide pay inflation rate is 1 percent for FY 2016 and 2 percent for FY 2017;
- Additional staff (\$166.7 million in FY 2016 and \$171.6 million in FY 2017).

Based on the results of the FY 2015 Staffing Allocation Model<sup>31</sup> and enhancement staffing requests submitted by program offices, USCIS projects that an additional 1,171 positions are needed to meet adjudicative processing goals and other USCIS mission objectives.

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<sup>31</sup> The Staffing Allocation Model is a workforce planning model used to calculate estimates of staffing types and levels necessary to undertake specific workload (e.g., applications and petitions) levels at target processing times.

- Additional resource requirements (\$24.9 million in FY 2016 and \$16.7 million in FY 2017). These additional resources will sustain current operations to support the USCIS strategic goals.

- Premium processing costs (\$264.3 million in FY 2016 and \$266.7 million in FY 2017). In addition to continuing to cover costs associated with the Office of Transformation, USCIS plans to use premium processing fees to pay an annual average of \$79.3 million in costs associated with administering premium-processing services and infrastructure improvements in the adjudications and customer services processes.<sup>32</sup> These costs pertain to the Service Center Operations staff adjudicating cases that requested premium processing service, transformation-related expenses (including the Office of Transformation Coordination personnel), and infrastructure investments being made to enhance the adjudication process and customer service.

- FY 2016/2017 total projected costs for the Refugee, Asylum, and International Operations Directorate (RAIO) (including an increase in the refugee admissions ceiling to 100,000 for FY 2017), SAVE,<sup>33</sup> and the Office of Citizenship (including the Citizenship and Integration Grant Program) (\$303.1 million). This is an increase of \$158 million, or 108 percent, over FY 2010 actual costs of \$145.4 million. The costs for these programs were removed from the FY 2010/2011 model used to calculate the USCIS fee schedule in the 2010 Fee Rule, consistent with FY 2010 appropriations and consistent with the Administration's FY 2011 budget request. That budget request was not fulfilled,

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<sup>32</sup> Premium processing fees are a subset of IEFA fees separately designated by Congress. See INA section 286(u), 8 U.S.C. 1186(u).

<sup>33</sup> SAVE is partially funded by reimbursable revenue from Federal, state, and local governments. The proposed fees only fund the remaining SAVE costs that are not funded by reimbursable revenue.

and USCIS was left to pay the costs of these programs after having removed the surcharge. See 75 FR 58963.

Table 2 summarizes adjustments to the FY 2015 cost baseline to reach the FY 2016 and FY 2017 cost baselines. After accounting for reductions, additional staff, and additional resource requirements, FY 2016 costs are 5 percent higher than the FY 2015 adjusted IEFA budget. FY 2017 costs are 2 percent higher than FY 2016 costs.

<b>Table 2 – Baseline Adjustments</b> (Dollars in Thousands)	
<b>Total FY 2015 Adjusted IEFA Budget</b>	<b>\$2,863,889</b>
Plus: Pay Inflation and Promotions/Within Grade Increases	130,092
Plus: Net Additional Costs	137,381
Less: Spending Adjustments	-122,338
<b>Total FY 2016 Adjusted IEFA Budget</b>	<b>\$3,009,024</b>
Plus: Pay Inflation and Promotions/Within Grade Increases	38,072
Plus: Net Additional Costs	19,452
<b>Total FY 2017 Adjusted IEFA Budget</b>	<b>\$3,066,548</b>

The projected annual budget for the FY 2016/2017 biennial fee review period is \$3.038 billion. This is a \$767 million, or 34 percent, increase over the FY 2010/2011 adjusted annual budget of \$2.271 billion. The main drivers of this increase are described in detail throughout this rule and the supporting documentation..

## **2. Revenue.**

The FY 2016/2017 Fee Review assumes that baseline revenue under the current fee schedule will increase from the FY 2010/2011 Fee Rule projection of \$2.056 billion to \$2.478 billion, an increase of approximately 9 percent. This results from a fee-paying volume increase of 13 percent despite a workload volume increase of 23 percent. See 75 FR 33456. Table 3 summarizes the projected cost differential.

<b>Table 3 - IEFA Cost Baseline and Revenue Comparison</b> (Dollars in Thousands)
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<b>Fiscal Year</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2016/2017 Average</b>
Non-Premium Revenue	\$2,507,683	\$2,448,596	\$2,478,139
IEFA Cost Baseline	\$3,009,024	\$3,066,548	\$3,037,786
<b>Difference</b>	<b>(\$501,341)</b>	<b>(\$617,952)</b>	<b>(\$559,647)</b>

Historically, and for the purpose of the fee review, USCIS has reported costs and revenue using an average over the biennial time period. In Table 3, FY 2016 and 2017 costs and revenue are averaged to determine the projected Fee Rule amounts. Based on current immigration benefit and biometric services fees and projected volumes, fees are expected to generate \$2.478 billion in average annual revenue in FY 2016 and FY 2017. For the same period, the average cost of processing those benefit requests is \$3.038 billion. This calculation results in an average annual deficit of \$560 million.

### **3. No Discretionary Appropriations for RAIIO, SAVE, Office of Citizenship, or Military Naturalization Costs.**

The current fee schedule is inadequate partly because it was established assuming that funds requested in the President's FY 2010 and FY 2011 budgets would be appropriated from Congress, yet those requests were not fulfilled. The FY 2010 and FY 2011 budgets requested \$55 million and \$259 million, respectively, to enable USCIS to remove the surcharge associated with refugee and asylum workload and military naturalization processing from immigration benefit request fees and to fund the cost of the SAVE program and the Office of Citizenship.<sup>34</sup> Before 2010, the USCIS fee schedule included a surcharge that could be used to recover the cost of adjudicating asylum,

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<sup>34</sup> See Office of Management and Budget, Budget of the United States Government, Fiscal Year 2010, at 510-1 (2009), available at <http://www.gpo.gov/fdsys/pkg/BUDGET-2010-SUMMARY/pdf/BUDGET-2010-SUMMARY.pdf>.

refugee, and military naturalization requests. See 72 FR 29867. The 2010 Fee Rule removed those costs and the surcharge from the fee structure. See 75 FR 58961, 58966. Congress, in its FY 2011 continuing resolution, provided USCIS with only \$29.95 million<sup>35</sup> of the requested \$259 million to fund the refugee and asylum processing administered under the RAIO Directorate and military naturalization processing. See Pub. L. 112–10, sec. 1639 (Apr. 15, 2011). USCIS has not received any substantial appropriations for these programs since FY 2011. Similarly, USCIS received no FY 2016 discretionary appropriations for the SAVE program or for the Office of Citizenship. See DHS Appropriations Act 2016, Pub. L. 114-113, div. F. (Dec. 18, 2015).<sup>36</sup> To avoid ongoing funding shortfalls for these programs, USCIS assumes in its fee model that no appropriations will be received for workload related to RAIO, SAVE, or Office of Citizenship operations and related expense items for the FY 2016/2017 biennial period.

Therefore, DHS proposes to fund the USCIS costs for RAIO, SAVE, and the Office of Citizenship through IEFA fee collections received from other fee-paying individuals seeking immigration benefits. DHS proposes to set the fees at a level sufficient to recover full costs.

USCIS is, however, requesting reimbursement from DOD for costs related to military naturalizations. DOD has reimbursed USCIS for the cost of naturalization processing for eligible military service members since FY 2012. See 10 U.S.C. 1790 (providing that the Secretary of Defense may reimburse the Secretary of Homeland

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<sup>35</sup> USCIS received \$29.95 million and also reprogrammed \$25 million from the prior year bringing the total spending authority to \$54.95 million.

<sup>36</sup> USCIS did not receive appropriations for refugee and asylum processing or SAVE after FY 2011. USCIS received \$2.5 million for the immigrant integration grants program in FY 2014 (Public Law No. 113-76) and FY 2013 (Public Law No. 113-6). USCIS did not receive appropriations for the immigrant integration grants program in FY 2015 or FY 2016.

Security (Secretary) for actual costs incurred by USCIS for processing applications for naturalization, not to exceed \$7,500,000 per fiscal year). The fee model presumes these reimbursements will continue in FY 2016/2017 and therefore does not seek to recover these costs through IEFA fee collections.

#### **4. New Fee for Annual Certification of Regional Center, Form I-924A.**

DHS proposes to establish a new fee in this rule for Annual Certification of Regional Center, Form I-924A, to recover the full cost of processing this EB-5 benefit type. See proposed 8 CFR 103.7(b)(1)(i)(WW). Form I-924A is used by regional centers to demonstrate continued eligibility for their designation. See 8 CFR 204.6(m)(6). Regional centers must submit the form to USCIS annually or upon request. Id. Upon failure to file Form I-924A or to demonstrate continued promotion of economic growth, USCIS will issue a Notice of Intent to Terminate. Id. If the regional center fails to overcome the grounds alleged in the Notice of Intent to Terminate, USCIS will terminate the designation of the regional center. Id. The form helps USCIS ensure that regional centers are continuing to promote economic growth and are otherwise in compliance with all applicable program requirements. Further, the form assists investors seeking to invest in a regional center, as it provides the regional center and USCIS with a process for recording data regarding the regional center's activities and job creation that can be shared with potential investors on a case-by-case basis.<sup>37</sup> Although approved regional

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<sup>37</sup> USCIS will provide the information to prospective investors in response to written requests for government records through the Freedom of Information Act, consistent with applicable laws and policies regarding the disclosure of information.

centers are required to file the Form I-924A annually, there is currently no filing fee and the processing cost is borne by other individuals paying fees for immigration benefits.

USCIS is proposing to establish a fee for the Form I-924A because USCIS incurs significant costs to review the Form I-924A and to administer the regional center program. In addition, the regional center program is continuing to grow rapidly.<sup>38</sup> With approximately 800 currently approved regional centers, USCIS must expend adjudicative resources to handle Form I-924A filings for which no fee is currently collected. Regional centers are often complex partnerships, limited liability companies, or other business entities involved in multiple commercial enterprises that may overlap or intertwine. These complex relationships must be described on the Form I-924A and the filing must be reviewed by USCIS to determine if the regional center continues to comply with program requirements. 8 CFR 204.6(m)(6) (requiring a regional center to provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, including improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area). In addition, USCIS conducts site visits to some regional centers to verify the information provided in connection with its original application. USCIS also conducts onsite audits of a select number of regional centers each year to validate the information the center has provided and ensure that the objectives of the Immigrant Investor Program are being met. DHS is proposing to establish and collect a fee for Form I-924A to recoup the costs of carrying out these activities.

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<sup>38</sup> There were 340 designated regional centers required to file Form I-924A at the end of FY 2013, and 580 such centers at the end of FY 2014, representing a 70 percent increase in 1 year.

DHS proposes to establish the fee for the Form I-924A at \$3,035. Proposed 8 CFR 103.7(b)(1)(i)(WW)(1). USCIS calculated this fee using the same ABC model used to calculate the other fees that DHS proposes in this rule. As with other proposed fees, projected adjudication hours determine part of the fee.

In addition to establishing the fee, DHS is clarifying the related regulations that provide for the annual regional center review related to the Form I-924A. In addition, a change is proposed to accommodate regional centers that seek to withdraw their designation. Proposed 8 CFR 204.6(m)(6)(vi). USCIS has received requests recently from regional centers seeking to withdraw their designation and discontinue their participation in the program. We currently have no procedure for this request and instead must proceed with the formal termination process of issuing a Notice of Intent to Terminate followed by a termination notice. Providing a withdrawal procedure will simplify the ability to terminate a regional center when the entity seeks to withdraw its designation. In conjunction with the fee, DHS wants to ensure that the requirements for continued participation for regional centers and the procedures to follow to meet the requirements are clear. Proposed 8 CFR 204.6(m)(6).

## **5. Summary.**

USCIS' projected FY 2016/2017 total operating costs are expected to exceed projected total revenue; this differential would be addressed with increased revenue. Under this proposed rule, increased revenue would be derived from a weighted average fee increase on existing immigration benefits and a new fee for Annual Certification of Regional Center, Form I-924A. The level of fee increase necessary to align costs and revenue is a weighted average of 21 percent. As noted earlier in this preamble, of the 21

percent weighted average increase, approximately four percent is directly attributable to cost increases for services included in the FY 2010/2011 Fee Rule. The remaining 17 percent is attributable to services that the FY 2010/2011 Fee Rule did not take into consideration, either because DHS assumed that these services would be funded through appropriations, or because the incidence of fee waivers has increased following the publication of the FY 2010/2011 Fee Rule.

## **VI. Fee Review Methodology.**

When conducting a fee review, USCIS reviews its recent cost history, operating environment, and current service levels to determine the appropriate method to assign costs to particular benefit requests. The methodology used in the review reflects a robust capability to calculate, analyze, and project costs and revenues.

USCIS uses commercially available ABC software to create financial models to calculate the costs for processing immigration benefit requests, including the costs for biometric services. Following the FY 2010/2011 Fee Rule, USCIS identified several key methodology changes to improve the accuracy of its ABC model, as discussed in the “Methodology for the 2016/2017 Fee Review” section in the Supporting Documentation. USCIS continues to update the ABC model with the most current information for fee review and cost management purposes.

### **A. Background.**

ABC is a business management tool that assigns resource costs to operational activities and then to products and services. These assignments provide an accurate cost assessment of each work stream involved in producing the individual outputs of an agency or organization. The Federal Accounting Standards Advisory Board (FASAB)

notes that ABC helps improve product costing by avoiding arbitrary indirect cost allocation and enables USCIS to conform to Managerial Cost Accounting Concepts and Standards for the Federal Government.<sup>39</sup>

### **1. ABC Methodology.**

DHS has included FY 2016/2017 Fee Review Supporting Documentation, including a detailed report on how it calculated the fee schedule proposed in the docket for this rulemaking. Comments are welcome on the supporting documentation and all aspects of this proposal. A summary of the fee study, calculations, methodology and conclusions follows.

#### **a. Resources.**

Resources equal the projected FY 2016/2017 annual cost baseline of \$3.0 billion. USCIS designed the ABC model structure for FY 2016/2017 to resemble the structure of the FY 2015 annual operating plan. That plan is the detailed budget execution plan USCIS establishes at the beginning of the fiscal year consistent with the approved fiscal year spending authority and forecasted fee revenue.

#### **b. Resource Drivers and Resource Assignment.**

ABC uses resource drivers to assign resources to activities. (See Section VI.A.1.c. of this preamble for more information.) All resource costs are assigned to activities, so the total resources in the model equal the total cost of activities.

A common resource driver in ABC is the number of employees in an organization and the percentage of time they spend performing various activities. The FY 2016/2017 ABC model uses employee counts and activity information to assign resources to

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<sup>39</sup> See Federal Accounting Standards Advisory Board Handbook, Version 14 (06/15), SFFAS 4, No. 152.

activities. USCIS refers to this process as the payroll title analysis. The payroll title analysis determines how employees contribute to the eleven activities in the fee review. When an office engages in more than one activity, USCIS uses operational information to prorate that office's time to multiple activities. Historical activity information is applied to projected staffing levels in FY 2016/2017. The ABC model assigns resources to activities using anticipated staffing levels and historical activity information from the payroll title analysis for each office.

USCIS assigns some costs directly to activities. For example, the contract awarded to support USCIS Application Support Center operations only pertains to the "Perform Biometric Services" activity. Therefore, the costs of this contract are assigned directly to this activity. Other overhead costs, including costs for the Office of Information Technology, service-level agreements, and USCIS contributions to the DHS working capital fund are prorated to each office based on the number of authorized positions in those offices, so that each office pays a proportionate share.

The allocation methods in the FY 2016/2017 review are in line with FASAB's Standard 4 on managerial cost accounting concepts. This fulfills the guideline for agencies to directly trace costs when feasible and to either assign costs on a cause-and-effect basis or allocate them in a reasonable and consistent way. Statement of Federal Financial Accounting Standards (SFFAS) 4, No. 126.

### **c. Activities.**

In ABC, activities are the critical link between resources and cost objects. Activities represent work performed by an organization. USCIS allocates projected FY 2016/2017 operating costs (resources) to the following eleven activities:

- **Inform the Public** involves receiving and responding to customer inquiries through telephone calls, written correspondence, and walk-in inquiries. It also involves public engagement and stakeholder outreach activities.
- **Perform Biometric Services** involves the management of electronic biometric information, background checks performed by the Federal Bureau of Investigation (FBI), and the collection, use, and reuse of collected biometric information to verify the identity of individuals seeking immigration benefits.
- **Intake** involves mailroom operations, data entry and collection, file assembly, fee receipting, adjudication of fee waiver requests, and file room operations.
- **Conduct TECS<sup>40</sup> Check** involves the process of comparing information on applicants, petitioners, requestors, beneficiaries, derivatives, and household members who apply for an immigration benefit against various Federal Government lookup systems.
- **Records Management** involves searching for and requesting files; creating temporary and/or permanent individual files; consolidating files; appending evidence submitted by applicants, petitioners, and requestors to existing immigration files; retrieving, storing, and moving files upon request; auditing and updating systems that track the location of files; and archiving inactive files.
- **Make Determination** involves adjudicating immigration benefit requests; making and recording adjudicative decisions; requesting and reviewing additional

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<sup>40</sup> In previous reviews, USCIS called the “Conduct TECS Check” activity by different names, such as “Conduct Interagency Border Inspection System Checks (IBIS)” or “Conduct Treasury Enforcement Communication System (TECS) Check.” The system has changed names, and now “TECS” is the actual system name and is no longer an acronym.

evidence; interviewing applicants, petitioners, or requestors; consulting with supervisors or legal counsel; and researching applicable laws and decisions on non-routine adjudications.

- **Fraud Detection and Prevention** involves activities performed by the Fraud Detection and National Security Directorate in detecting, combating, and deterring immigration benefit fraud and addressing national security and intelligence concerns.
- **Issue Document** involves producing and distributing secure cards that identify the holder as a foreign national and also identifies his or her immigration status and/or employment authorization.
- **Management and Oversight** involves activities in all offices that provide broad, high-level operational support and leadership necessary to deliver on the USCIS mission and achieve its strategic goals.

Since the 2010 Fee Rule, USCIS added two activities to the fee review.

