UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PROJECT CITIZENSHIP INC. Plaintiff, vs. DEPARTMENT OF HOMELAND SECURITY, CHAD WOLF, in his official capacity, KENNETH CUCCINELLI, in his official capacity, AND UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, Defendants.	Case No. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ADMINISTRATIVE PROCEDURE ACT CASE

Plaintiff Project Citizenship brings this Complaint against Defendants Chad Wolf, in his official capacity as Acting Secretary of Homeland Security; the U.S. Department of Homeland Security ("DHS"); U.S. Citizenship and Immigration Services ("USCIS"), and Kenneth Cuccinelli, in his official capacity as Senior Official Performing the Duties of Director of USCIS (collectively, "Defendants"). In this action, Plaintiff seeks declaratory and injunctive relief barring implementation of an illegal USCIS rule – currently set to take effect on October 2, 2020 – that would prevent tens of thousands of eligible immigrants from becoming naturalized U.S. citizens. Plaintiff alleges as follows:

I. INTRODUCTION

1. The naturalization process is regulated by USCIS and is the final step on the long road for "green card" holders, or Lawful Permanent Residents ("LPRs"), to apply for and obtain citizenship in the United States. Immigrants who are eligible to complete the naturalization process are, by definition, individuals whom the government has found to be eligible for permanent resident status, who have shown a deep commitment to and love for this country, and who already have deep roots in their communities.

2. Millions of immigrants are eligible to naturalize. *See, e.g.*, U.S. Dep't of Homeland Sec., Office of Immigration Statistics, *Population Estimates: Lawful Permanent Resident Population in the United States: January 2015* 1 (May 2019), https://www.dhs.gov/sites/default/files/publications/lpr_population_estimates_january_2015.pdf (DHS estimated that 9 million LPRs in the United States were eligible to naturalize as of January 1, 2015). To be eligible to naturalize, immigrants must meet criteria that Congress has determined demonstrates a commitment to this country: good moral character; years of lawful permanent residence and physical presence; proficiency in the English language (in most cases); and an understanding of the nation's history and government. None of these criteria concerns an individual's wealth.

3. In exchange for demonstrating commitment through the aforementioned criteria, naturalized immigrants – new citizens – are granted the right to participate fully in American life. Citizens are able to vote, serve on juries, travel without restrictions, and run for political office. These are all enormous benefits without which full integration into American society is impossible. Additionally, citizens have access to better economic opportunities than LPRs, including government jobs and certain job-related security clearances, to the ultimate benefit of their communities and the United States as a whole.

4. In addition, children who are LPRs who automatically derive citizenship from a U.S.-citizen parent ("Derivative Applicants," or, collectively with LPRs, "Applicants") rely upon USCIS to provide them with official documentation of their citizenship status. Thus, LPRs pursuing the naturalization process can strengthen their family units by obtaining citizenship for Derivative Applicants and by petitioning to bring other family members to the United States.

5. Fundamental to the naturalization process is the role of USCIS and its stated goal to "administer[] the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values." U.S. Dep't of Homeland Sec., *Citizenship and Immigration Services Overview*, https://www.dhs.gov/topic/overview (last visited Aug. 11, 2020).

6. This case challenges an unlawful measure taken by Defendants that directly undermines this goal by severely limiting the ability of low-income LPRs to apply for naturalization and/or for Derivative Applicants to apply for a Certificate of Citizenship. Currently, LPRs must pay a $725 fee with an Application for Naturalization, and Derivative Applicants must

pay a $1,170 fee with an Application for Certificate of Citizenship. Since 2011, USCIS has maintained a policy of waiving these fees for Applicants who demonstrate one of the following: (1) receipt of a means-tested benefit, such as Medicaid, Supplemental Security Income ("SSI"), Supplemental Nutrition Assistance Program ("SNAP," formerly known as food stamps), or Temporary Assistance for Needy Families ("TANF"); (2) income at or below 150 percent of the Federal Poverty Guidelines; or (3) "financial hardship" evinced by extraordinary circumstances such as job loss or medical expenses.

7. This fee waiver program has allowed hundreds of thousands of immigrants to begin the naturalization process despite having limited financial resources. In 2017, nearly 40 percent of all naturalization applications included a fee waiver. Studies show that fees are a substantial barrier to naturalization and that fee waivers lead to an increase in the number of naturalized citizens.

8. Since its founding in 2014, Plaintiff Project Citizenship has specialized in helping permanent residents in Massachusetts and beyond overcome barriers to U.S. citizenship. Each year, Project Citizenship is responsible for up to 5% of the total naturalization applications to the Boston and Lawrence, Massachusetts USCIS offices. Project Citizenship's mission to ensure that all eligible immigrants understand and have access to the path to citizenship, regardless of their ability to pay, is directly reliant on the fee waiver program.

9. Over the last six years alone, Project Citizenship has helped more than 7,965 LPRs apply for citizenship through its dedicated full-time staff, *pro bono* legal partners, and more than 1,000 trained volunteers. Project Citizenship has a 95% success rate. In its experience, Project Citizenship has found that the Application for Naturalization form ("Form N-400") is not straightforward and that clients benefit from legal advice and assistance. Over 20% of Project Citizenship's clients have previously attempted to apply for, or applied unsuccessfully for, citizenship. The majority of naturalization applications that Plaintiff submits on behalf of its clients are generated through naturalization workshops it hosts, which are highly streamlined, one-day events fueled primarily by volunteer labor. Plaintiff carefully plans these workshops to maximize efficiency and to ensure its ability to assist as many individuals as possible with limited resources. Workshops are one-stop shops for completing and submitting applications for eligible LPRs and Derivative Applicants, and Applicants are asked to bring all documentation required to

complete their naturalization or certificate application, including documentation supporting a fee waiver, if one is needed.

10. On November 14, 2019, USCIS proposed changes to the established fee waiver qualifications and process that will go into effect on October 2, 2020 (the "2020 Rule"). The 2020 Rule will cripple the ability of low-income Applicants to apply for naturalization or to receive a Certificate of Citizenship in two critical ways.

11. First, the 2020 Rule increases the application fee for citizenship applicants by nearly 83%, from $640 to $1,170. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 Fed. Reg. 46,788, 46,792 (Aug. 3, 2020) (to be codified at 8 C.F.R. pts. 103, 106, 204, 211-12, 214, 216-17, 223, 235-36, 240, 244-45, 245a, 248, 264, 274a, 286, 301, 319-20, 322, 324, 334, 341, 343a, 343b, 392). Applicants will receive a $10 discount for applying online, which still constitutes an application fee increase of over 81%. *Id.* at 46,792. N-400 applicants who previously would have qualified for the "reduced fee option . . . whose documented income is greater than 150 percent and not more than 200 percent of the Federal poverty level" will see their application fee rise from $320 to $1,170, a nearly 226% increase. *Id.* at 46,792 & n.8, 46,913.

12. Second, the 2020 Rule removes the ability of the vast majority of Applicants to obtain a fee waiver for Form N-400 and Application of Certificate of Citizenship (for Derivative Applicants) ("Form N-600") submissions. *See id.* at 46,818, 46,790. Under the proposed rule, fee waivers would be limited to very specific groups of applicants including Violence Against Women Act self-petitioners, certain special immigrant juveniles and special immigrants, and select victims of trafficking, crime, or domestic violence. *See id.* at 46,790, 46,810, 46,812-13 (allowing for N-400 fee waivers for "requestors who meet the requirements of INA section 245(l)(7), 8 U.S.C. 1255(l)(7)," along with other specified groups of applicants); *see also* 8 U.S.C. § 1255(l)(7) (2018).

13. By increasing the application fee and eliminating fee waivers for almost all applicants, USCIS eliminates access to naturalization for low-income immigrants and unduly burdens Applicants as well as providers of naturalization services, such as Plaintiff. In effect, this change constitutes a wealth test for citizenship, preventing large numbers of low-income LPRs from becoming citizens, and their LPR children from deriving citizenship, despite the fact that they otherwise qualify for citizenship in every way. Similarly, because the 2020 Rule removes the ability of Derivative Applicants to obtain fee waivers, eligible low-income Derivative Applicants

will be prevented from receiving certificates of citizenship, which are necessary to demonstrate their unquestionable status as U.S. citizens.

14. Plaintiff will likewise experience harm if the rule goes into effect. Plaintiff's mission is to ensure that all immigrants understand and have access to the path to citizenship, regardless of their ability to pay. Plaintiff receives funding from a combination of grants and donations, many of which are tied to the number of individuals whom Plaintiff serves per year. Plaintiff also receives grants and donations because it serves low-income clients. Approximately 73% of the individuals and families that Plaintiff serves apply for a fee waiver. Immediately upon going into effect, the 2020 Rule will effectively revoke the ability of those Applicants to pursue naturalization as well as Plaintiff's ability to assist them in doing so. In the long-term, it will drastically limit the number of future clients, especially low-income clients, that Plaintiff can assist, thus impinging upon Plaintiff's mission and jeopardizing Plaintiff's funding and, as a result, its very existence.

15. While limiting the number of eligible individuals applying for citizenship appears to have been the underlying purpose of USCIS's rule change, the 2020 Rule is unlawful for three principal reasons.

16. First, despite issuing substantive rule changes that affect the rights of individuals, Defendants failed to follow the notice-and-comment procedures required under the Administrative Procedure Act (the "APA"). Defendants failed to give interested persons a meaningful opportunity to participate in the rulemaking process. Specifically, Defendants did not provide enough time for public comment. Additionally, Defendants' response to the comments submitted in response to the 2020 Rule was wholly deficient.

17. Second, the 2020 Rule violates the APA because Defendants' decision to make changes to the naturalization process is arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A) (2018). Defendants claim that raising the citizenship fee and eliminating fee waivers are necessary to cover "the full operating costs associated with administering the nation's lawful immigration system." 85 Fed. Reg. at 46,789. Defendants further represent that citizenship fees have historically been heavily discounted, with costs of processing citizenship applications shifted to other fee payers, and that the proposed changes would shift fee policies from the "ability-to-pay" principle to the "beneficiary-pays" principle. *See id.* at 46,799, 46,801. But USCIS admits that the 2020 Rule "deviates from the beneficiary-pays principle to establish fees that do not represent the estimated

full cost of adjudication." *See id.* at 46,795. Further, the agency's own numbers suggest that the proposed changes would result in Applicants paying for more than just the cost of processing their applications. Applicants, therefore, will end up subsidizing the costs of processing other types of immigration benefits applications. Moreover, USCIS's projections regarding the number and cost of future applications are not supported by the available evidence.

18. Third, the 2020 Rule violates the Immigration and Nationality Act (the "INA") and is therefore "not in accordance with law." *See* 5 U.S.C. § 706(2)(A). The 2020 Rule violates sections 312 and 316 of the INA, which clearly enumerate the prerequisites for naturalization, *see* 8 U.S.C. §§ 1423, 1427 (2018), by creating a wealth requirement for citizenship.

19. For these reasons and others, the Court should vacate the 2020 Rule, declare it unlawful, and enjoin Defendants from applying it.

II. JURISDICTION AND VENUE

20. This Court has federal question jurisdiction under 28 U.S.C. § 1331 (2018) because this action arises under the APA and the INA.

21. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (e)(1) (2018).

III. PARTIES

A. Plaintiff

22. Plaintiff Project Citizenship is a 501(c)(3) nonprofit organization headquartered in Boston, Massachusetts. Its mission is to provide free, high-quality legal services to LPRs and Derivative Applicants in obtaining U.S. citizenship and certificates of citizenship, respectively. As a key part of that mission, Project Citizenship offers free workshops, eligibility screenings, application assistance, legal referrals, and all materials needed to apply for U.S. citizenship.

23. Project Citizenship's work relies upon a network of volunteer attorneys, Department of Justice-accredited representatives, law students, and other trained volunteers. With the assistance of approximately 1,005 volunteers, Project Citizenship held 64 workshops in 2019 alone, assisting 1,974 Applicants.

24. In addition, Project Citizenship works collaboratively with community-based partners throughout New England to provide a range of support services, civics instruction, application assistance, and English for Speakers of Other Languages ("ESOL") classes. As a result, Project Citizenship has helped thousands of LPRs with the naturalization process and Derivative Applicants with the certification process, in large part due to its extensive experience

with fee waiver applications. Project Citizenship relies heavily upon the ability of its low-income clients to submit applications without substantial burden and unnecessary hardship.

B. Defendants

25. Defendant DHS is the executive department charged with authority over federal immigration law, *see* 6 U.S.C. § 251 (2018), and DHS is an "agency" within the meaning of the APA, *see* 5 U.S.C. § 551(1) (2018).

26. Defendant Chad Wolf is the Acting Secretary of Homeland Security, 85 Fed. Reg. at 46,913, and is thus deemed the head of the agency with "direction, authority, and control over it." *See* 6 U.S.C. § 112(a)(2) (2018). Under the INA, he is "charged with the administration and enforcement of" the federal immigration and nationality laws. 8 U.S.C. § 1103(a)(1) (2018). Defendant Wolf is being sued in his official capacity.

27. Defendant USCIS is a component of DHS, *see* 6 U.S.C. § 271 (2018), and an "agency" within the meaning of the APA, *see* 5 U.S.C. § 551(1). USCIS is permitted to charge fees for naturalization services and to provide certain related services "without charge." *See* 8 U.S.C. § 1356(m) (2018). USCIS is the arm of DHS that issued the 2020 Rule.

28. Defendant Kenneth R. Cuccinelli is the Senior Official Performing the Duties of Director of USCIS. 85 Fed. Reg. at 46,804. Among the functions delegated to the USCIS Director is "establish[ing] the policies for performing" functions including "[a]djudications of naturalization petitions." 6 U.S.C. §§ 271(a)(3)(A), (b)(2). Defendant Cuccinelli is being sued in his official capacity.

IV. SUBSTANTIVE ALLEGATIONS

A. Naturalization

1. The Benefits of Naturalization

29. The Constitution recognizes two pathways to citizenship: by birth and by naturalization. U.S. Const. amend. XIV, § 1. Recognizing the importance of having a clear process for immigrants to become citizens, the First United States Congress passed the country's first Naturalization Act in 1790, just one year after the Constitution went into effect. 1 Stat. 103.

30. Since that time, the United States has always maintained a process by which immigrants who have made a permanent commitment to the United States can formalize that relationship by becoming citizens. The United States has historically "exhibit[ed] extraordinary

hospitality to those who come to our country," with "[o]ne indication of this attitude [being] Congress' determination to make it relatively easy for immigrants to become naturalized citizens." *Foley v. Connelie*, 435 U.S. 291, 294 & n.2 (1978).

31. To be eligible to naturalize under current law, most immigrants must: (1) have been an LPR for five years; (2) be able to read, write, and speak basic English; (3) have a basic understanding of United States history and government; (4) be a person of good moral character; and (5) demonstrate an attachment to the principles and ideals of the United States Constitution. 8 U.S.C. §§ 1423, 1427.

32. In addition, most LPRs must be able to show: (1) three months' residence in the state from which they are applying; (2) continuous residence in the United States for five years prior to applying for naturalization; and (3) "physical presence" in the United States for at least 30 months out of the five years before applying for citizenship. 8 U.S.C. § 1427.

33. Among the chief benefits of citizenship are the rights to vote, apply for government jobs, run for elected office, and serve on a jury. *See, e.g.*, U.S. Citizenship and Immigration Servs., M-476, *A Guide to Naturalization* 3 (rev. Nov. 2016), https://www.uscis.gov/sites/default/files/files/article/M-476.pdf. Put simply, naturalization allows the full and free participation in this nation's democracy.

34. There are additional tangible benefits only obtained once naturalized. For example, while LPRs face restrictions on international travel, naturalized citizens do not, and they can travel internationally with U.S. passports. *Id.* Further, unlike LPRs, naturalized citizens cannot be deported. Naturalized citizens are also eligible for state and federal government benefits that are not available to LPRs.

35. Naturalization is also associated with substantial improvements in economic and professional opportunities, including access to jobs requiring high-level security clearance. On average, naturalized citizens can see their earnings increase by eight to eleven percent. *See* Manuel Pastor & Justin Scoggins, Ctr. for the Study of Immigrant Integration, *Citizen Gain: The Economic Benefits of Naturalization for Immigrants and the Economy* 1, 11 (Dec. 2012), https://dornsife.usc.edu/csii/citizen-gain/; *see also* María E. Enchautegui & Linda Giannarelli, Urban Inst., *The Economic Impact of Naturalization on Immigrants and Cities* 15 (Dec. 2015), https://www.urban.org/research/publication/economic-impact-naturalization-immigrants-and-cities/view/full_report ("[W]e find that naturalization increases the earnings of those eligible

to naturalize 8.9 percent . . . ."). Naturalization alone may result in a wage premium of at least five percent, even when controlling for education, language skills, work experience, and other factors that might otherwise explain a wage gap. *See* Madeleine Sumption & Sarah Flamm, *The Economic Value of Citizenship for Immigrants in the United States* 1 (Sept. 2012), https://www.migrationpolicy.org/research/economic-value-citizenship. Naturalized citizens are more likely to own their own homes and build assets.

36. The economic benefits of naturalization are attributable, at least in part, to the fact that a naturalized citizen is better able to find the right job – including a highly skilled job – and to switch jobs if necessary. Naturalized citizens also have access to certain government jobs, and jobs in licensed professions that are not open to certain noncitizens. *See, e.g.*, 8 U.S.C. § 1621 (2018). Additionally, naturalized citizens experience less employment discrimination than noncitizens.

