



DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 106, 204, 211, 212, 214, 216, 223, 235, 236, 240, 244, 245, 245a, 248, 264, 274a, 301, 319, 320, 322, 324, 334, 341, 343a, 343b, and 392

[CIS No. 2627-18; DHS Docket No. USCIS-2019-0010.]

RIN 1615-AC18

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

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

ACTION: Proposed rule; extension of comment period; availability of supplemental information.

SUMMARY: The Department of Homeland Security (DHS) is extending the comment period for its November 14, 2019, notice of proposed rulemaking (NPRM or “proposed rule”) regarding the USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements. DHS is also announcing the availability of supplemental information to inform the public of information related to the NPRM. This supplement describes the projected costs associated with supporting immigration adjudication and naturalization services for which USCIS will reimburse U.S. Immigration and Customs Enforcement. This document also clarifies the comment period on the proposed information collection revisions in the NPRM. This announcement ensures that the public has an opportunity to comment on the supplemental materials.

DATES: The comment period for the NPRM published November 14, 2019, at 84 FR 62280, is extended to December 30, 2019.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS-2019-0010, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow this site's instructions for submitting comments.
- Mail: Samantha Deshommès, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW, Mailstop #2140, Washington, DC 20529-2140. To ensure proper handling, please reference DHS Docket No. **USCIS-2019-0010** in your correspondence. Mail must be postmarked by the comment submission deadline. Please note that USCIS cannot accept any comments that are hand delivered or couriered. In addition, USCIS cannot accept mailed comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives.

FOR FURTHER INFORMATION CONTACT: Kika M. Scott, Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529-2130, telephone (202) 272-8377.

SUPPLEMENTARY INFORMATION:

I. Public Participation

DHS invites you to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the 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-2019-0010 for this rulemaking. Providing comments is entirely voluntary. Regardless of how you submit your comment, DHS will post all submissions, without change, to the Federal eRulemaking Portal at <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 it determines that such information is offensive or may affect the privacy of an individual. For additional information, please read the Privacy Act notice available through the link in the footer of <http://www.regulations.gov>.

Docket: For access to the docket, go to <http://www.regulations.gov> and enter this rulemaking's eDocket number: USCIS-2019-0010. The docket includes additional documents that support the analysis contained in the proposed rule to determine the specific fees that are proposed. These documents include:

- Fiscal Year (FY) 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation;
- Regulatory Impact Analysis: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements; 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 software¹ used to compute the immigration benefit request fees² and biometric fees³ is a commercial product licensed to USCIS that may be accessed on-site, by appointment, by calling (202) 272-1969.⁴

II. Extension of Comment Period

On November 14, 2019, DHS published the aforementioned proposed rule. *See* 84 FR 62280. DHS has received requests to extend the comment period for this rulemaking. In consideration of these requests, and to provide additional time for the public to review the supplemental information below, the comment deadline is extended from December 16, 2019 through December 30, 2019.

DHS also notes and clarifies the comment period for the information collection requests (forms) that the proposed rule would revise in accordance with the Paperwork Reduction Act. The comment period for the NPRM will end on December 30, 2019, including comments on the forms DHS must submit to OMB for review and approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–12. The NPRM contained erroneous references to comments being accepted for 60 days from the publication date

¹ USCIS uses commercially available activity-based costing (ABC) software, SAP Business Objects Profitability and Cost Management, to create financial models as described in the supporting documentation.

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

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

⁴ The proposed rule describes key inputs to the ABC model (for example, budget, workload forecasts, staffing, and completion rates).

of the proposed rule. *See* 84 FR 62349, 62350, 62351, 62352, 62353, 62354, 62355, 62356.

III. Supplemental Information Regarding ICE Activities to be funded by the IEFA

a. Background

In the proposed rule, DHS proposed to recover, via USCIS' fee schedule, the full amount of the proposed transfer from USCIS to ICE that was contained in past budget requests. *See* 84 FR 62287. The IEFA may be used to reimburse appropriations that fund enforcement and support positions of U.S. Immigration and Customs Enforcement (ICE) to the extent that such positions support adjudication and naturalization services.