- **Direct Costs** directly support a specific immigration benefit type. For instance, USCIS applies costs specific to naturalization, including conducting naturalization ceremonies and naturalization benefit requests.
- **Systematic Alien Verification for Entitlements (SAVE)** represents the cost of this program.<sup>41</sup> SAVE is an intergovernmental information-sharing program that helps Federal, state, and local benefit-issuing agencies, institutions, and licensing agencies (such as an individual state's department of motor vehicles) determine the immigration

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<sup>41</sup> USCIS is required to offer an automated or other system to verify the immigration status of applicants. Certain agencies determining eligibility for a number of specified Federal public benefits are required to use an automated or other such system to verify the immigration status of applicants. 42 U.S.C. 1320b-7. The automated verification system is entitled the Systematic Alien Verification for Entitlements (SAVE) program. INS and USCIS have refined and operated the SAVE program on a large scale for over 16 years.

status of benefit applicants to help these agencies ensure that only those entitled to benefits or licenses receive them. Through the SAVE program, USCIS enters into reimbursable agreements with Federal, state, and local government agencies under the authority of the Economy Act and the Intergovernmental Cooperation Act of 1968 for those costs that can be directly assigned to SAVE. See generally 31 U.S.C. 1535; 31 U.S.C. 6501-6508, Pub. L. 97-258. These reimbursable agreements recover only a portion of the total program cost. Previously, USCIS treated SAVE as an overhead cost and did not consider the amounts recovered in the reimbursable agreements in calculating the costs of SAVE to be recovered by USCIS fees. USCIS has improved its model by distinguishing SAVE from other overheads. This may enable USCIS to examine SAVE reimbursable fees paid by federal, state and local governments in the future.

#### **d. Activity Drivers and Activity Assignment.**

The fourth stage in the ABC process assigns activity costs to specific immigration benefit requests (cost objects) using activity drivers. For most activities, USCIS assigns activity costs to cost objects based on the percentage of total projected volume because, for these activities, similar time and effort are involved for each benefit request. Unique activity drivers are used for two activities: **Make Determination** and **Perform Biometric Services**.

USCIS allocates the **Make Determination** activity across immigration benefit requests by projected adjudication hours. USCIS calculates projected adjudication hours by multiplying projected volumes by completion rates for most benefit types.

Completion rates are the average amount of time that employees take to adjudicate

immigration benefit requests.<sup>42</sup> Generally, the more time spent adjudicating a request, the more cost that gets assigned, and therefore, the higher the fee. Please see Section VIII: Completion Rates for additional information.

The **Perform Biometric Services** activity uses a direct activity driver. All costs associated with this activity are assigned directly to the biometric services fee.

Activity costs are allocated to immigration benefit requests by the locations (service centers, field offices, etc.) that process them. USCIS uses data from the USCIS Performance Reporting Tool that, among other data points, include workload volumes, adjudication hours, and the number of completed requests by field office location and immigration benefit type. The Performance Reporting Tool also captures and records information on biometrics, records management, and customer service. For the FY 2016/2017 Fee Review, USCIS aligned its fee review metrics with the Performance Reporting Tool metrics used in the FY 2015 Staffing Allocation Model to ensure organizational alignment and consistency.

#### **e. Cost Objects.**

Cost objects are the immigration benefit requests that USCIS processes. USCIS calculates a separate fee for biometric services. The costs for the biometric services fee are derived from the costs of the **Perform Biometric Services** activity and a small amount of direct costs.<sup>43</sup> USCIS determines costs for most immigration benefit requests, including those for asylum and refugee protection. The IEFA costs of immigration

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<sup>42</sup> Time here means the amount of time a USCIS immigration service officer spends on an adjudication. This is different than cycle time, the amount of time an applicant, petitioner, or requestor spends waiting for an output.

<sup>43</sup> For a quick reference of the immigration benefits that currently require biometric services with the initial submission, see Form G-1055, Fee Schedule, at <http://www.uscis.gov/sites/default/files/files/form/g-1055.pdf>.

benefit requests for which no revenue is recovered are redistributed to other benefit requests in a prorated manner.

**f. Exclusion of Temporary or Uncertain Costs Items and Programs.**

USCIS excludes from the fee calculation model the costs and revenue associated with programs that are temporary by definition or where the program may diminish or cease to exist because the program is predicated on guidance only (and not preserved in regulations or statute). This exclusion applies to: the Application for TPS, Form I-821, proposed 8 CFR 103.7(b)(1)(i)(NN); Consideration of Deferred Action for Childhood Arrivals, (DACA), Form I-821D; and Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105-100) (Nicaraguan Adjustment and Central American Relief Act (NACARA)), Form I-881, proposed 8 CFR 103.7(b)(1)(i)(QQ). These programs are excluded from the FY 2016/2017 Fee Rule Supporting Documentation and this rule.<sup>44</sup>

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 unable to handle the return of its nationals adequately. TPS, however, is a temporary benefit, and TPS

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<sup>44</sup> For the purposes of this rule, 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 be to request a benefit. For example, DACA is solely an exercise of prosecutorial discretion by DHS and not an immigration benefit, but would fit under the definition of "benefit request" solely for purposes of this rule. For historic receipts and completion information, see USCIS immigration and citizenship data available at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data>.

designations may be terminated.<sup>45</sup> 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.<sup>46</sup> 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

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<sup>45</sup> 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.

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

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. 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.<sup>47</sup> 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,

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

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 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.<sup>48</sup> 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 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.<sup>49</sup>

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..

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

<sup>49</sup> 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.

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).

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).<sup>50</sup> Third, DHS proposes to permit naturalization applicants with household incomes greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines<sup>51</sup> 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 policies<sup>52</sup> 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 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

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<sup>50</sup> 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.

<sup>51</sup> 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).

<sup>52</sup> 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](https://www.whitehouse.gov/sites/default/files/docs/final_tf_newamericans_report_4-14-15_clean.pdf).

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.<sup>53</sup>

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.<sup>54</sup>

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.<sup>55</sup> Independent university

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<sup>53</sup> 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.

<sup>54</sup> 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](http://dornsife.usc.edu/assets/sites/731/docs/citizen_gain_web.pdf).

<sup>55</sup> 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 falls between 150% and 200% of the federal poverty guidelines. Among immigrants who reported naturalizing in 2011 (737,618), 10.4% or 77,003 immigrants would have been eligible for a partial fee waiver.

research<sup>56</sup> estimated that about 12 percent of adult lawful permanent residents eligible to naturalize fell within the 150 to 200 percent of the Federal Poverty Guidelines. By averaging the 10 percent and the 12 percent from the two data sources, USCIS estimates 11 percent of average annual Form N-400 filings would be likely to qualify for the lower fee. The average FY 2016/2017 Application for Naturalization volume estimate is 821,500, excluding military naturalizations. USCIS expects that an average of 90,365 filers, 11 percent of the 821,500, would be eligible for the reduced fee of \$405 (including the biometrics fee).<sup>57</sup> Assuming that all 90,365 would have paid the full fee of \$725 for their Form N-400 and biometrics, this new N-400 fee would result in approximately \$28.9 million in foregone fee revenue associated with adjudication of Form N-400. That amount of USCIS operating expenses would be funded using fee revenue from other fee increases proposed in this rule.

### **5. Holding the Biometric Services Fee at its Current Level.**

DHS proposes to hold the biometric services fee at its current level of \$85. Proposed and current 8 CFR 103.7(b)(1)(i)(C). While the model calculated a biometric services fee of \$75, DHS believes that the importance of and uncertainty in the biometric services area justifies holding that fee at \$85.

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.

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<sup>56</sup> See Manuel Pastor, University of Southern California, Reducing Barriers to Citizenship: New Research and the Need for a Partial Fee Waiver (Jan. 8, 2015), available at <http://newamericanscampaign.org/wp-content/uploads/New-Research-on-Reducing-Barriers-to-Citizenship-1-8-15-Webinar-Powerpoint.pdf>.

<sup>57</sup> This is an estimate of the net impacts. Some who would have filed and paid the full fee would now opt to pay the reduced fee. Others who are eligible to seek a fee reduction based on income level may also qualify for a Federal means tested benefit in their state and thus qualify for a full fee waiver.

1103(a), 1225(d)(3), 1304(a). The collection, use, and reuse of biometric data are integral to identity management, excluding people with criminal backgrounds, minimizing national security concerns, and maintaining program integrity. Over the next few fiscal years the volume of requests for biometrics services, as well as the costs associated with those services, such as fees paid to the FBI for fingerprints and name checks, are uncertain. Therefore, a moderate amount above current full cost recovery calculation is justified to shield USCIS from that uncertainty.

In addition, DHS proposes to use its discretion in setting this fee to hedge against potential rising programmatic costs which USCIS cannot foresee or control. For example, new regulatory or statutory background check requirements may be borne out of increased national security concerns dictated by events or changing circumstances. For the same reasons, DHS is also proposing to clarify regulations pertaining to biometrics and the biometric services fee.

Current regulations provide both general authority for the collection of biometrics in connection with immigration and naturalization benefits as well as requirements specific to certain benefit types.<sup>58</sup> See 8 CFR 103.16(a). A related provision provides that an applicant, petitioner, sponsor, beneficiary, or other individual residing in the United States at the time of filing may be required to appear for fingerprinting. See 8 CFR 103.2(b)(9). The wording of the latter provision has resulted in questions and confusion about DHS authority to require biometrics and the associated biometric services fee beyond a case-by-case basis. While DHS believes its current biometrics and

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<sup>58</sup> See, e.g., 8 CFR 103.16(a), 204.2(a)(2) (requiring evidence of the claimed relationship), 204.3(c)(3) (requiring fingerprinting), 204.2(d)(2)(vi) (authorizing blood testing), 245a.2(d) (requiring photographs and a completed fingerprint card), 316.4(a) (requiring three photographs and fingerprinting).

biometrics fee collections are fully authorized, DHS proposes changes to the latter provision to clarify its regulatory authority to require and conduct biometrics-based identity and background checks, and to collect the associated fees. In addition, DHS is clarifying this section with regard to the use of the term biometrics in place of the term fingerprints. DHS has been using the term biometrics for several years in multiple contexts. See, e.g., 72 FR 4906 (Feb. 1, 2007) (discussing the proposed fee for immigration and naturalization benefit application and petition and biometric service processing activities and describing biometrics as fingerprints, photographs, and signatures). The term “biometrics” is also used throughout title 8 of the CFR. See, e.g., 8 CFR 103.7(b)(1)(i)(C), 103.16, 103.17, 204.310(a)(3)(ii), 204.312(e)(3)(ii), 209.1(b), 212.7(e)(1)(i), 204.312(e)(3)(ii), 214.2(w)(15), 245.21(b). Therefore, DHS proposes to revise 8 CFR 103.2(b)(9) to clarify that any applicant, petitioner, sponsor, beneficiary, or requestor, or individual filing a request may be required to appear for biometrics collection or for an interview. This requirement may be imposed upon individual notice or as established in the applicable regulations or form instructions. See proposed 8 CFR 103.2(b)(9). DHS is also making conforming edits in 8 CFR 103.16(a) to provide that an individual may be required to submit biometric information by law, regulation, Federal Register notice or the form instructions applicable to the request type or if required in accordance with 8 CFR 103.2(b)(9). See proposed 8 CFR 103.16(a).

**6. Continuing to Hold Refugee Travel Document Fee 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,<sup>59</sup> USCIS proposes to continue to charge a fee for Refugee Travel Documents similar to the charge for a U.S. passport book. See 75 FR at 58972 (discussing Article 28 standards for assessing charges for a Refugee Travel Document). Under this proposal, the fee for an Application for Travel Document, Form I-131, would be \$575 for advance parole and any other travel document, as calculated by the fee model. See proposed 8 CFR 103.7(b)(1)(i)(M)(3). However, the current fees for Form I-131 for a Refugee Travel Document would be maintained at \$135 for adults and \$105 for children under the age of 16 years. These fees are the same as the Department of State (DOS) passport book fees,<sup>60</sup> plus biometrics if the applicant is between 14 and 79 years of age. See proposed 8 CFR 103.7(b)(1)(i)(M)(1)-(2).

**7. Holding the Fee for a Petition by Entrepreneur to Remove Conditions (Form I-829) at its Current Level.**

DHS proposes to hold the fee for the Petition by Entrepreneur to Remove Conditions, Form I-829, at its current level of \$3,750. While the fee model calculated a fee of \$2,353, DHS proposes to maintain the current fee for such petitions. Because of the recent and continued growth and maturation of the EB-5 Program, the costs over the next few fiscal years are uncertain because the final parameters of the program are still

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<sup>59</sup> 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.”).

<sup>60</sup> The Refugee Travel Document fees are the same as the sum of the United States passport book application fee plus the additional execution fee that DOS charges for first time applicants.

evolving, such as the number of employees and facilities necessary to carry out the enhanced review of EB-5 filings and site visits. This makes it uncertain whether EB-5 related fees will fully fund EB-5 program activities.

The EB-5 program was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign 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. Pub. L. 102-395, sec. 610, 106 Stat 1828 (Oct. 6, 1992). The EB-5 immigrant classification allows qualifying individuals, and any accompanying or following to join spouses and children, to obtain lawful permanent resident (LPR) status if the qualifying individuals have invested, or are actively in the process of investing, \$1 million in a new commercial enterprise. See INA section 203(b)(5)(A) and (C), 8 U.S.C. 1153(b)(5)(A) and (C). To qualify, the individual’s investment must benefit the U.S. economy and create full-time jobs for 10 or more qualifying employees. INA section 203(b)(5)(A)(ii), 8 U.S.C. 1153(B)(5)(A)(ii). If the investment is in a Targeted Employment Area (TEA) (i.e., a rural area or an area that has unemployment of at least 150% of the national average), the required capital investment amount is \$500,000 rather than \$1 million. INA section 203(b)(5)(C)(ii), 8 U.S.C. 1153(b)(5)(C)(ii); 8 CFR 204.6(f)(2). Entrepreneurs may meet the job creation requirements through the creation of indirect jobs by making qualifying investments within a new commercial enterprise associated with a regional center approved by USCIS for participation in the regional center program. INA section 203(b)(5), 8 U.S.C. 1153(b)(5); 8 CFR 204.6(e) and (m)(7).

To increase its support of Congress's objective in establishing the program, USCIS has recently implemented several changes to refine and improve the delivery, security and integrity of the EB-5 Program.<sup>61</sup> USCIS established the Immigrant Investor Program Office (IPO) in Washington, DC at USCIS headquarters in 2012. Since that time, IPO has regularly added staff positions to focus both on managing the program and ensuring identification of fraud, national security, or public safety concerns within the program. In addition, USCIS plans to conduct more site visits to regional centers and associated commercial enterprises to verify information provided in regional center applications and investor petitions and to clarify its EB-5 regulations. DHS proposes to keep the Form I-829 at the current fee, above the full cost recovery calculation<sup>62</sup>, to shield USCIS against potential but likely rising costs. DHS believes the fee would still be set at an appropriate level and that it would not be overly burdensome to the Form I-829 filers, particularly considering the size of the investment required to participate in the program.

## **B. Changes in the FY 2016/2017 Fee Review.**

### **1. Interim Benefits.**

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<sup>61</sup> USCIS is committed to strengthening and improving the overall administration of the EB-5 Program. The EB-5 Program encompasses Forms I-526, I-829, I-924, and I-924A. The cost baseline includes \$16.0 million in FY 2016 and \$15.9 million in FY 2017 for additional staff that would comprise a specialized team of forensic auditors, compliance officers, and other staff, whose primary focus would be to ensure regulatory compliance. This would directly contribute to the integrity of the program by providing the USCIS Investor Program Office with employees who have specialized knowledge required to adjudicate these benefits. In addition to enhanced staffing, USCIS would make additional IT systems investments to make case processing more efficient. USCIS would add \$1.7 million in FY 2016 and \$1.8 million in FY 2017 to improve the case management system and further develop its risk management strategy to ensure program compliance.

<sup>62</sup> If DHS had decided to adjust the fee consistent with the adjustment that DHS made to most other fees, the proposed fee would have decreased to \$3,280. The proposed fee would have been higher than the model output because of Cost Reallocation. Other fees would also have been adjusted accordingly.

The FY 2016/2017 Fee Review isolates the workload volume and fee-paying percentage of Applications for Employment Authorization, Forms I-765, and Applications for Travel Document, Forms I-131, that are not associated with Applications to Register Permanent Residence or Adjust Status, Forms I-485. This change helps DHS to more accurately calculate the fees necessary for cost recovery for all three benefit types.

Usually, the favorable adjudication of an immigration benefit request is necessary before the beneficiary will receive ancillary benefits such as work and travel authorization. That is, USCIS only grants those ancillary benefits after, or at the same time as, it grants the underlying immigration status or benefit. In some situations, however, an individual may become entitled to a benefit because a case is pending adjudication. For example, a person who applies for adjustment of status would, in certain instances, be able to obtain work and/or travel authorization based on the pending immigration benefit request. 8 CFR 274a.12(c)(9). When this occurs, these ancillary benefits are referred to generally as “interim benefits.”<sup>63</sup>

DHS currently permits applicants who file and pay the required fee for an Application to Register Permanent Residence or Adjust Status, Form I-485, to submit an Application for Employment Authorization, Form I-765, and/or an Application for Travel Document, Form I-131, without paying an additional fee. See 8 CFR

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<sup>63</sup> The following case types are subject to appeal and frequently have an associated application for adjustment of status, thereby possibly warranting interim benefits: Immigrant Petition for Alien Workers, Form I-140; Petition for Amerasian, Widow(er) or Special Immigrant, Form I-360; Application for Permission to Reapply for Admission into the United States after Deportation or Removal, Form I-212; and Application for Waiver of Ground of Inadmissibility, Form I-601. Interim benefits may also be derived from an Application for Temporary Protected Status, Form I-821. DHS proposes free interim benefits in this rule only associated with a pending Application to Register Permanent Residence or Adjust Status, Form I-485.

103.7(b)(1)(i)(M)(4) & (HH). Applicants may file Form I-765 and/or Form I-131 concurrently with Form I-485. Alternatively, they may also file these forms after USCIS accepts their Form I-485, but while the Form I-485 is still pending.

