DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103 and 204
[CIS No. 2577–15; DHS Docket No. USCIS–2016–0001]
RIN 1615–AC09

U.S. Citizenship and Immigration Services Fee Schedule

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

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) proposes to adjust certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). USCIS conducted a comprehensive fee review, after refining its cost accounting process, and determined that current fees do not recover the full costs of the services it provides. Adjustment to the fee schedule is necessary to fully recover costs for USCIS services and to maintain adequate service. DHS proposes to increase USCIS fees by a weighted average of 21 percent and add one new fee. In addition, DHS proposes to clarify that persons filing a benefit request may be required to appear for biometrics services or an interview and pay the biometrics services fee, and make a number of other changes.

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

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

• Federal eRulemaking Portal: http://www.regulations.gov. Follow this site’s instructions for submitting comments.
• Email: You may email comments directly to USCIS at uscisfrcomment@dhs.gov. Include DHS Docket No. USCIS–2016–0001 in the subject line of the message.
• Mail: You may submit comments directly to USCIS by mailing them to Samantha Deshommes, Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. To ensure proper handling, please reference DHS Docket No. USCIS–2016–0001 on your correspondence. This mailing address may be used for paper or CD-ROM submissions.
• Hand Delivery/Courier: You may submit comments directly to USCIS by having them delivered to Samantha Deshommes, Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. The contact telephone number is (202) 272–8377.


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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
IPB 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 Docket: 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 used in computing the immigration benefit request fees and biometric fees is a commercial product licensed to USCIS that may be accessed on-site, by appointment, by calling (202) 272–1969.4

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. 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 includes the limited appropriated funds provided by Congress. USCIS anticipates if it continues to operate at current fee levels, it will experience an annual average 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.5 USCIS discusses the overall increase proposed in this rule in terms of weighted 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 to make 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.6 DHS also proposes to fund the costs of the Systematic Alien Verification for Entitlements (SAVE) program (to the extent not recovered from users),7 and the Office of Citizenship 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.

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

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4 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 rule. The ABC model inputs were developed by OMB Circular A–25 to provide a more accurate depiction of the overall effect that this proposed rule would have on fee revenue.

5 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.

6 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.

7 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.

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/, 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/pdffiles/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 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/a112015.pdf (providing guidance on the FY 2017 Budget and instructions on budget execution, offsets triggering, 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 IFEA costs.

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, Public Law 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. DHS works with OMB and generally follows OMB Circular A–25, which “establishes federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources.” 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.

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. As noted, Congress has provided that USCIS may set fees for providing....

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9 This rule proposes to change the title of Form I–924A from “Supplement to Form I–924” to “Annual Certification of Regional Center.”

10 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 CCR 1316.1. 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.
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).13 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.14

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), Public Law 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 to support the vast majority of USCIS programs and operations, which are conducted as part of adjudication and naturalization services.15 This conclusion is supported by Congress’ historical appropriations to USCIS. USCIS receives only a small amount of historical appropriations to USCIS.

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;16 and (3) make additional adjustments to effectuate specific policy objectives.17 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


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.

17 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.


19 The H–1B nonimmigrant classification allows U.S. employers to temporarily employ foreign workers in the United States to perform services in a special 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).

20 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).
The Immigration Examinations Fee Account (IEFA) is the account which will pay for the new biometric entry-exit data system. USCIS collects money into the account to cover the cost of the system, which is expected to be between $5 and 10 billion. The account will be used to pay for the new system and any other immigration-related expenses. The account will be funded by fees paid by individuals who enter the United States.

IV. The Immigration Examinations Fee Account

A. General Background

In 1985, the Immigration and Naturalization Service (INS) was renamed U.S. Citizenship and Immigration Services, later renamed U.S. Citizenship and Immigration Services. 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), 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 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 Fund to be used for the 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 Fund, further revenue will be deposited in the general fund of the Treasury. The funds in the 9–11 Fund 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 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 these fees. 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.

### Table 1—Current Non-Statutory IEFA Immigration Benefit Request Fees

<table>
<thead>
<tr>
<th>Form No.</th>
<th>Title</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>G–101</td>
<td>Genealogy Index Search Request</td>
<td>$20</td>
</tr>
<tr>
<td>G–101A</td>
<td>Genealogy Records Request (Copy from Microfilm)</td>
<td>20</td>
</tr>
<tr>
<td>G–101A</td>
<td>Genealogy Records Request (Copy from Textual Record)</td>
<td>35</td>
</tr>
<tr>
<td>I–90</td>
<td>Application to Replace Permanent Resident Card</td>
<td>365</td>
</tr>
<tr>
<td>I–102</td>
<td>Application for Replacement/Initial Nonimmigrant Arrival-Departure Document</td>
<td>330</td>
</tr>
<tr>
<td>I–129</td>
<td>Petition for a Nonimmigrant Worker</td>
<td>325</td>
</tr>
<tr>
<td>I–129F</td>
<td>Petition for Alien Fiance(e)</td>
<td>340</td>
</tr>
<tr>
<td>I–130</td>
<td>Petition for Alien Relative</td>
<td>420</td>
</tr>
<tr>
<td>I–131</td>
<td>Application for Travel Document24</td>
<td>360</td>
</tr>
<tr>
<td>I–140</td>
<td>Immigrant Petition for Alien Worker</td>
<td>580</td>
</tr>
<tr>
<td>I–191</td>
<td>Application for Advance Permission to Return to Unrelinquished Domicile</td>
<td>585</td>
</tr>
<tr>
<td>I–192</td>
<td>Application for Advance Permission to Enter as Nonimmigrant</td>
<td>585</td>
</tr>
<tr>
<td>I–193</td>
<td>Application for Waiver of Passport and/or Visa</td>
<td>585</td>
</tr>
<tr>
<td>I–212</td>
<td>Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal</td>
<td>585</td>
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<tr>
<td>I–290B</td>
<td>Notice of Appeal or Motion</td>
<td>630</td>
</tr>
<tr>
<td>I–360</td>
<td>Petition for Amerasian, Widow(er), or Special Immigrant</td>
<td>405</td>
</tr>
<tr>
<td>I–485</td>
<td>Application to Register Permanent Residence or Adjust Status</td>
<td>985</td>
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<tr>
<td>I–485</td>
<td>Application to Register Permanent Residence or Adjust Status25</td>
<td>635</td>
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</tbody>
</table>

24The 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.