DHS proposed to recover as much as \$207.6 million in ICE expenses via USCIS' fee schedule, and described some categories of eligible costs. *See id.* DHS wrote that it “continues to study which ICE costs would be reimbursable through the IEFA, and may announce more precise cost estimates prior to publication of a final rule. To the extent that such cost estimates are lower than the \$207.6 million figure currently accounted for in the rule, fee levels would be revised downward.” *See id.* at 62288. This document announces such cost estimates, which are lower than the \$207.6 million figure in the proposed rule. DHS therefore anticipates a downward adjustment in the proposed fees. *See id.*

Specifically, following further study, DHS now proposes to recover, via USCIS' fee schedule, \$112,287,417 for allowable costs, instead of the \$207.6 million referenced in the proposed rule. DHS proposes to establish USCIS fees at a level necessary to recover the full amount of this proposed transfer in addition to the costs of operating USCIS. This document explains how those ICE costs were determined.

b. Methodology

DHS estimated the ICE projected costs to be funded through the IEFA using Activity-Based Costing (ABC) consistent with OMB Circular A-25, the Statement of Federal Financial Accounting Standards (SFFAS-4): Managerial Cost Accounting Concepts and Standards for the Federal Government, and other relevant financial management directives as described in the November 14, 2019 proposed rule. 84 FR 62280, 62283. ICE used an ABC approach to define full cost, outline the sources of cost for providing the investigation of immigration adjudication and naturalization services and the collection, safeguarding, and accounting for fees deposited in and funds reimbursed from the IEFA. These costs do not include costs associated with the Student and Exchange Visitor Program (SEVP). ICE conducts a separate ABC analysis to set SEVP fees.

A critical element in building the ABC model was for ICE to identify the sources and cost for all expenses in providing immigration adjudication and naturalization services. Consistent with the applicable law and guidance as stated in the November 14, 2019 proposed rule, the proposed transfer from USCIS to ICE would recover the full cost of providing immigration adjudication and naturalization services. After identifying which case activities can be covered by IEFA funds, the total investigative hours were estimated for the case activities. ICE used the full cost of providing immigration adjudication and naturalization services to calculate the amount needed to be transferred

from the USCIS-managed IEFA to ICE to fully recover all costs for ICE administered immigration adjudication and naturalization services.⁵

c. Fees to Support Operations

ICE Homeland Security Investigations (HSI) would use funds transferred from the IEFA to support investigations of immigration benefit fraud via Document and Benefit Fraud Task Forces (DBFTFs), Operation Janus, the HSI National Lead Development Center, and other immigration adjudication and naturalization activities. Under INA section 286(m) and (n), 8 U.S.C. 1356(m) and (n), adjudication and naturalization services include all costs for work related to determining whether applicants may receive the benefit of such services. The cost of the services provided includes the cost of any investigatory work necessary to adjudicate applications or provide services, including investigations of fraud. Moving forward, USCIS will reimburse ICE for costs associated with supporting immigration adjudication and naturalization services. Table 1 provides a detailed list of case activities that can be paid for with IEFA funds as they directly relate to the investigation of the immigration adjudication and naturalization process.

Table 1—Identity and Benefit Fraud Activities (As of November 2019)

Activity	Detailed Description
General Investigative Activities	Covers investigation of benefit fraud of adjudication and naturalization services
Employment Fraud	Covers employment benefit fraud in the context of adjudication and naturalization services
Family Fraud	Covers family-based benefit fraud in the context of adjudication and naturalization services.

⁵ Additional HSI agents and requisite support staff would need to be hired in order to complete the additional work contemplated.