In the FY 2016/2017 Fee Review, USCIS determined the workload volume and fee-paying percentage of Forms I-765 and Forms I-131 that are not associated with Forms I-485. This methodology change enables USCIS to derive a fee-paying percentage for standalone Forms I-765 and Forms I-131, meaning those forms not filed concurrently with a Form I-485. By isolating stand-alone interim benefit customers from those concurrently filing Form I-485, USCIS can more accurately assess fee-paying percentages, fee-paying volumes, and fees for all three benefit types. As a result, DHS is confident that the fees for these three benefit types proposed in this rule are consistent with the ABC methodology for full cost recovery.

## **2. Form I-485 Fee for Child Under 14, Filing with Parent.**

USCIS proposes a fee of \$750 for a child under the age of 14 years when filing Form I-485 concurrently with the application of a parent 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). Proposed 8 CFR 103.7(b)(1)(i)(U)(2). For this review, the proposed fee of \$750 is the model output cost for a Form I-485 filed with Form I-131. Children under the age of 14 cannot work in the United States. These children, however, can travel. This is \$390 less than the proposed fee of \$1,140 for adults. Proposed 8 CFR 103.7(b)(1)(i)(U)(1).

Currently, the fee is \$985 for an adult and \$635 for a child under the age of 14 filing with a parent (\$350 less than the fee for adults). 8 CFR 103.7(b)(1)(i)(U). In the 2010 Fee Rule, USCIS calculated the \$635 fee outside of the model due to a lack of available data. The FY 2016/2017 Fee Review calculated the proposed \$750 fee using actual data for each of the elements of the model. Therefore, the proposed fee for Form I-485 for a child under the age of 14 filing with a parent complies more closely with the ABC methodology for full cost recovery at a level that tracks its relative burden.

USCIS proposes to remove the provision at 8 CFR 103.7(b)(1)(i)(U)(iii) that states, “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 proposed 8 CFR 103.7(b)(1)(i)(U). This sentence is unnecessary because 8 CFR 103.7(b)(1)(i)(U)(ii) already requires that a child must adjust as a derivative to pay the lesser fee. See INA section 203(d), 8 U.S.C. 1153(d). This proposed revision is a clarifying change to remove a redundancy in the regulatory language; it would have no substantive effect.

### **3. One Fee for a Genealogy Records Request.**

USCIS has included the genealogy fees in the FY 2016/2017 IEFA fee review. The USCIS genealogy program processes requests for historical records of deceased individuals. See Final Rule, Establishment of a Genealogy Program, 73 FR 28026 (May 15, 2008). Before creating a genealogy program, USCIS processed the requests as Freedom of Information Act (FOIA) request workload, which resulted in delays. See Proposed Rule, Establishment of a Genealogy Program, 71 FR 20357-8 (Apr. 20, 2006). DHS created the genealogy program to reduce delays for these requests. At the time,

USCIS averaged 10,000 such requests over four years, see id., and USCIS expected the workload to increase to 26,000 a year with the new program, see 71 FR 20361. USCIS determined that genealogy fees would range between \$16 and \$55. See 71 FR 20362. These proposed fees were based on projected volume and full cost of the program. Id. After considering the comments received on the proposed genealogy rule, the costs of providing this service, OMB Circular A-25 guidelines, and the fees charged for similar services, DHS set the fees for Forms G-1041 at \$20 and G-1041A at \$20 or \$35 (depending on the format requested) in the final rule. 73 FR 28028; 8 CFR 103.7(b)(1)(i)(E)-(F). Requestors use the Genealogy Records Request, Form G-1041A, to obtain copies of USCIS historical records that may assist them in conducting genealogical research. Requestors use the Genealogy Index Search Request, Form G-1041, to request an index search of USCIS historical records.

The current genealogy program fees were not established based on the projected full cost of operating the genealogy research and information services of USCIS, although that was permitted by the authorizing law. See INA section 286(t)(1), 8 USC 1356(t)(1).<sup>64</sup> At the time, USCIS did not have clearly segregated records of the full cost of operating its genealogy research and information services, and DHS has not since adjusted the genealogy program fees. But after seven years of operating the program, DHS now has reliable data to determine the new fees. USCIS has thus incorporated the genealogy records requests fees in the comprehensive costs recovery fee model with the aim to simplify the genealogy fee structure.

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<sup>64</sup> The statute requires genealogy program fees to be deposited as offsetting collections 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. INA sec. 286(t)(1), 8 U.S.C. 1356(t)(1).

Current regulations state that the Form G-1041A fee is \$20 for each file copy from microfilm and \$35 for each hard copy. In some cases, the requestor may be unable to determine the fee, because the requestor will have a file number obtained from a source other than USCIS and therefore not know whether the format of the file is microfilm or paper. In such cases, individuals may provide the lesser \$20 amount and if USCIS discovers the relevant file is a paper file, USCIS will notify the requestor to remit an additional \$15. In addition, USCIS will refund the records request fee only when the agency is unable to locate the file previously identified in response to the index search request. See 8 CFR 103.7(b)(1)(i)(F).

DHS proposes to charge a single \$65 fee for Form G-1041A. See proposed 8 CFR 103.7(b)(1)(i)(F). Under the ABC model, USCIS projected the cost of the forms G-1041 and G-1041A to be \$46 each. The cost is based on the projected volumes and costs of the genealogy program. The projected costs include a portion of Lockbox costs, genealogy contracts, and a portion of costs related to the division that handles genealogy, FOIA and similar USCIS workloads. The proposed \$65 fee is based on the ABC model output, plus an additional \$19 to recover the applicable administrative costs associated with funding these services, such as the USCIS Librarian and other genealogy research and information services.<sup>65</sup> Because the INA contains a separate fee setting authorization for the genealogy program to recover the full costs of providing all genealogy research and information services, DHS does not propose to adjust the ABC model output for genealogy fees using the cost reallocation methodology that was used to adjust the other fees for which the model output was not used. See INA section 286(t), 8 U.S.C. 1356(t).

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<sup>65</sup> The Cost Reallocation amount is \$18. The additional \$1 results from rounding the proposed fee to the nearest \$5 increment.

Administrative costs, such as the Management and Oversight activity cost, range from \$33 to \$426 for other immigration benefit fees. Had USCIS included all such costs in the proposed genealogy fees, it would have added at least \$141 to the proposed genealogy fees. DHS proposes to add only \$19 to the model output for estimated applicable costs for a total proposed fee of \$65.

#### **4. Dishonored Payments and Failure to Pay the Biometrics Services Fee.**

DHS proposes to amend the regulations regarding how USCIS will treat a benefit request accompanied by fee payment (in the form of check or other financial instrument) that is subsequently returned as not payable. Proposed 8 CFR 103.2(a)(7)(ii). DHS also proposes changes to provisions governing non-payment of the biometric service fee. Proposed 8 CFR 103.17(b). Each of these proposed changes is described below.

Current regulations provide that when a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter will be notified and requested to pay the filing fee and associated service charge within 14 calendar days, without extension. If the benefit request is pending and these charges are not paid within 14 days, the benefit request will be rejected as improperly filed.<sup>66</sup> See 8 CFR 103.2(a)(7)(ii). In addition, a receipt issued by a DHS officer for any remittance will not be binding upon DHS if the remittance is found uncollectible, and legal and statutory deadlines will not be deemed to have been met if payment is not made within 10 business

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<sup>66</sup> By contrast, DHS immediately rejects any application or petition submitted without a fee payment instrument. See 8 CFR 103.2(a)(1) (“Each benefit request or other document must be filed with fee(s) as required by regulation. Benefit requests which require a person to submit biometric information must also be filed with the biometric service fee in 8 CFR 103.7(b)(1), for each individual who is required to provide biometrics.”); 8 CFR 103.2(a)(7)(i) (“A benefit request which is not signed and submitted with the correct fee(s) will be rejected.”).

days after notification by DHS of the dishonored form of payment. See 8 CFR 103.7(a)(2). Finally, if a benefit request is received by DHS without the correct biometric service fee, DHS will notify the applicant of the deficiency and take no further action until payment is received. 8 CFR 103.17(b)(1). Failure to submit the correct biometric service fee within the time allotted in the notice will result in denial of the benefit request. Id. In accordance with these provisions, when a payment is returned as non-payable, USCIS places the immigration benefit request on hold and suspends adjudication. If a check is dishonored or payment otherwise fails, USCIS assesses a \$30 charge and pursues the unpaid fee and penalty using administrative debt collection procedures. If the biometrics services fee was required and is missing, USCIS generally provides the filer 30 days to correct the payment. If payment is made within the allotted time, USCIS resumes processing the benefit request. If the filer does not correct the payment, USCIS rejects the filing. If the biometric fee is not paid, USCIS considers the benefit request as abandoned.

DHS proposes to eliminate the three rules requiring that cases be held while deficient payments are corrected. See proposed 8 CFR 103.2(a)(7)(ii), 103.7(a)(2), 103.17(b). As a practical matter, USCIS clears payment checks through the Automated Clearing House (ACH) by converting checks to electronic payments. Because USCIS converts checks into ACH payments, there is currently no or very little delay before USCIS knows whether the check is valueless. DHS is proposing that USCIS will not begin processing the benefit request until the payment has cleared. DHS anticipates that the proposed change would reduce the USCIS administrative costs for holding and tracking immigration benefit requests with rejected payments. This change would

streamline USCIS' process for handling immigration benefit requests when payments are returned as not payable or do not include the required biometric services fee.

This proposal further recognizes that a fee is a fundamental aspect of the benefit request filing. For example, under current 8 CFR 103.2(a)(7)(ii), an H-1B cap-subject petition<sup>67</sup> that was submitted with a check that was dishonored would be able to preserve its place in the lottery as long as the petitioner paid the fee and the aforementioned \$30 charge within 14 days.<sup>68</sup> Under proposed 8 CFR 103.2(a)(7)(ii), an H-1B cap-subject petition that is submitted with a check that is dishonored would be rejected and the receipt date would not be retained. By providing a 14-day correction window for dishonored checks, current regulations permit a benefit request paid with a dishonored payment instrument to secure a place in line ahead of a benefit request that was accompanied by a proper payment. DHS believes that this result is unfair, particularly because a rejected applicant, petitioner, or requestor may complete a new application and refile it immediately with proper payment.

DHS is also proposing minor changes to this same provision to clarify when USCIS would consider a benefit request received and when USCIS would reject a benefit request. Proposed 8 CFR 103.2(a)(7)(i) - (ii). Currently, numerous regulations address

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<sup>67</sup> Congress has established limits on the number of temporary workers who may be granted H-1B nonimmigrant status each fiscal year (commonly known as the "H-1B cap"). See INA section 214(g), 8 U.S.C. 1184(g). Due to the historically high demand for cap-subject H-1B workers, the H-1B cap usually is reached within days of the opening of the H-1B filing period for a new fiscal year.

<sup>68</sup> USCIS employs a random selection process after announcing a final date on which it will receive H-1B petitions. USCIS refers to this day as the "final receipt date." See 8 CFR 214.2(h)(8)(ii)(B). All petitions submitted properly prior to or on the "final receipt date" undergo a random selection process to determine which petitions can be processed to completion and, if otherwise eligible, which beneficiaries are able to receive a new H-1B visa number.

filing requirements for different benefits, including rejection criteria.<sup>69</sup> To ensure clarity among these numerous regulations, DHS proposes to delete the reference to parts 204, 245, and 245a, and insert in its place a corresponding revision to 8 CFR 103.2(a)(7)(ii)(C) providing that a benefit request would be rejected if it is not, among other things, filed in compliance with the regulations governing the filing of the specific application, petition, form, or request. Finally, DHS proposes to address the possibility that special rules may apply for paying fees at a Department of Homeland Security office located outside of the United States. We propose to clarify fees paid in person overseas must be made payable in accordance with the guidance specific to the applicable U.S. Government office when submitting it. Proposed 8 CFR 103.7(a)(2).

## 5. Refunds.

DHS proposes a minor change in the provision regarding USCIS fee refunds. See 8 CFR 103.2(a)(1) (providing that filing fees and biometric service fees are non-refundable).<sup>70</sup> In general, and except for a premium processing fee under 8 CFR

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<sup>69</sup> Current 8 CFR 103.2(a)(7)(i) states, in part, “[e]xcept as provided in 8 CFR parts 204, 245, or 245a, a benefit request will be considered received by USCIS as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format.” 8 CFR 245.2(a)(2) requires a current priority date for proper filing, 8 CFR 245a.2(e) permits receipt at a Qualified Designated Entity as opposed to a USCIS office, and 8 CFR 204.5(a) provides that a petition is considered properly filed only if it is accompanied by any required individual labor certification. In addition, regulations specific to a given benefit request produce filing requirements beyond those required under 8 CFR 103.2. See, e.g., 8 CFR 212.7(e)(5)(ii) (providing additional filing requirements for an application for a provisional unlawful presence waiver).

<sup>70</sup> USCIS is proposing no changes with regard to the prohibitions on refunds of a Notice of Appeal or Motion (Form I-290B) in 8 CFR 103.3(a)(2), which provide that the fee paid with an appeal filed too late or by a person or entity not entitled to file it will not be refunded regardless of the action taken. See also 8 CFR 103.5(a)(iii)(B) (requiring a motion to reopen to be accompanied by a nonrefundable fee as set forth in 8 CFR 103.7) (emphasis added). Likewise, no changes are proposed to the prohibition on refunds for a Genealogy Index Search Request (Form G-1041), proposed 8 CFR 103.7(b)(1)(i)(E), the limited refunds for a Genealogy Records Request (Form G-1041A), proposed 8 CFR 103.7(b)(1)(i)(F), or no refund of the DCL System Costs Fee. 8 CFR 103.7(b)(ii)(A).

103.7(e)(2)(i),<sup>71</sup> USCIS does not refund a fee regardless of the decision on the immigration benefit request. USCIS will refund a fee if the agency determines that an administrative error occurred resulting in the incorrect collection of a fee. Examples of USCIS errors include:

- Unnecessary filings. Cases in which USCIS (or DOS in the case of an immigration benefit request filed overseas) erroneously requests that an individual file an unnecessary form along with the associated fee; and
- Accidental payments. Cases in which an individual pays a required fee more than once or otherwise pays a fee in excess of the amount due and USCIS (or the DOS in the case of an immigration benefit request filed overseas) erroneously accepts the erroneous fee.

DHS is proposing that 8 CFR 103.2(a)(1) be revised to provide that fees are “generally” not refunded. See proposed 8 CFR 103.2(a)(1). This would address concern that the current regulatory text does not explicitly permit refunds at DHS discretion. DHS currently grants such refunds because as electronic filings and associated electronic payments have increased, there has been an increase in the number of erroneous payments where refunds are appropriate. For example, an applicant may be charged twice in error due to technical issues related to the specific device, software, or internet connection used to pay the fee. In such a case, if the request is not rejected for an erroneous payment, a refund may be appropriate. DHS is proposing to continue the

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<sup>71</sup> USCIS automatically refunds the fee for a Request for Premium Processing (Form I-907) if USCIS has not reached a final decision (approval, denial, notice of intent to deny, or request for evidence) or opened an investigation relating to the benefit request for which premium processing was requested within 15 days of its receipt. 8 CFR 103.7(e)(2). No changes are proposed to that provision.

practice of providing these refunds in limited circumstances where refunds are justified. Applicants would continue to request refunds by calling the USCIS customer service line or submitting written requests to the office having jurisdiction over the relevant filing.

### **C. Fee-Related Issues Noted for Consideration.**

DHS has identified a number of issues that do not affect the 2016/2017 Fee Review but which, for a variety of reasons, merit some discussion. No changes are proposed 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. DHS welcomes comments on all facets of the 2016/2017 Fee Review, this proposed rule, and USCIS fees in general, regardless of whether changes have been proposed here.

#### **1. Premium Processing.**

USCIS is proposing no change to premium processing fees or regulations but notes it here for consideration due to stakeholder interest, past comments, and correspondence on the subject. Section 286(u) of the INA, 8 U.S.C. 1356(u), authorizes DHS to establish and collect a fee for a premium processing service for employment-based petitions and applications. Revenue from premium processing fees fund the costs associated with providing the premium processing service, as well as infrastructure improvements in the adjudications and customer service processes.<sup>72</sup>

Congress set the premium processing fee at \$1,000 and authorized USCIS to adjust the fee for inflation, as determined by the Consumer Price Index (CPI). USCIS adjusted the premium processing fee by using the CPI in the 2010 Fee Rule to \$1,225.

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<sup>72</sup> Premium processing fees are paid in addition to the regular form fee. For example, individuals would pay the proposed \$700 fee for a Form I-140 under this rule, plus \$1,225 for premium processing. Premium processing prioritizes the applicable application or petition for adjudication. The additional fee permits the devotion of specific resources to resolving that immigration benefit request.

See 75 FR 58979; 8 CFR 103.7(b)(1)(i)(RR). Because projected premium processing revenue is sufficient to cover the projected costs of providing the premium service and other permissible infrastructure investments, USCIS is proposing no change to the premium processing fee. DHS is not barred from increasing the premium processing fee outside of rulemaking should circumstances require it.

DHS also notes that commenters regularly request that DHS: extend premium processing beyond the limits of section 286(u) to other immigration benefit requests. See 75 FR 58978. The FY 2016/2017 Fee Review did not analyze the potential effect of premium processing for other forms. Congress established the premium processing fee at an amount it determined to be appropriate and permitted USCIS to increase it based on inflation. Id. USCIS has not incurred any operating deficits as a result of the amount of that fee. These fees more than cover the costs of providing premium processing for the associated benefits. Nevertheless, USCIS has many years' experience in processing certain employment-based cases using premium processing. It would be very difficult to estimate the staff, resources, and costs necessary to ensure the processing of additional benefit types within a certain time frame, especially when those cases may require other types of background checks, interviews and additional steps that USCIS does not generally control. Expanding the premium processing program would require USCIS to estimate the costs of a service that does not currently exist with sufficient confidence that it can deliver the service promised and not impair service in other product lines. To study a potential new premium processing program would require the devotion of considerable resources. Thus, DHS proposes no extension of premium processing beyond its current usage. Comments, however, are welcome on that subject.

USCIS currently offers premium processing to business customers filing: a Petition for Nonimmigrant Worker, Form I-129, and an Immigrant Petition for Alien Worker, Form I-140, in certain visa classifications. In the 2007 and 2010 Fee Rules, USCIS indicated that it would dedicate premium processing fee revenue for transformation activities.<sup>73</sup> At that time, projected annual premium processing revenues and annual transformation investment costs were roughly equal. Since that time, the projected lifecycle costs of the transformation investment, which now includes USCIS' electronic immigration system, have decreased, whereas demand for USCIS premium processing services has grown, resulting in an imbalance between revenue and spending.