25The 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 Public Law 107–296, § 451; 6 U.S.C. 271.
C. USCIS Initiatives Funded Under the 2010 Fee Adjustment

In the FY 2010/2011 fee rule, USCIS committed to a set of goals and

<table>
<thead>
<tr>
<th>Form No.</th>
<th>Title</th>
<th>Fee</th>
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<tbody>
<tr>
<td>I–526</td>
<td>Immigrant Petition by Alien Entrepreneur</td>
<td>1,500</td>
</tr>
<tr>
<td>I–539</td>
<td>Application to Extend/Change Nonimmigrant Status</td>
<td>290</td>
</tr>
<tr>
<td>I–600</td>
<td>Petition to Classify Orphan as an Immediate Relative</td>
<td>720</td>
</tr>
<tr>
<td>I–600A</td>
<td>Application for Advance Processing of Orphan Petition</td>
<td>720</td>
</tr>
<tr>
<td>I–601</td>
<td>Application for Waiver of Ground of Inadmissibility</td>
<td>585</td>
</tr>
<tr>
<td>I–601A</td>
<td>Application for Provisional Unlawful Presence Waiver</td>
<td>585</td>
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<tr>
<td>I–612</td>
<td>Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)</td>
<td>585</td>
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<tr>
<td>I–687</td>
<td>Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act</td>
<td>1,130</td>
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<tr>
<td>I–690</td>
<td>Application for Waiver of Grounds of Inadmissibility</td>
<td>200</td>
</tr>
<tr>
<td>I–694</td>
<td>Notice of Appeal of Decision under Section 210 or 245A</td>
<td>755</td>
</tr>
<tr>
<td>I–698</td>
<td>Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Pub. L. 99–603).</td>
<td>1,020</td>
</tr>
<tr>
<td>I–751</td>
<td>Petition to Remove the Conditions of Residence</td>
<td>505</td>
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<tr>
<td>I–765</td>
<td>Application for Employment Authorization</td>
<td>380</td>
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<tr>
<td>I–800</td>
<td>Petition to Classify Convention Adoptee as an Immediate Relative</td>
<td>720</td>
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<tr>
<td>I–800A</td>
<td>Application for Determination of Suitability to Adopt a Child from a Convention Country</td>
<td>720</td>
</tr>
<tr>
<td>I–817</td>
<td>Application for Family Unity Benefits</td>
<td>435</td>
</tr>
<tr>
<td>I–824</td>
<td>Application for Action on an Approved Application or Petition</td>
<td>405</td>
</tr>
<tr>
<td>I–829</td>
<td>Petition by Entrepreneur to Remove Conditions</td>
<td>3,750</td>
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<tr>
<td>I–910</td>
<td>Application for Civil Surgeon Designation</td>
<td>615</td>
</tr>
<tr>
<td>I–924</td>
<td>Application for Regional Center Designation Under the Immigrant Investor Program</td>
<td>6,230</td>
</tr>
<tr>
<td>I–929</td>
<td>Petition for Qualifying Family Member of a U–1 Nonimmigrant</td>
<td>215</td>
</tr>
<tr>
<td>N–300</td>
<td>Application to File Declaration of Intention</td>
<td>250</td>
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<tr>
<td>N–336</td>
<td>Request for Hearing on a Decision in Naturalization Proceedings</td>
<td>650</td>
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<tr>
<td>N–400</td>
<td>Application for Naturalization</td>
<td>595</td>
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<tr>
<td>N–470</td>
<td>Application to Preserve Residence for Naturalization Purposes</td>
<td>330</td>
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<tr>
<td>N–565</td>
<td>Application for Replacement Naturalization/Citizenship Document</td>
<td>345</td>
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<tr>
<td>N–600/600K</td>
<td>Application for Certification of Citizenship/Application for Citizenship and Issuance of Certificate under Section 322</td>
<td>600</td>
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<tr>
<td></td>
<td>Immigrant visa DHS domestic processing fee</td>
<td>165</td>
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<tr>
<td></td>
<td>Biometric services</td>
<td>85</td>
</tr>
</tbody>
</table>

26 DHS proposes to remove the word “Pilot” from the form title.

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

28 DHS proposes to change the fee name to “USCIS Immigrant Fee.” See proposed 8 CFR 103.7(b)(1)(ii)(D).

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.

- 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.

- Expanding the Use of Systems Qualified Adjudication to a Larger...
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), SAFE, 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:

- Reinstate a surcharge in the fee schedule to fully fund RAIO, SAFE, 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, SAFE 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),
2. The Fraud Prevention and Detection Account, and
3. The H–1B Nonimmigrant Petitioner Account.

The Fraud Prevention and Detection Account and the H–1B Nonimmigrant Petitioner Account are both funded by statute set fees. The proceeds of these fees are divided among USCIS to use for fraud detection and prevention activities and for the National Security 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.

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 and

2015 Staffing Allocation Model 31 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.

- 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. 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, 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, 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 IFEA budget. FY 2017 costs are 2 percent higher than FY 2016 costs.

### Table 2—Baseline Adjustments

<table>
<thead>
<tr>
<th>Description</th>
<th>Dollars in thousands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total FY 2015 Adjusted IFEA Budget</td>
<td>$2,863,889</td>
</tr>
<tr>
<td>Plus: Pay Inflation and Promotions/Within Grade Increases</td>
<td>130,092</td>
</tr>
<tr>
<td>Total FY 2016 Adjusted IFEA Budget</td>
<td>$3,009,024</td>
</tr>
<tr>
<td>Plus: Net Additional Costs</td>
<td>19,452</td>
</tr>
<tr>
<td>Total FY 2017 Adjusted IFEA Budget</td>
<td>$3,066,548</td>
</tr>
</tbody>
</table>

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.

### Table 3—IEFA Cost Baseline and Revenue Comparison

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2016/2017 Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Premium Revenue</td>
<td>$2,507,683</td>
<td>$2,448,596</td>
<td>$2,478,139</td>
</tr>
<tr>
<td>IFEA Cost Baseline</td>
<td>$3,009,024</td>
<td>$3,066,548</td>
<td>$3,037,786</td>
</tr>
<tr>
<td>Difference</td>
<td>$(501,341)</td>
<td>$(617,952)</td>
<td>$(559,647)</td>
</tr>
</tbody>
</table>

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 RAIO, 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.