37. The benefits of naturalization extend to the families of naturalized citizens. LPR children under the age of 18 living with their parents automatically become citizens once their parents naturalize. 8 U.S.C. § 1431(a) (2018). These Derivative Applicants are eligible to apply for a certificate of citizenship from the government that serves as tangible evidence of their citizenship status. Naturalized citizens, unlike LPRs, can also file immigration petitions to reunite with certain family members, such as parents, siblings, and married sons and daughters. *See* 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153 (a)(1)-(4) (2018).

38. When more individuals are eligible to, and do, participate in the political process, our government is stronger and tends to enact policies that more fully reflect the needs of the entire populace. By opening the door to political participation, naturalization helps to ensure that our representative government is truly representative.

2. The Naturalization Application Process

39. For LPRs seeking to become U.S. citizens, naturalization marks the final step in a long journey.

40. An LPR begins the application process by filling out USCIS Form N-400, the naturalization application. This 20-page form requests detailed information, including information about the Applicant's residence, parents, marital history, children, employment and education, and travel outside the United States. It also asks more than 40 questions about the Applicant's moral

character and commitment to the United States; many of the questions have legal implications and are written at an advanced English level.

41. After completing the form, an LPR must collect a number of required documents. Depending on an LPR's basis for eligibility, these can include, among other things, a Permanent Resident Card, marriage certificate, proof of a spouse's U.S. citizenship, and proof of termination of all prior marriages. The LPR must mail these documents, together with the application form and fee, to a USCIS "Lockbox Facility."

42. After the application is processed, LPRs are sent a letter with a date and location for a biometrics appointment. When the date comes, the LPR travels to the location to be fingerprinted and photographed. Afterward, the LPR waits to hear about their status and may be required to provide additional documents, or be fingerprinted again.

43. Once the documents and biometrics are in order, USCIS schedules an interview for the Applicant, at which a USCIS officer asks detailed questions about the Applicant's background, residence, moral character, and allegiance to the United States. The officer also administers an English test (unless the Applicant qualifies for an exemption) and a civics exam with questions about American politics and history.

44. After the interview, the LPR waits to receive a decision. The application is either denied, continued (in which case a second interview is scheduled or more documents are requested), or approved. Approved LPRs attend a ceremony where they become American citizens after taking an oath to support and defend the Constitution and laws of this nation.

3. Naturalization Application Fees and Fee Waivers

45. Congress has authorized USCIS to collect fees to cover the costs of its operations, including any costs associated with processing immigration applications. *See* 8 U.S.C. § 1356(m). Pursuant to that authority, USCIS has set the total fee for naturalization applications at $725. The fee for Form N-600 is $1,170.

46. For many low-income Applicants, the application fee is a major barrier to applying for naturalization or for a certificate of citizenship. It can often mean the difference of being able to pay rent, secure food for their family, keep up with medical bills, and pay all the other expenses families incur on a daily basis. Research and Plaintiff's own experience demonstrate that the application fee can preclude eligible LPRs from applying for citizenship. *See, e.g.*, Jens Hainmueller et al., *A Randomized Controlled Design Reveals Barriers to Citizenship for Low-*

Income Immigrants, 115(5) Proceedings of the Nat'l Acad. of Sci. of the United States of Am. 939 (2018) ("Offering [a] fee voucher increased naturalization application rates by about 41%, suggesting that application fees act as a barrier for low-income immigrants who want to become US citizens.").

47. Because of the significant expense associated with naturalization, Congress has enacted a way for USCIS to provide services "without charge" to certain immigrants. *See* 8 U.S.C. § 1356(m). In 2010, pursuant to that authority, USCIS set out the parameters of the fee waiver program under 8 C.F.R. section 103.7(c). It states that to be eligible for a fee waiver, Applicants must be "unable to pay the prescribed fee." 8 C.F.R. § 103.7(c)(1)(i) (2020). Additionally,

> To request a fee waiver, a person requesting an immigration benefit must submit a written request for permission to have their request processed without payment of a fee with their benefit request. The 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. There is no appeal of the denial of a fee waiver request.

Id. § 103.7(c)(2).

48. Since the fee waiver program's implementation, fee waivers have played an important role in making naturalization accessible to many eligible LPRs. According to researchers from the University of Southern California, approximately 32 percent of all naturalization-eligible adults qualify for a fee waiver based on income alone. *See* Manuel Pastor, Patrick Oakford & Jared Sanchez, Ctr. for the Study of Immigrant Integration & Ctr. for Am. Progress, *Profiling the Eligible to Naturalize* 3 (Nov. 24, 2014), https://dornsife.usc.edu/assets/sites/731/docs/Report_Profiling-the-Eligible-to-Naturalize.pdf. Consistent with that statistic, almost 40 percent of naturalization applications filed in 2017 included a fee waiver request.

49. Project Citizenship experiences an even higher percentage of fee waiver requests due to the low-income client population it serves – 73% of naturalization applications filed by Project Citizenship include a fee waiver request.

4. The 2010 Notice and 2011 Policy Memorandum Regarding Fee Waivers

50. In June 2010, USCIS published a notice to the Federal Register (the "2010 Notice"), attached as Exhibit ("Ex.") A, proposing changes to USCIS's fee waiver regulation for naturalization applications, 8 C.F.R. § 103.7(c). U.S. Citizenship and Immigration Services Fee

Schedule, 75 Fed. Reg. 33,446 (proposed June 11, 2010) (to be codified at 8 C.F.R. pts. 103, 204, 244, 274A). Among other things, USCIS restructured the section "to list fees that can be waived, rather than those that cannot be waived." *Id.* at 33,478.

51. In connection with the 2010 Notice, USCIS also created a form that Applicants could use to request a fee waiver. The form, known as Form I-912, was designed to "bring clarity and consistency to the fee-waiver process." U.S. Citizenship and Immigr. Servs., PM-602-0011.1, Policy Memorandum 2 (Mar. 13, 2011).

52. In 2011, USCIS issued policy guidance clarifying how it would decide future fee waiver requests (the "2011 Policy Memorandum"), attached as Ex. B. *Id*. at 5-8. The 2011 Policy Memorandum set out three main ways in which Applicants could prove eligibility for a fee waiver.

53. First, Applicants could submit proof that they currently receive a means-tested benefit, such as Medicaid, SSI, SNAP, or TANF. *Id.* at 5. These and other means-tested benefits are approved and offered by local government agencies to low-income individuals and families in order to ensure that they have access to the basic necessities of daily living. Receipt of a means-tested benefit was, therefore, determined to be a good indicator that an individual deemed unable to pay for daily needs such as food and medical care would similarly not be able to pay the fee required to become a U.S. citizen or obtain proof of U.S. citizenship. Applicants could easily provide valid proof of receipt of a means-tested benefits by means of a letter, notice, or other official document obtained directly from the benefit-granting agency. Once an Applicant proved that they were receiving a means-tested benefit, "the fee waiver w[ould] normally be approved, and no further information w[ould] be required." *Id*.

54. Second, if an Applicant could not show proof of receipt of a means-tested benefit, they could still receive a fee waiver by proving that their income was "at or below 150 percent of the Federal Poverty Guidelines." *Id.* at 6. To do that, the 2011 Policy Memorandum requested evidence of the Applicant's wages, other sources of income, and, if available, federal tax returns. *Id.*

55. Third, if an Applicant did not receive a means-tested benefit and could not prove that his or her income was at or below 150 percent of the Federal Poverty Guidelines, he or she could still demonstrate eligibility for a fee waiver by showing "financial hardship due to extraordinary expenses or other circumstances affecting his or her financial situation to the degree that he or she is unable to pay the fee," such as significant uninsured medical bills. *Id.* at 7. The

2011 Policy Memorandum directed employees evaluating financial hardship to consider proof of the Applicant's overall assets, liabilities, and expenses. *Id.* at 7-8.

56. As USCIS noted when it issued the 2011 Policy Memorandum, "the use of a USCIS-published fee-waiver request form is not mandated by regulation." *Id.* at 2. Fee waiver requests made without the use of Form I-912 were known as "applicant-generated" requests. *Id.*

57. An applicant-generated request required only a statement giving "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." 8 C.F.R § 103.7(c)(2). Thus, Applicants were free to apply for a fee waiver without using the specific Form I-912 and could substitute a written reason and supporting evidence tailored to the Applicant's individual circumstances.

58. The simplification and standardization of fee waiver applications after 2010 have had a significantly positive impact on rates of naturalization among low-income Applicants, non-English-speaking Applicants, and Applicants with lower education levels. Analyzing federal immigration and census data, Stanford University researchers recently found that the introduction of Form I-912 increased the naturalization rate by about 1.5 percent. Vasil Yasenov et al., *Standardizing the Fee-waiver Application Increased Naturalization Rates of Low-Income Immigrant*s, 116(34) Proceedings of the Nat'l Acad. of Sci. of the United States of Am. 16770 (2019). It represents an estimated 75,318 low-income LPRs who were able to apply for and become citizens as a result of more standardized fee waiver access in 2013 alone. *See id.*

59. Ease of access to a fee waiver has had the greatest "impact on precisely those LPR groups who are most likely to be deterred by burdensome, complicated application processes" – including "households without an English speaker[], . . . immigrants in the lowest income [brackets,]" and "individuals with lower education levels." *Id.*

60. Moreover – and most critically for Plaintiff – researchers believe that higher rates of naturalization are driven by the improved efficiency with which immigration service providers are able to navigate the administrative process of determining and documenting prospective Applicants' fee waiver eligibility. *See id.* at 16,770–71. In fact, service provider assistance "is by far the most important predictor of fee waiver use." *Id.* at 16,771. This detailed research underscores what Project Citizenship has learned from years of experience: if its ability to

effectively and efficiently serve clients is curtailed, the number of Form N-400 and Form N-600 applications will decrease—to the detriment of eligible LPRs, Derivative Applicants, and Plaintiff.

B. The 2019 Rule

61. On October 24, 2019, USCIS published a new Form I-912 (the "Revised Form I-912"), attached as Ex. C, for Applicants to use when making application fee waiver requests. U.S. Citizenship and Immigr. Servs., OMB No. 1615-0116, Request for Fee Waiver (Oct. 24, 2019). On the following day, October 25, 2019, USCIS officially announced changes to the fee waiver process and eligibility criteria for Applicants seeking naturalization and other immigration benefits. U.S. Citizenship and Immigr. Servs., PA-2019-06, Policy Alert (Oct. 25, 2019). These announcements included a new policy alert, attached as Ex. D, and revisions to USCIS's policy manual. *See id*.

62. Together, the Revised Form I-912, the policy alert, and revisions to the policy manual (collectively, hereinafter the "2019 Rule") threatened to change the fee waiver process in a manner that would substantially reduce naturalization rates among the fee waiver-eligible population.

63. Specifically, the 2019 Rule made three major changes to the naturalization application fee waiver process, all of which would reduce access to naturalization for low-income immigrants: (i) it eliminated fee waiver eligibility based on evidence of means-tested benefits; (ii) it required tax transcripts in lieu of tax returns to prove an Applicant's income; and (iii) it eliminated applicant-generated fee waiver requests. The final implementation of these changes resulted in multiple lawsuits against USCIS and DHS, including one by Project Citizenship. *See Project Citizenship, Inc. v. DHS*, No. 1:19-cv-12362 (D. Mass. filed Nov. 15, 2019); *N.W. Immigrant Rights Project v. USCIS*, No. 1:19-cv-03283 (D.D.C. filed Oct. 31, 2019); *City of Seattle v. DHS*, No. 3:19-cv-07151 (N.D. Cal. filed Oct. 29, 2019). The court in *City of Seattle* issued a preliminary nationwide injunction against the application of USCIS's proposed fee waiver changes, finding that "(1) plaintiffs [were] likely to succeed on the merits of their claim that the 2019 Fee Waiver Revisions were established without compliance with the procedures required by the Administrative Procedure Act, [and] (2) plaintiffs [were] likely to suffer irreparable harm absent the requested relief" where they alleged that implementation of the 2019 Rule would jeopardize their funding and frustrate their mission of providing assistance to immigrants applying for naturalization. *See City of Seattle v. DHS*, No. 3:19-cv-07151 (N.D. Cal. Dec. 11, 2019) (order

granting Plaintiff's motion for a preliminary injunction). *City of Seattle* was stayed "pending the completion of the 2020 Rulemaking by [USCIS] announced in U.S. Citizenship and Immigration Servs. Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements." *See City of Seattle v. DHS*, No. 3:19-cv-07151 (N.D. Cal. Feb. 10, 2020) (order granting stipulated request to hold case in abeyance). This court also granted a stay in *Project Citizenship, Inc.* pending the completion of the rulemaking process for the 2020 Rule. *See Project Citizenship, Inc. v. DHS*, No. 1:19-cv-12362 (D. Mass. Feb. 12, 2020) (order granting joint motion to stay case and hold all proceedings in abeyance).

C. The 2020 Rule

64. On November 14, 2019, USCIS published its notice of proposed rulemaking, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements. 84 Fed. Reg. 62,280 (proposed Nov. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 106, 204, 211-12, 214, 216, 223, 235-36, 240, 244-45, 245a, 248, 264, 274a, 301, 319-20, 322, 324, 334, 341, 343a, 343b, 392).

65. According to USCIS, the "primary objective" of the fee review is to generate sufficient revenue to match its costs. *Id.* at 62,282. In its notice of proposed rulemaking, USCIS explains that its projected FY2019/2020 costs will be higher than its revenue and that achieving the full cost accounting that constitutes the primary objective of the fee review can only be done by reducing projected costs, using "carryover funds or revenue from the recovery of prior year obligations," or increasing fees. *Id.* at 62,288. USCIS represents that "reducing the projected costs to equal the projected revenue would risk degrading USCIS operations funded by the IEFA [or the "Immigration Examinations Fee Account"]," and a fee increase is therefore necessary. *Id.*

66. On August 3, 2020, USCIS published the final 2020 Rule in the Federal Register. 85 Fed. Reg. 46,788. The 2020 Rule eliminates the ability of most low-income Applicants to apply for naturalization or to receive a certificate of citizenship in two critical ways.

67. First, the 2020 Rule increases the application fee for Form N-400 by about 83% for paper filing, from $640 to $1,170, and by about 81% for online filing, from $640 to $1,160. *Id.* at 46,792. Prior to promulgating this rule, USCIS limited the Form N-400 application fee to "an amount less than its estimated costs and shift[ed] those costs to other fee payers." *Id.* at 46,857. Now, under the "beneficiary-pays principle," USCIS will no longer limit Form N-400 fees. *Id.* Instead, according to USCIS, the $1,170 fee for paper filing and the $1,160 fee for online filing

represent "the full cost of adjudicating the Form N-400, as well as the cost of similar service[s] provided without charge to asylum applicants and other immigrants." *Id.*

68. Second, the 2020 Rule eliminates waived and reduced fees for most Applicants. *Id.* at 46,818, 46,913; *see supra* ¶ 12. Under 8 C.F.R section 103.7(c)(2), USCIS previously waived application fees for Applicants who are unable to pay. 8 C.F.R § 103.7(c)(2). In addition, under 8 C.F.R section 103.7(b)(1)(i)(BBB)(1), USCIS previously reduced application fees for Applicants with family incomes greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines. 8 C.F.R § 103.7(b)(1)(i)(BBB)(1) (2020).

69. Among the costs that USCIS proposes to cover using newly generated fees are 1,960 new staff positions. *See* 85 Fed. Reg. at 46,871.

D. Defendants' Promulgation of the 2020 Rule

70. Defendants issued three notices for the 2020 Rule under the APA.

71. USCIS first published its notice of proposed rulemaking in the Federal Register on November 14, 2019 (the "November 2019 Notice"). *See* 84 Fed. Reg. 62,280. The November 2019 Notice directed interested parties to submit written comments "on or before December 16, 2019." *See id.* On November 22, 2019, USCIS published supplemental information in the Federal Register, titled "Fee Rule – ECON Analysis 31OCT2019," which was a regulatory impact analysis. *See* U.S. Citizenship and Immigr. Servs., CIS No. 2627-18, Regulatory Impact Analysis (Oct. 30, 2019).

72. USCIS subsequently published two additional notices in the Federal Register extending the comment period. USCIS published the second notice on December 9, 2019 (the "December 2019 Notice"), extending the comment period to December 30, 2019. *See* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 67,243 (proposed Dec. 9, 2019) (to be codified at 8 C.F.R. pts. 103, 106, 204, 211-12, 214, 216, 223, 235-36, 240, 244-45, 245a 248, 264, 274a, 301, 319-20, 322, 324, 334, 341, 343a, 343b, 392).

73. USCIS published the third and final notice on January 24, 2020 (the "January 2020 Notice"), reopening the comment period until February 10, 2020. *See* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 Fed. Reg. 4243 (proposed Jan. 24, 2020) (to be codified at 8 C.F.R. pts. 103, 106, 204, 211-12, 214, 216, 223, 235-36, 240, 244-45, 245a, 248, 264, 274a, 301, 319-20, 322,

324, 334, 341, 343a, 343b, 392). In this notice, USCIS announced that it would "consider comments received during the entire public comment period, including comments received since December 30, 2019," after the initial public comment period closed. *Id.*

74. Individuals and organizations across the country submitted 43,108 comments to USCIS's notices. 85 Fed. Reg. at 46,794. Comments submitted by immigrant rights groups and legal services organizations – including Plaintiff Project Citizenship – emphasized the devastating effect the rule change would have.

1. The Administrative Procedure Act's Notice-and-Comment Rulemaking Procedures

75. The APA requires an agency to follow a specific set of procedures before implementing a new or revised rule. These procedures include a proposed rule, a comment period, and a final rule.

76. First, notice-and-comment procedures require that a "[g]eneral notice of proposed rulemaking shall be published in the Federal Register." 5 U.S.C. § 553(b) (2018).