In the FY 2016/2017 Fee Review, USCIS identified \$79.3 million in additional costs to be funded through premium processing fee revenue, thereby reducing the costs that USCIS must recover through its standard (non-premium) immigration benefit request fees. Consistent with INA section 286(u), 8 U.S.C. 1186(u), DHS intends to use premium processing revenue to pay for the salaries of immigration services officers that process this workload, associated supervisory and support staff, and associated non-personnel costs. Premium processing revenue will also be used to fund the salaries and benefits costs for Office of Transformation Coordination staff that manage USCIS' electronic immigration system and transformation investment. USCIS also identified additional costs for staff adjudicating requests for premium processing service,

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<sup>73</sup> Transformation is an agency-wide effort to transition the agency from a fragmented, paper-based operational environment to a centralized environment facilitating electronic processing of requests for immigration benefits through the USCIS electronic immigration system (ELIS). This investment is a large-scale, complex undertaking to modernize USCIS business processes using information technology-enabled re-engineering. ELIS will employ the types of online customer accounts used in the private sector to manage transactions and track activities while helping USCIS enforce and administer the immigration laws. The revised processes, enabled by ELIS, will help USCIS meet customer expectations for on-demand information and immediate real-time electronic service over the Internet.

transformation-related expenses, and infrastructure investments being made to enhance the adjudication process and customer service, that the agency intends to fund with premium processing fee collections instead of continuing to use general filing fees.

## **2. Accommodating E-filing and Form Flexibility.**

DHS has endeavored, as it did in the 2010 fee rule, to propose fees based on form titles instead of form numbers to avoid prescribing fees in a manner that could undermine the transformation process. See proposed 8 CFR 103.7(b)(1). 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 promulgated. As USCIS modernizes its processes and systems to allow more people to file applications online, the agency may collect fees for 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 labelling the different sections pursuant to the relevant form numbers. DHS would still collect the required fee for the underlying 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.

Likewise, if USCIS determines that efficiency and customer service would be improved by breaking paper Form I-131 into separate paper forms (for instance, USCIS could institute a separate form and form number for advance parole, humanitarian parole, parole in place, refugee travel documents, reentry permits, or boarding documents),

USCIS could do so and continue to charge the Form I-131 fee that is included in this rule. This structure permits USCIS to change forms more easily without having to perform a new fee study each time the agency chooses to do so.

### **3. Fee Waivers.**

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). To request a fee waiver, the individual must submit a written waiver request for permission to have their benefit request processed without payment. The waiver request must state the person's belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated. See 8 CFR 103.7(c)(2). There is no appeal of the denial of a fee waiver request. See id. Before 2007, USCIS could waive any fee, even where the fee waiver would be inconsistent with the underlying benefit request. For example, prior to 2007, USCIS could waive fees for companies seeking to sponsor foreign workers; individuals seeking status based on substantial business investments; or individuals seeking to sponsor foreign relatives to whom the sponsors must provide a financial safety net. See 72 FR 4912. Since 2007, however, DHS has limited the USCIS fees that may be waived in 8 CFR 103.7(c)(3) based on the general premise that fee waivers must be consistent with any financial considerations that apply to the status or benefit sought. See 8 CFR 103.7(c)(1)(ii).

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, 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.<sup>74</sup> USCIS previously engaged in a holistic analysis of the individual's finances to determine inability to pay. See, e.g., William R. Yates, Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c), dated March 4, 2004. Under the fee waiver guidance, USCIS established a streamlined process under which it will usually waive the entire fee and the biometric services fee for forms listed in 8 CFR 103.7(c)(3) for applicants who:

- Are currently receiving a means-tested benefit;
- Have household income at or below 150 percent of the Federal poverty level; or
- Are experiencing extreme financial hardship such as unexpected medical bills or emergencies. AFM Chapter 10.9(b).

The 2010 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 8 CFR 103.7(c). See 75 FR 58990; 8 CFR 103.7(d).

As noted in the Fiscal Year (FY) 2016/2017 Immigration Examinations Fee Account Fee Review Supporting Documentation, the projected annual impact of fee

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<sup>74</sup> The form and its instructions may be viewed at <http://www.uscis.gov/i-912>.

waivers and exemptions has increased markedly since the 2010 Fee Rule from \$191 million to \$613 million. Applicants, petitioners, and requestors that pay a fee cover the cost of processing requests that are fee-waived or fee-exempt. Although DHS does not currently plan to do so, it may in the future revisit the USCIS fee waiver guidance with respect to what constitutes inability to pay under 8 CFR 103.7(c). DHS welcomes comment on this issue.

## **VII. Volume.**

USCIS uses two types of volume data in the fee review. Workload volume is a projection of the total number of immigration benefit requests that will be received in a fiscal year. Fee-paying volume is a projection of the number of applicants, petitioners, and requestors that will pay a fee when filing requests for immigration benefits. Not all applicants, petitioners, or requestors pay a fee. Those applicants, petitioners, and requestors for whom USCIS grants a fee waiver or to whom an exemption applies are represented in the workload volume but not the fee-paying volume. Applicants, petitioners, and requestors that pay a fee fund the cost of processing requests for fee-waived or fee-exempt immigration benefit requests.

### **A. Workload Volume and Volume Projection Committee.**

USCIS uses statistical time series modeling and immigration receipt data from the last 15 years, as well as the best available internal assessment of future developments (such as annualized data prepared by the USCIS Office of Performance and Quality) to develop workload volume projections. All relevant USCIS directorates and program offices are represented on the USCIS Volume Projection Committee (VPC). The VPC forecasts USCIS workload volume with subject-matter-expert input from USCIS Service

Centers, the National Benefits Center, the RAIO Directorate, and Regional, District, and Field Offices. Input from these offices helps refine projected volume estimates. The VPC reviews short- and long-term volume trends. In most cases, time series models provide volume projections by form type. The time series models use historical receipts data to determine patterns (such as level, trend, and seasonality) or correlations with historical events, which in turn are used to derive the projected receipts. Where possible, the models are also used to determine relationships between different benefit request types. Workload volumes are a key element used when determining the USCIS resources needed to process benefit requests within established adjudicative processing goals. They are also the primary cost driver for assigning activity costs to immigration benefits and biometric services in the USCIS ABC model.

<b>Table 4 – Workload Volume Comparison</b>				
<b>Immigration Benefit Request</b>		<b>Average Annual FY 2010/2011 Projected Workload Receipts</b>	<b>Average Annual FY 2016/2017 Projected Workload Receipts</b>	<b>Difference</b>
I-90	Application to Replace Permanent Resident Card	540,000	810,707	270,707
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	17,165	10,143	-7,022
I-129	Petition for a Nonimmigrant Worker	395,000	432,156	37,156
I-129F	Petition for Alien Fiancé(e)	54,000	45,351	-8,649
I-130	Petition for Alien Relative	690,520	911,349	220,829
I-131/ I-131A	Application for Travel Document	256,255	256,622	367
I-140	Immigrant Petition for Alien Worker	75,000	88,602	13,602
I-290B	Notice of Appeal or Motion	28,734	24,706	-4,028

**Table 4 – Workload Volume Comparison**

<b>Immigration Benefit Request</b>		<b>Average Annual FY 2010/2011 Projected Workload Receipts</b>	<b>Average Annual FY 2016/2017 Projected Workload Receipts</b>	<b>Difference</b>
I-360	Petition for Amerasian, Widow(er) or Special Immigrant	17,669	26,428	8,759
I-485	Application to Register Permanent Residence or Adjust Status	526,000	593,717	67,717
I-526	Immigrant Petition by Alien Entrepreneur	1,399	14,673	13,274
I-539	Application to Extend/Change Nonimmigrant Status	195,000	172,001	-22,999
I-600/ I-600A; I-800/ I-800A	Orphan Petitions	25,241	15,781	-9,460
I-601A	Provisional Unlawful Presence Waiver	N/A	42,724	42,724
I-687	Application for Status as a Temporary Resident	48	18	-30
I-690	Application for Waiver on Grounds of Inadmissibility	74	21	-53
I-694	Notice of Appeal of Decision	50	39	-11
I-698	Application to Adjust Status From Temporary to Permanent Resident	704	91	-613
I-751	Petition to Remove the Conditions of Residence	183,000	173,000	-10,000
I-765	Application for Employment Authorization	720,000	747,825	27,825
I-800A Supp. 3	Request for Action on Approved Form I-800A	N/A	1,585	1,585
I-817	Application for Family Unity Benefits	1,750	2,069	319
I-824	Application for Action on an Approved Application or Petition	20,961	10,921	-10,040
I-829	Petition by Entrepreneur to Remove Conditions	441	3,562	3,121

**Table 4 – Workload Volume Comparison**

<b>Immigration Benefit Request</b>		<b>Average Annual FY 2010/2011 Projected Workload Receipts</b>	<b>Average Annual FY 2016/2017 Projected Workload Receipts</b>	<b>Difference</b>
I-910	Application for Civil Surgeon Designation	3,410	609	-2,801
I-924	Application for Regional Center Designation Under the Immigrant Investor Program	132	400	268
I-924A	Annual Certification of Regional Center	N/A	882	882
I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	N/A	575	575
N-300	Application to File Declaration of Intention	45	41	-4
N-336	Request for Hearing on a Decision in Naturalization Proceedings	4,145	4,666	521
N-400	Application for Naturalization	693,890	830,673	136,783
N-470	Application to Preserve Residence for Naturalization Purposes	621	362	-259
N-565	Application for Replacement Naturalization/Citizenship Document	29,298	28,914	-384
N-600/600K	Naturalization Certificate Applications	45,347	69,723	24,376
I-191, I-192, I-193, I-212, I-601, I-612	Waiver Forms	31,432	71,527	40,095
	USCIS Immigrant Fee	215,000	472,511	257,511
G-1041	Genealogy Index Search Request	N/A	3,605	3,605
G-1041A	Genealogy Records Request	N/A	2,410	2,410
	<b>Subtotal</b>	<b>4,772,331</b>	<b>5,870,989</b>	<b>1,101,459</b>

<b>Table 4 – Workload Volume Comparison</b>				
<b>Immigration Benefit Request</b>		<b>Average Annual FY 2010/2011 Projected Workload Receipts</b>	<b>Average Annual FY 2016/2017 Projected Workload Receipts</b>	<b>Difference</b>
	Biometrics	2,048,177	3,028,254	980,077
	<b>Grand Totals</b>	<b><u>6,820,508</u></b>	<b><u>8,899,243</u></b>	<b><u>2,081,536</u></b>

**B. Fee-Paying Volume and Methodology.**

USCIS uses historical revenue and receipt data to determine the number of individuals that paid the fee for each immigration benefit type. Total revenue for an immigration benefit request is divided by its fee to determine the 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 volumes are adjusted to reflect filing trends and anticipated changes.

<b>Table 5 – Fee-Paying Volume Comparison</b>				
<b>Immigration Benefit Request</b>		<b>Average Annual FY 2010/2011 Fee Paying Projection</b>	<b>Average Annual FY 2016/2017 Fee Paying Projection</b>	<b>Difference</b>
I-90	Application to Replace Permanent Resident Card	518,400	718,163	199,763
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	17,165	9,499	-7,666
I-129	Petition for a Nonimmigrant Worker	395,000	427,778	32,778

**Table 5 – Fee-Paying Volume Comparison**

<b>Immigration Benefit Request</b>		<b>Average Annual FY 2010/2011 Fee Paying Projection</b>	<b>Average Annual FY 2016/2017 Fee Paying Projection</b>	<b>Difference</b>
I-129F	Petition for Alien Fiancé(e)	39,960	39,277	-683
I-130	Petition for Alien Relative	690,520	907,512	216,992
I-131/ I-131A	Application for Travel Document	192,255	194,461	2,206
I-140	Immigrant Petition for Alien Worker	75,000	88,602	13,602
I-290B	Notice of Appeal or Motion	28,734	20,955	-7,779
I-360	Petition for Amerasian, Widow(er) or Special Immigrant	6,957	8,961	2,004
I-485	Application to Register Permanent Residence or Adjust Status	480,000	473,336	-6,664
I-526	Immigrant Petition by Alien Entrepreneur	1,343	14,673	13,330
I-539	Application to Extend/Change Nonimmigrant Status	195,000	171,616	-23,384
I-600/600 A; I-800/800 A	Orphan Petitions	16,211	5,811	-10,400
I-601A	Provisional Unlawful Presence Waiver	N/A	42,724	42,724
I-687	Application for Status as a Temporary Resident	43	0	-43
I-690	Application for Waiver on Grounds of Inadmissibility	74	17	-57
I-694	Notice of Appeal of Decision	50	39	-11
I-698	Application to Adjust Status From Temporary to Permanent Resident	605	91	-514

**Table 5 – Fee-Paying Volume Comparison**

<b>Immigration Benefit Request</b>		<b>Average Annual FY 2010/2011 Fee Paying Projection</b>	<b>Average Annual FY 2016/2017 Fee Paying Projection</b>	<b>Difference</b>
I-751	Petition to Remove the Conditions of Residence	177,510	162,533	-14,977
I-765	Application for Employment Authorization	511,200	397,954	-113,247
I-800A Supp. 3	Request for Action on Approved Form I-800A	N/A	746	746
I-817	Application for Family Unity Benefits	1,750	1,988	238
I-824	Application for Action on an Approved Application or Petition	20,961	10,828	-10,134
I-829	Petition by Entrepreneur to Remove Conditions	256	3,562	3,306
I-910	Application for Civil Surgeon Designation	1,160	609	-551
I-924	Application for Regional Center Designation Under the Immigrant Investor Program	132	400	268
I-924A	Annual Certification of Regional Center	N/A	882	882
I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	N/A	257	257
N-300	Application to File Declaration of Intention	45	36	-9
N-336	Request for Hearing on a Decision in Naturalization Proceedings	4,145	3,593	-553
N-400	Application for Naturalization	684,390	631,655	-52,736
N-470	Application to Preserve Residence for Naturalization purposes	621	360	-261

<b>Table 5 – Fee-Paying Volume Comparison</b>				
<b>Immigration Benefit Request</b>		<b>Average Annual FY 2010/2011 Fee Paying Projection</b>	<b>Average Annual FY 2016/2017 Fee Paying Projection</b>	<b>Difference</b>
N-565	Application for Replacement Naturalization/Citizenship Document	24,903	23,491	-1,413
N-600/600K	Naturalization Certificate Applications	45,347	46,870	1,523
I-191, I-192, I-193, I-212, I-601, I-612	Waiver Forms	31,432	41,902	10,470
	USCIS Immigrant Fee	215,000	472,511	257,511
G-1041	Genealogy Index Search Request	N/A	3,605	3,605
G-1041A	Genealogy Records Request	N/A	2,410	2,410
	<b>Subtotal</b>	<b><u>4,376,169</u></b>	<b><u>4,929,707</u></b>	<b><u>553,533</u></b>
	Biometrics	1,950,603	2,598,639	648,036
	<b>Grand Totals</b>	<b><u>6,326,772</u></b>	<b><u>7,528,346</u></b>	<b><u>1,201,569</u></b>

### **VIII. 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 request types. 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. It does not reflect “queue time” or time spent waiting, for example, for additional evidence or supervisory approval. It does not reflect the total processing time customers can expect to wait for a decision on their case after USCIS accepts it.

USCIS requires the employees who adjudicate immigration benefit requests to report adjudication hours and case completions by benefit type. Adjudication hours are divided by the number of completions for the same time period to determine an average completion rate. In addition to using this data to determine fees, completion rates help determine staffing allocations appropriate to handle the projected workload. The Office of Performance and Quality, field offices, and regional management scrutinize the data to ensure accuracy. When the data is inconsistent and anomalies are identified, the Office of Performance and Quality contacts the reporting office and makes necessary adjustments. USCIS has confidence in the data, given the consistency of reporting over the last several years. The continual availability of the information makes it easier for USCIS to update cost information more frequently for fee review and cost management purposes.

<b>Table 6 - Completion Rates per Benefit Request</b> (Projected Adjudication Hours/Completion)		
<b>Immigration Benefit Request</b>		<b>Service-Wide</b>
I-90	Application to Replace Permanent Resident Card	0.21
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	0.48
I-129	Petition for a Nonimmigrant Worker	0.83
I-129F	Petition for Alien Fiancé(e)	0.65
I-130	Petition for Alien Relative	0.75
I-131/ I-131A	Application for Travel Document	0.21
I-140	Immigrant Petition for Alien Worker	1.68
I-290B	Notice of Appeal or Motion	1.22
I-360	Petition for Amerasian, Widow(er) or Special Immigrant	1.97
I-485	Application to Register Permanent Residence or Adjust Status	1.63
I-526	Immigrant Petition by Alien Entrepreneur	6.50
I-539	Application to Extend/Change Nonimmigrant Status	0.40
I-600/600A; I-800/800A	Orphan Petitions	2.14

<b>Table 6 - Completion Rates per Benefit Request</b> (Projected Adjudication Hours/Completion)		
<b>Immigration Benefit Request</b>		<b>Service-Wide</b>
I-601A	Application for Provisional Unlawful Presence Waiver	2.84
I-687	Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act	4.12
I-690	Application for Waiver on Grounds of Inadmissibility	0.89
I-694	Notice of Appeal of Decision under Section 210 or 245A	2.10
I-698	Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA)	3.80
I-751	Petition to Remove the Conditions of Residence	0.99
I-765	Application for Employment Authorization	0.20
I-800A Supplement 3	Request for Action on Approved Form I-800A	1.10
I-817	Application for Family Unity Benefits	0.92
I-824	Application for Action on an Approved Application or Petition	0.59
I-829	Petition by Entrepreneur to Remove Conditions	5.50
I-910	Application for Civil Surgeon Designation	1.81
I-924	Application for Regional Center Designation Under the Immigrant Investor Program	40.00
I-924A	Annual Certification of Regional Center	5.00
N-300	Application to File Declaration of Intention	1.64
N-336	Request for Hearing on a Decision in Naturalization Proceedings	2.60
N-400	Application for Naturalization	1.25
N-470	Application to Preserve Residence for Naturalization Purposes	1.83
N-565	Application for Replacement Naturalization/Citizenship Document	0.59
N-600/ N-600K	Naturalization Certificate Applications	1.00
I-191, I-192, I-193, I-212, I-601, I-612	Waiver Forms	1.18

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

- **Biometric Services.** Application Support Centers and the Biometrics Division incur certain costs, which are assigned to this fee. Completion rates are not necessary to assign processing activity costs to this product. See proposed 8 CFR 103.7(b)(1)(i)(C).