### Table 2—Baseline Adjustments—Continued

<table>
<thead>
<tr>
<th>Description</th>
<th>Dollars in thousands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plus: Net Additional Costs</td>
<td>17,080</td>
</tr>
<tr>
<td>Total FY 2016 Adjusted IFEA Budget</td>
<td>$3,066,548</td>
</tr>
</tbody>
</table>

33 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.

continuing resolution, provided USCIS with only $29.95 million \(^{35}\) of the requested $259 million to fund the refugee and asylum processing administered under the RAIO Directorate and military naturalization processing. See Public Law 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, Public Law 114–113, div. F (Dec. 18, 2015).\(^{36}\) 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 fees 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 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)(jj)(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.\(^{37}\) Although approved regional 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.\(^{38}\) 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.

DHS proposes to establish the fee for the Form I–924A at $3,035. Proposed 8 CFR 103.7(b)(1)(jj)(WW)(f). 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 increased costs 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.39

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 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
government and stakeholder outreach
activities.

• Conduct 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 40 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 evidence;
interviewing applicants, petitioners, or
requestors; consulting with supervisors
or legal counsel; and researching
applicable laws and decisions on
non-routine adjudications.

39 See Federal Accounting Standards
152.

40 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.
• 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.41 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 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. 1355; 31 U.S.C. 6501–6508, Public Law 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.

41 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.

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.42 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

42 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 requester spends waiting for an output.

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.43 USCIS determines costs for most immigration benefit requests, including those for asylum and refugee protection. The IEFA costs of immigration 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; and the American Relief Act (NACARA), Form I–881, proposed 8 CFR 103.7(b)(1)(ii)(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)(ii)(QQ). These programs are excluded from the FY 2016/2017 Fee Rule Supporting Documentation and this rule.44

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

43 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.

44 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.
TPS designations may be terminated. 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. The DACA policy is an administrative exercise of prosecutorial discretion and it is implemented at the discretion of the agency. For NACARA, the eligible population will eventually be exhausted due to relevant eligibility requirements, including the date by which an applicant was required to have entered the United States. USCIS analyzes the distinct costs associated with processing these benefit types and excludes these costs from the ABC model. All fee revenue deposited into the IEFA is pooled and collectively used to finance USCIS operations. USCIS also responds to surges in customer demand for services by realigning resources to cover the cost of processing. Consequently, USCIS is capable of funding these programs even though their costs are not included in the fee model. DHS excludes the costs and revenue associated with these programs because program eligibility is subject to the discretion of the Department. Given this discretion, USCIS has excluded the cost and workload of these programs from the fee review and does not propose to allocate overhead and other fixed costs to these workload volumes. This mitigates an unnecessary revenue risk, i.e., that USCIS will not have enough revenue to recover full cost if the eligible populations diminish or cease to exist. As in prior fee reviews, USCIS has excluded both the cost and revenue associated with these programs from the fee review. By excluding programs that are temporary by definition, for which the population may diminish or cease to exist, DHS maintains the integrity of the ABC model, better ensures recovery of full costs, and mitigates revenue risk from unreliable sources.

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

DHS uses its fee setting discretion to adjust certain immigration request fees that would be overly burdensome on applicants, petitioners, and requestors if set at recommended ABC model levels. 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. Any additional costs from these benefit request types beyond this calculated weighted average increase figure would be reallocated to other benefit types. In addition, as noted above, fees for the other benefit types would also be calculated to cover costs that are not directly supported by fees. This process is known as “Low Volume Reallocation.”

In the fee review for this proposed rule, the model output costs identified a weighted average 8 percent cost increase across all fee-paying benefit types. Accordingly, consistent with prior practice, DHS proposes to limit the fee adjustments for certain benefit types to this 8 percent weighted average increase. These immigration benefit requests do not receive any additional cost reallocation for fee waivers, refugee, asylum or other programs. DHS does not believe that using the calculated 8 percent weighted average increase figure as a basis for fee increases for these benefit types would result in fees for other benefit types that would be overly burdensome to the applicants, petitioners or requestors. DHS proposes to subject specific benefit types to the 8 percent weighted average increase because the combined effect of cost, fee-paying volume, and methodology changes since the last Fee Rule would otherwise place an inordinate fee burden on individuals requesting these types of benefits. For example, without Low Volume Reallocation, the Petition to Classify Orphan as an Immediate Relative, Form I–600, would have a fee of at least $2,258. DHS believes it would be contrary to the public interest to impose a fee of this amount on an estimated 15,000 potential adoptive parents each year. Similar reasoning led to the other forms chosen to be adjusted using Low Volume Reallocation. For this reason, DHS proposes to subject these benefit types to the calculated 8 percent weighted average increase. In other words, consistent with past USCIS fee rules, DHS is proposing an 8 percent increase for each of these benefit types, based on the calculated 8 percent weighted average increase across all fee-paying benefit types as identified by the model.

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

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


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

48 See the 2016/2017 Fee Rule Supporting Documentation in the rulemaking docket for an explanation of how the weighted average is calculated.
true. DHS believes that by limiting the adjustment of the naturalization fee to the 8 percent weighted average increase, it would reinforce these principles by encouraging more immigrants to naturalize and fully participate in civic life. This proposal is also consistent with other DHS efforts to promote citizenship and immigrant integration.49

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

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

Finally, as noted above, in the 2010 fee rule, DHS held fee increases for a number of benefit requests to the weighted average fee increase for all fee-paying immigration benefits. 75 FR 33461. In this rule, DHS proposes not to 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**

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).Third, DHS proposes to permit naturalization applicants with household incomes greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines51 to pay a fee of $320 plus an additional $85 for biometrics, for a total of $405. DHS has created a proposed new form, USCIS Form I–942, Request for Reduced Fee, that would be filed with the N–400. The form would provide a convenient guide for applicants to demonstrate that their income meets the level required to pay the reduced fee. The Paperwork Reduction Act section of this preamble provides information on how to comment on the proposed form.

DHS proposes the new reduced fee option to limit potential economic disincentives some eligible applicants may face when deciding whether or not to apply for naturalization. The proposed reduced fee option for low-income applicants supports the Administration’s immigration integration policies52 and the USCIS mission to support aspiring citizens. Nevertheless, USCIS is funded mainly from fees and we must collect a fee to recover at least some of the costs associated with naturalization. DHS believes the reduced fee would help ensure that those immigrants whose goal it is to apply for naturalization are not unnecessarily limited by their economic means. DHS realizes that other fee payers would be required to bear the cost of the reduced fee, but believes the importance of naturalization justifies this slight shift of burden.53

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

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

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

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

49 As described elsewhere in this preamble, an applicant with a household income at or below 150 percent of the federal poverty guidelines is eligible for a partial fee waiver, since their income bears the cost of the reduced fee, but believes the importance of naturalization justifies this slight shift of burden.