77. Next, the agency must institute a comment period that "give[s] interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments." *See id.* at § 553(c). The opportunity for interested persons to comment must be meaningful. *See Levesque v. Block*, 723 F.2d 175, 188 (1st Cir. 1983) (discussing the "right of interested persons to make their views known to the agency in time to influence the rule in a meaningful way"); *see also Pennsylvania v. Trump*, 930 F.3d 543, 568 (3d Cir. 2019). In order to provide a meaningful opportunity to comment, an agency must give interested persons "enough time with enough information to comment." *Prometheus Radio Project v. F.C.C.*, 652 F.3d 431, 450 (3d Cir. 2011). Under Executive Order 12,866, "a meaningful opportunity to comment on any proposed regulations," in most cases, "should include a comment period of not less than 60 days." Exec. Order 12,866, 58 Fed. Reg. 51,735 (Sept. 30, 1993).

78. At the end of the comment period, the agency "must consider and respond to significant comments received during the period for public comment," *Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1203 (2015), and publish a final rule that includes a "concise general statement of [the rule's] basis and purpose." 5 U.S.C. § 553(c).

79. Agencies must not be arbitrary and capricious when promulgating rules but "must examine the relevant data and articulate a satisfactory explanation for its action including a rational

connection between the facts found and the choice made. In reviewing that explanation, [a court] must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Motor Veh. Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks and citations omitted).

80. "Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.*

81. Additionally, agency rules must be "in accordance with law." 5 U.S.C. § 706(2)(A). "If an agency action violates a regulation, it is 'not in accordance with law'" and must therefore be struck down. *See Bradley v. Weinberger*, 483 F.2d 410, 414 n.2 (1st Cir. 1973) (internal citation omitted).

E. Defendants Were Required to Comply with the APA's Notice-and-Comment Rulemaking Procedures

82. Rules typically must go through APA notice-and-comment rulemaking unless they are: "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 8 U.S.C. § 553(b)(A).

1. The 2020 Rule is substantive, not interpretive

83. The 2020 Rule is substantive because it alters the rights of individuals who would otherwise qualify to apply for citizenship.

84. In contrast to an interpretative rule, a "substantive" rule affects "individual rights and obligations," and must go through APA notice-and-comment rulemaking. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979). This includes regulations that are "binding . . . [on] the agency and regulated parties, [and] also on the courts." *Warder v. Shalala*, 149 F.3d 73, 82 (1st Cir. 1998).

85. The 2020 Rule imposes binding substantive changes that affect Applicants' individual rights and obligations. The rule prohibits many Applicants from submitting and obtaining fee waiver requests with their Form N-400 and Form N-600 applications, a right Applicants previously had under 8 C.F.R. section 103.7(c), and thus for many, impacting the right to apply for citizenship or proof of citizenship altogether.

2. The 2020 Rule is not a general statement of policy, or a rule of agency organization, procedure, or practice

86. Nor is the 2020 Rule a general statement of policy, or rule of agency organization, procedure, or practice. APA rulemaking was thus required.

87. "[A] critical test of whether a rule is a general statement of policy is its practical effect in a subsequent administrative proceeding: a general statement of policy ... does not establish a binding norm .... it leaves the administrator free to exercise his informed discretion." *Greenwald v. Olsen*, 583 F. Supp. 1002, 1006 (D. Mass. 1984) (internal quotation marks and citations omitted). In contrast, substantive rules are "binding norms intended to have the force of law, restraining the discretion of officials." *Caribbean Produce Exch., Inc. v. Sec'y of Health & Human Servs.*, 893 F.2d 3, 7 (1st Cir. 1989); *see also Better Gov't Ass'n v. Department of State*, No. 83-2998, 1987 WL 8528, *2 (D.D.C. Mar. 9, 1987) (concluding that the Department of Justice needed to go through the APA rulemaking procedure when implementing binding changes to FOIA fee waiver regulations).

88. The 2020 Rule removes any discretion from USCIS officers' evaluations of the fee waiver requests of most Applicants. Except for in limited circumstances, Applicants can no longer request fee waivers, so there is no opportunity for officers to exercise discretion over such requests.

F. Defendants Did Not Comply with the APA's Notice-and-Comment Rulemaking Procedures

1. Defendants failed to provide the public with a meaningful opportunity to participate in the rulemaking process

89. Defendants failed to comply with the APA's notice-and-comment rulemaking procedures because they did not provide a comment period that gave interested persons a meaningful opportunity to participate in the rulemaking process. *See* 5 U.S.C. § 553(c).

90. Specifically, USCIS failed to provide interested parties with a meaningful opportunity to comment because USCIS did not provide enough time to comment on the 2020 Rule.

91. Initially, on November 14, 2019, USCIS provided a comment period of only approximately 31 days, ending December 16, 2019. 84 Fed. Reg. at 62,280. On November 22, USCIS posted its regulatory impact analysis, *see* U.S. Citizenship and Immigr. Servs., CIS No. 2627-18, Regulatory Impact Analysis (Oct. 30, 2019), but did not extend the existing comment

period. On December 9, 2019, USCIS published its December 2019 Notice, which extended the comment period to December 30, 2019. 84 Fed. Reg. at 67,243. Nearly one month later, on January 24, 2020, USCIS reopened the public comment period until February 10, 2020. 85 Fed. Reg. at 4243. During this period, on February 3, 2020, "USCIS . . . hosted its first and only demonstration of [the] cost-modeling software" it used to calculate its proposed fee changes. *See* The Immigrant Legal Resource Center, Comment Letter on U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements 4 (Feb. 10, 2020). Thus, the public was afforded only approximately 55 days to comment on USCIS's November 22, 2019 economic analysis[1] and only approximately 7 days to comment on USCIS's cost modeling software, the foundation of its proposed fee changes.

92. In the 2020 Rule, USCIS claims that it afforded the public a meaningful opportunity to comment in accordance with Executive Order 12,866 because it provided "a comment period of 61 days to review the [proposed rule], revised information collections, supporting documents, other comments, and the entire docket contents." *See* 85 Fed. Reg. at 46,805. However, given that the agency provided the public only approximately 55 days to comment on its November 22, 2019 economic analysis and only approximately 7 days to comment on its cost modeling software, this claim is false.

93. Further, the 2020 Rule takes up 92 pages in the Federal Register and contains complex, quantitative analyses, which take substantial time and resources to understand. As described above, this information was provided to the public in a piecemeal approach, with USCIS providing its economic analyses or pivotal supplemental information at least two different times. This approach failed to give the public sufficient time to conduct analysis and to comment on the complex information provided. Thus, Plaintiff Project Citizenship and similarly situated organizations were not given a meaningful opportunity to participate in the rulemaking process. *See Prometheus Radio Project*, 652 F.3d at 450.

94. USCIS's claim in its January 2020 Notice that it would "consider comments received . . . since December 30, 2019," *see* 85 Fed. Reg. at 4243, does not change the fact that it

[1] Under the December 2019 Notice, the public was given approximately 38 days to comment on this analysis, from November 22, 2019 to December 30, 2019. *See* 84 Fed. Reg. at 67,243. Then, under the January 2020 Notice, the public was given an additional 17 days to comment on this analysis, from January 24, 2020 to February 10, 2020. *See* 85 Fed. Reg. at 4243.

failed to provide interested persons with a meaningful opportunity to comment on its proposed rule. In fact, in its December 2019 Notice, USCIS made it clear that interested persons no longer had an opportunity to comment after December 30, 2019. *See* 84 Fed. Reg. at 67,243 ("Mail must be postmarked by the comment submission deadline."). Further, USCIS is not required to consider comments submitted outside of the public comment period. *See Roosevelt Campobello Int'l Park Comm'n v. U.S. E.P.A.*, 684 F.2d 1041, 1046 (1st Cir. 1982) (rejecting Petitioners' argument that agency "failed to consider . . . alternative[s]" in part because Petitioners did not suggest these alternatives "during the comment period"). Interested persons thus had no reason to believe that any comments submitted between December 30, 2019 and January 24, 2020 would be considered by USCIS, and no reason to invest resources into submitting comments during this period. Therefore, USCIS's choice to retroactively consider such comments does not render interested persons' opportunity to comment any more meaningful.

2. Defendants failed to adequately respond to the public's comments on the 2020 Rule

95. Defendants failed to comply with the APA and acted arbitrarily and capriciously in promulgating the 2020 Rule because, despite the fact that thousands of comments were submitted in response to the Notices, Defendants' response to those comments was wholly deficient.

96. All of the justifications Defendants provided for the 2020 Rule demonstrate clear error of judgment and failure to consider aspects of the problems raised in comments by Project Citizenship and other similarly situated groups. Additionally, and relatedly, the 2020 Rule runs counter to the evidence presented in the comments.

97. In particular, Defendants failed to substantively respond to three arguments made in comments submitted by Project Citizenship and similarly situated organizations: (i) Defendants need not raise fees and eliminate fee waivers for naturalization applicants and should instead explore ways of limiting operating costs in light of their exponential growth in recent years; (ii) the proposed fee changes will prevent most low-income applicants from accessing the naturalization process and effectively constitute a "wealth test;" and (iii) Defendants have failed to adhere to the "beneficiary-pays" principle that they claim justifies the 2020 Rule's proposed changes.

98. First, Defendants failed to substantively respond to comments questioning their assertion that raising fees and eliminating fee waivers are necessary for USCIS to balance its

budget. Numerous commenters suggested that Defendants explore ways of curbing inefficiencies or limiting ballooning costs before resorting to raising application fees to the detriment of the populations they serve. *See* 85 Fed. Reg. at 46796, 46825. Defendants effectively waved these comments away, vaguely promising to "continue to explore efficiencies that improve USCIS services" and possibly "incorporate corresponding cost savings into future biennial fee reviews and rulemakings" before ultimately declining to make changes based on those comments. *Id.* at 46,881.

99. Second, Defendants' responses significantly underestimate the burden that the 2020 Rule will place on Applicants. Several comments cited studies establishing that naturalization fees prevent lower income Applicants from accessing citizenship and will inevitably drive down the volume of applications. *Id.* at 46,818, 46,857, 46,859–60. Others pointed out that, in order for lower income Applicants to afford the increased fees, they will either have to forego paying for necessities like food, shelter, healthcare, and education, or will have to go into debt. *Id.* at 46,806. Defendants barely address these arguments and the data that supports them. In several instances, they summarily state that "DHS does not agree that individuals will be prevented from filing applications or receiving immigrant benefits." *Id.* Elsewhere, they profess a belief that "most individuals will continue to value American citizenship, even if it is more expensive," *id.* at 46,858, and that "many LPRs will determine that the benefits of naturalization, including the prospect of additional earnings, exceed the cost of the fee for Form N-400[]." *Id.* at 46,826. Additionally, Defendants all but ignore numerous studies showing that the decision to apply for citizenship is highly price sensitive. Instead of countering those studies with data of their own, Defendants rely on the assertion that "the proportion of LPRs naturalizing increased over time from the 1970s to 2004, despite the increase in the naturalization fee over that time period." *Id.* at 46,860.

100. Relatedly, Defendants' response to comments submitted by Plaintiff and other organizations that the proposed changes to the fee schedule constitute a "wealth test" for citizenship in violation of the INA was wholly deficient. Defendants merely state that "[i]n adjusting the fees, DHS is not imposing a 'wealth test' or otherwise attempting to erect barriers to immigration and rejects any implication that its justifications for adjusting the fees are pretexts to obscure any other motivation." *Id.* at 46,803. Defendants failed entirely to respond to comments pointing out that an individual's financial means is not a requirement for citizenship under the INA. *See id.* at 46,855.

101. Third, Defendants failed to adequately respond to comments questioning their adherence to the "beneficiary-pays" principle that they claim justifies changes to N–400 and other fees. Several commenters pointed to "measurable hypocrisy" insofar as USCIS maintained fee caps and subsidies for certain forms and applicants, despite its newfound insistence on using the "beneficiary-pays" principle to set fees generally. *See id.* at 46,801-02. Indeed, Defendants even admit that "[i]n certain instances, DHS deviates from the beneficiary-pays principle to establish fees that do not represent the estimated full cost of adjudication." *Id.* at 46,795. With respect to form N–400 fees specifically, commenters noted that the 2020 Rule proposes to "charg[e] naturalization applicants a higher amount than the cost of processing of their own applications, subsidizing other immigration-related expenditures." *Id.* at 46,857. In response, Defendants claim that "the fee for Form N–400 reflects not only the direct costs of processing an individual Form N–400 filing but also the cost of providing similar services at no or reduced charge to asylum applicants and other immigrants." *Id.* at 46,858. Despite this, Defendants profess to believe that it would not be "equitable . . . to continue to force certain other applicants to subsidize fee-waived and reduced-fee applications for naturalization applicants who are unable to pay the full cost fee." *Id.* Defendants fail to account for how they can claim to adhere to the beneficiary-pays principle to set fees generally, while deviating from it with respect to naturalization fees specifically.

102. In general, Defendants demonstrated a refusal to sincerely consider comments or adjust the 2020 Rule to account for the evidence presented by Project Citizenship and others. Defendants' foregone approach to promulgation of the 2020 Rule clearly did not satisfy the APA's notice-and-comment rulemaking procedures.

G. Defendants' 2020 Rule is Arbitrary and Capricious

103. The 2020 Rule is also unlawful because it is arbitrary and capricious, in violation of the APA. *See* 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious if the agency fails to "give adequate reasons for its decisions," *Encino Motorcars LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016), "explain the evidence which is available," "examine the relevant data," or "offer a rational connection between the facts found and the choices made." *State Farm*, 463 U.S. at 43, 52 (internal quotation marks omitted). "An agency must cogently explain why it has exercised its discretion in a given manner." *See id.* at 48.

104. Defendants failed to adhere to this standard in many instances. First, the 2020 Rule is not tailored to its stated rationale. Defendants claim that raising the citizenship fee and

eliminating fee waivers are necessary measures to generate sufficient revenues to match operating costs. *See* 85 Fed. Reg. at 46,789. Defendants allege that citizenship application fees have historically been discounted heavily, with the costs of processing citizenship applications shifted to other fee payers. *Id.* at 46,857. Under the 2020 Rule, USCIS will "no longer limit the Form N-400 fee, thereby mitigating the fee increase of other immigration benefit requests." *Id.* According to Defendants, the fee changes merely reflect a shift from the "ability-to-pay" principle, in which "those who are more capable of bearing the burden of fees should pay more for the service than those with less ability to pay," to the "beneficiary-pays" principle, in which "the beneficiaries of a service pay for the cost of providing that service." 84 Fed. Reg. at 62,298.

105. But, as USCIS admits, the 2020 Rule "deviates from the beneficiary-pays principle to establish fees that do not represent the estimated full cost of adjudication." 85 Fed. Reg. at 46,795. Further, Defendants' concession is not surprising in light of the agency's own data revealing that the proposed fee increase would result in Applicants paying for more than the cost of processing their applications. Applicants, therefore, will be subsidizing the costs of processing other types of immigration benefits applications. According to USCIS, the cost of processing an N-400 application for FY2018/2019 is $985 per application. 84 Fed. Reg. at 62,317. Yet Defendants propose to charge naturalization applicants $1,170 for paper filing, a fee that is $185 or 19% higher than the cost to the agency of each application. *See id.* In fact, Defendants expressly acknowledge that this fee covers "the full cost of adjudicating the Form N-400, *as well as* the cost of similar service[s] provided without charge to asylum applicants and other immigrants." 85 Fed. Reg. at 46,857 (emphasis added). The 2020 Rule does not set application fees under the "beneficiary-pays" principle, but instead relies on Form N-400 fee payers to provide extra revenue that Defendants could use to subsidize other applicants or initiatives.

106. Second, Defendants rely on inadequate and unsound data to support their projections regarding both the number and cost of future applications. USCIS projects an increase in N-400 applications for FY2019/2020 from roughly 830,000 to 913,500, with an increase in fee-paying applications from roughly 632,000 to 812,000. 84 Fed. Reg. at 62,290-91. As an initial matter, it is unclear how Defendants can project over 10% of the N-400 applications in FY2019/2020 to be non-fee-paying applications, given their proposal to remove the fee waiver and reduced fees for N-400 applications. But Defendants also fail to explain how they project a large increase in N-400 applications at the same time the 2020 Rule implements a drastic fee

increase. Defendants summarily assert that "DHS does not anticipate a reduction in receipt volumes because of the fee waiver policy changes," 85 Fed. Reg. at 46,807, and assume that, if needed, Applicants will "save, borrow, or use a credit card in order to pay fees." *Id.* at 46,881. But such an assumption contradicts multiple studies finding that the decision to pursue citizenship is highly price sensitive. *See infra* nn.2-3 and accompanying text.

107. In short, USCIS has provided only inconsistent, unsupported, and facially irrational justifications for the changes subsumed within the 2020 Rule in violation of the APA.

H. The 2020 Rule Conflicts with the Immigration and Nationality Act

108. Agency actions must be struck down when they are "not in accordance with law." 5 U.S.C. § 706(2)(A). The revisions embodied in the 2020 Rule are directly contrary to several sections of the INA and, therefore, are not in accordance with law.

109. By creating a wealth requirement for citizenship, the 2020 Rule is not in accordance with sections 312 and 316 of the INA, which enumerate the prerequisites for naturalization. *See* 8 U.S.C. §§ 1423, 1427. Those criteria, set by Congress, include demonstration of good moral character; a minimum number of years of lawful permanent residence; physical presence within the United States for a certain period of time; proficiency in the English language; and basic knowledge of the nation's history and government. *See id.* Income, wealth, economic, and even employment status are conspicuously absent.