- **USCIS Immigrant Fees.** USCIS does not adjudicate immigrant visa benefit requests. Rather, individuals located outside of the United States apply with a Department of State overseas consular officer for an immigrant visa. If DOS issues the immigrant visa, the individual may apply with a U.S. Customs and Border Protection officer for admission to the United States as an immigrant at a port of entry. This fee represents USCIS costs to create and maintain files and to issue permanent resident cards to individuals who go through this process. See proposed 8 CFR 103.7(b)(1)(i)(D) (changing the fee's title to "USCIS Immigrant Fee").

- **Refugee and Asylee Processing.** Refugee Division and Asylum Division costs are not directly assigned to any fee and are covered by immigration benefit requests that pay fees. USCIS does not charge a fee for the following:

- Application for Asylum and Withholding of Removal, Form I-589;
- Registration for Classification as a Refugee, Form I-590;
- Application By Refugee For Waiver of Grounds of Excludability, Form I-602;
- and
- Refugee/Asylee Relative Petition, Form I-730.

- **Other Forms Exempt from Fees.** The following forms are also not discussed in this rule as applicants for these form types are exempt from paying a fee:

- Application for Posthumous Citizenship, Form N-644;
- Application for T Nonimmigrant Status, Form I-914; and

- Petition for U Nonimmigrant Status, Form I-918.

• **Forms with Uncertain Fee Revenue.** These form types may be terminated under current law, or may cease due to a reduction in the eligible population, and DHS proposes to not rely on their uncertain fee revenue streams for recovering USCIS operational expenses. The following forms are excluded from discussion in this rule because, as discussed earlier in this preamble, this proposed rule does not propose to change or establish a special fee for those programs:

- Application for Temporary Protected Status, Form I-821;<sup>75</sup>
- Consideration of Deferred Action for Childhood Arrivals, Form I-821D; and
- Application for Suspension of Deportation or Special Rule Cancellation of Removal, Form I-881.<sup>76</sup>

#### **IX. Proposed Fee Adjustments to IEFA Immigration Benefits.**

Because projected USCIS costs for FY 2016 and 2017 exceed projected revenue by an average of \$569 million each year, USCIS must adjust the fee schedule to recover the full cost of processing immigration benefits, and to continue to maintain or improve current service delivery standards.

After resource costs are identified, they are distributed to USCIS' primary processing activities in the ABC model. Table 7 outlines total IEFA costs by activity.

<p style="text-align: center;"><b>Table 7 – Projected IEFA Costs by Activity</b> (Dollars in Thousands)</p>
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<sup>75</sup> The proposed rule would, however, change the location of the reference to the fee in the Code of Federal Regulations (CFR). See proposed 8 CFR 103.7(b)(1)(i)(NN).

<sup>76</sup> The proposed rule would change the location of the reference to the fee in the CFR. See proposed 8 CFR 103.7(b)(1)(i)(QQ).

Activity	FY 2016	FY 2017	FY 2016/2017 Average
Perform Biometrics Services	\$194,670	\$197,837	\$196,254
Make Determination	\$1,268,309	\$1,302,756	\$1,285,533
Management and Oversight	\$588,262	\$592,151	\$590,206
Inform the Public	\$281,668	\$288,187	\$284,927
Records Management	\$238,271	\$240,777	\$239,524
Fraud Detection and Prevention	\$176,530	\$180,544	\$178,537
Intake	\$94,736	\$93,120	\$93,928
Direct Costs	\$56,444	\$58,476	\$57,460
Conduct TECS Check	\$52,829	\$53,994	\$53,412
Issue Document	\$31,975	\$32,632	\$32,304
Systematic Alien Verification for Entitlements	\$25,330	\$26,074	\$25,702
<b>Total IEFA Costs</b>	<b>\$3,009,024</b>	<b>\$3,066,548</b>	<b>\$3,037,786</b>

The activity costs are then distributed to the immigration benefit requests. Table 8 summarizes total revenue by immigration benefit request based on the proposed fee schedule.

<b>Table 8 – Projected FY 2016/2017 Average Annual Revenue per Immigration Benefit</b>		
<b>(Dollars in Thousands)</b>		
<b>Immigration Benefit Request</b>		<b>Revenue</b>
G-1041	Genealogy Index Search Request	\$234
G-1041A	Genealogy Records Request	\$157
I-90	Application to Replace Permanent Resident Card	\$326,764
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	\$4,227
I-129	Petition for a Nonimmigrant worker	\$196,778
I-129F	Petition for Alien Fiancé(e)	\$21,013
I -130	Petition for Alien Relative	\$485,519
I-131/I-131A	Application for Travel Document	\$111,815
I-140	Immigrant Petition for Alien Worker	\$62,021
I-290B	Notice of Appeal or Motion	\$14,145
I-360	Petition for Amerasian Widow(er) or Special Immigrant	\$3,898
I-485	Application to Register Permanent Residence or Adjust Status	\$539,603
I-526	Immigrant Petition by Alien Entrepreneur	\$53,923
I-539	Application to Extend/Change Nonimmigrant Status	\$63,498
I-600/600A/ 800/800A	Orphan Petitions	\$4,504

<b>Table 8 – Projected FY 2016/2017 Average Annual Revenue per Immigration Benefit</b>		
<b>(Dollars in Thousands)</b>		
<b>Immigration Benefit Request</b>		<b>Revenue</b>
I-601A	Provisional Unlawful Presence Waiver	\$26,916
I-690	Application for Waiver of Grounds of Inadmissibility	\$12
I-694	Notice of Appeal of Decision	\$35
I-698	Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA)	\$152
I-751	Petition to Remove Conditions on Residence	\$96,707
I-765	Application for Employment Authorization	\$163,161
I-800A Supplement 3	Request for Action on Approved Form I-800A	\$287
I-817	Application for Family Unity Benefits	\$1,193
I-824	Application for Action on an Approved Application or Petition	\$5,035
I-829	Petition by Entrepreneur to Remove Conditions	\$13,356
I-910	Application for Civil Surgeon Designation	\$478
I-924	Application for Regional Center Designation Under the Immigrant Investor Program	\$7,109
I-924A	Annual Certification of Regional Center	\$2,677
I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	\$59
N-300	Application to File Declaration of Intention	\$10
N-336	Request for Hearing on a Decision in Naturalization Proceedings	\$2,515
N-400	Application for Naturalization	\$404,259
N-470	Application to Preserve Residence for Naturalization Purposes	\$128
N-565	Application for Replacement Naturalization/Citizenship Document	\$13,037
N-600/ N-600K	Application for Certificate of Citizenship	\$54,838
I-191, I-192, I-193, I-212, I-601, I-602, I-612	Waiver Forms	\$38,968
	USCIS Immigrant Fee	\$103,952
	Biometric Services	\$220,884
	<b>Grand Totals</b>	<b>\$3,043,866</b>

Table 9 depicts the current and proposed USCIS fees for immigration benefits and biometric services. For a more detailed description of the basis for the changes described

in this table, see Appendix Table 4 in the FY 2016/2017 Fee Review Supporting Documentation accompanying this proposed rule.

<b>Table 9 – Proposed Fees by Immigration Benefit</b>					
<b>Immigration Benefit Request</b>		<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Delta (\$)</b>	<b>Percent Change</b>
G-1041	Genealogy Index Search Request	\$20	\$65	\$45	225%
G-1041A	Genealogy Records Request (Copy from Microfilm)	\$20	\$65	\$45	225%
G-1041A	Genealogy Records Request (Copy from Textual Record)	\$35	\$65	\$30	86%
I-90	Application to Replace Permanent Resident Card	\$365	\$455	\$90	25%
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	\$330	\$445	\$115	35%
I-129	Petition for a Nonimmigrant worker	\$325	\$460	\$135	42%
I-129F	Petition for Alien Fiancé(e)	\$340	\$535	\$195	57%
I-130	Petition for Alien Relative	\$420	\$535	\$115	27%
I-131/I-131A	Application for Travel Document	\$360	\$575	\$215	60%
I-140	Immigrant Petition for Alien Worker	\$580	\$700	\$120	21%
I-290B	Notice of Appeal or Motion	\$630	\$675	\$45	7%
I-360	Petition for Amerasian Widow(er) or Special Immigrant	\$405	\$435	\$30	7%
I-485	Application to Register Permanent Residence or Adjust Status	\$985	\$1,140	\$155	16%
I-526	Immigrant Petition by Alien Entrepreneur	\$1,500	\$3,675	\$2,175	145%
I-539	Application to Extend/Change Nonimmigrant Status	\$290	\$370	\$80	28%

<b>Table 9 – Proposed Fees by Immigration Benefit</b>					
<b>Immigration Benefit Request</b>		<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Delta (\$)</b>	<b>Percent Change</b>
I-600/600A/ 800/800A	Orphan Petitions	\$720	\$775	\$55	8%
I-601A	Application for Provisional Unlawful Presence Waiver	\$585	\$630	\$45	8%
I-687	Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act	\$1,130	\$1,130	\$0	0%
I-690	Application for Waiver of Grounds of Inadmissibility	\$200	\$715	\$515	258%
I-694	Notice of Appeal of Decision	\$755	\$890	\$135	18%
I-698	Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA)	\$1,020	\$1,670	\$650	64%
I-751	Petition to Remove Conditions on Residence	\$505	\$595	\$90	18%
I-765	Application for Employment Authorization	\$380	\$410	\$30	8%
I-800A Supp. 3	Request for Action on Approved Form I-800A	\$360	\$385	\$25	7%
I-817	Application for Family Unity Benefits	\$435	\$600	\$165	38%
I-824	Application for Action on an Approved Application or Petition	\$405	\$465	\$60	15%
I-829	Petition by Entrepreneur to Remove Conditions	\$3,750	\$3,750	\$0	0%
I-910	Application for Civil Surgeon Designation	\$615	\$785	\$170	28%
I-924	Application for Regional Center Designation Under the Immigrant Investor Program	\$6,230	\$17,795	\$11,565	186%

<b>Table 9 – Proposed Fees by Immigration Benefit</b>					
<b>Immigration Benefit Request</b>		<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Delta (\$)</b>	<b>Percent Change</b>
I-924A	Annual Certification of Regional Center	\$0	\$3,035	\$3,035	N/A
I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	\$215	\$230	\$15	7%
N-300	Application to File Declaration of Intention	\$250	\$270	\$20	8%
N-336	Request for Hearing on a Decision in Naturalization Proceedings	\$650	\$700	\$50	8%
N-400	Application for Naturalization	\$595	\$640	\$45	8%
N-470	Application to Preserve Residence for Naturalization Purposes	\$330	\$355	\$25	8%
N-565	Application for Replacement Naturalization/Citizenship Document	\$345	\$555	\$210	61%
N-600/ N-600K	Application for Certificate of Citizenship	\$600	\$1,170	\$570	95%
I-191, I-192, I-193, I-212, I-601, I-602, I-612	Waiver Forms	\$585	\$930	\$345	59%
	USCIS Immigrant Fee	\$165	\$220	\$55	33%
	Biometric Services	\$85	\$85	\$0	0%

## **X. Statutory and Regulatory Reviews.**

### **A. Regulatory Flexibility Act.**

In accordance with the RFA, 5 U.S.C. 601(6), USCIS examined the impact of this rule on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than 50,000

people). Below is a summary of the small entity analysis. A more detailed analysis is available in the rulemaking docket at <http://www.regulations.gov>.

Individuals rather than entities submit the majority of immigration and naturalization benefit applications and petitions. Entities that would be affected by this rule are those that file and pay the fees for certain immigration benefit applications and petitions. There are four categories of USCIS benefits that are subject to a RFA analysis for this rule: Petition for a Nonimmigrant Worker, Form I-129; Immigrant Petition for an Alien Worker, Form I-140; Application for Civil Surgeon Designation, Form I-910; and the Application for Regional Center Designation Under the Immigrant Investor Program, Form I-924.<sup>77</sup>

DHS does not believe that the increase in fees proposed in this rule will have a significant economic impact on a substantial number of small entities that are filing Form I-129, Form I-140, or Form I-910. However, 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-924. DHS requests any data that would help to further assess the impact on small entities in the regional centers. DHS is publishing the initial regulatory flexibility analysis to aid the public in commenting on the small entity impact of its proposed adjustment to the USCIS Fee Schedule.

### **1. A Description of the Reasons Why the Action by the Agency is Being Considered.**

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<sup>77</sup> Also captured in the dataset for Form I-924 is the Supplement Form I-924A, which regional centers must file annually to certify their continued eligibility for regional center designation.

DHS proposes to adjust certain immigration and naturalization benefit request fees charged by USCIS. USCIS has determined that current fees do not recover the full costs of services provided. As USCIS is nearly fully funded by fees, adjustment to the fee schedule is necessary to recover costs and maintain adequate service.

**2. 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 Section III of this preamble.

**3. A Description and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply.**

Entities affected by this rule are those that file and pay fees for certain immigration benefit applications and petitions on behalf of a foreign national. These applications include Petition for Nonimmigrant Worker, Form I-129; Immigrant Petition for Alien Worker, Form I-140; Civil Surgeon Designation, Form I-910; and Application for Regional Center Designation Under the Immigrant Investor Program, Form I-924. Annual numeric estimates of small entities affected by this fee increase total (in parentheses): Form I-129 (70,211), Form I-140 (17,812), Form I-910 (589), and Form I-924 (412).

This rule applies to small entities including businesses, non-profit organizations, and governmental jurisdictions filing for the above benefits. Form I-129 and Form I-140 will see a number of industry clusters affected by this rule (see Appendix A of the Small Entity Analysis for a list of industry codes). The fee for civil surgeon designation will apply to physicians requesting such designation. Finally, the Form I-924 will apply to any entity requesting approval and designation as a regional center under the Immigrant

Investor Program or filing an amendment to an approved regional center application. Also captured in the dataset for Form I-924 is the Supplement Form I-924A, which regional centers must file annually to certify their continued eligibility for regional center designation.

**a. Petition for a Nonimmigrant Worker, Form I-129.**

USCIS proposes to increase the fee for the Petition for a Nonimmigrant Worker, Form I-129, from \$325 to \$460, a \$135 (42 percent) increase. Using a 12-month period of data on filings of Form I-129 from September 1, 2014 to August 31, 2015, USCIS collected internal data for each filing organization including the name, Employer Identification Number, city, state, ZIP code, and number/type of filings. Each entity may make multiple filings; for instance, there were 482,190 Form I-129 petitions, but only 84,490 unique entities that filed those petitions. Since the filing statistics do not contain information such as the revenue of the business, USCIS looked for this information by researching databases from third-party sources. USCIS used the subscription-based online database from Hoover's, as well as three open-access databases from Manta, Cortera, and Guidestar, to help determine an organization's small entity status and apply Small Business Administration size standards.

USCIS devised a methodology to conduct the small entity analysis based on a representative sample of the affected population for each form. To achieve a 95 percent confidence level and a 5 percent confidence interval on a population of 84,490 unique entities for Form I-129, USCIS used the standard statistical formula to determine a minimum sample size of 382 entities was necessary. Based on past experience, USCIS expected to find about 40 to 50 percent of the filing organizations in the online

subscription and public databases. Accordingly, USCIS selected a sample size approximately 40 percent larger than the minimum necessary in order to allow for non-matches (filing organizations that could not be found in any of the four databases). Therefore, USCIS conducted searches on 534 randomly selected entities from the population of 84,490 unique entities for Form I-129.

The 534 searches for Form I-129 resulted in 404 instances where the name of the filing organization was successfully matched in the databases and 130 instances where the name of the filing organization was not found in the databases. Based on previous experience conducting regulatory flexibility analyses, USCIS assumes filing organizations not found in the online database are likely to be small entities. Thus, in order not to underestimate the number of small entities affected by this rule, USCIS makes the conservative assumption to consider all of the non-matched entities as small entities for the purpose of this analysis. Among the 404 matches for Form I-129, 287 were determined to be small entities based on their reported revenue or employee count and their North American Industry Classification System (NAICS) code. Combining non-matches (130), matches missing data (27), and small entity matches (287), enables us to classify 444 of the 534 entities as small for Form I-129.

With an aggregated total of 444 out of a sample size of 534, DHS inferred that a majority, or 83.1 percent, of the entities filing Form I-129 petitions during the period were small entities. Furthermore, 284 of the 534 searched were small entities with the sales revenue data needed to estimate the economic impact of the proposed rule. Because these 284 small entities were a subset of the random sample of 534 searches, they were statistically significant in the context of this research. In order to calculate the economic

impact of this rule, USCIS estimated the total costs associated with the proposed fee increase for each entity, divided by the sales revenue of that entity.<sup>78</sup> Based on the proposed fee increase of \$135 for Form I-129, this would amount to an average impact of 0.08 percent on all 284 small entities with reported revenue data.

In terms of range, among the 284 small entities with reported revenue data, all experienced an economic impact of considerably less than 1.0 percent in the analysis, with the exception of one entity. Using the above methodology, the greatest economic impact imposed by this fee change totaled 2.55 percent on that one entity and the smallest totaled 0.0001 percent.

The evidence suggests that the additional fee imposed by this rule does not represent a significant economic impact on these entities.

**b. Immigrant Petition for an Alien Worker, Form I-140.**

USCIS proposes to increase the fee for the Immigrant Petition for an Alien Worker, Form I-140, from \$580 to \$700, a \$120 (21 percent) increase. Using a 12-month period of data on filings of Form I-140 petitions from September 1, 2014 to August 31, 2015, USCIS collected internal data similar to that of Form I-129. There were 101,245 Form I-140 petitions, but only 23,284 unique entities that filed those petitions. Again, USCIS used the third party sources of data mentioned previously to search for revenue and employee count information.