Activity	Detailed Description
Non-Employment Visa Fraud	Closely tied to benefit fraud of adjudication and naturalization services.
Marriage Fraud	Covers marriage-based benefit fraud in the context of adjudication and naturalization services
Refugee Fraud	Covers refugee-based benefit fraud in the context of adjudication and naturalization services.
Asylum Fraud	Covers asylum-based benefit fraud in the context of adjudication and naturalization services.
Citizenship/Naturalization Fraud	Covers benefit fraud of adjudication and naturalization services.
Deferred Action for Childhood Arrivals (DACA) Fraud	Covers activities related to specific fraud investigations that USCIS refers to ICE for investigation.
Petition for Relief of Seizure	Covers costs associated with investigating relief of seizure when property had been seized as part of a fraud investigation in the context of adjudication and naturalization services.
Benefit Fraud	Covers identity benefit fraud cases directly related to adjudication and naturalization fraud.
Unauthorized Practice of Immigration Law (UPIL)/Notario Fraud	Covers fraud related to individuals acting as an attorney or authorized legal representative for aliens in an attempt to fraudulently obtain a USCIS benefit.
Document Benefit Fraud Task Force (DBFTF)	Targets criminal enterprises and individuals who attempt to use document and benefit fraud to compromise the integrity of the immigration system. IEFA-funded personnel improve DBFTFs' information sharing, reduce duplication of efforts, and increase the effectiveness of investigations alongside our Federal, State, and local law enforcement partners.
Operation Janus (Special Interest Alien (SIA) Fraud)	Covers naturalization fraud by an alien that's been identified through biometrics for having an alternative identity.
EB-5 Investor Fraud	Covers benefit fraud case for investing \$900,000+ into a business solely to gain immigration status.
Juvenile Deferred Action	Covers routine investigative activities to support DACA adjudication and/or to confirm the DACA application information.
H&L Visa Fraud	Covers benefit fraud by illegally obtaining H and L visas.
Benefit Fraud Assessment	Statistical analysis of benefit fraud.
HQ-Denaturalization Referrals	Covers naturalization fraud relating to the vetting of denaturalization referrals from the Department of State and other federal agencies, now being conducted by ICE.
Executive Office for Immigration Review (EOIR) Referral	Covers investigative activities that focus on USCIS fraud that were referred from EOIR.
USCIS Historical Fingerprint	Covers activities related to HFE referrals from USCIS.

Activity	Detailed Description
Enrollment (HFE) Referrals	
Military Marriage Fraud	Covers benefit fraud from a military marriage.
Sex Offender Naturalization	Covers fraud during the naturalization process, by not disclosing the fact that they have a criminal record relating to sex offenses, and the benefit would not have been awarded had the criminal history been disclosed.

DHS notes that the aforementioned list of activities serves as the basis for cost projections and is not intended to be all-inclusive. DHS may use IEFA revenue to reimburse any IEFA-eligible expense, regardless of whether DHS considered those expenses when setting fees.

d. Expansion of Investigations

ICE HSI case hours from Fiscal Year (FY) 2017, FY 2018, and FY 2019 are used to estimate future expenditures on those activities. Using an activity-based cost model consistent with DHS methodology for USCIS fee setting, the number of case hours were translated into total cost of full-time equivalents (FTEs) needed to cover activities that DHS proposes to fund with IEFA funds. DHS estimated a 5.2 percent growth rate from FY 2020 projections and 1.9 percent constant rate to FY 2021 to fully fund the cost of future expenses consistent with recent trends in the hours spent providing immigration adjudication and naturalization services. The projected growth rate is based on the growth rate for case hours in FY 2017 (517,531 hours), FY 2018 (547,774 hours), and FY 2019 (572,004 hours). There was a 5.84 percent increase in HSI investigative case hours from FY 2017 to FY 2018 and a 4.42 percent increase in investigative case hours from FY 2018 to FY 2019. The DHS forecast of 5.2 percent growth in FY 2020 based on historical averages was applied to account for future costs.

Table 2 outlines the percent change of activity hours by fiscal year.