110. But the 2020 Rule's 83% fee hike and effective elimination of the fee waiver and reduced fee programs promise to price most individuals out of citizenship, creating a *de facto* wealth requirement. It is well established that application fees are a barrier to citizenship.[2] Indeed, research has shown that historical increases in application fees for naturalization have priced out

[2] *See, e.g.*, Vasil Yasenov et al., *Standardizing the Fee-Waiver Application Increased Naturalization Rates of Low-Income Immigrants*, 116(34) Proceedings of the Nat'l Acad. of Sci. of the United States of Am. 16772 (2019) ("[D]ifficulties accessing the fee waiver are barriers to citizenship for low-income LPRs."); Jens Hainmueller et al., *A Randomized Controlled Design Reveals Barriers to Citizenship for Low-Income Immigrants*, 115(5) Proceedings of the Nat'l Acad. of Sci. of the United States of Am. 939 (2018) (finding that "offering [fee vouchers that cover the cost of the application fee] increased naturalization applications rates by about 41%, suggesting that application fees act as a barrier for low-income immigrants who want to become US citizens . . . ."); Ana Gonzalez-Barrera et al., *The Path Not Taken: Two-thirds of Legal Mexican Immigrants Are Not U.S. Citizens*, Pew Research Center 6 (Feb. 4, 2013) (finding that 18% of Latino lawful permanent residents surveyed cited financial and administrative barriers as one of the main reasons they had not naturalized).

lower income and less educated immigrants.[3] Further, while the 2020 Rule includes limited exceptions to the elimination of fee waivers, *see supra* ¶ 12, the LPRs that benefit from these exceptions make up only a small portion of the total LPRs eligible to naturalize. For example, in 2018, only 31,168 individuals obtaining LPR status fell within these exceptions.[4] In contrast, almost 1.1 million individuals obtained LPR status that year in total. Dep't Homeland Sec., Table 7. Persons Obtain Lawful Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2018, https://www.dhs.gov/immigration-statistics/yearbook/2018/table7 (last updated Jan. 16, 2020). Thus, only about 2.8% of individuals obtaining LPR status in 2018 could be eligible to apply for a Form N-400 fee waiver under the 2020 Rule's limited exceptions. Accordingly, 97.2% of low-income immigrants who are eligible for citizenship would be seriously impacted by the fee increases and the removal of fee waiver and reduced fee options under the 2020 Rule. Effectively, all but the wealthiest applicants would be barred from applying for citizenship. By creating a wealth requirement, the 2020 Rule violates the plain language of sections 312 and 316 of the INA. *See* 8 U.S.C. §§ 1423, 1427.

V. PLAINTIFF IS HARMED BY DEFENDANTS' 2020 RULE

111. Plaintiff Project Citizenship provides legal assistance to low-income immigrants who are eligible to naturalize or to receive a certificate of citizenship and would not otherwise be able to afford an attorney to guide them through the complicated process. For years, Plaintiff has designed and administered programs to assist applicants to complete fee waiver paperwork along with their applications – complex tasks for which legal assistance is often required. The 2020 Rule

[3] Manuel Pastor et al., *Nurturing Naturalization: Could Lowering the Fee Help?*, Center for the Study of Immigrant Integration 17 (Feb. 2013) ("[T]he price increases for naturalization in 2004 and 2007 are a significant barrier to citizenship for less educated and lower income immigrants . . . .").

[4] Under the 2020 Rule, USCIS will allow Violence Against Women Act self-petitioners, victims of human trafficking, victims of crime, Special Immigrant Juveniles, special immigrant interpreters who are nationals of Iraq or Afghanistan, and special immigrant Iraqis and Afghans employed by the U.S. government to submit fee waiver requests. 85 Fed. Reg. 46,790, 46,810, 46,920. According to DHS, in FY2018, 58 Violence Against Women Act self-petitioners, 1,208 victims of human trafficking, 15,012 victims of crime, 4,547 Special Immigrant Juveniles, 46 special immigrant interpreters who are nationals of Iraq or Afghanistan, and 10,297 special immigrant Iraqis and Afghans employed by the U.S. government obtained lawful permanent resident status. Dep't Homeland Sec., Table 7. Persons Obtain Lawful Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2018, https://www.dhs.gov/immigration-statistics/yearbook/2018/table7 (last updated Jan. 16, 2020).

will jeopardize Project Citizenship's primary source of funding and significantly impair its ability to achieve its mission, thereby preventing thousands of Project Citizenship's clients from becoming citizens and depriving them of the benefits of citizenship. *See supra* ¶¶ 33-37.

A. The 2020 Rule jeopardizes Plaintiff's funding

112. First, Project Citizenship is harmed because the 2020 Rule will immediately jeopardize its funding.

113. Project Citizenship's entire revenue stream consists of grants and donations from foundations, corporations, and individuals. In order to receive these grants and donations, Project Citizenship must serve low-income clients and report the number of individuals served. Accordingly, Project Citizenship's applications, proposals, and request letters state the minimum number of individuals Project Citizenship is expected to serve annually. Grant proposals submitted for funding have historically predicted outcomes of at least 1,500 citizenship applications per year based on patterns of productivity over the past several years.

114. Project Citizenship's model is based upon serving a high volume of Applicants, and Project Citizenship's ability to reach its current fundraising targets will be jeopardized if the volume of applications it submits plummets. Project Citizenship assisted 1,974 legal permanent residents in filing for naturalization in 2019; 1,575 in 2018; 1,628 in 2017; and 1,504 in 2016. Approximately 71% of those applications were submitted with a request for a fee waiver.

115. The elimination of fee waivers and the increased application fee will significantly reduce the number of Applicants that Project Citizenship can serve. Although the number of immigrants interested in citizenship is likely to stay consistent or grow, the number of Applicants who can afford to pay the increased and not waivable citizenship fees will be greatly diminished. 2018 statistics suggest at least 97.2% of LPRs will be not be eligible to apply for a fee waiver. As a result, Plaintiff will not be able to serve as many applicants as it has promised funders, potentially putting it in breach of its current grant obligations and making it a less attractive investment for future funding.

116. Plaintiff also receives a significant amount of revenue in the form of corporate and law firm donations. These donations are given primarily in recognition of the opportunities that Plaintiff provides for attorneys at these organizations to participate in *pro bono* services such as citizenship workshops for low-income clients. But a reduced number of clients served will inevitably mean that Plaintiff is not able to provide the same volume and quality of *pro bono*

opportunities. As a result, Plaintiff anticipates that these organizations will decline future donation requests.

B. The 2020 Rule Will Frustrate Project Citizenship's Mission

117. More generally, the elimination of the fee waiver and the increased application fee will frustrate Plaintiff's mission to provide a path to citizenship for all regardless of ability to pay the requisite application fees. As explained above, these changes will discourage immigration and deter LPRs from becoming citizens, *see supra* nn.2-3 and accompanying text, including the over 70% of Project Citizenship's clients who cannot afford to submit their applications without a waived or reduced filing fee. The economic reality for many of Project Citizenship's clients has only worsened as a result of the COVID-19 pandemic, and an increased percentage of Project Citizenship's clients are now unemployed. The 2020 Rule will therefore fundamentally undermine, and potentially outright defeat, Plaintiff's mission of providing access to legal services for individuals who cannot afford to hire individual private attorneys to guide them through the complex and legally fraught process of naturalization. By defeating Project Citizenship's mission, the 2020 Rule will deprive thousands of its clients of the benefits of naturalization, including economic opportunities and the right to vote. *See supra* ¶¶ 33-37.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Defendants Failed to Comply with Procedures Required by the Administrative Procedure Act)

118. Plaintiff repeats and incorporates by reference the preceding allegations.

119. USCIS is subject to the APA. *See* 5 U.S.C. §§ 551(1), 553; *see also* 5 U.S.C. § 703 (2018).

120. The APA was "adopted to provide, inter alia, that administrative policies affecting individual rights and obligations be promulgated pursuant to certain stated procedures so as to avoid the inherently arbitrary nature of unpublished ad hoc determinations." *Morton v. Ruiz*, 415 U.S. 199, 232 (1974). Indeed,

> [The] agency power to make rules that affect substantial individual rights and obligations carries with it the responsibility not only to remain consistent with the governing legislation, but also to employ procedures that conform to the law. No

> matter how rational ... a particular decision might be, the determination of eligibility cannot be made on an ad hoc basis by the dispenser of the funds.

Id. (internal citations omitted). All rules that are "substantive" and affect "individual rights and obligations"— that is, regulations that are "binding . . . [on] the agency and regulated parties, [and] also on the courts," *Warder*, 149 F.3d at 82 – must go through APA notice-and-comment rulemaking. *See Chrysler Corp.*, 441 U.S. at 302.

121. Notice-and-comment rulemaking procedures under the APA require: (1) that "[g]eneral notice of proposed rulemaking shall be published in the Federal Register," 5 U.S.C. § 553(b); (2) that "the agency ... give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments," *id.* at § 553(c); (3) that the agency "consider and respond to significant comments received during the period for public comment," *Perez*, 135 S. Ct. at 1203; and (4) that the final published rule include "a concise general statement of [the rule's] basis and purpose." 5 U.S.C. § 553(c).

122. The agency must give interested persons a meaningful opportunity to comment. *See Levesque*, 723 F.2d at 188; *see also Pennsylvania*, 930 F.3d at 568. Specifically, an agency must provide "enough time with enough information to comment." *Prometheus Radio Project*, 652 F.3d at 450.

123. Following the submission of comments, the agency must then respond to those comments. "In order for an agency decision to pass muster under the APA[] … the decision [must be] 'rational' [and] 'make[] … sense.'" *Penobscot Air Servs., Ltd. v. F.A.A.*, 164 F.3d 713, 720 (1st Cir. 1999) (internal citations omitted). "The requirement that agency action not be arbitrary or capricious includes a requirement that the agency adequately explain its result . . . and 'respond to 'relevant' and 'significant' public comments.'" *Id.* at 719 n.3 (internal citations omitted). Therefore, "agency decisions [must be] founded on reasoned evaluation of the relevant factors." *Id.* at 720. In the rulemaking process, an agency official cannot "shut his mind to other ideas" and must "remain[] open to persuasion." *S. Terminal Corp. v. E.P.A.*, 504 F.2d 646, 675 (1st Cir. 1974).

124. The 2020 Rule is substantive and affects individual rights and obligations.

125. Defendants failed to provide interested persons with a meaningful opportunity to comment. They published complex economic analyses regarding their fee determinations and supplemented that information over the course of the comment period. This piecemeal approach

failed to give Plaintiff Project Citizenship and similarly situated organizations sufficient time to conduct analysis and to comment on the complex information provided.

126. Defendants failed to adequately respond to comments submitted by Plaintiff and similarly situated organizations. They summarily dismissed comments suggesting that DHS consider addressing its own inefficiencies and growing costs before imposing those costs on the public in the form of fee increases. Defendants also virtually ignored data presented by numerous commenters that the proposed changes will have a severe negative effect on lower income Applicants and effectively constitute a "wealth test" for citizenship. Finally, Defendants fail to reconcile inconsistencies between the "beneficiary-pays" principle, which they claim justifies the proposed changes, and the fact that naturalization applicants will be required to pay more than the cost of adjudicating their applications, in effect subsidizing other applicant categories.

127. Accordingly, the 2020 Rule was issued "without observance of procedure required by law" and is invalid under 5 U.S.C. § 706(2)(D).

SECOND CAUSE OF ACTION

(The 2020 Rule is Substantively Arbitrary and Capricious and Otherwise Not in Accordance with the Law in Violation of the Administrative Procedure Act)

128. Plaintiff repeats and incorporates by reference the preceding allegations of this Complaint.

129. The 2020 Rule is a final agency action subject to judicial review because it "marks the consummation of the agency's decisionmaking process" and is "one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennett v. Spear*, 520 U.S. 154, 156, 178 (1997) (quoting *Port of Bos. Terminal Ass'n v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970)).

130. An agency action is arbitrary and capricious where an agency failed to "give adequate reasons for its decisions," "explain the evidence which is available," "examine the relevant data," or offer a "rational connection between the facts found and the choice made." *Encino Motorcars, LLC*, 136 S. Ct. at 2125; *State Farm*, 463 U.S.at 43, 52 (1983).

131. The 2020 Rule is arbitrary and capricious and violates the APA for several reasons.

132. Defendants have failed to "cogently explain why [they have] exercised [their] discretion in a given manner." *State Farm*, 463 U.S. at 48–49. Specifically, the 2020 Rule is not tailored to its stated rationale.

133. Defendants assert, as a basis for the 2020 Rule, that citizenship fees have historically been heavily discounted, with the costs of processing citizenship applications shifted to other fee payers. Defendants claim that the fee changes reflect a shift from the "ability-to-pay" principle to the "beneficiary pays" principle, in which "the beneficiaries of a service pay for the cost of providing that service." 84 Fed. Reg. at 62,298. But Defendants' own data suggest that the proposed fee changes would in fact result in naturalization applicants subsidizing the costs of *other* immigration benefits applicants or government initiatives.

134. Defendants' stated rationale is an unsubstantiated and pretextual justification that conceals the agency's true purpose, which is to limit access to naturalization and thereby deprive those eligible for naturalization of political rights, including the right to vote.

135. Defendants have also failed to examine the relevant data. Defendants project an increase in N-400 applications of approximately 180,000 for FY 2019/2020 while simultaneously implementing a drastic fee increase and summarily assert that they do not anticipate any changes in the volume of N-400 applications as a result of the fee increase or elimination of fee waivers. But empirical studies have shown time and again that high fees are a significant barrier to citizenship for low-income applicants.

136. The 2020 Rule is not in accordance with the law because it creates a *de facto* wealth requirement for citizenship that is contrary to the plain language of sections 312 and 316 of the INA. *See* 8 U.S.C. §§ 1423, 1427.

137. 8 U.S.C. §§ 1423 and 1427 are unambiguous. They list the requirements for naturalization, including English language proficiency, knowledge and understanding of the fundamentals of United States history and government, continuous residence and physical presence in the United States for a prescribed period, and good moral character. *See id.* The statute does not contemplate, let alone require, wealth or ability to pay. Defendants' 2020 Rule contradicts the plain language of the statute.

138. Accordingly, the 2020 Rule is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and is invalid under 5 U.S.C. § 706(2)(A).

REQUEST FOR RELIEF

For the foregoing reasons, Plaintiff requests that the Court:

a) Declare that the 2020 Rule is unlawful;

b) Vacate the 2020 Rule;

c) Enjoin Defendants from enforcing or applying any aspect of the 2020 Rule;

d) Grant Plaintiff its costs in this action, including reasonable attorneys' fees incurred; and

e) Award other relief that the Court deems just and proper.

Dated: August 17, 2020

Ropes & Gray LLP

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EXHIBIT A

Federal Register

Friday,
June 11, 2010

Part IV

Department of Homeland Security

8 CFR Parts 103, 204, 244, et al.
U.S. Citizenship and Immigration Services Fee Schedule; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 204, 244, and 274A

[CIS No. 2490–09; DHS Docket No. USCIS–2009–0033]

RIN 1615–AB80

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 fees charged by U.S. Citizenship and Immigration Services (USCIS). USCIS conducted a comprehensive fee study and refined its cost accounting process, and determined that current fees do not recover the full costs of services provided. Adjustment to the fee schedule is necessary to fully recover costs and maintain adequate service. DHS proposes to increase USCIS fees by a weighted average of 10 percent. DHS proposes among other amendments to add three new fees to cover USCIS costs related to processing the following requests: Regional center designation under the Immigrant Investor Pilot Program; Civil surgeon designation; and Immigrant visas.

DATES: Written comments must be submitted on or before July 26, 2010.

ADDRESSES: Comments, identified by DHS Docket No. USCIS–2009–0033, should be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Room 3008, Washington, DC 20529–2210. To ensure proper handling, please reference DHS Docket No. USCIS–2009–0033 on the correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Room 3008, Washington, DC 20529–2210. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Timothy Rosado, Chief, Budget Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2130, telephone (202) 272–1930.

SUPPLEMENTARY INFORMATION:

Table of Contents

List of Acronyms and Abbreviations

ABC—Activity-Based Costing.
AAO—Administrative Appeals Office.
AOP—Annual Operating Plan.
ASC—Application Support Centers.
BLS—Bureau of Labor Statistics.
CFO—Chief Financial Officer.
CLAIMS—Computer Linked Application Information System.
CNMI—Commonwealth of Northern Mariana Islands.
CPI–U—Consumer Price Index—Urban Consumers.
CHEP—Cuban Haitian Entrant Program.
CBP—U.S. Customs and Border Protection.
DED—Deferred Enforced Departure.
DOD—Department of Defense.
DHS—Department of Homeland Security.
DOL—Department of Labor.
DOS—Department of State.
DNB—Dun and Bradstreet.
EAD—Employment Authorization Document.
FASAB—Federal Accounting Standards Advisory Board.
FBI—Federal Bureau of Investigation.
FSM—Federated States of Micronesia.
FY—Fiscal Year.
FDNS—Fraud Detection and National Security.
FTE—Full-Time Equivalents.
GAO—Government Accountability Office.
IV—Immigrant Visa.
IEFA—Immigration Examinations Fee Account.
IT—Information Technology.
IBIS—Interagency Border Inspection System.
IO—International Operations.
NARA—National Archives and Records Administration.
OIS—Office of Immigration Statistics.
OIT—Office of Information Technology.
OMB—Office of Management and Budget.
PAS—Performance Analysis System.
PMB—Production Management Branch.
PPA—Program Project Activity Structure.
RAIO—Refugee, Asylum, and International Operations.
RFA—Regulatory Flexibility Act.
RMI—Republic of the Marshall Islands.
SLAs—Service Level Agreements.
SAM—Staffing Allocation Model.
SQA—System Qualified Adjudication.
SAVE—Systematic Alien Verification for Entitlements.
TPS—Temporary Protected Status.
TPO—Transformation Program Office.
TTPI—Trust Territory of the Pacific Islands.
USCIS—U.S. Citizenship and Immigration Services.
UMRA—Unfunded Mandates Reform Act.
USPHS—United States Public Health Service.
VPC—Volume Projection Committee.