USCIS used the same methodology as with Form I-129 to conduct the small entity analysis based on a representative sample of the affected population. To achieve a 95 percent confidence level and a 5 percent confidence interval on a population of 23,284

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<sup>78</sup> Total Cost to Entity = (Number of Petitions × \$135)/Entity Sales Revenue.

unique entities for Form I-140, USCIS used the standard statistical formula to determine that a minimum sample size of 378 entities was necessary. Again, based on past experience, USCIS expected to find about 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, USCIS oversampled in order to allow for non-matches (filing organizations that could not be found in any of the four databases).

USCIS conducted searches on 514 randomly selected entities from the population of 23,284 unique entities for Form I-140. The 514 searches resulted in 430 instances where the name of the filing organization was successfully matched in the databases and 84 instances where the name of the filing organization was not found in the databases. Based on previous experience conducting regulatory flexibility analyses, USCIS assumes filing organizations not found in the online databases are likely to be small entities. In order not to underestimate the number of small entities affected by this rule, USCIS makes the conservative assumption to consider all of the non-matched entities as small entities for the purpose of this analysis. Among the 430 matches for Form I-140, 290 were determined to be small entities based on their reported revenue or employee count and their NAICS code. Combining non-matches (84), matches missing data (19), and small entity matches (290), enables us to classify 393 of 514 entities as small for Form I-140.

With an aggregated total of 393 out of a sample size of 514, USCIS inferred that a majority, or 76.5 percent, of the entities filing Form I-140 petitions during the period were small entities. Furthermore, 287 of the 514 searched were small entities with the sales revenue data needed in order to estimate the economic impact of the proposed rule.

Because these 287 small entities were a subset of the random sample of 514 searches, they were statistically significant in the context of this research. Similar to Form I-129, DHS estimated the total costs associated with the proposed fee increase for each entity, divided by the sales revenue of that entity in order to calculate the economic impact of this rule.

Among the 287 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0 percent in the analysis. Using the above methodology, the greatest economic impact imposed by this fee change totaled 0.68 percent and the smallest totaled 0.000002 percent. The average impact on all 287 small entities with revenue data was 0.04 percent.

The evidence suggests that the additional fee imposed by this rule does not represent a significant economic impact on these entities.

Additionally, USCIS analyzed any cumulative impacts to Form I-129 and Form I-140, as well the individual analyses. USCIS wanted to determine if there were cumulative impacts when the forms were analyzed together. USCIS isolated those entities that overlapped in both samples of Forms I-129 and I-140 by EIN. Only 3 entities had EINs that overlapped in both samples. Of these 3 entities, 2 of them were small entities and 1 was not a small entity. Only 1 entity submitted multiple Form I-129 petitions, while all 3 entities submitted multiple Form I-140 petitions. 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 two forms to be an economically significant burden on a substantial number of small entities.

**c. Application for Civil Surgeon Designation, Form I-910.**

USCIS proposes to increase the fee for the Application for Civil Surgeon Designations, Form I-910, from \$615 to \$785, a \$170 (28 percent) increase. Using a 12-month period of August 1, 2014 to July 31, 2015, USCIS collected internal data on the applicants. There were 719 Form I-910 applications, but only 602 unique entities that filed such applications. Again, USCIS used third party sources of data mentioned previously to search for revenue and employee count information.

Using the same methodology as with Form I-129 and Form I-140, USCIS conducted the small entity analysis based on a representative sample, with a 95 percent confidence level and a 5 percent confidence interval, of the population of 602 unique entities for Form I-910. USCIS determined that a minimum sample size of 235 entities was necessary. USCIS oversampled and conducted searches on 329 randomly selected entities for Form I-910.

The 329 searches for Form I-910 resulted in 252 instances where the name of the filing organization was successfully matched in the databases and 77 instances where the name of the filing organization was not found in the databases. USCIS assumed again that filing organizations not found in the online databases are likely to be small entities, so USCIS considered all of the non-matched entities as small entities for the purpose of this analysis. Among the 252 matches for Form I-910, 240 were determined to be small entities based on their reported revenue or employee count and their NAICS code. Combining non-matches (77), matches missing data (5), and small entity matches (240), USCIS classified 322 of 329 entities as small for Form I-910.

With an aggregated total of 322 out of a sample size of 329, USCIS inferred that a majority, or 97.9 percent, of the entities filing Form I-910 applications were small entities. Furthermore, 238 of the 329 entities searched were small entities with the sales revenue data needed in order to estimate the economic impact of the proposed rule. Because these 238 small entities were a subset of the random sample of 329 searches, they were statistically significant in the context of this research.

Similar to Form I-129 and Form I-140, USCIS estimated the total costs associated with the proposed fee increase for each entity. Among the 238 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0 percent in the analysis. The greatest economic impact imposed by this fee change totaled 0.61 percent and the smallest totaled 0.00002 percent. The average impact on all 238 small entities with revenue data was 0.09 percent.

The evidence suggests that the additional fee imposed by this rule does not represent a significant economic impact on these entities.

**d. Regional Center Designation Under the Immigrant Investor Program, Form I-924 and I-924A.**

Congress created the EB-5 Program in 1990 under section 203(b)(5) of the INA to stimulate the U.S. economy through job creation and capital investment by foreign investors. Foreign investors have the opportunity to obtain lawful permanent residence in the United States for themselves, their spouses, and their minor unmarried children through a certain level of capital investment and associated job creation or preservation. There are two distinct EB-5 pathways for a foreign investor to gain lawful permanent residence: the Basic Program and the Regional Center Program. Both options require a

capital investment from the foreign investor in a new commercial enterprise located within the United States. The capital investment amount is generally set at \$1,000,000, but may be reduced to \$500,000 if the investment is made in a “Targeted Employment Area.”

A regional center is an economic entity, public or private, that promotes economic growth, regional productivity, job creation, and increased domestic capital investment. Regional centers pool funds into development loans or equity for commercial space and real estate development projects. As of January 4, 2016, there were 790 USCIS-approved regional centers.<sup>79</sup> Entities seeking designation as regional centers file Form I-924 along with supporting materials. Approved regional centers are currently required to file the Supplement to Form I-924, Form I-924A, annually to demonstrate continued eligibility for regional center designation. DHS is proposing to change the name of the Form I-924A annual filing to “Annual Certification of Regional Center”.

DHS proposes to increase the fee for the Application for Regional Center Designation Under the Immigrant Investor Program, Form I-924, from \$6,230 to \$17,795, an \$11,565 (186 percent) increase. Additionally, DHS proposes to introduce a filing fee of \$3,035 for Form I-924A. In proposing to establish this fee, DHS would also clarify the related regulations that provide for the annual regional center review related to Form I-924A. Currently, there is no procedure for regional centers seeking to withdraw their designation and discontinue their participation in the program. Formal termination is currently processed by USCIS issuing a Notice of Intent to Terminate and a subsequent

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<sup>79</sup> USCIS Immigrant Investor Regional Centers: <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers#table>.

termination notice. The proposed withdrawal procedure would allow a regional center to proactively request withdrawal without the need for the more formal notices sent out by USCIS. This proposed procedure would reduce administrative costs and time for the Department, while timely clarifying status to the requesting regional center. Over a 13-month period of August 1, 2014 through August 31, 2015, USCIS received a total of 412 Form I-924 applications.<sup>80</sup> These applications include the request for newly designated regional centers, as well as requests for continued designation for existing regional centers.

DHS was not able to determine the numbers of regional centers that would be considered small entities. Regional centers are difficult to assess because there is a lack of official data on employment, income, and industry classification for these 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 USCIS attempted to treat the regional centers similar to the other entities in this analysis, we were not able to identify most of the entities in any of the 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 \$1 million or \$500,000 per investor) that the regional center invests into a new commercial

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<sup>80</sup> Supplemental Form I-924A (Supplement to Form I-924) is captured in this dataset.

enterprise. 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 through the administrative fees charged to investors. Searching through several public websites, DHS gathers that administrative fees charged to investors could range between \$30,000 and \$100,000 per investor.<sup>81</sup> 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 rule could 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 that have revenues equal to or less than \$303,500 per year<sup>82</sup> (some of which we assume would be derived from administrative fees charged to individual investors) could experience a significant economic impact if we assume a fee increase that represents 1% of annual revenue is a “significant” economic burden under the RFA. DHS also assumes newly designated regional centers that have revenues equal to or less than \$1,779,500 per year<sup>83</sup> could also experience a significant impact. DHS was able to obtain some sample data on 440 regional centers operating 5,886 projects. These 5,886 projects had a total of 54,506 investors, averaging 124 investors per regional

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<sup>81</sup> Yen, Christine et al., “A Report on Source of Funds: Perils of the Administrative Fee.” EB5 Investors Magazine (Aug. 20, 2015), available at: <http://www.eb5investors.com/magazine/article/A-Report-on-Source-of-Funds>. See also Green, Merritt. “The Costs of an EB-5 Regional Center Project Investment.” (June 27, 2014), available at: <http://www.generalcounselaw.com/the-cost-of-an-eb-5-regional-center-project-investment/>.

<sup>82</sup> Calculation: 1 percent of \$303,500 = \$3,035 (the new proposed fee for Form I-924A).

<sup>83</sup> Calculation: 1 percent of \$1,779,500 = \$17,995 (the new proposed fee for Form I-924).

center.<sup>84</sup> Assuming an average of 124 investors is a representative proxy of the regional centers, and that \$30,000 is the minimum administrative fee charged by regional centers, then such fees would represent approximately \$3,720,000 in revenue. In that case, the proposed filing fee increase for Form I-924 and the creation of a new fee for Form I-924A would not cause a significant economic impact to these entities. DHS 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.

**4. 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 Forms I-129, I-140, I-910, or I-924 other than the fee adjustments. The proposed rule does not require any new professional skills for reporting.

**5. An Identification, to the Extent Practicable, 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.

**6. 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 Such as:**

(1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

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<sup>84</sup> Department of Homeland Security, USCIS, Immigrant Investor Program Office.

(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 those eligible for fee waivers and exemptions. DHS funds the costs of providing services without charge by using a portion of the filing fees that are collected for other immigration benefits. Without an increase in fees, USCIS will be unable to maintain the level of service for immigration and naturalization benefits as it now provides. DHS considered the alternative of maintaining fees at the current level but with reduced services and increased processing times, but has decided that this would not be in the interest of applicants and petitioners. While most immigration benefit fees are paid by individuals, as described above, some also apply to small entities. USCIS seeks to minimize the impact on all parties, but in particular small entities. Another alternative would be to maintain fees at their current level for small entities. This alternative would avoid additional fee-burdens on small entities; however, small entities would experience negative effects due to the service reductions that would result in the absence of the fee adjustments proposed in this rule.

Without the fee adjustments proposed in this rule, significant operational changes would be necessary. Given current filing volume and other economic considerations, USCIS requires additional revenue to prevent immediate and significant cuts in planned

spending. These spending cuts would include reductions in areas such as federal and contract staff, infrastructure spending on information technology and facilities, and training. Depending on the actual level of workload received, these operational changes would result in longer processing times, a degradation in customer service, and reduced efficiency over time. These cuts would ultimately represent an increased cost to small entities by causing delays in benefit processing and reductions in customer service.

**7. DHS seeks public comment on the following questions:**

- Please provide comment on the numbers of small entities that may be affected by this rulemaking.
- Please provide comment on any or all of the provisions in the proposed rule with regard to the economic impact of this rule, paying specific attention to the effect of the rule on small entities in light of the above analysis, as well as the full analysis on regulations.gov.
- Please provide comment on any significant alternatives DHS should consider instead of the changes proposed by this rule.
- Please describe ways in which the rule could be modified to reduce burdens for small entities consistent with the INA and the CFO Act of 1990 requirements.
- Please identify all relevant federal, state or local rules that may duplicate, overlap or conflict with the proposed rule.

**B. Unfunded Mandates Reform Act.**

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken before an agency promulgates any proposed or final rule “that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the

expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.<sup>85</sup> While this rule may result in the expenditure of more than \$100 million by the private sector annually, the rulemaking is not a “Federal mandate” as defined for UMRA purposes,<sup>86</sup> as the payment of immigration benefit fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States.<sup>87</sup> Therefore, no actions were deemed necessary under the provisions of the UMRA.

### **C. Small Business Regulatory Enforcement Fairness Act.**

This rulemaking is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rulemaking will result in an annual effect on the economy of more than \$100,000,000 in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit applications and petitions and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants at no charge; and the full cost of providing similar benefits to other immigrants, as specified in the proposed regulation, at no charge. The increased costs would be recovered through the fees charged for various immigration benefit requests.

### **D. Congressional Review Act.**

The Congressional Review Act (5 U.S.C. 801 et seq.) requires rules to be submitted to Congress before taking effect. If implemented as proposed, we will submit

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<sup>85</sup> See 2 U.S.C. 1532(a).

<sup>86</sup> See 2 U.S.C. 658(6).

<sup>87</sup> See 2 U.S.C. 658(7)(A)(ii).

to Congress and the Comptroller General of the United States a report regarding the issuance of the final rule prior to its effective date, as required by 5 U.S.C. 801.

**E. Executive Orders 12866 and 13563 (Regulatory Planning and Review).**

**1. Background and Purpose of the Proposed Rule.**

Executive Orders 12866 and 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, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated an “economically significant regulatory action” under section 3(f)(1) of Executive Order 12866. Accordingly, OMB has reviewed the proposed rule.

USCIS projects an annual budget of \$3.038 billion in FY 2016/FY 2017, a \$767 million (34 percent) increase over the FY 2010/FY2011 Fee Review-adjusted annual budget of \$2.271 billion. The implementation of this proposed rule would provide USCIS with an average of \$546 million in FY 2016 and FY 2017 annual fee revenue above the FY 2010/FY 2011 levels, based on a projected annual fee-paying volume of 4.9 million immigrant benefit requests and 2.6 million requests for biometric services. USCIS would use this increase in revenue under subsections 286(m) and (n) of the INA, 8 U.S.C. 1356(m) and (n), to fund the full costs of processing immigration benefit requests and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants at no charge; and the full cost of providing similar benefits to others at no charge.

If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit requests, it would be forced to make reductions in services provided to applicants and petitioners. These would reverse the considerable progress USCIS has made over the last several years to reduce the backlogs of immigration benefit filings, to increase the integrity of the immigration benefit system, and to protect national security and public safety. The proposed revenue increase is based on USCIS costs and volume projections available at the time the rule was drafted. USCIS has placed in the rulemaking docket a detailed analysis that explains the basis for the annual fee increase. USCIS has included an accounting statement detailing the annualized costs of the proposed rule in Table 10 below.

<b>Table 10: Accounting Statement, FY 2016 through FY 2017</b>		
<b>Category</b>	<b>Primary Estimate</b>	<b>Maximum Estimate</b>
<b>Benefits</b>		
Un-quantified Benefits	Maintain current level of service with respect to processing times, customer service, and efficiency levels.	
<b>Transfers</b>		
Annualized Monetized Transfers at 3%	\$546,429,650	\$546,429,650
Annualized Monetized Transfers at 7%	\$546,429,650	\$546,429,650
<b>Category</b>	<b>Effects</b>	<b>Source</b>
Effects on State, local, and/or tribal governments	For those state, local, and/or tribal governments that submit petitions for nonimmigrant and immigrant workers, they would face an increase in filing fees.	NPRM, EO 12866/13563 Analysis
Effects on small businesses	For those small businesses that submit petitions for nonimmigrant and immigrant workers, they would face an increase in filing fees.	NPRM, EO 12866/13563 Analysis, Small Entity Analysis

## **2. Proposed Amendments and Impacts of Proposed Regulatory Change.**

This proposed rule is intended to adjust current fees to ensure that USCIS is able to recover the full costs of the immigration services it provides and maintain adequate service. In addition to increasing fees, USCIS proposes the following amendments: provisions that USCIS will reject an immigration benefit request paid with a dishonored check; provisions that USCIS will reject an application that does not include the required biometric services fee; the institution of a reduced fee for the Application for Naturalization, Form N-400; and provisions that fee refunds will be provided at USCIS discretion.

### **a. Dishonored Payments.**

Earlier in this preamble USCIS explains its proposal to change how it will treat a benefit request accompanied by fee payment (in the form of check or other financial instrument) that is subsequently returned as not payable.<sup>88</sup> Current regulations provide that when a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter will be notified and requested to pay the filing fee and associated service charge within 14 calendar days, without extension.<sup>89</sup> If the benefit request is pending and these charges are not paid within 14 days, the benefit request will be rejected as improperly filed. In addition, a receipt issued by a DHS officer for any remittance will not be binding upon DHS if the remittance is found uncollectable, and legal and statutory deadlines will not be deemed to have been met if payment is not made

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<sup>88</sup> USCIS proposes to immediately reject and not accept for processing any applications and petitions submitted with invalid payments, e.g. an unsigned check or invalid bank account on an electronic payment. The subsequent identification as not payable would occur when an attempt is made to process the payment through a bank, but the bank does not honor the payment, e.g. returned for insufficient funds.

<sup>89</sup> See 8 CFR 103.2(a)(7)(ii).

within 10 business days after notification by DHS of the dishonored check.<sup>90</sup> In accordance with these provisions, when a payment is returned as not payable, USCIS places the immigration benefit request on hold, and suspends adjudication. If the check was dishonored or payment fails, USCIS assesses a \$30 penalty and pursues the unpaid fee and penalty using administrative debt collection procedures.<sup>91</sup> If payment is made within the allotted time, USCIS resumes processing the application or benefit request. If a payment is not corrected by the applicant, USCIS rejects the filing for nonpayment.<sup>92</sup>

DHS proposes to eliminate provisions requiring that applications or petitions be held while deficient payments are corrected. Under the proposed amendment, if a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the benefit request will be rejected as improperly filed.<sup>93</sup> If the benefit request was approved and finds payment to be deficient at a later time, the remitter will be requested to pay the filing fee plus the previously established \$30 service charge within 14 calendar days, without extension.<sup>94</sup> If these charges are not paid, the approval will be automatically rejected for nonpayment.<sup>95</sup>

In order to get an estimate of the numbers of applicants who make a payment with a dishonored check or failed payment, USCIS analyzed the count of all returned and subsequently corrected payments of a credit card or check from fiscal years 2012 to

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<sup>90</sup> See 8 CFR 103.2(a)(7)(ii), 103.7(a)(2).

<sup>91</sup> See 8 CFR 103.7(a)(2).