Table 2—IEFA Hours by Fiscal Year

Fiscal Year	IEFA Activity Hours	Percent Change
FY 2017	517,531	-
FY 2018	547,774	5.84%
FY 2019	572,004	4.42%
FY 2020*	601,748	5.2%
FY 2021*	601,748	0%

**Denotes forecast*

e. Projected Cost Estimates by Fiscal Year

In FY 2017, 2018, and 2019 HSI agents worked a total of 517,531 hours, 547,774 hours and 572,004 hours, respectively, on IEFA reimbursable related activities. To determine the number of IEFA activity hours for FY 2020, ICE analyzed historical growth rates from the three preceding years, which averaged approximately 5.2 percent. The IEFA activity hours for FY 2021 may remain the same. This results in a “total hours” projection of 601,748 hours for FY 2020, and 601,748 hours for FY 2021. Hours were then translated into an FTE count for an ICE, HSI Criminal Investigator (U.S. Office of Personnel Management Classification Position Number 1811).⁶ Total FTEs were then translated into a total cost for all HSI criminal investigators. Total cost of HSI criminal investigators was derived using an ICE Budget-approved modular cost table that

⁶ U.S. Office of Personnel Management, *General Schedule Qualifications Standards*, <https://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/1800/criminal-investigator-treasury-enforcement-agent-1811/>.

accounts for salary, compensation, locality payment, mission essential equipment (e.g., uniforms, technical equipment, supplies, and training), and inflation.

Mission Support staff is also needed to support the investigators. To determine the mission support FTEs required, a mission support ratio of 0.32 to each criminal investigator was derived by taking the total number of mission support FTEs divided by the total number of investigators from the ICE FY 2017 to FY 2019 Table of Organization Position System (TOPS) data. This FTE total was then translated into total Mission Support Cost using the ICE Budget-approved cost table that accounts for salary, compensation, locality payment, mission essential equipment, supplies, trainings, and inflation.

ICE estimates that it will spend approximately 601,748 investigative hours on IEFA reimbursable activities in FY 2021. That results in an estimated 355 criminal investigators and 113 mission support professionals being required.⁷ Table 3 outlines the cost estimate for the services provided.

Table 3—Cost Estimate for Immigration Adjudication and Naturalization Services

Fiscal Year	IEFA Activity Hours	HSI 1811 FTE	HSI FTE Frontline (1811 series) Cost (HSI 1811 FTE * Fully Burdened 1811 FTE Cost)	Mission Support FTE (HSI 1811 FTE * MS FTE to 1811 Ratio)	HSI Mission Support Cost (MS FTE * Fully Burdened MS FTE Cost))	Total Cost (HSI 1811 FTE Frontline Cost + HSI MS Cost)
FY 2017	517,531	305	\$77,750,217	96	\$17,021,439	\$94,771,656
FY	547,774	323	\$82,293,713	102	\$18,016,122	\$100,309,835

⁷Actual needs may be slightly more or less based on the ability to hire and on-board personnel and the level of services ICE provides to support USCIS within a given year.

Fiscal Year	IEFA Activity Hours	HSI 1811 FTE	HSI FTE Frontline (1811 series) Cost (HSI 1811 FTE * Fully Burdened 1811 FTE Cost)	Mission Support FTE (HSI 1811 FTE * MS FTE to 1811 Ratio)	HSI Mission Support Cost (MS FTE * Fully Burdened MS FTE Cost))	Total Cost (HSI 1811 FTE Frontline Cost + HSI MS Cost)
2018						
FY 2019	572,004	337	\$85,933,858	107	\$18,813,040	\$104,746,897
FY 2020	601,748	355	\$90,402,418	113	\$19,791,318	\$110,193,736
FY 2021*	601,748	355	\$92,120,064	113	\$20,167,353	\$112,287,417

**Denotes forecast*

As a result, DHS projects an annual transfer to ICE of \$112,287,417, rather than \$207.6 million. Because the projected annual transfer to ICE is lower than DHS previously proposed, the proposed fee levels would be reduced accordingly. As the NPRM stated, the fees that DHS proposed may change in the final rule based on policy decisions, in response to public comments, intervening legislation, and other reasons. 84 FR 62327. In the NPRM, to reduce uncertainty, USCIS laid out what the fees would be if certain conditions materialize and explained that the final fees would be one of the scenarios presented, or an amount in between the highest and lowest fees proposed. *Id.* Table 21 in the NPRM outlines the proposed fee levels contained in the proposed rule that would result if the ICE transfer of \$207.6 million either did or did not occur. Because the estimated amount of the transfer is \$112,287,417 million, the resulting fee schedule would, all else remaining the same, be somewhere between those two levels.

Chad F. Wolf,
Acting Secretary

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