I. Public Participation

DHS invites interested persons to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments that will provide 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 support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2009–0033. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anonymous comments should be submitted to *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

The docket includes additional documents that support the analysis contained in this rule to determine the specific fees that are proposed. These documents include:

- FY 2010/2011 Fee Review Supporting Documentation; and
- Small Entity Analysis for Adjustment of the U.S. Citizenship and Immigration Services Fee Schedule.

These documents may be reviewed on the electronic docket. The software used in computing the immigration benefit request and biometric fees is a commercial product licensed to USCIS that may be accessed on-site by appointment by calling (202) 272–1930.

II. Legal Authority and Guidance

The Immigration and Nationality Act of 1952 (INA), as amended, provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants. INA section 286(m), 8 U.S.C. 1356(m).[1] The INA provides that the fees may recover administrative costs as well. The fee revenue collected under section 286(m) of the INA remains available to DHS to provide immigration and naturalization benefits and ensures the collection, safeguarding, and accounting of fees by USCIS. INA section 286(n), 8 U.S.C. 1356(n).

INA section 286(m), 8 U.S.C. 1356(m), contains both silence and ambiguity under *Chevron USA, Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984). Congress has not spoken directly, for example, to a number of issues present in this section, including the scope of application of the section or subsidizing operations from other fees.[2] Congress has provided that USCIS recover costs "including the costs of similar services" provided to "asylum applicants and other immigrants." Congress has not detailed the determination of what costs are to be included. Moreover, "other immigrants" has a broad meaning under the INA because the term "immigrant" is defined by exclusion to mean "every alien except an alien who is within one of the following classes of nonimmigrant aliens." INA section 101(a)(15), 8 U.S.C. 1101(a)(15). The extensive listing of exclusions from "immigrant" by the non-immigrant visa classes is replete with ambiguity evidenced by the detailed and complex regulations and judicial interpretations of those provisions.

Additionally, Congress provides appropriations for specific USCIS programs. Appropriated funding for FY 2010 included asylum and refugee operations (4th Quarter contingency funding), and military naturalization surcharge costs ($55 million); E-Verify ($137 million); immigrant integration ($11 million); REAL ID Act implementation ($10 million); and data center consolidation ($11 million). Department of Homeland Security Appropriations Act, 2010, Public Law 111–83, title IV, 123 Stat. 2142, 2164—5 (Oct. 28, 2009) (DHS Appropriation Act 2010). Providing these limited funds against the backdrop of the broad immigration examinations fee statute—together forming the totality of funding available for USCIS operations—requires that all other costs relating to USCIS and adjudication operations are funded from fees.

When no appropriations are received, or fees are statutorily set at a level that does not recover costs, or DHS determines that a type of application should be exempt from payment of fees, USCIS must use funds derived from other fee applications to fund overall requirements and general operations. For example, when a fee such as Temporary Protected Status (TPS), set by statute at $50, does not cover the cost of adjudicating the TPS application, the excess cost must be recovered by fees charged to other applications. INA section 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B). Furthermore, when a policy decision is made by regulations, for example, to exempt aliens who are victims of a severe form of trafficking in persons and who assist law enforcement in the investigation or prosecution of the acts of trafficking (T Visa), and aliens who are victims of certain crimes and are being helpful to the investigation or prosecution of those crimes (U Visa), from visa fees, the cost of processing those fee-exempt visas must be recovered by fees charged against other applications. INA sections 101(a)(15)(T), (U), 214(o), (p), 8 U.S.C. 1101(a)(15)(T), (U), and 1184(o), (p); 8 CFR 214.11, 214.14, 103.7(c)(5)(iii); *Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status*, 73 FR 75540 (Dec. 12, 2008).

The proposed rule follows initial steps taken by the Administration within enacted FY 2010 appropriations for USCIS fee reform that moved some asylum, refugee, and military naturalization costs out of the fee structure. The purpose of this fee reform is to improve the linkage between fees paid by USCIS applicants and petitioners and the cost of programs and activities to provide immigration benefits. Because of fee exemptions for beneficiaries of asylum, refugee, and military naturalization, fee surcharges were added to other applications and petitions. 72 FR 29859. Similarly, costs of SAVE and the Office of Citizenship are currently only partially supported by fee revenue. Additional fee reform in these areas moves these costs out of the USCIS fee structure and improves the transparency of USCIS fees. Nevertheless, while USCIS has calculated its fees as much as possible to bear a relationship with the effort expended to carry out the adjudication, fees are the prevalent source of USCIS funding.[3]

[1] INA section 286(m), 8 U.S.C. 1356(m), provides, in pertinent part:

Notwithstanding any other provisions of law, all adjudication fees as are designated by the [Secretary of Homeland Security] in regulations shall be deposited as offsetting receipts into a separate account entitled "Immigration Examinations Fee Account" in the Treasury of the United States, whether collected directly by the [Secretary] or through clerks of courts: *Provided, however*, * * *: *Provided further*, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

Paragraph (n) provides that deposited funds remain available until expended "for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the 'Immigration Examinations Fee Account'."

[2] Congress's intent in using individual terms, such as "full cost," is clear, although the totality of the section is ambiguous.

[3] INA section 286(m), 8 U.S.C. 1356(m), provides broader fee-setting authority and is an exception from the stricter costs-for-services-rendered requirements of the Independent Offices Appropriations Act, 1952, 31 U.S.C. 9701(c) (IOAA); see *Seafarers Intern. Union of North America* v. *U.S. Coast Guard,* 81 F.3d 179 (DC Cir. 1996) (IOAA provides that expenses incurred by agency to serve some independent public interest cannot be included in cost basis for a user fee,

Continued

DHS works with the Office of Management and Budget (OMB) and follows the guidance provided by OMB Circular A–25, establishing Federal policy guidance regarding fees assessed by Federal agencies for government services. OMB Circular A–25, *User Charges* (Revised), par. 6, 58 FR 38142 (July 15, 1993). Circular A–25 provides that:

> [i]t is the objective of the United States Government to:
>
> a. Ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining;
>
> b. Promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits; and
>
> c. Allow the private sector to compete with the Government without disadvantage in supplying comparable services, resources, or goods where appropriate.

Id, par. 5. In summary, one objective of Circular A–25 ensures that Federal agencies recover the full costs of providing specific services to users and associated costs. Full costs include, but are not limited to, an appropriate share of:

- Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;
- Management and supervisory costs; and
- The costs of enforcement, collection, research, establishment of standards, and regulation.

Id. par. 6d1. INA section 286(m), 8 U.S.C. 1356(m), provides DHS broader discretion to include other costs.

OMB Circular A–25 advises that fees should be set to recover these costs in their entirety. Full costs are determined based upon the best available records of the agency. *Id. See also* OMB Circular A–11, section 20.7(d), (g) (August 7, 2009, revised November 16, 2009) (FY 2011 budget formulation and execution policy regarding user fees), found at *http://www.whitehouse.gov/omb/assets/a11_current_year/a_11_2009.pdf.* DHS and OMB use OMB Circular A–25 as the overall policy guidance for determining the activity based costing that forms a base for the ultimate decisions on appropriate fee amounts, and, in conjunction with OMB Circular A–11, issued each budget cycle, determining appropriate requests for appropriations that may offset a portion of the totality of fee recovery.

OMB Circulars A–11 and A–25 provide internal Executive Branch direction for the development of appropriation requests and fee schedules (under the IOAA), but are adapted here to the activity based costing methodology that forms the nucleus for the proposed fee schedule. These internal directions remain at the discretion of the President and the Director of OMB. 5 CFR 1310.1.

DHS also conforms to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901–03, requiring that each agency's Chief Financial Officer (CFO) "review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value." *Id.* at 902(a)(8). This proposed rule reflects recommendations made by the DHS CFO and USCIS CFO.

When developing proposed fees, USCIS reviews, to the extent applicable, cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB defines "full cost" to include "direct and indirect costs that contribute to the output, regardless of funding sources." *FASAB, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government* 36 (July 31, 1995). To determine the full cost of a service or services, FASAB identifies various classifications of costs to be included and recommends various methods of cost assignment. *Id.* at 33–42. DHS proposes complete funding of existing services and specific allocation methods.

Accordingly, DHS applies the discretion provided in INA section 286(m), 8 U.S.C. 1356(m), to (1) develop activity based costing to establish basic fee setting parameters that are consistent to the extent practical with OMB Circular A–25, (2) applies administrative judgment to spread those overhead and other costs that are not driven by the cost of services, and (3) applies policy judgments to effectuate the overall Administration policy.[4] The "full" cost of operating USCIS, less any appropriated funding, has been the historical total basis for establishing the cost basis for the fees, and Congress has consistently recognized this concept on annual appropriations. This proposed rule reflects the authority granted to DHS by INA section 286(m) and other statutes.

III. The Immigration Examinations Fee Account

A. General Background

In 1988, Congress established the Immigration Examination Fee Account (IEFA). Public Law 100–459, section 209, 102 Stat. 2186 (Oct. 1, 1988), enacting, after correction, INA sections 286(m) and (n), 8 U.S.C. 1356(m) and (n). Fees deposited into the IEFA fund the provision of immigration and naturalization benefits and other benefits as directed by Congress. In subsequent legislation, Congress directed that the IEFA also fund the cost of asylum processing and other services provided to immigrants at no charge. Public Law 101–515, sec. 210(d)(1) and (2), 104 Stat. 2101, 2121 (Nov. 5, 1990). Consequently, the immigration benefit fees were increased to recover these additional costs. *See* 59 FR 30520 (June 14, 1994).

B. Fee Review History

USCIS conducted a comprehensive fee review in 2007 and promulgated a revised fee schedule that amended many of the fees charged by USCIS to more accurately reflect the costs of the services provided by USCIS. 72 FR 29851 (May 30, 2007) (final rule) (FY 2008/2009 Fee Rule).[5] The 2007 final rule was effective on July 30, 2007, covering FY 2008 and FY 2009. The documentation accompanying this rule in the rulemaking docket at *http://www.regulations.gov* contains a historical fee schedule that shows the immigration benefit fee history since FY

although agency is not prohibited from charging applicant full cost of services rendered to applicant which also results in some incidental public benefits). Congress initially enacted immigration fee authority under the IOAA. See *Ayuda, Inc.* v. *Attorney Genera*l, 848 F.2d 1298 (DC Cir. 1988). Congress thereafter amended the relevant provision of law to require deposit of the receipts into the separate Immigration Examinations Fee Account of the Treasury as offsetting receipts to fund operations, and broadened the fee setting authority. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Public Law 101–515, sec. 210(d), 104 Stat. 2101, 2111 (Nov. 5, 1990). Additional values are considered in setting Immigration Examinations Fee Account fees that would not be considered in setting fees under the IOAA. *See* 72 FR at 29866—7.

[4] DHS may reasonably adjust fees based on value judgments and public policy reasons where a rational basis for the methodology is propounded in the rulemaking. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. —, —, 129 S.Ct. 1800, 1811 (2009); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983).

[5] FY 2008/2009 Fee Rule as used in this rule encompasses the proposed rule, final rule, fee study, and all supporting documentation associated with the regulations effective July 30, 2007.

1985. The Immigration and Naturalization Service (INS) or USCIS also adjusted fees incrementally in 1994, 2002, 2004, and 2005. *See,* respectively, 59 FR 30520 (June 14, 1994); 66 FR 65811 (Dec. 21, 2001); 69 FR 20528 (April 15, 2004); and 70 FR 56182 (Sep. 26, 2005). Prior to USCIS's 2007 review and update, the last comprehensive fee review was conducted by INS in 1998. 63 FR 43604 (Aug, 14, 1998).

USCIS is committed to reviewing the IEFA every two years consistent with the biennial review standard of the CFO Act and guidance from OMB Circular A–25. The FY 2008/2009 Fee Rule followed nearly a decade without a comprehensive review of IEFA fees, and fees increased by a weighted average of 86 percent to recover both base costs and costs for improving operations and service-wide performance needs. By reviewing the IEFA every two years, USCIS is able to implement more moderate fee changes and avoid periods of inadequate revenue that typically precede large fee increases. Additionally, conducting a comprehensive review every two years will allow USCIS to incorporate the productivity gains achieved from investments in technology and modernization of agency operations. These investments should result in improved performance and lower costs.

Table 1 sets out the current IEFA and biometric fee schedule.

BILLING CODE 9111–97–P

Table 1 – Immigration Benefit Request Fees		
Form No.	**Title**	**Fee**
I-90	Application to Replace Permanent Resident Card	$290
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$320
I-129	Petition for a Nonimmigrant Worker	$320
I-129F	Petition for Alien Fiancé(e)	$455
I-130	Petition for Alien Relative	$355
I-131	Application for Travel Document	$305
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	$375
I-140	Immigrant Petition for Alien Worker	$475
I-191	Application for Advance Permission to Return to Unrelinquished Domicile	$545
I-192	Application for Advance Permission to Enter as Nonimmigrant	$545
I-193	Application for Waiver of Passport and/or Visa	$545
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	$545
I-290B	Notice of Appeal or Motion	$585
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	$375
I-485	Application to Register Permanent Residence or Adjust Status	$930
I-526	Immigrant Petition by Alien Entrepreneur	$1,435
I-539	Application to Extend/Change Nonimmigrant Status	$300
I-600/600A I-800/800A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition	$670
I-601	Application for Waiver of Ground of Excludability	$545
I-612	Application for Waiver of the Foreign Residence Requirement	$545
I-687	Application for Status as a Temporary Resident under Sections 245A or 210 of the Immigration and Nationality Act	$710
I-690	Application for Waiver of Grounds of Inadmissibility	$185
I-694	Notice of Appeal of Decision under Sections 245A or 210 of the Immigration and Nationality Act	$545
I-698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603)	$1,370
I-751	Petition to Remove the Conditions of Residence	$465
I-765	Application for Employment Authorization	$340
I-817	Application for Family Unity Benefits	$440
I-824	Application for Action on an Approved Application or Petition	$340
I-829	Petition by Entrepreneur to Remove Conditions	$2,850
	Civil Surgeon Designation	$0
I-924	Application for Regional Center under the Immigrant Investor Pilot Program	$0
N-300	Application to File Declaration of Intention	$235
N-336	Request for Hearing on a Decision in Naturalization Proceedings	$605
N-400	Application for Naturalization	$595

Table 1 – Immigration Benefit Request Fees		
Form No.	**Title**	**Fee**
N-470	Application to Preserve Residence for Naturalization Purposes	$305
N-565	Application for Replacement Naturalization/Citizenship Document	$380
N-600/ 600K	Application for Certification of Citizenship/ Application for Citizenship and Issuance of Certificate under Section 322	$460
	Immigrant Visa	$0
Biometrics	Capturing, Processing, and Storing Biometric Information	$80

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C. USCIS Accomplishments Funded Under the 2007 Fee Adjustment

The 2007 adjustment to USCIS's fee schedule enabled USCIS to accomplish several critical service actions and improvements, including improved service delivery. The following are some of the key accomplishments:

- USCIS processed nearly 1.2 million naturalization applications in FY 2008, 56 percent more than FY 2007. As of March 2010, approximately 262,000 naturalizations cases were pending—one of the lowest levels in recent history.
- A surge response plan implemented in FY 2008 enabled USCIS to meet nearly all FY 2008/2009 Fee Rule processing time goals by the end of FY 2009.
- In FY09 USCIS and the FBI effectively eliminated the National Name Check Program (NNCP) backlog. NNCP now is able to complete 98 percent of name check requests submitted by USCIS within 30 days, and the remaining 2 percent within 90 days.
- Refugee admissions totaled 74,652 for FY 2009, a 25 percent increase over the FY 2008 admissions level. This figure includes the processing of 18,833 Iraqi refugees, up from 13,000 in FY 2008.
- USCIS is using System Qualified Adjudication (SQA) to electronically adjudicate some cases and determine those that require closer review. This improvement helps staff focus attention on more complex cases including those where discrepancies have been found. USCIS uses SQA on about 5 percent of immigration benefit requests.
- USCIS implemented a secure mail delivery process whereby USCIS delivers re-entry permits and refugee travel documents to applicants via the U.S. Postal Service Priority Mail. This process allows documents to be delivered in two to three days with delivery confirmation.
- USCIS is transitioning to a U.S. Department of the Treasury Lockbox provider and away from dispersed collection points to improve intake operations and control the timing of fee deposits. Two major forms—Form N–400, Application for Naturalization, and Form I–90, Application to Replace Permanent Resident Card—have already been centralized for filing at the Lockbox. Likewise, forms related to international adoptions that are filed domestically have been centralized for filing at the Lockbox: (Form I–800, Petition to Classify Convention Adoptee as an Immediate Relative; Form I–800A, Application for Determination of Suitability to Adopt a Child from a Convention Country; Form I–600, Petition to Classify Orphan as an Immediate Relative; and Form I–600A, Application for Advance Processing of Orphan Petition). USCIS centralized eight more application types in December 2009.

In tandem with the additional capacity and efficiency improvements in the FY 2008/2009 Fee Rule, USCIS committed to reducing immigration benefit request processing times. Two performance goals were specified:

- Reduce processing times by the end of FY 2008 for four key benefits:
  - Application to Register Permanent Residence or Adjust Status (Form I–485), from six months to four months;
  - Application for Naturalization (Form N–400) from seven months to five months;
  - Application to Replace Permanent Residence Card (Form I–90) from six months to four months; and
  - Immigrant Petition for Alien Worker (Form I–140), from six months to four months.
- Achieve a 20 percent reduction in average application processing times by the end of FY 2009.