<sup>92</sup> See 8 CFR 103.2(a)(7)(ii).

<sup>93</sup> See proposed 8 CFR 103.2(a)(7)(ii).

<sup>94</sup> See proposed 8 CFR 103.7(a)(2).

<sup>95</sup> Id.

2015.<sup>96</sup> In FY 2015, 10,818 payments were returned (Table 11). Of those 10,818 returned payments, 6,399 (59.2 percent) were later corrected. The average annual number of returned payments from FY 2012 to FY 2015 was 9,781 with an annual average of 6,478 payments (66.2 percent) later corrected. Assuming all included a current service fee of \$30, the resulting total annual cost to applicants for returned payments is \$293,430.<sup>97</sup>

<b>Table 11: Count of Returned and Corrected Credit Card/Check Payments, FY 2012 - 2015</b>			
<b>Year</b>	<b>Total Returned Payments</b>	<b>Total Corrected Payments</b>	<b>Percentage of Corrected Payments</b>
2015	10,818	6,399	59.2%
2014	9,200	6,467	70.3%
2013	9,785	6,496	66.4%
2012	9,322	6,550	70.3%
<b>Average</b>	<b>9,781</b>	<b>6,478</b>	<b>66.2%</b>
Source: Department of Homeland Security, Immigration and Customs Enforcement, Burlington Finance Center			

The proposed provisions would require USCIS to reject these returned payments and associated benefit requests for nonpayment. The existing \$30 service charge would continue to be imposed for benefit requests rejected when a financial institution does not honor a payment. USCIS anticipates that the prospect of rejection would encourage applicants to provide the correct filing fees at the time they submit an application or petition. However, USCIS recognizes that there would continue to be applicants who file an application with an incorrect fee and would be required to pay the \$30 service fee.

<sup>96</sup> Corrected payments include any payment collected by USCIS after the return of an initial payment.

<sup>97</sup> Calculation: 9,781 (average number of returned payments) \* \$30 (current service fee charge) = \$293,430 (total cost for returned payments)

While USCIS knows currently this additional service fee averages to \$293,430 for all applicants and anticipates it would be lower in the future, we do not have enough information at this time to estimate the degree of this decrease.

For applicants, filing fees are a required and fundamental aspect of the benefit being requested. By providing a 14-day window to correct for dishonored checks, the regulation currently permits a benefit request paid with a dishonored payment instrument to secure a place in line ahead of a benefit request that was accompanied by a proper payment, for what may be a time sensitive or numerically limited program. In all cases, rejected filings may be refiled immediately with the proper payment but there are some slight differences depending upon if the submission is paper-based or electronically filed. The USCIS online filing system will permit the rejected applications to remain accessible for the applicant to print and view. The original rejected electronic submission would not be available for resubmission with a new payment; however, the rejected submission may be used as a reference when a new application is being completed. In cases where the rejected submission is paper-based, the entire application/petition/request and supporting documentation are returned and can generally be refiled with the proper payment instrument.

The proposed amendments will provide several benefits to USCIS. First, USCIS currently clears payment checks via the ACH by converting checks to electronic payments. Because USCIS converts checks into ACH payments, there is currently little or no delay before USCIS knows whether the check is valueless. Thus, unlike in the past, USCIS would not begin adjudication until the check has cleared. USCIS benefits by streamlining the process for adjudicators to only begin work on those applications with

properly filed fees, eliminating the need to hold applications. USCIS anticipates this streamlined process would help adjudicators to more efficiently process cases without the need to wait on payments. This change in process also provides parity to those applicants who file an application with the correct fees. In addition, the proposed amendments would lower USCIS administrative costs for holding and tracking applications and payments. The holding and tracking of applications requires physical storage space that would no longer be required with the proposed revisions. USCIS currently incurs administrative costs through tracking payments in postage costs and adjudicator time among other costs.. USCIS recognizes the unique situation that these proposed changes may have on H-1B lottery regulations, which allow numbers available to petitions in the order in which the petitions are filed.<sup>98</sup> The H-1B lottery regulations allow the final receipt date to be any of the first 5 business days on which petitions subject to the applicable numerical limit may be received. USCIS then will randomly apply all of the numbers among the petitions received on any of those 5 business days and conduct a random selection among the petitions subject to the exemption under section 214(g)(5)(C) of the Act first. Currently, petitions are still eligible for the H-1B lottery, despite having dishonored checks or failed payments as long as the payments are corrected within the provided 14-day or 10-day timeframe.<sup>99</sup> These proposed changes, however, would remove these petitions from the H-1B lottery as the dishonored checks or failed payments would result in a rejected petition as improperly filed. USCIS does not have data at this time to estimate the impact on how many petitions may be affected by

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<sup>98</sup> See 8 CFR 214.2(h)(8)(ii)(B).

<sup>99</sup> See 8 CFR 103.2(a)(7)(ii).

these proposed changes. USCIS is also unable to monetize the cost to the applicant of having a petition removed from the lottery. DHS requests comments on this impact.

**b. Failure to Pay the Biometrics Services Fees.**

DHS also proposes amendments to eliminate provisions governing non-payment of the biometric service fee. Currently, if a benefit request is received by DHS without the correct biometric service fee, USCIS will notify the applicant of the deficiency and take no further action on the benefit request until payment is received.<sup>100</sup> Failure to submit the correct biometric service fee within the time allotted in the notice will result in denial of the benefit request. To comply with these provisions, if the biometrics services fee was required and is missing, USCIS places an application or petition on hold, and suspends adjudication. If payment is made within the allotted time, USCIS resumes processing the benefit request. If the biometric fee is not paid, the benefit request is denied as abandoned.

USCIS proposes to eliminate the provisions requiring that applications be held while deficient payments are corrected. USCIS is proposing that if a benefit request is received by USCIS without the correct biometric service fee, as specified in the form instructions, USCIS would reject the benefit request.

In order to analyze the number of people who do not pay the biometric fee, USCIS gathered 6 months of data from USCIS lockbox facilities.<sup>101</sup> The data covers from June 1, 2015 to November 30, 2015. During this 6-month period, USCIS lockbox facilities accepted 1,196,134 applications. Of these, 4,963 (.41 percent) of applicants

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<sup>100</sup> See 8 CFR 103.17(b)(1).

<sup>101</sup> While USCIS prefers to base assumptions on a longer time period (ideally 5 years), 6 months was the longest time period for which this data was available.

were issued a notice alerting the applicant that their biometric fees were missing. Assuming this 6-month trend is typical of the number of deficient biometric fee notices, the proposed new provision will affect less than 1 percent of all applications received at the USCIS lockbox facilities. As previously mentioned, rejected filings may be refiled immediately. While applicants do not incur monetary costs associated with the rejection of an application, reapplying for benefits with the correct fees requires time. Again, USCIS anticipates this new provision would encourage applicants to file with the appropriate fees.

This change would streamline USCIS' process for handling applications and petitions when biometrics fees are not submitted when required. USCIS costs are reduced by eliminating the administrative handling costs associated with holding cases while biometric fees are collected.

**c. Reduced Fee for Application for Naturalization.**

The current fee for the Application for Naturalization, Form N-400, is \$595. In most cases, applicants must also pay an \$85 biometrics fee, so the total cost for most applicants is \$680. If an applicant cannot pay the fee, he or she can file a Request for Fee Waiver, Form I-912, along with their Form N-400. USCIS considers anyone with a household income below 150 percent of the Federal Poverty Guidelines to be eligible for a fee waiver. If USCIS approves an applicant's fee waiver, both the \$595 Form N-400 fee and the \$85 biometrics fee, where applicable, are waived.

DHS proposes to increase the Form N-400 fee from \$595 to \$640, a \$45 (8 percent) increase. The biometrics fee would remain unchanged at \$85. Therefore, if the proposed fees are implemented, the new costs of Form N-400 plus the biometric fee

would total \$725. DHS also proposes an additional fee option for those non-military naturalization applicants with family incomes greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines. Specifically, DHS proposes that such applicants would receive a 50 percent discount and only be required to pay a filing fee of \$320 for the N-400, plus an additional \$85 for biometrics (for a total of \$405). DHS proposes this reduced fee option to limit any potential economic disincentives that some eligible naturalization applicants may face when deciding whether or not to seek citizenship. The lower fee would help ensure that those who have worked hard to become eligible for naturalization are not limited by their economic means. In order to qualify for this fee, the eligible applicant will have to submit a newly proposed Request for Reduced Fee, Form I-942, along with their Form N-400. Form I-942 will require 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 Federal Poverty Guidelines.

As described earlier in the preamble, USCIS estimates that approximately 11 percent of all Form N-400 applicants, excluding military applicants, could qualify for the reduced fee. Given the non-military Form N-400 volume projection estimate of 821,500 annually, over the biennial period, USCIS expects that 90,365 filers would be included in the population eligible for the fee reduction.<sup>102</sup> While these 90,365 filers represent only the current number of applicants who would be eligible for the fee reduction, USCIS anticipates an increase in Form N-400 filings as a result of these proposed changes. USCIS anticipates that the reduced fee for applicants with qualifying incomes would

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<sup>102</sup> Calculation: 821,500 \* 11 percent.

remove economic barriers associated with the costs of associated fees and thus encourage more eligible applicants to file their Form N-400 applications. While USCIS anticipates an increase in Form N-400 filings due to this proposed fee reduction, we cannot predict how many more eligible applicants would file their N-400 applications as a result at this time.

USCIS has factored the estimated revenue loss from this product line into its fee model, so those costs are reallocated over other fee paying benefit requests. While the costs of the reduced fee are being reallocated to other fee-paying customers, DHS believes the benefits of providing a means to promote citizenship among those with limited economic means outweighs the cost reallocation impacts.

As previously mentioned, an eligible applicant would have to submit a Form I-942 along with their N-400 application to qualify for this reduced fee. While USCIS is not imposing an additional fee for Form I-942, we have estimated the opportunity cost of time to applicants to complete the form. The total opportunity cost of time for applicants would be \$717,724, if all 90,365 eligible applicants apply for the reduced fee.<sup>103</sup> The federal minimum wage rate<sup>104</sup> of \$7.25 was used as the hourly wage rate as the anticipated applicants are asserting they cannot afford to pay the full USCIS fee. The anticipated applicants are assumed to be from occupations having a less than average income. The Bureau of Labor Statistics (BLS) reports the average employer costs for employee compensation for all civilian workers in major occupational groups and

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<sup>103</sup> Total Opportunity Costs of Time to Applicants = Expected Filers (90,365) \* (Full Cost of Employee Benefits (\$10.59) \* Time Burden (.75 hr.)).

<sup>104</sup> U.S. Department of Labor, Wage and Hour Division. The minimum wage in effect as of January 20, 2016. Available at <http://www.dol.gov/general/topic/wages/minimumwage>.

industries. Using the most recent BLS report, DHS calculated a benefits-to-wage multiplier of 1.46 to estimate the full opportunity costs to applicants, including employee wages and salaries and the full costs of benefits such as paid leave, insurance, and retirement.<sup>105</sup> In order to anticipate the full opportunity cost of time to applicants, we multiplied the federal minimum wage rate by 1.46 to account for the full cost of employee benefits for a total of \$10.59. The time burden estimate was developed by USCIS with an average of 45 minutes (or .75 of an hour) to complete Form I-942. Therefore, the opportunity cost of time per petition is \$7.94.<sup>106</sup> This additional burden is offset by the benefits received through a reduced fee.

#### **d. Refunds**

DHS is also proposing to amend regulations for fee refunds. In general, and except for a premium processing fee under 8 CFR 103.7(e)(2)(i), USCIS does not refund a fee regardless of the decision on the immigration benefit request. USCIS makes very rare exceptions when USCIS determines that an administrative error occurred resulting in the inadvertent collection of a fee. USCIS errors may include:

- Unnecessary filings. Cases in which USCIS (or DOS in the case of an immigration benefit request filed overseas) erroneously requests that an individual file an unnecessary form along with the associated fee; and

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<sup>105</sup> The benefits-to-wage multiplier is calculated as follows: (All Workers Total Employee Compensation per hour) / (Wages and Salaries per hour). See Economic News Release, U.S. Department of Labor, Bureau of Labor Statistics, Table 1. Employer Costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (Sept. 2015), available at <http://www.bls.gov/news.release/pdf/ecec.pdf>.

<sup>106</sup> Calculation: \$10.59 hourly wage rate \* .75 hour.

- **Accidental Payments.** Cases in which an individual pays a required fee more than once or otherwise pays a fee in excess of the amount due and USCIS (or the DOS in the case of an immigration benefit request filed overseas) erroneously accepts the erroneous fee.

DHS is proposing to codify into regulation the continuance of providing these refunds under circumstances where refunds are necessary due to obvious USCIS error. Under this proposal, individuals would continue to request a refund by the current process. The current process requires that an individual call the customer service line or submit a written request for a refund to the office having jurisdiction over the relevant immigration benefit request.

Any USCIS refunds provided are generally due to obvious USCIS errors resulting from system behavior issues or human error. The anticipation of future electronic filings also spurs the need for this provision. Currently, DHS provides fee refunds and amounts to applicants as shown in Table 12. Over the past 3 fiscal years, an annual average of 5,363 refunds were provided by USCIS, resulting in an average of \$2.1 million refunded. This is approximately \$396 per refund. These numbers and amounts of refunds do not include premium processing refunds regulated under 8 CFR 103.7(e)(2)(i). In the context of the number of fees collected by USCIS, this average amount of refunds is still less than 1 percent of the total fees collected.

<b>Fiscal Year</b>	<b>Amount Refunded</b>	<b>Number of Refunds</b>
2013	\$2,674,290	7,405
2014	\$1,805,006	4,198

2015	\$1,890,638	4,485
<b>Average</b>	<b>\$2,123,311</b>	<b>5,363</b>
Source: Department of Homeland Security, U.S. Immigration and Customs Enforcement, Burlington Finance Center.		

These proposed amendments would benefit applicants that might accidentally submit payments twice. USCIS anticipates this to be a bigger issue as more forms and associated fees begin to be collected through electronic means. Applicants would recoup any fees that were submitted due to these electronic systems issues. USCIS would benefit by having clear regulatory authority to justify the few cases in which refunds are provided.

There may be some administrative costs associated with the issuance of refunds to USCIS, as well as some time burden costs to USCIS adjudicators who process these refund requests. It may be possible to see a potential increase initially in requests for refunds due to the visibility of this rule; however, USCIS does not anticipate a sustained increase as the parameters of the refunds issued are not proposed to be changed from current policy. There may also be a potential increase in the time burden costs for USCIS adjudicators due to potential initial increases in refund requests. USCIS does not have cost estimates at this time indicating the number of hours required to process and issue these refunds. There may also be some opportunity costs of time to applicants who submit a refund request; however, USCIS anticipates this cost is offset by the benefit gained in receiving a refund.

**F. Executive Order 13132 (Federalism).**

This proposed rule will 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 Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**G. Executive Order 12988 (Civil Justice Reform).**

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**H. Paperwork Reduction Act.**

Under the Paperwork Reduction Act of 1995, Pub. L. 104-13, 109 Stat. 163 (1995) (PRA), DHS is required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. USCIS is revising two information collections, adding a new information collection in association with this rulemaking action, and requesting public comments on the proposed information collection changes as follows: Application for Naturalization, Form N-400, to collect information necessary to document the applicant's eligibility for the reduced fee proposed in this rule at 8 CFR 103.7(b)(1)(i)(AAA)(1); Annual Certification of Regional Center, Form I-924A, and the Application for Regional Center Designation Under the Immigrant Investor Program, Form I-924, to add the instructions necessary to require the annual fee; and, Request for Reduced Fee, Form I-942, to document the applicant's eligibility for the reduced fee. DHS is requesting comments on the information collection changes included in this rulemaking. Comments on this revised 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, such as permitting electronic submission of responses.

**Overview of Information Collection- Form N-400:**

a. Type of information collection: Revision of a Currently Approved Collection.

b. Abstract: USCIS uses the information gathered on Form N-400 to make a determination as to a respondent's eligibility to naturalize and become a U.S. citizen.

USCIS is proposing changes to the form instructions to notify the public of the information needed to document an applicant's eligibility for the proposed reduced fee.

c. Title of Form/Collection: Application for Naturalization.

d. Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Form N-400; USCIS.

e. Affected public who will be asked or required to respond: Individuals or households.

f. An estimate of the total number of respondents: 830,673 respondents.

g. Hours per response: The estimated hour burden per response for the paper filing of the N-400 is 9.17 hours per response. The estimated hour burden per response for the electronic filing of the N-400 is 3.5 hours per response. The estimated hour burden per response for the biometric processing associated with the N-400 is 1.17 hours per response.

h. Total Annual Reporting Burden: 8,118,167 hours.

**Overview of Information Collection-Forms I-924 and I-924A:**

a. Type of information collection: Revision to a currently approved information collection.

b. Abstract: This collection is used to demonstrate a regional center's continued eligibility for regional center designation.

c. Title of Form/Collection: Application for Regional Center Designation Under the Immigrant Investor Program/Annual Certification of Regional Center.

d. Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Form I-924 and Form I-924A; USCIS.

e. Affected public who will be asked or required to respond: Businesses or other for-profit Entities; or State, local or Tribal Government

f. An estimate of the total number of respondents:

- Form I-924 – 400 respondents.
- Form I-924A – 882 respondents.

g. Hours per response: For Form I-924, 51 hours; and Form I-924A, 14 hours.

h. Total Annual Reporting Burden: 32,748 hours.

**Overview of Information Collection-Form I-942:**

- a. Type of information collection: New information collection.
- b. Abstract: This collection is used for an applicant to request a reduced fee and document that annual household income is between 150% and 200% of the FPG.
- c. Title of Form/Collection: Request for Reduced Fee.
- d. Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Form I-942, USCIS.
- e. Affected public who will be asked or required to respond: Individuals.
- f. An estimate of the total number of respondents: 90,365 respondents.
- g. Hours per response: .75 hours.
- h. Total Annual Reporting Burden: 67,774 hours.

Comments concerning these collections and forms can be submitted to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529-2020. Please include the OMB control number in the comment letter.

Please also submit comments on the forms to OMB by:

- Email: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov);
- Facsimile at 202-395-7285, or;
- Mail: Desk Officer for USCIS, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17<sup>th</sup> St NW, Washington, D.C. 20503

The changes to the proposed fees will require minor amendments to USCIS forms to reflect the new fees. The necessary changes to the annual cost burden and to the forms will be submitted to OMB when a final rule is submitted to OMB.