51 As described elsewhere in this preamble, the Federal Poverty Guidelines defined in the 2010 Fee Rule qualify for a waiver of their entire fee under current USCIS policy.

52 The guidelines are issued each year by the Department of Health and Human Services and the Department of Homeland Security, and 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).

53 DHS previously stated that adjusting fee levels based on income would be administratively complex and would require higher costs to administer. See 75 FR 58071. Specifically, in 2010, DHS stated that a tiered fee system would impose an unreasonable cost and administrative burden. Because it applies only to Form N–400 and the act was passed 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.


55 USCIS analyzed immigrants who reported naturalization since the year 2000. These represent people who recently became U.S. citizens. Approximately 24.7% were eligible for a fee waiver based on current criteria (2.2 million out of 8.9 million) because their household income is below 150% of the federal poverty guidelines. A further 10.3% ($23,901 out of 8.9 million) would have been eligible for a partial fee waiver, since their income
research 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). 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. \( \text{See, e.g., INA secs. 103(a), 235(d)(3), 264(a); 8 U.S.C. 1103(a), 1225(d)(3), 1304(a).} \) \( \text{The collection, use, and reuse of biometric data are integral to identity management, excluding people with criminal backgrounds, minimizing national security concerns, and maintaining program integrity. Over} \)

falls between 150% and 200% of the federal poverty guidelines. Among immigrants who reported naturalizing in 2011 (737,618), 10.4% or 77,001 immigrants would have been eligible for a partial fee waiver.


This is an estimate of the net impacts. Some 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.

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, 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 $576 for advance parole and any other travel document, as calculated by the fee model. \( \text{See proposed 8 CFR 103.7(b)(1)(i)(M)(3).} \) 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, 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).


59 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.

204.310(a)(3)(i), 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. \( \text{Federal Register notice or the form instructions applicable to the request type or if} \)

required in accordance with 8 CFR 103.2(b)(9). See proposed 8 CFR 103.16(a).
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 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.

63 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.

64 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.

65 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.
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 205(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 U.S.C. 1356(t). 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 program costs in the comprehensive costs recovery fee model with the aim to simplify the genealogy fee structure.

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 file copy, 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. 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). 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).

64 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).

65 The Cost Reallocation amount is $18. The additional $1 results from rounding the proposed fee to the nearest $5 increment.
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.66 See 8 CFR 103.2(a)(7)[i][i]. 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 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 biometric 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][i], 103.2(a)[7][ii]. 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 $30 charge 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 67 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.68 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 filing requirements for different benefits, including rejection criteria.69 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][i][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).70 USCIS does not refund a fee regardless of the decision on the immigration benefit

66 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 accepted, signed and submitted with the correct fee(s) will be rejected.”).

67 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.

68 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[b][iii][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.

69 Current 8 CFR 103.2[a][7][i] states, in part, “if excepted 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 245.4(a)(2) requires a current priority date for proper filing. 8 CFR 245.4(a)(2) 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][i][ii] (providing additional filing requirements for an application for a provisional unlawful presence waiver).

70 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][ii][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][ii][C] (the limited refunds for a Genealogy Records Request (Form G–1041A), proposed 8 CFR 103.7[b][1][ii][F], or no refund of the DCL System Costs Fee. 8 CFR 103.7[b][ii][A].

71 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.
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.\textsuperscript{72}

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. 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. USCIS is not barred from increasing the premium processing fee outside of rulemaking should circumstances require it.\textsuperscript{73}

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. \textit{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.\textsuperscript{73} 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.

\textsuperscript{72} 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.

\textsuperscript{73} 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.
USCIS also identified additional costs for staff adjudicating requests for premium processing service, 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)(i).

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.74 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 56990; 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 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.

74 The form and its instructions may be viewed at http://www.uscis.gov/i–912.
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.
### 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.