During the period between the 2007 notice of proposed rulemaking and implementation of a final rule on July 30, 2007, USCIS received a substantial surge in immigration benefit requests. This surge more than doubled the number of naturalization applications received for the entire year—at the lower fee level which the fee study had found insufficient to cover the costs of processing those applications. Naturalization applications are very labor-intensive and the additional surge had a significant impact on USCIS resources.

USCIS responded to the 2007 surge by rapidly adding capacity in 2008 in excess of the increases planned in connection with the FY 2008/2009 Fee Rule. Despite completing 1.6 million more requests than received during FY 2008, USCIS could not meet its processing time goals. As a result, all of the FY 2008 goals for key immigration benefits were postponed until the end of FY 2009. No change was made to the existing 20 percent processing time reduction goal slated to be reached by the end of FY 2009. USCIS achieved nearly all of the goals set for the FY 2008/2009 Fee Rule by the end of FY 2009.

D. Processing Time Outlook

USCIS met or exceeded nearly all FY 2008/2009 Fee Rule processing time performance goals by the end of FY 2009. Processing time progress updates are posted monthly to the USCIS Web site. For the FY 2010/2011 period, USCIS intends to ensure that the FY 2008/2009 Fee Rule average processing time goals are met and maintained. Wherever appropriate and feasible, USCIS aims to exceed target performance goals through existing staff levels, efficiency improvements, and systems modernization. USCIS does not plan to increase adjudication staffing levels and, in fact, has and will continue to reduce staff during the FY 2010/2011 biennial period based on current revenue trends and the institutional focus on countering fee increases to the extent possible.

E. FY 2008/2009 Fee Rule Enhancements

Table 2 provides a status summary of all fee rule initiatives by program. USCIS set forth 43 enhancements and initiatives in the FY 2008/2009 fee rule. *See, e.g.,* 72 FR 4888 at 4898–4902 (Feb

1, 2007); 72 FR 29851 at 29855 (May 30, 2007). USCIS has successfully implemented these enhancements and initiatives, and, of 43 initiatives, 35 are complete.

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Table 2 – Status of FY 2008/2009 Fee Rule Enhancements

PROGRAM	COMPLETION DATE
Office of Administration	
Lease Acquisition & Rent	May 2011
Procurement	COMPLETE
Office of Chief Counsel	
Attorneys & Support	COMPLETE
Office of Chief Information Officer	
Baseline Automation Support Infrastructure for Citizenship Services (BASICS)	April 2013
Computer-Linked Application Information Management System 3 Program Optimization (CLAIMS 3 Program Optimization (C3PO))	June 2011
Enterprise Citizens and Immigration Services Centralized Operational Repository (e-CISCOR)	March 2011
IT Portfolio	December 2010
Office of Citizenship	
Learn About the United States	COMPLETE
New Citizen's Almanac	COMPLETE
Office of the Chief Financial Officer	
Performance Analytics	COMPLETE
Budget	COMPLETE
Internal Controls	COMPLETE
Competitive Sourcing Reviews	COMPLETE
Service Level Agreements (SLAs)	COMPLETE
Financial Management Service Level Agreements	COMPLETE
Office of Policy and Strategy	
Policy Consultation	COMPLETE
Research and Evaluation	COMPLETE
Administrative Appeals Office	
Management Support Contract	COMPLETE
Domestic Operations	
Second Full-Service Production Facility	POSTPONED
Adjudication Officers & Support	COMPLETE
Enhanced Delivery of Secure Documents	TBD
Integrated Document Production	COMPLETE
FBI Background Checks	COMPLETE
National Security & Records Verification	
Fraud Prevention and Detection	COMPLETE
Administrative Site Program	COMPLETE
Fraud Detection and National Security (FDNS) Data Systems	June 2011
Freedom of Information Act (FOIA)	COMPLETE
National Archives and Records Administration (NARA) Transfer	COMPLETE
Change of Address	COMPLETE
Refugee, Asylum and International Operations	
Cuban-Haitian Entrant Program	COMPLETE

Table 2 – Status of FY 2008/2009 Fee Rule Enhancements

PROGRAM	COMPLETION DATE
Office of Human Capital, Training, and Career Development	
EDvantage	COMPLETE
Blended Learning Solution	COMPLETE
Enterprise Employee Orientation	COMPLETE
Enterprise Development Program	COMPLETE
Human Resources Service Level Agreements	COMPLETE
Occupational Safety and Health	COMPLETE
National Recruitment Program	COMPLETE
Office of Security and Investigations	
Protective Security Options	COMPLETE
Internal Security and Investigations Operations	COMPLETE
Crisis Management & Information Security	COMPLETE
Information Technology Security	COMPLETE
Personnel Security Operations	COMPLETE
Emergency Management and Safety	
Emergency Preparedness Operations	COMPLETE

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F. Administration Policy

President Obama launched a multi-year effort in his fiscal year (FY) 2010 Budget to reform immigration fees. The purpose of reforming immigration fees is to improve the transparency and precision of how fees are determined and to develop, as a matter of discretion, fees that reflect more closely actual costs of adjudication and assignable associated costs. The President's FY 2010 Budget requested appropriations from Congress to allow USCIS to remove the surcharge for refugee and asylum program costs and military naturalizations. Additional steps to reform immigration fees have continued in the President's FY 2011 Budget request and in this proposed fee rule.

DHS has calculated the proposed changes to the fee schedule based on the fee reform steps taken in the FY 2010 Budget and FY 2011 Budget request. These changes may require adjustment if USCIS's appropriation requests are not enacted or are reduced for FY 2011. Accordingly, DHS is proposing a range of fees to account for fee increases that would be necessary if the requested appropriations for FY 2011 are not enacted.

IV. FY 2010/2011 Immigration Examination Fee Account Fee Review

A. Overall Approach

USCIS manages three fee accounts: The IEFA (which includes premium processing revenues set aside for infrastructure improvements by the Office of Transformation Coordination for near- and long-term investments to strategically improve USCIS operations),[6] the Fraud Prevention and Detection Account (immigration benefit fraud),[7] and the H–1B Nonimmigrant Petitioner Account.[8] The Fraud Prevention and Detection account and the H–1B Nonimmigrant Petitioner Account are both funded by statutorily-set fees. The proceeds of these fees are used for fraud detection and prevention activities and to provide training for American workers in order to reduce employer reliance on nonimmigrant workers, respectively. DHS has no authority to adjust fees for these accounts.

The IEFA account comprised approximately 95 percent of total funding for USCIS in FY 2009, excluding premium processing, and is the focus of this proposed rule. The FY 2010/2011 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 2010/2011 are derived from the USCIS operating plan for FY 2010.
- *Revenue Status and Projections*—Actual revenue collections for FY 2009 are used to derive projections for the two-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 is to ensure immigration benefit request fee revenue provides sufficient funding to meet ongoing operating costs, including national security, customer service, and business adjudicative processing needs which are essential to provide immigration benefits and services.

B. Basis for Fee Schedule Changes

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 increase costs.

1. Costs

a. Baseline Adjustments

The cost baseline is comprised of the resources (such as personnel and

[6] INA sections 286(m), (n), 8 U.S.C. 1356(m), (n).

[7] INA sections 214(c), 286(v), 8 U.S.C. 1184(c) 1356(v).

[8] INA sections 214(c), 286(s), 8 U.S.C. 1184(c), 1356(s).

general expenses) necessary for each USCIS office to sustain operations. The baseline excludes new or expanded programs or significant policy changes. A detailed USCIS annual operating plan (AOP) is the starting point for baseline estimates.

In developing estimates of program needs for FY 2010/2011, USCIS used the FY 2010 AOP as the starting point. In response to reduced workload and declining revenue during both FY 2008 and FY 2009, USCIS reduced baseline costs for FY 2010.

Expenditures were reduced by $111 million in such areas as staffing and correspondingly reduced introductory training programs, overtime, and facilities improvement.

These reductions were offset by necessary pay adjustments and increases to programs to maintain current services, particularly adjustments to programs that received one-time reductions during FY 2009. Examples of necessary adjustments include:

- Pay inflation ($15.1 million in FY 2010 and $16.5 million in FY 2011). The assumed government-wide pay inflation rate for FY 2010 and FY 2011 is 2 percent and 2.1 percent respectively;
- Within-grade pay step increases ($15.4 million in FY 2010 and $16 million in FY 2011);
- Rent increases ($15.1 million in FY 2010 and $27.6 million in FY 2011). Rent increases as existing leases expire and are renegotiated. Rent is projected to increase by 9 percent in FY 2010 and 15 percent in FY 2011. The increase in rent is attributable to several factors including the size of the facilities, the growth of USCIS, the timing of facility projects, and the cost of construction. Many facility projects that are scheduled for completion in FY 2010 commenced in FY 2008. The additional space was acquired based on increased staffing levels (a direct result of the FY 2008/2009 Fee Rule enhancements). Outside of the acquisition of new facilities, annual rent costs increase due to higher operating costs (such as utilities) that USCIS must pay to the General Services Administration.

Table 3 summarizes adjustments to the FY 2009 cost baseline, as well as the cost increases and decreases to reach the FY 2010 and FY 2011 cost baselines. Overall, the IEFA cost baseline decreases by approximately 1.5 percent in FY 2010 from FY 2009 and increases by 2.7 percent for FY 2011.

Table 3 – Baseline Adjustments
(Dollars in Thousands)

FY 2009 Adjusted IEFA Budget	$2,420,187
Plus: Pay Inflation and Promotions/Within Grade Increases	30,569
Plus: Net Additional Resource Requirements	45,097
Plus: FY 2010 AOP Spending Cuts	-111,175
Total FY 2010 IEFA Budget	**$2,384,678**
Plus: Pay Inflation and Promotions/Within Grade Increases	37,548
Plus: Net Additional Resource Requirements	27,330
Total FY 2011 IEFA Budget	**$2,449,556**

b. Program Increase

USCIS has included only one program increase, encompassing $30 million in infrastructure funding to support the transformation of USCIS operations under its transformation program. To improve operational efficiency, enhance customer service, and increase national security, USCIS is centralizing and consolidating the electronic environments used for case processing and management and to standardize and improve business processes. A large portion of this effort is dedicated to developing and integrating information management systems. USCIS will migrate from a paper file-based, non-integrated systems environment to an electronic customer-focused, centralized case management environment for benefit processing. This transformation will allow USCIS to streamline benefit processing, eliminate the capture and processing of redundant data, and reduce the number of and automate its forms. This process will be a phased multi-year initiative to restructure USCIS business processes and related information technology systems.

Direct transformation program costs are currently funded through premium processing fees. Some supporting infrastructure upgrades outside of the Transformation Program are necessary to enable implementation such as upgrades to existing network, communication, and supporting systems. USCIS is assuming a $30 million program increase each year, for a total of $60 million in additional costs over the fee review period.

2. Revenue

During the fourth quarter of FY 2007, USCIS received over 2.5 million filings, compared to 1.3 million received in the same period of FY 2006, as applicants attempted to file before the July 30, 2007 fee adjustment and in response to adjustments made by the Department of State (DOS) to its July 2007 visa bulletin. This filing surge created a delay in receipting, which led to an increase in revenue at the beginning of FY 2008. The additional applications received were charged lower pre-FY 2008/2009 Fee Rule fees. The increase in early filings meant that FY 2008 application levels were substantially below expectations. The decrease in FY 2008 filings began the last two quarters of FY 2008 and continued throughout FY 2009. IEFA revenue for FY 2008 was $75 million below the estimated FY 2008 projection of $2.329 billion, despite an estimated $300 million of FY 2007 applications receipted in FY 2008. IEFA revenue for FY 2009 was $345 million below the $2.329 billion projection.

Actual FY 2009 IEFA revenue includes the revenue associated with the temporary protected status (TPS) registration that was not included in the FY 2008/2009 Fee Rule projections. In order to have a more reliable budget estimate upon which to base its fees, USCIS chose not to rely on temporary funding sources such as TPS that are subject to being discontinued annually. Therefore, USCIS cannot build TPS cost and revenue into long-term plans. Thus the fees proposed in this rule are based on the TPS Program for re-registrants of certain nationalities not continuing and their associated fees not being collected. When estimated TPS revenue of $120 million is factored out, the IEFA revenue was $465 million below the FY 2008/2009 Fee Rule projections.

USCIS fee revenue collections are affected by many things including the economy, debate in Congress over immigration legislation, and business cycles. A significant downward trend in employment benefit receipts in FY 2009 suggests that the primary cause of reduced receipts was the downturn in the economy. Employment-based workload, adjustment of status and naturalization requests—both primary consumers of work hours and sources of revenue—were also significantly lower than FY 2007 receipts. In addition, there is anecdotal evidence that there was a "surge" in the volume of certain applications, the Application for Naturalization in particular, just before the previous fee rule went into effect that may have had an impact on application volume in FY 2009. The fee increase may have been the reasons for this surge, although other factors, such as the immigration legislation that was considered but not enacted by Congress in 2007, and the 2008 Presidential election, are believed to have had an impact on filing volumes during FY 2008.

Given the downward revenue trend for FY 2008 and FY 2009, USCIS has formulated conservative volume and revenue projections. Overall, this fee review assumes that baseline revenue will decline from an FY 2008/2009 Fee Rule projection of $2.329 billion to $2.056 billion, a decrease of approximately 12 percent. This determination is based on a workload volume reduction from the FY 2008/2009 projections of approximately 1.6 million benefit requests (including biometrics) and a fee-paying volume reduction of 827,689. *See* 72 FR 29851. Table 4 summarizes the projected cost differential.

Table 4 - IEFA Baseline Cost and Revenue Comparison
(Dollars in Thousands)

	FY 2010	FY 2011	FY 2010/2011 AVERAGE
Revenue	$2,056,213	$2,056,213	$2,056,213
Cost	$2,384,678	$2,449,556	$2,417,117
$ Delta	**($328,465)**	**($393,343)**	**($360,904)**

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 5, FY 2010 and 2011 costs and revenue are averaged to determine the projected fee rule revenue and cost amounts. Based on current immigration benefit and biometric service fees and projected volumes, fees are expected to generate $2.056 billion in annual revenue in FY 2010 and FY 2011. For the same period, the average cost of processing those benefit requests is $2.417 billion. This calculation results in an average annual deficit of $361 million.

3. Refugee and Asylum Surcharge

The President's FY 2010 Budget requested $200 million to eliminate estimated asylum and refugee surcharges. *See* Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2010,* at 510–1 (2009), available at *http://www.gpoaccess.gov/usbudget/fy10/pdf/appendix/dhs.pdf.* Congress enacted $50 million for FY 2010, contingent upon conforming rulemaking to adjust the surcharges accordingly (*i.e.,* the $50 million represents an annualized figure of $200 million, appropriated in the expectation that it will fund the final quarter of FY 2010 rather than the entire year). DHS Appropriation Act 2010, 123 Stat. at 2164–5. Costs of refugee and asylum processing are currently borne by all fee-paying applicants as a surcharge applied to each fee-paying immigration benefit request. *See* 72 FR at 29859 (all immigration benefit and petition fees include a total of $72 in "surcharges" to recover asylum and refugee costs, and fee waiver and exemption costs). While consistent with the Immigration and Nationality Act, this surcharge raises fees for those applying for other benefits. Estimated costs in these areas include:

- The budgets of both the Refugee and Asylum Divisions of the Refugee, Asylum, and International Operations (RAIO) Directorate, along with the cost of RAIO Headquarters;
- Five percent of the International Operations (IO) office, representing the portion of IO that completes refugee work;
- A proportionate share of overhead costs of USCIS; and
- The cost of the Cuban-Haitian Entrant Program.

The $50 million appropriation enacted by Congress only replaces a portion of the surcharge for FY 2010 representing one-quarter of the fiscal year. DHS Appropriation Act 2010, 123 Stat. at 2164–5. President Obama requested an appropriation from Congress of $207 million to replace the full, annualized costs of these activities in FY 2011. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011,* at 521–2 (2010) (2011 Budget Request), available at *http://www.whitehouse.gov/omb/budget/fy2011/assets/dhs.pdf.* If Congress enacts the requested FY 2011 appropriations, surcharges for this category of costs will be eliminated when this proposed rule is promulgated as a final rule and becomes effective. If the requested appropriation is not enacted, or a different amount is appropriated, the final rule will adjust the fee schedule accordingly. *See* Table 16 (comparative fee schedule with and without requested appropriations).

4. Military Naturalizations

Service members in any of the branches of the U.S. Military who meet certain requirements may apply for naturalization and are exempt from paying the fee for the Application for Naturalization (Form N–400). INA sec. 328(a)(4), 8 U.S.C. 1439(a)(4); INA sec. 329(b)(4), 8 U.S.C. 1440(b)(4). Congress provided $5 million in FY 2010 to cover the estimated cost to USCIS of processing military naturalization applications. DHS Appropriation Act 2010, Public Law 111–83, 123 Stat. at 2164–5. As recognized by Congress in providing this appropriation, these costs

should not be borne by other fee-payers, particularly since this volume increases as the Department of Defense expands its recruitment efforts to certain aliens and other than lawful permanent residents. The estimated cost is based on a projected workload of 9,500 military naturalizations multiplied by the current fee of $595. The FY 2011 Budget Request of $5 million in appropriations for the Department of Defense is reflected in the recalculation of the proposed fees. *See* 2011 Budget Request, at 521–2. If Congress appropriates a different amount, the fees will be adjusted accordingly in the final rule. Table 5 depicts the cost and revenue differential after appropriations for refugee, asylum, and military naturalizations are assumed.