## List of Subjects

### **8 CFR Part 103**

Administrative practice and procedures, Authority delegations (government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, and Surety bonds.

### **8 CFR Part 204**

Administrative practice and procedure, Immigration, 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 BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 et seq.); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2 ; Pub. L. 112-54.

2. Section 103.2 is amended by:
  - a. Revising paragraph (a)(1);
  - b. Revising paragraph (a)(7); and
  - c. Revising paragraph (b)(9).

The revisions read as follows:

### **§ 103.2 Submission and adjudication of benefit requests.**

(a) \* \* \*

(1) Preparation and submission. Every form, benefit request, or other document must be submitted to DHS and executed in accordance with the form instructions regardless of a provision of 8 CFR chapter I to the contrary. The form's instructions are hereby incorporated into the regulations requiring its submission. Each form, benefit request, or other document must be filed with the fee(s) required by regulation. Filing fees generally are non-refundable and, except as otherwise provided in this chapter I, must be paid when the benefit request is filed.

\* \* \* \* \*

(7) Benefit requests submitted. (i) USCIS will consider a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format.

(ii) A benefit request which is rejected will not retain a filing date. A benefit request will be rejected if it is not:

(A) Signed with valid signature;

(B) Executed;

(C) Filed in compliance with the regulations governing the filing of the specific application, petition, form, or request; and

(D) Submitted with the correct fee(s). If a financial instrument used to pay a fee is returned as unpayable, the filing will be rejected and a charge will be imposed in accordance with 8 CFR 103.7(a)(2).

(iii) A rejection of a filing with USCIS may not be appealed.

(b) \* \* \*

(9) Appearance for interview or biometrics. USCIS may require any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request, or any group or class of such persons submitting requests, to appear for an interview and/or biometrics collection. USCIS may require the payment of the biometrics services fee in 8 CFR 103.7(b)(1)(i)(C) or that the individual obtain a fee waiver. Such appearance and fee may also be required by law, regulation, form instructions, or Federal Register notice applicable to the request type. USCIS will notify the affected person of the date, time and location of any required appearance under this paragraph. Any person required to appear under this paragraph may, prior to the scheduled date and time of the appearance, either:

(i) Appear before the scheduled date and time;

(ii) For good cause, request that the biometric services appointment be rescheduled; or

(iii) Withdraw the benefit request.

\* \* \* \* \*

4. Section 103.7 is amended by revising paragraphs (a)(2) and (b)(1) to read as follows:

**§ 103.7 Fees.**

\* \* \* \* \*

(a) \* \* \*

(2) Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. Remittances must be made payable in accordance with the guidance specific to the applicable U.S. Government

office when submitting to a Department of Homeland Security office located outside of the United States. 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. A charge of \$30.00 will be imposed 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. If the remittance is found uncollectible 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.

(b) Amounts of fees. (1) Established fees and charges. (i) USCIS fees. A request for immigration benefits submitted to USCIS must include the required fee as established under this section. The fees established in this section are associated with the benefit, the adjudication, or the type of request and not solely determined by the form number listed below. The term “form” as defined in 8 CFR part 1, may include a USCIS-approved electronic equivalent of such form as USCIS may provide on its official website at <http://www.uscis.gov>.

(A) Certification of true copies: \$2.00 per copy.

(B) Attestation under seal: \$2.00 each.

(C) Biometric services fee. For capturing, storing, and using biometric information (Biometric Fee). A service fee of \$85 will be charged to pay for background checks and have their biometric information captured, stored, and used for any individual who is required to submit biometric information for an application, petition, or other request for certain immigration and naturalization benefits (other than asylum or refugee status) or actions. USCIS will not charge a biometric service fee when:

(1) An applicant under 8 CFR 204.3 submits to USCIS a written request for an extension of the approval period of an Application for Advance Processing of an Orphan Petition (“Application”), if the request is submitted before the approval period expires and the applicant has not yet filed a Petition to Classify Orphan as an Immediate Relative (“Petition”) in connection with the approved Application. The applicant may submit only one extension request without having to pay an additional biometric service fee. If the extension of the approval expires before the applicant files an associated Petition, then the applicant must file either a new Application or a Petition, and pay a new filing fee and a new biometric service fee.

(2) The application or petition fee for the associated request has been waived under paragraph (c) of this section; or

(3) The associated benefit request is one of the following:

(i) Application for Posthumous Citizenship, Form N-644;

(ii) Refugee/Asylee Relative Petition, Form I-730;

(iii) Application for T Nonimmigrant Status, Form I-914;

(iv) Petition for U Nonimmigrant Status, Form I-918;

(v) Application for Naturalization, Form N-400, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service under paragraph (b)(1)(i)(WW) of this section;

(vi) Application to Register Permanent Residence or Adjust Status, Form I-485, from an asylee under paragraph (b)(1)(i)(U) of this section;

(vii) Application To Adjust Status under Section 245(i) of the Act, Supplement A to Form I-485, from an unmarried child less than 17 years of age, or when the applicant is

the spouse, or the unmarried child less than 21 years of age of a legalized foreign national and who is qualified for and has applied for voluntary departure under the family unity program from an asylee under paragraph (b)(1)(i)(V) of this section; or

(viii) Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360, meeting the requirements of paragraphs (b)(1)(i)(T)(1), (2), (3) or (4) of this section.

(D) 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: \$220.

(E) Request for a search of indices to historical records to be used in genealogical research, Form G-1041: \$65. The search request fee is not refundable.

(F) Request for a copy of historical records to be used in genealogical research, Form G-1041A: \$65. USCIS will refund the records request fee only when it is unable to locate the file previously identified in response to the index search request.

(G) 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: \$455.

(H) Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, Form I-102. For filing a petition for an application for Arrival/Departure Record Form I-94, or Crewman's Landing Permit Form I-95, to replace one lost, mutilated, or destroyed: \$445.

(I) Petition for a Nonimmigrant Worker, Form I-129. For filing a petition for a nonimmigrant worker: \$460.

(J) Petition for Nonimmigrant Worker in CNMI, Form I-129CW. For an employer to petition on behalf of one or more beneficiaries: \$460 plus a supplemental CNMI education funding fee of \$150 per beneficiary per year. The CNMI education funding fee cannot be waived.

(K) Petition for Alien Fiancé(e), Form I-129F. For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: \$535; there is no fee 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 United States citizen on a Petition for Alien Relative, Form I-130.

(L) 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: \$535.

(M) Application for Travel Document, Form I-131. For filing an application for travel document:

(1) \$135 for a Refugee Travel Document for an individual age 16 or older.

(2) \$105 for a Refugee Travel Document for a child under the age of 16.

(3) \$575 for advance parole and any other travel document.

(4) No fee if filed in conjunction with a pending or concurrently filed Form I-485 with fee that was filed on or after July 30, 2007.

(N) 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: \$700.

(O) Application for Advance Permission to Return to Unrelinquished Domicile, Form I-191. For filing an application for discretionary relief under section 212(c) of the Act: \$930.

(P) Application for Advance Permission to Enter as a Nonimmigrant, Form I-192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case or where the approval of the application is in the interest of the United States Government: \$930.

(Q) Application for Waiver for Passport and/or Visa, Form I-193. For filing an application for waiver of passport and/or visa: \$930.

(R) 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 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 instead of deportation: \$930.

(S) 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: \$675. The fee will be the same for appeal of a denial of a benefit request with one or multiple beneficiaries. There is no fee for an appeal or motion associated with a denial of a petition for a special immigrant visa filed by or on behalf of an individual seeking special immigrant visa or status as an Iraqi or Afghan national who was employed by or on behalf of the U.S. Government in Iraq or Afghanistan.

(T) Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant: \$435. The following requests are exempt from this fee:

- (1) A petition seeking classification as an Amerasian;
- (2) A self-petition for immigrant status as a battered or abused spouse, parent, or child of a U.S. citizen or lawful permanent resident; or
- (3) A petition for special immigrant juvenile status; or
- (4) A petition seeking special immigrant visa or status an Iraqi or Afghan national who was employed by or on behalf of the U.S. Government in Iraq or Afghanistan.

(U) 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) \$1,140 for an applicant 14 years of age or older; or
- (2) \$750 for an applicant under the age of 14 years when:
  - (i) The application is submitted concurrently for adjudication with the Form I-485 of a parent; and
  - (ii) The applicant is seeking to adjust status as a derivative of his or her parent;
- (3) There is no fee if an applicant is filing as a refugee under section 209(a) of the Act.

(V) Application to Adjust Status under Section 245(i) of the Act, Supplement A to Form I-485. Supplement to Form I-485 for persons seeking to adjust status under the provisions of section 245(i) of the Act: \$1,000. There is no fee when the applicant is an

unmarried child less than 17 years of age, when the applicant is the spouse, or the unmarried child less than 21 years of age of an individual with lawful immigration status and who is qualified for and has applied for voluntary departure under the family unity program.

(W) Immigrant Petition by Alien Entrepreneur, Form I-526. For filing a petition for an alien entrepreneur: \$3,675.

(X) Application To Extend/Change Nonimmigrant Status, Form I-539. For filing an application to extend or change nonimmigrant status: \$370.

(Y) 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 under section 204(a) of the Act. Only one fee is required when more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters: \$775.

(Z) Application for Advance Processing of Orphan Petition, Form I-600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.): \$775. No fee is charged if Form I-600 has not yet been submitted in connection with an approved Form I-600A subject to the following conditions:

(1) The applicant requests an extension of the approval in writing and the request is received by USCIS before the expiration date of approval; and

(2) The applicant's home study is updated and USCIS determines that proper care will be provided to an adopted orphan.

(3) A no fee extension is limited to one occasion. If the Form I-600A approval extension expires before submission of an associated Form I-600, then a complete application and fee must be submitted for any subsequent application.

(AA) Application for Waiver of Ground of Inadmissibility, Form I-601. For filing an application for waiver of grounds of inadmissibility: \$930.

(BB) Application for Provisional Unlawful Presence Waiver, Form I-601A. For filing an application for provisional unlawful presence waiver: \$630.

(CC) Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended), Form I-612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act: \$930.

(DD) Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act, Form I-687. For filing an application for status as a temporary resident under section 245A(a) of the Act: \$1,130.

(EE) Application for Waiver of Grounds of Inadmissibility under Sections 245A or 210 of the Immigration and Nationality Act, 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 sections 210 or 245A of the Act, or a petition under section 210A of the Act: \$715.

(FF) 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 sections 210 or 245A of the Act, or a petition under section 210A of the Act: \$890.

(GG) Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Pub. L. 99-603), 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.

(HH) Petition to Remove Conditions on Residence, Form I-751. For filing a petition to remove the conditions on residence based on marriage: \$595.

(II) Application for Employment Authorization, Form I-765. \$410; no fee if filed in conjunction with a pending or concurrently filed Form I-485 with fee that was filed on or after July 30, 2007.

(JJ) Petition to Classify Convention Adoptee as an Immediate Relative, Form I-800.

(1) 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 approval period.

(2) If more than one Form I-800 is filed during the approval period for different children, the fee is \$775 for the second and each subsequent petition submitted.

(3) If the children are already siblings before the proposed adoption, however, only one filing fee of \$775 is required, regardless of the sequence of submission of the immigration benefit.

(KK) Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I-800A. For filing an application for determination of suitability to adopt a child from a Convention country: \$775.

(LL) Request for Action on Approved Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I-800A, Supplement 3.

This filing fee is not charged if Form I-800 has not been filed based on the approval of the Form I-800A, and Form I-800A Supplement 3 is filed in order to obtain a first extension of the approval of the Form I-800A: \$385.

(MM) Application for Family Unity Benefits, Form I-817. For filing an application for voluntary departure under the Family Unity Program: \$600.

(NN) Application for Temporary Protected Status, Form I-821. For first time applicants: \$50. There is no fee for re-registration.

(OO) Application for Action on an Approved Application or Petition, Form I-824. For filing for action on an approved application or petition: \$465.

(PP) Petition by Entrepreneur to Remove Conditions, Form I-829. For filing a petition by entrepreneur to remove conditions: \$3,750.

(QQ) Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105-100), Form I-881:

(1) \$285 for adjudication by DHS, except that the maximum amount payable by family members (related as husband, wife, unmarried child under 21, unmarried son, or unmarried daughter) who submit applications at the same time will be \$570.

(2) \$165 for adjudication by the Immigration Court (a single fee of \$165 will be charged whenever applications are filed by two or more foreign nationals in the same proceedings).

(3) The \$165 fee is not required if the Form I-881 is referred to the Immigration Court by DHS.

(RR) Application for Authorization to Issue Certification for Health Care Workers, Form I-905: \$230.

(SS) Request for Premium Processing Service, Form I-907. The fee must be paid in addition to, and in a separate remittance from, other filing fees. The fee to request premium processing: \$1,225. The fee for a request for premium processing fee may be adjusted annually by notice in the Federal Register based on inflation according to the Consumer Price Index (CPI). The fee for Premium Processing Service may not be waived.

(TT) Application for Civil Surgeon Designation, Form I-910. For filing an application for civil surgeon designation: \$785. There is no fee for an application from a medical officer in the U.S. Armed Forces or civilian physician employed by the U.S. Government who examines members and veterans of the Armed Forces and their dependents at a military, Department of Veterans Affairs, or U.S. Government facility in the United States.

(UU) Application for T Nonimmigrant Status, Form I-914. No fee.

(VV) Application for U Nonimmigrant Status, Form I-918. No fee.

(WW) Application for Regional Center Designation under the Immigrant Investor Program, Form I-924. For filing an application for regional center designation under the Immigrant Investor Program: \$17,795.

(XX) Annual Certification of Regional Center, Form I-924A. To provide updated information and certify that an Immigrant Investor Regional Center has maintained their eligibility: \$3,035.

(YY) Petition for Qualifying Family Member of a U-1 Nonimmigrant, Form I-929. For U-1 principal applicant to submit for each qualifying family member who plans to seek an immigrant visa or adjustment of U status: \$230.

(ZZ) Application to File Declaration of Intention, Form N-300. For filing an application for declaration of intention to become a U.S. citizen: \$270.

(AAA) Request for a Hearing on a Decision in Naturalization Proceedings (Under section 336 of the Act), Form N-336. For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act: \$700. There is no fee if filed on or after October 1, 2004, by an applicant who has filed an Application for Naturalization under sections 328 or 329 of the Act with respect to military service and whose application has been denied.

(BBB) Application for Naturalization, Form N-400. For filing an application for naturalization: \$640. Except:

(1) The fee for an applicant whose documented income is greater than 150% and not more than 200% of the federal poverty level is \$320.

(2) No fee is charged an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service.

(CCC) Application to Preserve Residence for Naturalization Purposes, Form N-470. For filing an application for benefits under section 316(b) or 317 of the Act: \$355.

(DDD) Application for Replacement Naturalization/Citizenship Document, Form N-565. For filing an application for a certificate of naturalization or declaration of intention in place of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the

Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act: \$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.

(EEE) Application for Certificate of Citizenship, Form N-600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act: \$1,170. There is no fee for any application filed by a member or veteran of any branch of the United States Armed Forces.

(FFF) Application for Citizenship and Issuance of Certificate under section 322 of the Act, Form N-600K. For filing an application for citizenship and issuance of certificate under section 322 of the Act: \$1,170.

(GGG) American Competitiveness and Workforce Improvement Act (ACWIA) fee. \$1,500 or \$750 for filing certain H-1B petitions as described in 8 CFR 214.2(h)(19) and USCIS form instructions.

(HHH) Fraud detection and prevention fee. \$500 for filing certain H-1B and L petitions, and \$150 for H-2B petitions as described in 8 CFR 214.2(h)(19).

(III) 9-11 Response and Biometric Entry-Exit Fee for H-1B Visa. \$4,000 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. Collection of this fee is scheduled to end on September 30, 2025.

(JJJ) 9-11 Response and Biometric Entry-Exit Fee for L-1 Visa. \$4,500 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.  
Collection of this fee is scheduled to end on September 30, 2025.

\* \* \* \* \*

5. Section 103.16 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 103.16 Collection, use and storage of biometric information.**

(a) Use of biometric information. An individual may be required to submit biometric information by law, regulation, Federal Register notice or the form instructions applicable to the request type or if required in accordance with 8 CFR 103.2(b)(9). \* \* \*

\* \* \* \* \*

6. Section 103.17 is amended by revising paragraph (b) to read as follows:

**§ 103.17 Biometric service fee.**

\* \* \* \* \*

(b) Non-payment. If a benefit request is received by DHS without the correct biometric services fee as provided in the form instructions, DHS will reject the benefit request.

**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, 1641; 8 CFR part 2.

8. Section 204.6 is amended by revising paragraph (m)(6) to read as follows:

**§ 204.6 Petitions for employment creation aliens.**

\* \* \* \* \*

(m) \* \* \*

(6) Continued participation requirements for regional centers. (i) Regional centers approved for participation in the program must:

(A) Continue to meet the requirements of section 610(a) of the Appropriations Act.

(B) Provide USCIS with updated information annually, and/or as otherwise requested by USCIS, to demonstrate that the regional center is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area, using a form designated for this purpose; and

(C) Pay the fee provided by 8 CFR 103.7(b)(1)(i)(WW).

(ii) USCIS will issue a notice of intent to terminate the designation of a regional center in the program if:

(A) A regional center fails to submit the information required in paragraph (m)(6)(i)(B) of this section, or pay the associated fee; or

(B) USCIS determines that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

(iii) A notice of intent to terminate the designation of a regional center will be sent to the regional center and set forth the reasons for termination.

(iv) The regional center will be provided 30 days from receipt of the notice of intent to terminate to rebut the ground or grounds stated in the notice of intent to terminate.

(v) USCIS will notify the regional center of the final decision. If USCIS determines that the regional center's participation in the program should be terminated, USCIS will state the reasons for termination. The regional center may appeal the final termination decision in accordance with 8 CFR 103.3.

(vi) A regional center may elect to withdraw from the program and request a termination of the regional center designation. The regional center must notify USCIS of such election in the form of a letter or as otherwise requested by USCIS. USCIS will notify the regional center of its decision regarding the withdrawal request in writing.

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**Jeh Charles Johnson,**  
**Secretary.**

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