<table>
<thead>
<tr>
<th>Immigration benefit request</th>
<th>Average annual FY 2010/2011 fee paying projection</th>
<th>Average annual FY 2016/2017 fee paying projection</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>I–90 Application to Replace Permanent Resident Card ...........................................................</td>
<td>518,400</td>
<td>718,163</td>
<td>199,763</td>
</tr>
<tr>
<td>I–102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document ..............</td>
<td>17,165</td>
<td>9,499</td>
<td>–7,666</td>
</tr>
<tr>
<td>I–129 Petition for a Nonimmigrant Worker ..................................................................................</td>
<td>395,000</td>
<td>427,778</td>
<td>32,778</td>
</tr>
<tr>
<td>I–129F Petition for Alien Fiancé(e) .........................................................................................</td>
<td>39,960</td>
<td>39,277</td>
<td>–683</td>
</tr>
<tr>
<td>I–130 Petition for Alien Relative .............................................................................................</td>
<td>690,520</td>
<td>907,512</td>
<td>216,992</td>
</tr>
<tr>
<td>I–131/I–131A Application for Travel Document ...........................................................................</td>
<td>192,255</td>
<td>194,461</td>
<td>2,206</td>
</tr>
<tr>
<td>I–140 Immigrant Petition for Alien Worker ...................................................................................</td>
<td>75,000</td>
<td>88,602</td>
<td>13,602</td>
</tr>
<tr>
<td>I–290B Notice of Appeal or Motion ..............................................................................................</td>
<td>28,734</td>
<td>20,955</td>
<td>–7,779</td>
</tr>
<tr>
<td>I–360 Petition for Amerasian, Widow(er) or Special Immigrant .........................................................</td>
<td>6,957</td>
<td>8,961</td>
<td>2,004</td>
</tr>
<tr>
<td>I–485 Application to Register Permanent Residence or Adjust Status ...........................................</td>
<td>480,000</td>
<td>473,336</td>
<td>–6,664</td>
</tr>
<tr>
<td>I–526 Immigrant Petition by Alien Entrepreneur ...........................................................................</td>
<td>1,343</td>
<td>1,463</td>
<td>120,030</td>
</tr>
<tr>
<td>I–539 Application to Extend/Change Nonimmigrant Status .............................................................</td>
<td>195,000</td>
<td>171,616</td>
<td>–23,384</td>
</tr>
<tr>
<td>I–600/600A; I–800/800A Orphan Petitions ......................................................................................</td>
<td>16,211</td>
<td>5,811</td>
<td>–10,400</td>
</tr>
<tr>
<td>I–601A Provisional Unlawful Presence Waiver ..............................................................................</td>
<td>N/A</td>
<td>42,724</td>
<td>42,724</td>
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<tr>
<td>I–677 Application for Status as a Temporary Resident ...................................................................</td>
<td>43</td>
<td>9</td>
<td>–34</td>
</tr>
<tr>
<td>I–690 Application for Waiver on Grounds of Inadmissibility ......................................................</td>
<td>74</td>
<td>17</td>
<td>–57</td>
</tr>
<tr>
<td>I–694 Notice of Appeal of Decision ................................................................................................</td>
<td>50</td>
<td>39</td>
<td>–11</td>
</tr>
<tr>
<td>I–698 Application to Adjust Status From Temporary to Permanent Resident ......................................</td>
<td>605</td>
<td>91</td>
<td>–514</td>
</tr>
<tr>
<td>I–751 Petition to Remove the Conditions of Residence .................................................................</td>
<td>177,510</td>
<td>162,533</td>
<td>–14,977</td>
</tr>
<tr>
<td>I–800A Supp. 3 Request for Action on Approved Form I–800A .........................................................</td>
<td>N/A</td>
<td>601</td>
<td>497</td>
</tr>
<tr>
<td>I–817 Application for Family Unity Benefits ...............................................................................</td>
<td>1,750</td>
<td>1,988</td>
<td>238</td>
</tr>
<tr>
<td>I–824 Application for Action on an Approved Application or Petition ...........................................</td>
<td>20,961</td>
<td>10,828</td>
<td>–10,134</td>
</tr>
<tr>
<td>I–829 Petition by Entrepreneur to Remove Conditions ....................................................................</td>
<td>256</td>
<td>3,562</td>
<td>3,306</td>
</tr>
<tr>
<td>I–910 Application for Civil Surgeon Designation ...........................................................................</td>
<td>1,160</td>
<td>609</td>
<td>–551</td>
</tr>
<tr>
<td>I–924 Application for Regional Center Designation Under the Immigrant Investor Program ... ........</td>
<td>132</td>
<td>400</td>
<td>268</td>
</tr>
<tr>
<td>I–924A Annual Certification of Regional Center ...........................................................................</td>
<td>N/A</td>
<td>882</td>
<td>882</td>
</tr>
<tr>
<td>I–929 Petition for Qualifying Family Member of a U–1 Nonimmigrant ...........................................</td>
<td>N/A</td>
<td>257</td>
<td>257</td>
</tr>
<tr>
<td>N–300 Application to File Declaration of Intention ....................................................................</td>
<td>45</td>
<td>36</td>
<td>–9</td>
</tr>
<tr>
<td>N–336 Request for Hearing on a Decision in Naturalization Proceedings ......................................</td>
<td>4,145</td>
<td>3,593</td>
<td>–553</td>
</tr>
<tr>
<td>N–400 Application for Naturalization ............................................................................................</td>
<td>684,390</td>
<td>631,655</td>
<td>–52,736</td>
</tr>
<tr>
<td>N–470 Application to Preserve Residence for Naturalization purposes .........................................</td>
<td>621</td>
<td>360</td>
<td>–261</td>
</tr>
<tr>
<td>N–600/600K Naturalization Certificate Applications .......................................................................</td>
<td>45,347</td>
<td>46,870</td>
<td>5,533</td>
</tr>
<tr>
<td>USCIS Immigrant Fee .....................................................................................................................</td>
<td>215,000</td>
<td>472,511</td>
<td>257,511</td>
</tr>
<tr>
<td>G–1041 Genealogy Index Search Request ......................................................................................</td>
<td>N/A</td>
<td>3,605</td>
<td>3,605</td>
</tr>
<tr>
<td>G–1041A Genealogy Records Request ............................................................................................</td>
<td>N/A</td>
<td>2,410</td>
<td>2,410</td>
</tr>
<tr>
<td>Subtotal .........................................................................................................................................</td>
<td>4,376,169</td>
<td>4,929,707</td>
<td>553,533</td>
</tr>
<tr>
<td>Biometrics ......................................................................................................................................</td>
<td>1,950,603</td>
<td>2,598,639</td>
<td>648,036</td>
</tr>
<tr>
<td>Grand Totals .................................................................................................................................</td>
<td>6,326,772</td>
<td>7,528,346</td>
<td>1,201,569</td>
</tr>
</tbody>
</table>
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 as described 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;
  - 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.

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 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 Protection, Form I–821;
- 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.