Table 5 – IEFA Cost Baseline and Revenue Comparison after Incorporating Refugee, Asylum, and Military Naturalization Actual (FY 2010) and Assumed (FY 2011) Appropriations
(Dollars in Thousands)

	FY 2010	FY 2011	FY 2010/2011 AVERAGE
Revenue	$2,056,213	$2,056,213	$2,056,213
Cost	$2,329,678	$2,237,556	$2,283,617
$ Delta	**($273,465)**	**($181,343)**	**($227,404)**

5. Proposed FY 2011 Appropriations for Systematic Alien Verification for Entitlements (SAVE) Program and the Office of Citizenship

The $385,800,000 for USCIS funding in the FY 2011 Budget Request seeks appropriations to cover the estimated cost of the SAVE program ($34 million) and the Office of Citizenship ($18 million) for FY 2011. *See* 2011 Budget Request, at 521–2. If Congress appropriates a different amount, the fees will be adjusted accordingly in the final rule. The fees proposed in this rule are based on the costs of the SAVE program and the Office of Citizenship not being financed by fee revenue and, instead, paid with appropriated funds. The baseline costs (without program increases) are approximately $26.1 million in FY 2011. If appropriations are not approved for these activities, USCIS will be required to adjust fees to reflect costs for the programs.

The proposal follows initial steps taken within enacted FY 2010 appropriations for USCIS fee reform that moved some asylum, refugee, and military naturalization costs out of the fee structure. The purpose of this fee reform is to improve the linkage between fees paid by USCIS applicants and petitioners and the cost of programs and activities to provide immigration benefits. Because of fee exemptions for beneficiaries of asylum, refugee, and military naturalization, fee surcharges were added to other applications and petitions. 72 FR 29859. Similarly, costs of SAVE and the Office of Citizenship are currently only partially supported by fee revenue. Additional fee reform in these areas moves these costs out of the USCIS fee structure and improves the precision and transparency of USCIS fees.

The IEFA cost baseline is increasing while anticipated volumes and revenue are expected to decrease compared to the last fee rule. Table 6 depicts the cost and revenue differential after appropriations for refugee, asylum, military naturalizations, SAVE, and the Office of Citizenship are assumed.

Table 6 – IEFA Cost Baseline and Revenue Comparison after Additional Proposed Appropriation for SAVE and the Office of Citizenship
(Dollars in Thousands)

	FY 2010	FY 2011	FY 2010/2011 AVERAGE
Revenue	$2,056,213	$2,056,213	$2,056,213
Cost	$2,329,678	$2,211,454	$2,270,566
$ Delta	**($273,465)**	**($155,241)**	**($214,353)**

6. Establish an Immigrant Visa Processing Fee

DHS proposes to establish a new fee for immigrant visas to recover the costs to USCIS for related activities. Immigrant visas are issued by the Department of State (DOS) in overseas consulates to foreign nationals seeking to reside permanently in the United States. INA section 221–222, 8 U.S.C. 1201–1202. Although DOS issues the visas, USCIS must complete several visa application-related activities prior to issuance of a permanent resident card. USCIS must create a file, review the application, correspond with the applicant, and produce and issue a secure card upon approval. DOS charges fees for immigrant visas, but USCIS does not. The DOS fee is currently established, using DOS's fee-setting methodology, at $355. 22 CFR 22.1. The DOS fee was established to recover DOS costs only, and the USCIS FY 2010/2011 Fee Review was performed without consideration of fees paid by applicants to DOS. Other USCIS applicants have historically borne the cost of processing this immigrant visa workload.

The USCIS fee only reflects the costs incurred by USCIS. Although USCIS projects an annual volume of 430,000 requests, in anticipation of the timing of implementation of a final rule promulgating the fee, USCIS only accounts for revenue for the second half of the first fiscal year, or 215,000 immigrant visas. USCIS projects that the collection of the immigrant visa fee will be implemented beginning in FY 2011. The proposed fee based on the workload analysis is $165. The additional revenue from implementing this fee will reduce

fees paid by, and fee increases charged to, other applications.

7. Civil Surgeon Program Fees

DHS proposes to establish new fees for processing civil surgeon designations. Medical examinations are needed for most adjustment of status cases (Form I–485) and requests for V nonimmigrant status (Form I–539). The medical examination must be conducted by a civil surgeon who has been designated by USCIS. USCIS traditionally has not charged civil surgeons seeking this designation a fee to recover the costs associated with this application; these costs have been recovered as part of the administrative overhead charged to all fee-paying applicants and petitioners. The process for receiving and reviewing the information required for a civil surgeon designation, however, is labor intensive. For USCIS to continue to provide civil surgeon designations in a timely manner and to further refine the cost analysis and fee setting, USCIS must establish a fee of $615 to cover the cost of processing requests for such designations. Collecting a fee for these services will ensure that other fee-paying applicants do not bear these costs.

8. EB–5 Regional Center Designation Fee

DHS proposes to add a fee for adjudication of regional center designations under the Immigrant Investor Pilot Program. *See* Public Law 102–395, tit. VI, sec. 610, 106 Stat. 1874 (1992) (8 U.S.C. 1153 note). This program, implemented by Congress in 1990 to stimulate the U.S. economy, allows certain foreign investors to obtain lawful permanent resident status in the United States as EB–5 immigrants by making certain levels of capital investment and associated job creation or preservation. One aspect of this program (the Regional Center Pilot Program) encourages foreign investors to invest funds in a distinct economic "regional center." A regional center is an economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment. *See* 8 CFR 204.6(e). An individual or entity interested in participating in the Regional Center Pilot Program must file a Regional Center Proposal with USCIS to request USCIS approval of the proposal and designation of the entity as a regional center. The proposal must provide a framework within which individual alien investors affiliated with the regional center can satisfy the EB–5 eligibility requirements and create qualifying EB–5 jobs.[9]

USCIS's fee study found that these designations are exceptionally labor intensive for USCIS. Historically, the cost of this designation process has been borne by all fee-paying applicants and beneficiaries. Accordingly, to refine the cost accounting and fee structure, and to make the distribution of costs more equitable, DHS proposes a new fee of $6,230 per request for designation.

9. Employment Authorization Document Fees for Applicants Covered by Deferred Enforced Departure (Form I–765)

DHS proposes to collect a fee for an Application for Employment Authorization and the associated biometrics for aliens granted deferred enforced departure (DED). DHS also proposes to remove an extraneous provision from the employment authorization regulations relating to aliens granted "extended voluntary departure by the Attorney General as a member of a nationality group pursuant to a request by the Secretary of State." 8 CFR 274a.12(a)(11).

In the Immigration Act of 1990, Congress established the temporary protected status (TPS) program and instructed that TPS constitutes the exclusive authority of the Attorney General (now the Secretary of Homeland Security) to permit deportable or paroled aliens to remain in the United States temporarily because of their particular nationality. *See* INA sec. 244(g), 8 U.S.C. 1254a(g). Accordingly, since 1990 neither the Attorney General nor the Secretary have designated a class of aliens for nationality-based "extended voluntary departure," and there no longer are aliens in the United States benefiting from such a designation. Accordingly, DHS proposes to remove the obsolete reference to extended voluntary departure.

On occasion, however, Presidents have issued executive orders or memoranda directing the deferral of enforced departure from the United States of certain nationals of a particular country for temporary periods and have directed that eligible individuals be provided employment authorization during the period of deferral. *See, e.g.,* Exec. Order No. 12711, 55 FR 13897 (April 11, 1990) (deferring departure of certain Chinese nationals); Memorandum from President Barack Obama to Secretary of Homeland Security Janet Napolitano Extending Deferred Enforced Departure for Liberians (Mar. 20, 2009), available at *http://www.whitehouse.gov/the_press_office/Presidential-Memorandum-Regarding-Deferred-Enforced-Departure-for-Liberians.* DHS proposes changes that will clarify its authority to process and collect a fee for EADs and associated biometrics for aliens eligible for DED. Proposed 8 CFR 103.7(b) and 274a.12(a)(11). Collection of the EAD fee from individuals who are covered by an occasional Presidential directive to defer their departure temporarily will facilitate adjudication of the benefit, and the production of secure, biometric EADs, as with other EAD-eligible groups, such as aliens granted TPS. An EAD applicant may request a fee waiver based on an inability to pay the fee. The new provision will still be in regulations governing work authorization incident to status. 8 CFR 274a.12(a). The proposed change specifies that work authorization will be provided under terms and conditions set by the Secretary consistent with the President's DED directive. Proposed 8 CFR 274a.12(a)(11).

C. Summary

Projected costs are expected to exceed projected revenue. This differential must be addressed with increased revenue, notwithstanding new appropriations and cost adjustments. Increased revenue will be derived from new immigrant visas, civil surgeon designations, and immigrant investors. Increased revenue will also be derived from a weighted average fee increase on existing immigration benefits. Some fees will be reduced due to lower processing costs; other fees will increase. The level of fee increase necessary to align costs and revenue is a weighted average of 10 percent after adjusting prices to account for reduced surcharges and other costs from appropriations for SAVE, Office of Citizenship, refugee and asylum costs, and military naturalization reimbursements from DOD. USCIS will adjust fees consistent with the details of this supporting documentation if proposed appropriations are not approved.

D. Performance Improvements

In the FY 2008/2009 fee rule, USCIS committed to a series of performance improvements and reduced processing time goals. For the FY 2010/2011 period, USCIS is identifying in this fee rule a new set of goals and performance improvements that are aimed at increasing accountability, providing

[9] *See* "Adjudication of EB–5 Regional Center Proposals and Affiliated Form I–526 and Form I–829 Petitions; Adjudicators Field Manual (AFM) Update to Chapters 22.4 and 25.2," Donald Neufeld, Acting Associate Director, Domestic Operations, USCIS (Dec. 11, 2009); *http://www.uscis.gov.*

better customer service, and increasing efficiency. These enhancements include:

• *Expanding the use of Systems Qualified Adjudication to a larger share of USCIS's workload.* USCIS expects all Form I–90, I–765, and I–821 re-registration applications will be supported by electronic adjudication by September 2011. In addition to improving the processing of these requests, this step will provide adjudicators with more time to focus on more complex applications.

• *Begin Deployment of Transformed Processes and System.* USCIS expects to deploy the initial increment of its transformation program by the end of FY 2011. As one of the Administration's High Priority Performance Goals,[10] USCIS has committed to ensuring that at least 25 percent of applications will be electronically filed and adjudicated using the new transformed integrated operating environment by FY 2012.

• *Integration of productivity measures in future fee review methodology.* Beginning with the next fee rule, USCIS will integrate productivity measures into the underlying methodology USCIS uses to conduct fee studies. This means that efficiency gains resulting from information technology investments and process improvements will be clearly identified, including the cost savings that occur due to these changes, ensuring that those savings are incorporated into new fee amounts.

V. 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 activity-based costing (ABC) software to create financial models to calculate immigration benefit requests and biometric service fees. Following the FY 2008/2009 Fee Rule, USCIS identified several key methodology changes to improve the accuracy of the ABC model. Improvements were also suggested by the Government Accountability Office (GAO) following a review and completion of the FY 2008/2009 Fee Rule.[11] These changes include analyzing cost allocation methods to evaluate methods that may offer greater precision and fully documenting the rationale and any related analysis for using the assumptions and cost assignment methods selected. 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. ABC is a preferred cost accounting method endorsed by the FASAB and enables USCIS to conform to Managerial Cost Accounting Concepts and Standards for the Federal Government.[12]

1. ABC Methodology

a. Resources

The total resource base for the ABC model is the FY 2010/2011 cost baseline and assumes that USCIS will receive $55 million in FY 2010 and $238 million in FY 2011 from appropriations to replace surcharges. The resulting $2.271 billion (*see* Table 6) is the estimated cost of FY 2010 and FY 2011 resources necessary to fund the full cost of processing immigration benefit requests and biometric services for which USCIS charges a fee, as well as the cost of providing similar services at no cost. This represents the first stage of the ABC process.

The ABC model structure for FY 2010/2011 was designed to closely resemble the structure of the FY 2009 Annual Operating Plan (AOP). The AOP is the detailed budget execution plan USCIS establishes at the beginning of the fiscal year consistent with the Congressionally approved fiscal year appropriation and forecasted fee revenue. The model includes the same USCIS offices and individual line items associated with these offices. This structure provides a common format and creates a means to project out-year budgets and potentially track commitments, obligations, and expenditures by the operating plan line item description in the model.

The ABC model structure for the FY 2008/2009 Fee Rule was based on the FY 2007 AOP. Headquarters payroll and agency-wide non-payroll were very similar to the operating plan; however, payroll for field offices (Service Centers, District Offices, National Benefits Center, and National Records Center) was broken down into sub-categories similar to the internal USCIS Staffing Allocation Model (SAM).[13]

b. Resource Drivers and Resource Assignment

ABC methodology uses resource drivers to assign resources to activities. Using the resource base of $2.271 billion, costs are assigned to activities using resource drivers. All resource costs are assigned to activities, so the total resources in the model equal the total cost of activities. This represents the second stage of the ABC process.

A commonly used resource driver in ABC is an organization's number of employees and the percentage of time they spend performing certain activities. The FY 2010/2011 ABC model uses this methodology to assign resources to activities. The ABC model assigns resources to activities using authorized positions by funding stream (fund code) and Program, Project, and Activity (PPA) for each USCIS office. This driver is then weighted by the percentage of on-board positions performing specific activities within each USCIS office. These percentages are determined using a payroll position title analysis. The payroll position title analysis identifies the percentage of each office that is dedicated to the nine ABC activities (for more information *see* the section titled "Activities" below) by reviewing the titles and position descriptions of its workforce.

Other resource drivers in the FY 2010/2011 model include a direct driver

[10] See Memorandum for the Heads of Departments and Agencies, *Planning for the President's Fiscal Year 2011 Budget and Performance Plans, from Peter R. Orszag,* Director, Office of Management and Budget, June 11, 2009.

[11] Government Accountability Office, *Immigration Application Fees: Costing Methodology Improvements Would Provide More Reliable Basis for Setting Fees* (GAO–09–70, Jan. 23, 2009); Government Accountability Office, *Federal User Fees: Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations* (GAO–09–180, Jan. 23, 2009); Statement of Susan J. Irving, Government Accountability Office, *Federal User Fees: Fee Design Characteristics and Trade-Offs Illustrated by USCIS's Immigration and Naturalization Fees,* Testimony before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Committee on the Judiciary, U.S. House of Representatives, 18 (March 23, 2010) (Noting that "Any user fee design embodies trade-offs among equity, efficiency, revenue adequacy, and administrative burden.").

[12] Federal Accounting Standards Advisory Board, *Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government* 36 (July 31, 1995).

[13] The Staffing Allocation Model is a model used to calculate estimates of staffing types and levels necessary to undertake specific workload (*e.g.,* applications and petitions) levels at target processing times.

and a rent driver that are similar to those used in the FY 2008/2009 model. The direct driver assigns specific resources directly to activities. For example, the contract issued for USCIS Application Support Centers (ASCs) only pertains to the capture biometrics activity. Therefore, the costs associated with this contract are assigned directly to the capture biometrics activity using a direct driver. The rent driver assigns estimated rent costs for each fiscal year to each USCIS office based on projected FY 2010 rent costs by location. Other overhead costs, such as the Office of Information Technology, service-level agreements, and the DHS working capital fund costs are distributed to each USCIS office on a prorated basis by authorized positions.

The FY 2008/2009 model used total authorized positions as the primary resource driver. For Headquarters offices, this driver was weighted by the estimated percentage of time spent performing certain activities, based on operational knowledge. For field offices, total positions were weighted by the time spent performing certain activities, based on operational knowledge as well as time percentages determined using officer hour data from the USCIS Performance Analysis System (PAS).[14]

The allocation methods in the FY 2008/2009 Fee Rule, as well as the FY 2010/2011 Fee Review, are consistent with the FASAB Standard 4 on managerial cost accounting concepts. They fulfill the mandate 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.

c. Activities

In ABC, activities are the critical link between resources and cost objects. This represents the third stage of the ABC process. Projected operating costs (resources) for FY 2010/2011 are spread to nine activities. They are:

- *Inform the Public* involves receiving and responding to applicant and petitioner inquires through telephone calls, written correspondence, or walk-in inquiries;
- *Capture Biometrics* involves the electronic capture of biometric information (fingerprint and photograph), background checks performed by the FBI, and use of the collected biometrics for verifying the identity of the applicants;
- *Intake* involves mailroom operations, data capture and collection, file assembly, fee receipting, and file room operations;
- *Conduct Interagency Border Inspection System (IBIS) Checks* involves the process of comparing information on applicants, petitioners, beneficiaries, derivatives, and household members who apply for an immigration benefit against various Federal lookout systems;
- *Review Records* involves searching and requesting files; creating temporary and/or permanent alien files; consolidating files; connecting returned evidence with application or petition files; pulling, storing, and moving files upon request; auditing and updating systems on the location of files; and archiving inactive files;
- *Make Determination* involves the tasks of adjudicating immigration benefits; making and recording adjudicative decisions; requesting and reviewing additional evidence; interviewing applicants; consulting with supervisors or legal counsel; and researching applicable laws and decisions on non-routine adjudications;
- *Fraud Detection and Prevention* involves activities performed by the Fraud Detection and National Security Directorate in detecting, combating, and deterring immigration benefit fraud, and addressing national security and intelligence concerns;
- *Issue Document* involves the tasks of producing and distributing secure cards that identify the holder as an alien and also identify his or her status or employment authorization;
- *Management and Oversight* involves activities in all offices that provide broad, high-level leadership to meet USCIS goals.

Management and Oversight is an activity designed to capture managerial activities at Headquarters and in the field. This activity provides a more specific depiction of the work performed by certain offices. All Headquarters offices [15] are allocated to Management and Oversight in their entirety, including the Executive Secretariat; Office of Administration; Office of the Chief Financial Officer; Office of Citizenship; Office of Communications; Office of Congressional Relations; Office of Emergency Preparedness and Coordination; Office of Equal Opportunity & Inclusion; Office of Human Capital, Training, and Management; Office of Policy & Strategy; Office of Privacy; Office of Security & Integrity; Office of the Chief Counsel; Office of the Deputy Director/ Chief of Staff; Office of the Director; Office of Transformation Coordination;[16] and Office of Records.