### Table 6—Completion Rates per Benefit Request

<table>
<thead>
<tr>
<th>Immigration benefit request</th>
<th>Service-wide</th>
</tr>
</thead>
<tbody>
<tr>
<td>I–90 Application to Replace Permanent Resident Card</td>
<td>0.21</td>
</tr>
<tr>
<td>I–102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document</td>
<td>0.48</td>
</tr>
<tr>
<td>I–129 Petition for a Nonimmigrant Worker</td>
<td>0.83</td>
</tr>
<tr>
<td>I–129F Petition for Alien Fiancé(e)</td>
<td>0.65</td>
</tr>
<tr>
<td>I–130 Petition for Alien Relative</td>
<td>0.75</td>
</tr>
<tr>
<td>I–131/i–131A Application for Travel Document</td>
<td>0.21</td>
</tr>
<tr>
<td>I–140 Immigrant Petition for Alien Worker</td>
<td>1.68</td>
</tr>
<tr>
<td>I–290B Notice of Appeal or Motion</td>
<td>1.22</td>
</tr>
<tr>
<td>I–360 Petition for Amerasian, Widow(er) or Special Immigrant</td>
<td>1.97</td>
</tr>
<tr>
<td>I–485 Application to Register Permanent Residence or Adjunct Status</td>
<td>1.63</td>
</tr>
<tr>
<td>I–526 Immigrant Petition by Alien Entrepreneur</td>
<td>6.50</td>
</tr>
<tr>
<td>I–539 Application to Extend/Change Nonimmigrant Status</td>
<td>0.40</td>
</tr>
<tr>
<td>I–600/600A, I–800/800A Orphan Petitions</td>
<td>2.14</td>
</tr>
<tr>
<td>I–601A Application for Provisional Unlawful Presence Waiver</td>
<td>2.84</td>
</tr>
<tr>
<td>I–687 Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act</td>
<td>4.12</td>
</tr>
<tr>
<td>I–690 Application for Waiver on Grounds of Inadmissibility</td>
<td>0.89</td>
</tr>
<tr>
<td>I–694 Notice of Appeal of Decision under Section 210 or 245A</td>
<td>2.10</td>
</tr>
<tr>
<td>I–698 Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA)</td>
<td>3.80</td>
</tr>
<tr>
<td>I–751 Petition to Remove the Conditions of Residence</td>
<td>0.99</td>
</tr>
<tr>
<td>I–765 Application for Employment Authorization</td>
<td>0.20</td>
</tr>
<tr>
<td>I–800A Supplement 3 Request for Action on Approved Form I–800A</td>
<td>1.10</td>
</tr>
<tr>
<td>I–817 Application for Family Unity Benefits</td>
<td>0.92</td>
</tr>
<tr>
<td>I–824 Application for Action on an Approved Application or Petition</td>
<td>0.59</td>
</tr>
<tr>
<td>I–829 Petition by Entrepreneur to Remove Conditions</td>
<td>5.50</td>
</tr>
<tr>
<td>I–910 Application for Civil Surgeon Designation</td>
<td>1.81</td>
</tr>
<tr>
<td>I–924 Application for Regional Center Designation Under the Immigrant Investor Program</td>
<td>40.00</td>
</tr>
<tr>
<td>I–924A Annual Certification of Regional Center</td>
<td>5.00</td>
</tr>
<tr>
<td>N–300 Application to File Declaration of Intention</td>
<td>1.64</td>
</tr>
<tr>
<td>N–336 Request for Hearing on a Decision in Naturalization Proceedings</td>
<td>2.60</td>
</tr>
<tr>
<td>N–400 Application for Naturalization</td>
<td>1.25</td>
</tr>
<tr>
<td>N–470 Application to Preserve Residence for Naturalization Purposes</td>
<td>1.83</td>
</tr>
<tr>
<td>N–556 Application for Replacement Naturalization/Citizenship Document</td>
<td>0.59</td>
</tr>
<tr>
<td>N–600/N–600K Naturalization Certificate Applications</td>
<td>1.00</td>
</tr>
</tbody>
</table>
Table 8 summarizes total revenue by immigration benefit request based on the proposed fee schedule.

### Table 7—Projected IEFA Costs by Activity

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

The activity costs are then distributed to USCIS' primary processing activities in the ABC model.

### Table 8—Projected FY 2016/2017 Average Annual Revenue Per Immigration Benefit

<table>
<thead>
<tr>
<th>Immigration benefit request</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>G–1041 Genealogy Index Search Request</td>
<td>$234</td>
</tr>
<tr>
<td>G–1041A Genealogy Records Request</td>
<td>157</td>
</tr>
<tr>
<td>I–90 Application to Replace Permanent Resident Card</td>
<td>326,764</td>
</tr>
<tr>
<td>I–102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document</td>
<td>4,227</td>
</tr>
<tr>
<td>I–129 Petition for a Nonimmigrant</td>
<td>196,778</td>
</tr>
<tr>
<td>I–129F Petition for Alien Fiancé(e)</td>
<td>21,013</td>
</tr>
<tr>
<td>I–130 Petition for Alien Relative</td>
<td>485,519</td>
</tr>
<tr>
<td>I–131/I–131A Application for Travel Document</td>
<td>111,815</td>
</tr>
<tr>
<td>I–140 Immigrant Petition for Alien Worker</td>
<td>62,021</td>
</tr>
<tr>
<td>I–290B Notice of Appeal or Motion</td>
<td>14,145</td>
</tr>
<tr>
<td>I–360 Petition for Amerasian Widow(er) or Special Immigrant</td>
<td>3,898</td>
</tr>
<tr>
<td>I–465 Application to Register Permanent Residence or Adjust Status</td>
<td>539,603</td>
</tr>
<tr>
<td>I–526 Immigrant Petition by Alien Entrepreneur</td>
<td>53,923</td>
</tr>
<tr>
<td>I–539 Application to Extend/Change Nonimmigrant Status</td>
<td>63,498</td>
</tr>
<tr>
<td>I–600/600A/800/800A Orphan Petitions</td>
<td>4,504</td>
</tr>
<tr>
<td>I–601A Provisional Unlawful Presence Waiver</td>
<td>26,916</td>
</tr>
<tr>
<td>I–690 Application for Waiver of Grounds of Inadmissibility</td>
<td>12</td>
</tr>
<tr>
<td>I–694 Notice of Appeal of Decision</td>
<td>35</td>
</tr>
<tr>
<td>I–696 Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA)</td>
<td>152</td>
</tr>
<tr>
<td>I–751 Petition to Remove Conditions on Residence</td>
<td>96,707</td>
</tr>
<tr>
<td>I–765 Application for Employment Authorization</td>
<td>163,161</td>
</tr>
<tr>
<td>I–800A Supplement 3 Request for Action on Approved Form I–800A</td>
<td>287</td>
</tr>
<tr>
<td>I–817 Application for Family Unity Benefits</td>
<td>1,193</td>
</tr>
<tr>
<td>I–824 Application for Action on an Approved Application or Petition</td>
<td>5,035</td>
</tr>
<tr>
<td>I–829 Petition by Entrepreneur to Remove Conditions</td>
<td>13,356</td>
</tr>
<tr>
<td>I–910 Application for Civil Surgeon Designation</td>
<td>478</td>
</tr>
<tr>
<td>I–924 Application for Regional Center Designation Under the Immigrant Investor Program</td>
<td>7,109</td>
</tr>
<tr>
<td>I–924A Annual Certification of Regional Center</td>
<td>2,677</td>
</tr>
<tr>
<td>I–929 Petition for Qualifying Family Member of a U–1 Nonimmigrant</td>
<td>59</td>
</tr>
<tr>
<td>N–300 Application to File Declaration of Intention</td>
<td>10</td>
</tr>
<tr>
<td>N–336 Request for Hearing on a Decision in Naturalization Proceedings</td>
<td>2,515</td>
</tr>
<tr>
<td>N–400 Application for Naturalization</td>
<td>404,259</td>
</tr>
<tr>
<td>N–470 Application to Preserve Residence for Naturalization Purposes</td>
<td>128</td>
</tr>
<tr>
<td>N–565 Application for Replacement Naturalization/Citizenship Document</td>
<td>13,037</td>
</tr>
<tr>
<td>N–600/N–600K Application for Certificate of Citizenship</td>
<td>54,838</td>
</tr>
<tr>
<td>USCIS Immigrant Fee</td>
<td>103,952</td>
</tr>
<tr>
<td>Biometric Services</td>
<td>220,884</td>
</tr>
<tr>
<td>Grand Totals</td>
<td>3,043,886</td>
</tr>
</tbody>
</table>
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.

**TABLE 9—PROPOSED FEES BY IMMIGRATION BENEFIT**

<table>
<thead>
<tr>
<th>Immigration benefit request</th>
<th>Current fee ($)</th>
<th>Proposed fee ($)</th>
<th>Delta ($)</th>
<th>Percent change</th>
</tr>
</thead>
<tbody>
<tr>
<td>G–1041 Genealogy Index Search Request</td>
<td>$20</td>
<td>$65</td>
<td>$45</td>
<td>225</td>
</tr>
<tr>
<td>G–1041A Genealogy Records Request (Copy from Microfilm)</td>
<td>20</td>
<td>65</td>
<td>45</td>
<td>225</td>
</tr>
<tr>
<td>G–1041A Genealogy Records Request (Copy from Textual Record)</td>
<td>35</td>
<td>65</td>
<td>30</td>
<td>86</td>
</tr>
<tr>
<td>I–90 Application to Replace Permanent Resident Card</td>
<td>365</td>
<td>455</td>
<td>90</td>
<td>25</td>
</tr>
<tr>
<td>I–129 Petition for a Nonimmigrant worker</td>
<td>325</td>
<td>460</td>
<td>135</td>
<td>42</td>
</tr>
<tr>
<td>I–129F Petition for Alien Fiancé(e)</td>
<td>340</td>
<td>535</td>
<td>195</td>
<td>57</td>
</tr>
<tr>
<td>I–130 Petition for Alien Relative</td>
<td>420</td>
<td>535</td>
<td>115</td>
<td>27</td>
</tr>
<tr>
<td>I–131/I–131A Application for Travel Document</td>
<td>360</td>
<td>575</td>
<td>215</td>
<td>60</td>
</tr>
<tr>
<td>I–140 Immigrant Petition for Alien Worker</td>
<td>580</td>
<td>700</td>
<td>120</td>
<td>21</td>
</tr>
<tr>
<td>I–200B Notice of Appeal or Motion</td>
<td>630</td>
<td>675</td>
<td>45</td>
<td>7</td>
</tr>
<tr>
<td>I–360 Petition for Amerasian Widow(er) or Special Immigrant</td>
<td>405</td>
<td>435</td>
<td>30</td>
<td>7</td>
</tr>
<tr>
<td>I–485 Application to Register Permanent Residence or Adjust Status</td>
<td>985</td>
<td>1,140</td>
<td>155</td>
<td>16</td>
</tr>
<tr>
<td>I–526 Immigrant Petition by Alien Entrepreneur</td>
<td>1,500</td>
<td>3,675</td>
<td>2,175</td>
<td>145</td>
</tr>
<tr>
<td>I–539 Application to Extend/Change Nonimmigrant Status</td>
<td>290</td>
<td>370</td>
<td>80</td>
<td>28</td>
</tr>
<tr>
<td>I–600/600A/800/800A Orphan Petitions</td>
<td>720</td>
<td>775</td>
<td>55</td>
<td>8</td>
</tr>
<tr>
<td>I–601A Application for Provisional Unlawful Presence Waiver</td>
<td>585</td>
<td>630</td>
<td>45</td>
<td>8</td>
</tr>
<tr>
<td>I–687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act</td>
<td>1,130</td>
<td>1,130</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>I–690 Application for Waiver of Grounds of Inadmissibility</td>
<td>200</td>
<td>715</td>
<td>515</td>
<td>258</td>
</tr>
<tr>
<td>I–694 Notice of Appeal of Decision</td>
<td>755</td>
<td>890</td>
<td>135</td>
<td>18</td>
</tr>
<tr>
<td>I–698 Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA)</td>
<td>1,020</td>
<td>1,670</td>
<td>650</td>
<td>64</td>
</tr>
<tr>
<td>I–751 Petition to Remove Conditions on Residence</td>
<td>505</td>
<td>595</td>
<td>90</td>
<td>18</td>
</tr>
<tr>
<td>I–765 Application for Employment Authorization</td>
<td>380</td>
<td>410</td>
<td>30</td>
<td>8</td>
</tr>
<tr>
<td>I–800A Supp. 3 Request for Action on Approved Form I–800A</td>
<td>360</td>
<td>385</td>
<td>25</td>
<td>7</td>
</tr>
<tr>
<td>I–817 Application for Family Unity Benefits</td>
<td>435</td>
<td>600</td>
<td>165</td>
<td>38</td>
</tr>
<tr>
<td>I–824 Application for Action on an Approved Application or Petition</td>
<td>405</td>
<td>465</td>
<td>60</td>
<td>15</td>
</tr>
<tr>
<td>I–829 Petition by Entrepreneur to Remove Conditions</td>
<td>3,750</td>
<td>3,750</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>I–910 Application for Civil Surgeon Designation</td>
<td>615</td>
<td>785</td>
<td>170</td>
<td>28</td>
</tr>
<tr>
<td>I–924 Application for Regional Center Designation Under the Immigrant Investor Program</td>
<td>6,230</td>
<td>17,795</td>
<td>11,565</td>
<td>186</td>
</tr>
<tr>
<td>I–924A Annual Certification of Regional Center</td>
<td>0</td>
<td>3,035</td>
<td>3,035</td>
<td>N/A</td>
</tr>
<tr>
<td>I–929 Petition for Qualifying Family Member of a U–1 Nonimmigrant</td>
<td>215</td>
<td>230</td>
<td>15</td>
<td>7</td>
</tr>
<tr>
<td>N–300 Application to File Declaration of Intention</td>
<td>250</td>
<td>270</td>
<td>20</td>
<td>8</td>
</tr>
<tr>
<td>N–336 Request for Hearing on a Decision in Naturalization Proceedings</td>
<td>650</td>
<td>700</td>
<td>50</td>
<td>8</td>
</tr>
<tr>
<td>N–400 Application for Naturalization</td>
<td>595</td>
<td>640</td>
<td>45</td>
<td>8</td>
</tr>
<tr>
<td>N–470 Application to Preserve Residence for Naturalization Purposes</td>
<td>330</td>
<td>355</td>
<td>25</td>
<td>8</td>
</tr>
<tr>
<td>N–565 Application for Replacement Naturalization/Citizenship Document</td>
<td>345</td>
<td>555</td>
<td>210</td>
<td>61</td>
</tr>
<tr>
<td>N–600/N–600K Application for Certificate of Citizenship</td>
<td>600</td>
<td>1,170</td>
<td>570</td>
<td>95</td>
</tr>
<tr>
<td>USCIS Immigrant Fee</td>
<td>165</td>
<td>220</td>
<td>55</td>
<td>33</td>
</tr>
<tr>
<td>Biometric Services</td>
<td>85</td>
<td>85</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

**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–924.77

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.

77 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 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

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 understate 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. 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 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 entities, 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-matches 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 329 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. Here, 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 as 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. These entities 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. 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 $77,905, 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 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–924A applications. 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 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 Web sites, DHS gathers that administrative fees charged to investors could range between $30,000 and $100,000 per investor. 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 impact 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 (the new proposed fee for Form I–924A) 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 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 center. 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.


80 Supplemental Form I–924A (Supplement to Form I–924) is captured in this dataset.

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;

(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.” 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, 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. 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 Fairness 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 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.

Table 10—Accounting Statement, FY 2016 Through FY 2017

<table>
<thead>
<tr>
<th>Category</th>
<th>Primary estimate</th>
<th>Maximum estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Un-quantified Benefits</td>
<td>Maintain current level of service with respect to processing times, customer service, and efficiency levels.</td>
<td></td>
</tr>
<tr>
<td>Transfers:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annualized Monetized Transfers at 3%</td>
<td>$546,429,650</td>
<td></td>
</tr>
<tr>
<td>Annualized Monetized Transfers at 7%</td>
<td>$546,429,650</td>
<td></td>
</tr>
<tr>
<td>Effects on State, local, and/or tribal governments.</td>
<td>For those state, local, and/or tribal governments that submit petitions for nonimmigrant and immigrant workers, they would face an increase in filing fees.</td>
<td></td>
</tr>
<tr>
<td>Effects on small businesses</td>
<td>For those small businesses that submit petitions for nonimmigrant and immigrant workers, they would face an increase in filing fees.</td>
<td></td>
</tr>
</tbody>
</table>

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. 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 plus 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. 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 within 10 business days after notification by DHS of the dishonored check. 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. 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.

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. 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. If these charges are not paid, the approval will be automatically rejected for nonpayment.

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 2015. In FY 2015, 10,818 payments were returned (Table 11). Of those 10,818

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82 See 8 CFR 103.2(a)(7)(ii).
83 See proposed 8 CFR 103.2(a)(7)(ii).
84 See proposed 8 CFR 103.7(a)(2).
85 Id.
86 Corrected payments include any payment collected by USCIS after the return of an initial payment.
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. 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 resubmitted 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 resubmitted 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. 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. 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 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. 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

<table>
<thead>
<tr>
<th>Year</th>
<th>Total returned payments</th>
<th>Total corrected payments</th>
<th>Percentage of corrected payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>10,818</td>
<td>6,399</td>
<td>59.2</td>
</tr>
<tr>
<td>2014</td>
<td>9,200</td>
<td>6,467</td>
<td>70.3</td>
</tr>
<tr>
<td>2013</td>
<td>9,785</td>
<td>6,496</td>
<td>66.4</td>
</tr>
<tr>
<td>2012</td>
<td>9,322</td>
<td>6,550</td>
<td>70.3</td>
</tr>
<tr>
<td>Average</td>
<td>9,781</td>
<td>6,478</td>
<td>66.2</td>
</tr>
</tbody>
</table>


\[^{97}\text{Calculation: } 9,781 \text{ (average number of returned payments) } \times 30 \text{ (current service fee charge) } = 293,430 \text{ (total cost for returned payments).}\]

\[^{98}\text{See } 8 \text{ CFR 214.2(b)(i)(B).}\]

\[^{99}\text{See } 8 \text{ CFR 103.2(a)(7)(iii).}\]

\[^{100}\text{See } 8 \text{ CFR 103.17(b)(1).}\]
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. 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 (0.41 percent) of applicants 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 biometric 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 $585. 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 $585 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. 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 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 of 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. The federal minimum wage rate 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 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. 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

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


106 Calculation: 821,500 * 11 percent.
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
- 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.

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Amount refunded</th>
<th>Number of refunds</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>$2,674,290</td>
<td>7,405</td>
</tr>
<tr>
<td>2014</td>
<td>1,805,006</td>
<td>4,198</td>
</tr>
<tr>
<td>2015</td>
<td>1,890,623</td>
<td>4,485</td>
</tr>
<tr>
<td>Average</td>
<td>2,123,311</td>
<td>5,363</td>
</tr>
</tbody>
</table>


These proposed amendments would benefit applicants who might accidently 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, Public Law 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)(AA)(A)); 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 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 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 electronic filing of the N–400 is 9.17 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–942 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.

• Form I–924—51 respondents.

• Form I–924A—14 respondents.

• Form I–924—51 hours.

• Form I–924A—14 hours.

• 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: oira_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 17th St. NW., Washington, DC 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:


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 1, 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) 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 Web site 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.

   (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: $230.

   (E) Request for a search of indices to historical 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 fiancé 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, Widower, 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 Adjustment 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 siblings: $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 siblings, 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.

(A) 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.

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

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

(D) 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.

(E) 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 210A of the Act, or a petition under section 210A of the Act: $890.

(G) Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Pub. L. 99–603), Form I–608. 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.

(H) Application to Remove Conditions on Residence, Form I–751. For filing a petition to remove the conditions on residence based on marriage: $595.

(I) 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.
(J) 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.  

(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 if multiple applications are filed by two or more foreign nationals in the same proceedings).  


(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 for 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 a 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: $1,700. There is no fee for any application filed by a member or veteran of any branch of the United States Armed Forces.  


(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:


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)(ii)(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.

[FR Doc. 2016–10297 Filed 5–3–16; 8:45 am]

BILLING CODE 9111–97–P