The payroll title analysis allowed USCIS to identify leadership positions in the field offices that should be allocated to the Management and Oversight activity. Projected operating costs for FY 2008/2009 were spread to the nine activities (Inform the Public, Intake, Capture Biometrics, Conduct IBIS Check, Review Records, Fraud Detection and Prevention, Make Determination, and Issue Document). Management and Oversight was not a separate activity.

d. Activity Drivers and Activity Assignment

The fourth stage in the ABC process is driving the activity costs to the immigration benefits (cost objects). Activity costs are primarily spread to immigration benefit requests based on the percentage of total projected volume, as similar time and effort are involved in processing each application. There are unique drivers used for two of the activities—Capture Biometrics and Make Determination. The Make Determination activity is spread to requests by a factor of average adjudication time and projected volume (*i.e.,* projected adjudication hours) as these metrics pertain directly to the adjudication function and can vary significantly by application. The general premise is that the more time spent adjudicating a request, the higher the fee. Exceptions to this general rule occur when volumes skew unit costs (*e.g.,* high-volume applications tend to have lower unit costs since costs are allocated over a higher volume base) or additional activities are performed (*e.g.,* some applications require the creation of secure cards). Capture Biometrics uses a direct activity driver to drive all of the costs associated with this activity to Biometric Services.

Activity costs are spread to immigration benefit requests by the locations where they are processed apart from the Intake activity. Intake is primarily performed at the Lockbox; however, some intake is performed at the field offices. Due to varying costs at field locations, spreading intake costs by a percentage of total field office costs introduces inaccurate variability in

[14] The USCIS Performance Analysis System (PAS) is an online data entry and retrieval system used to track workload accomplishments and human resources expenditures.

[15] In January 2010, USCIS realigned its structure and management functions that created new offices and modified the reporting relationship between others. For the purpose of this fee review, the previous organizational chart, valid as of February 2009, was used.

[16] The only portion of the Office of Transformation Coordination that is treated as a Headquarters office is funding for staff (payroll, overtime, and awards) and related general expenses. Other programmatic costs are funded by premium processing revenue.

intake costs by request. There is little variability in the intake process by request type and therefore, intake costs are spread using an average cost per request. Ultimately, nearly all immigration benefit request types will be received only by Lockbox locations.

Activity costs for the FY 2008/2009 Fee Rule were spread by projected volume weighted by average adjudication time for the Make Determination activity. All other activity costs were spread using an average activity cost per application.

e. Cost Objects

Cost objects are the immigration benefits and biometric services for which USCIS charges a fee. Driving activity costs to the cost objects is the final stage of the ABC process.

Application costs were derived for virtually every immigration benefit that USCIS adjudicates including those filed for asylum and refugee protection, Temporary Protected Status, Premium Processing, and H–1B nonimmigrant petitions. The IEFA cost of requests for which no revenue is recovered is redistributed to other applications in a prorated manner similar to the way the FY 2008/2009 Fee Rule handled requests. Temporary Protected Status (Form I–821), Nicaraguan Adjustment and Central American Relief Act (NACARA) (Form I–881)—Suspension of Deportation or Application Special Rule, are temporary programs. Thus USCIS does not rely on their revenue in the FY 2010/2011 Fee Review to support baseline operations, although their costs are analyzed.

A separate fee for biometric services was also derived. The proposed rule continues to provide for a separate $85 biometric fee to accommodate national security and fraud detection decisions that may require extension of biometric requirements to additional immigration benefit requests that do not already include that fee. Table 7 outlines the fees for immigration benefits that require biometric services. These fees assume receipt of $283 million in appropriated funds in FY 2011 for refugee, asylum, military naturalization, SAVE, and Office of Citizenship activities.

Table 7 - Fees for Immigration Benefits Requiring Biometric Services

Form	Proposed Fee	Proposed Biometric Fee	Total Proposed Fee
I-90 Application to Replace Permanent Resident Card	$365	$85	$450
I-131 Application for Travel Document[17]	$360	$85	$445
I-360 Petition for Amerasian, Widow(er), or Special Immigrant[18]	$405	$85	$490
I-485 Application to Register Permanent Residence or Adjust Status	$985	$85	$1,070
I-600/600A, I-800/800A Orphan Petitions	$720	$85	$805
I-687 Application for Status as a Temporary Resident	$1,130	$85	$1,215
I-698 Application to Adjust Status from Temporary to Permanent Resident	$1,020	$85	$1,105
I-751 Petition to Remove Conditions of Residence	$505	$85	$590
I-817 Application for Family Unity Benefits	$435	$85	$520
I-829 Petition by Entrepreneur to Remove Conditions	$3,750	$85	$3,835
N-400 Application for Naturalization	$595	$85	$680

Table 8 outlines the fees for immigration benefits if Congress does not enact the requested appropriations for SAVE and the Office of Citizenship.

[17] Applicants submitting a Form I–131, Travel Document—Advance Parole, are not required to pay the biometrics fee.

[18] Amerasian applicants are the only class of I–360 applicants required to pay for biometric services.

Table 8 - Fees for Immigration Benefits Requiring Biometric Services if SAVE and Office of Citizenship Appropriations are Not Approved			
Form	**Proposed Fee**	**Proposed Biometric Fee**	**Total Proposed Fee**
I-90 Application to Replace Permanent Resident Card	$365	$85	$450
I-131 Application for Travel Document	$360	$85	$445
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$405	$85	$490
I-485 Application to Register Permanent Residence or Adjust Status	$1,000	$85	$1,085
I-600/600A, I-800/800A Orphan Petitions	$725	$85	$810
I-687 Application for Status as a Temporary Resident	$1,145	$85	$1,230
I-698 Application to Adjust Status from Temporary to Permanent Resident	$1,035	$85	$1,120
I-751 Petition to Remove Conditions of Residence	$510	$85	$595
I-817 Application for Family Unity Benefits	$440	$85	$525
I-829 Petition by Entrepreneur to Remove Conditions	$3,805	$85	$3,890
N-400 Application for Naturalization	$595	$85	$680

2. Low Volume Reallocation

USCIS is using its fee setting discretion to adjust certain application and petition fees when the low volume that is projected leads to particularly high unit cost increases. USCIS determined in its fee study that the combined effect of cost, revenue estimates, and methodology results in an inordinate fee burden being placed on these requests relative to other benefit requests. For example, without reallocation for an orphan petition, the fee for that form would be $1,455. USCIS believes it would be contrary to the public interest to impose a fee of this size on an estimated 25,000 potential adoptive parents each year. Similar disparate effects occur for all of the form types that are being adjusted using a low volume reallocation. Thus, USCIS has decided, based on its experience in carrying out immigration benefit programs, assessing fees, and the characteristics of various applicants, that reasonable adjustments based on such equitable considerations are justified.

USCIS will therefore limit the fee increase for these forms to an increase equal to the weighted average percentage fee increase of all immigration benefits. The additional costs from these form types are then prorated to other benefits. This same methodology was used effectively in the FY 2008/2009 Fee Rule. 72 FR at 4910. The benefit requests requiring a low volume adjustment for the FY 2010/2011 Fee Rule are:

- Petition for Amerasian, Widow(er), or Special Immigrant (with respect to Form I–360 applicants who are not already exempt from paying the fee);
- Application for Waiver of Grounds of Inadmissibility (Form I–690);
- Application to File Declaration of Intention (Form N–300);
- Application to Preserve Residence for Naturalization Purposes (Form N–470);
- Orphan Petitions (Forms I–600/I–600A and I–800/I–800A,);
- Notice of Appeal or Motion (Form I–290B);
- Request for Hearing on a Decision in Naturalization Proceedings (Form N–336); and
- Waiver Forms (Forms I–191, I–192, I–193, I–212, I–601, I–612).

Public comments would be particularly useful on whether to maintain fees for certain low volume applications and petitions at levels below the ABC model.

3. Application for Naturalization

DHS proposes to provide special consideration to the fee for an Application for Naturalization (Form N–400), by limiting the fee at its current level of $680 ($595 current fee with the $85 biometrics fee). USCIS received many comments on the FY 2008/2009 Fee Rule expressing concern that the N–400 fee had been increased inordinately. 72 FR at 29856.

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. DHS believes this action to retain the naturalization fee at the current level will reinforce these principles, allow more immigrants to fully participate in civic life, and is consistent with other DHS efforts to promote citizenship and immigrant integration.[19] For these reasons, and based on its experience in administering the naturalization program, DHS proposes to retain the fee for naturalization at the current level over the FY 2010/2011 biennial period.

DHS recognizes that limiting the fee at its current level would lead to the subsidization of naturalization by other fee-paying applicants as allowed by INA section 286(m), 8 U.S.C. 1356(m). Charging "other immigrants" who file an Application for Naturalization (Form N–400) less than full cost of adjudicating that petition, or spreading the costs of administration of USCIS more fully among non-naturalization applicants, may be fairly interpreted as providing the naturalization applicants with a part of that service "without charge." As

[19] *See USCIS Office of Citizenship Vision and Mission at http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=a5e314c0cee47210VgnVCM100000082ca60aRCRD&vgnextchannel=a5e314c0cee47210VgnVCM100000082ca60aRCRD.*

discussed in the Authority section of this rule, DHS is proposing to shift this amount to other applicants as part of full cost recovery in compliance with INA section 286(m).

This proposal would result in setting the fee for the Application for Naturalization (Form N–400) at less than what the ABC model generates as the full cost of adjudicating that application. A model-based fee for naturalization would have increased the current fee level by as much as $60 per application. DHS is anticipating receiving an annual volume of 684,390 fee-paying naturalization applications (Form N–400); accordingly, forgoing the $60 fee increase for the Form N–400 thus would reduce fee collections by approximately $41 million, as compared to using the adjusted fee. As a result, retaining the current fee will spread this portion of the cost from naturalization applicants to other applicants and petitioners as part of full cost recovery in implementing INA section 286(m), 8 U.S.C. 1356(m). The estimated fee impact of this policy on other application and petition types is a weighted average of $8.00 per application and petition (*i.e.,* the impact is greater or less than $8.00 for each application and petition, with the weighted average being $8.00). DHS is specifically requesting comments on this policy decision. The comments will be considered in determining whether the final rule provides a fee of $680 as proposed or a higher amount as calculated in the FY 2010/2011 Fee Review using ABC methodology and all other factors that are part of calculations for the final rule.[20] Table 9 illustrates the impact of this proposed policy decision across all fee paying applications and petitions.

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[20] The fees established in the final rule may vary based on cost figures that are current when the final rule is drafted, enacted appropriations, and adjustments made as a result of public comments on all fees, waivers, exemptions, reallocations, and general methodology. Adjustment of one fee will result in changes in the fees for other benefit requests (raising or reducing fees) depending on the action. The effect of a change in one fee on all other fees cannot be precisely stated because of the other adjustments that will be made.

Costs not recovered with respect to immigration benefits for which the fee is set below the ABC model amount are spread to other immigration benefits by the ABC model output amount. First these redistributed costs are added to all non-held immigrant benefits. Then these redistributed costs, as an average, are spread to the fee-paying volume of each of the non-held immigrant benefit fees. This methodology is consistent with the methodology used in the FY 2007 Fee Rule to spread these costs equitably to the benefit instead of applying a fixed "surcharge."

Table 9. Effect of Policy Decision to Retain or Not to Retain Current Naturalization Fee Levels by Immigration Benefit

Immigration Benefit	1. Current Fees	Proposed Fees with President's Requested Appropriation for Asylum / Refugee Surcharge; Military Naturalization; SAVE; and Citizenship;		4. Percentage Change Retaining Current Naturalization Fee 2./1.	5. Percentage Change not Retaining Current Naturalization Fee 3./1.
		2. Retaining Current Naturalization Fees	3. Not Retaining Current Naturalization Fees		
I-90 Application to Replace Permanent Resident Card	$290	$365	$360	26%	24%
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$320	$330	$320	3%	0%
I-129 Petition for a Nonimmigrant Worker	$320	$325	$320	2%	0%
I-129F Petition for Alien Fiancé(e)	$455	$340	$330	-25%	-27%
I-130 Petition for Alien Relative	$355	$420	$410	18%	15%
I-131 Application for Travel Document	$305	$360	$350	18%	15%
I-140 Immigrant Petition for Alien Worker	$475	$580	$565	22%	19%
I-290B Notice of Appeal or Motion	$585	$630	$630	8%	8%
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$375	$405	$405	8%	8%
I-485 Application to Register Permanent Residence or Adjust Status	$930	$985	$960	6%	3%
I-526 Immigrant Petition by Alien Entrepreneur	$1,435	$1,500	$1,460	5%	2%
I-539 Application to Extend/Change Nonimmigrant Status	$300	$290	$280	-3%	-7%
I-600/600A, I-800/800A Orphan Petitions	$670	$720	$720	7%	7%
I-687 Application for Status as a Temporary Resident	$710	$1,130	$1,100	59%	55%
I-690 Application for Waiver of Grounds of Inadmissibility	$185	$200	$200	8%	8%
I-694 Notice of Appeal of Decision	$545	$755	$735	39%	35%
I-698 Application to Adjust Status From Temporary to Permanent Resident	$1,370	$1,020	$995	-26%	-27%
I-751 Petition to Remove the Conditions of Residence	$465	$505	$490	9%	5%
I-765 Application for Employment Authorization	$340	$380	$375	12%	10%
I-817 Application for Family Unity Benefits	$440	$435	$425	-1%	-3%
I-824 Application for Action on an Approved Application or Petition	$340	$405	$395	19%	16%
I-829 Petition by Entrepreneur to Remove Conditions	$2,850	$3,750	$3,655	32%	28%
Civil Surgeon Designation Registration	$0	$615	$600	0%	0%
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	$0	$6,230	$6,070	0%	0%
N-300 Application to File Declaration of Intention	$235	$250	$250	6%	6%
N-336 Request for Hearing on a Decision in Naturalization Proceedings	$605	$650	$650	7%	7%
N-400 Application for Naturalization	$595	$595	$655	0%	10%
N-470 Application to Preserve Residence for Naturalization Purposes	$305	$330	$330	8%	8%
N-565 Application for Replacement	$380	$345	$335	-9%	-12%

Table 9. Effect of Policy Decision to Retain or Not to Retain Current Naturalization Fee Levels by Immigration Benefit

Immigration Benefit	1. Current Fees	Proposed Fees with President's Requested Appropriation for Asylum / Refugee Surcharge; Military Naturalization; SAVE; and Citizenship;		4. Percentage Change Retaining Current Naturalization Fee 2./1.	5. Percentage Change not Retaining Current Naturalization Fee 3./1.
		2. Retaining Current Naturalization Fees	3. Not Retaining Current Naturalization Fees		
Naturalization/Citizenship Document					
N-600/N-600K Applications for Certificate of Citizenship	$460	$600	$585	30%	27%
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	$545	$585	$585	7%	7%
Immigrant Visas	$0	$165	$160	0%	0%
Biometric Services	$80	$85	$85	6%	6%

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B. Key Changes Implemented for the FY 2010/2011 Fee Review

1. Appropriation for Refugee, Asylum, and Military Naturalization Benefits

Fee setting authority for the IEFA provides that fees may be set at a level to fund the full cost of processing immigration benefit requests and the full cost of providing similar benefits to asylum and refugee applicants. INA sec. 286(m); 8 U.S.C. 1356(m). In the FY 2008/2009 Fee Rule, USCIS attached a $72 surcharge to every immigration benefit request representing the cost of workload for asylum and refugee applicants as well as the cost of estimated fee waivers and exemptions. 72 FR 29859. For the fees proposed in this rule, USCIS will exclude the costs incurred for refugee, asylum, and military naturalization workload from the ABC model. Appropriated funding for these purposes was requested and partially approved for FY 2010; additional appropriations to fund operations were requested for FY 2011.

International Operations (IO) processes immigration benefits and petitions, facilitates the international adoption process, and serves the immediate family members of U.S. citizens residing abroad who want to adjust their status. In the FY 2008/2009 Fee Rule, IO's costs were part of the Refugee/Asylum surcharge applied to all fee-paying applications and petitions. In this proposed rule, the portion of IO's budget attributable to processing refugee benefits has been included in the requested appropriation. The remaining costs are included in the IEFA cost baseline and recovered by fee revenue. The portion of IO that processes fee-paying benefits will be funded using IEFA revenue. If the FY 2011 request for appropriated funds is not enacted or enacted at a reduced level, the model will be revised and the final fee structure will reflect the costs of these activities.

2. Fee Waivers and Exemptions

DHS proposes to modify the regulatory language and clarify eligibility for an individual fee waiver in 8 CFR 103.7(c). Where appropriate in the IEFA fee structure, USCIS exempts certain classes of applicants and petitioners from paying fees, and certain applicants may be granted a fee waiver due to verifiable financial hardship. DHS proposes to modify 8 CFR 103.7(c) to list benefit requests for which applicants may request fee waivers.

DHS also proposes to add a new 8 CFR 103.7(d) to provide USCIS with the discretion to approve and revoke 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). To exercise this authority, the Director of USCIS must determine that such an exemption or waiver would be in the public interest and the exception is not inconsistent with other applicable law or regulation. DHS proposes that this exception authority will be vested with the Director of USCIS and cannot be delegated to any other official other than his or her deputy. USCIS plans to issue internal guidance that will require requests for a Director's waiver to be sent to the USCIS District Office. The guidance will require the District Office and applicable program directorate to recommend approval, outline the reasons for the recommendation in their transmission of the waiver or exemption request to the Director, and certify that no other law or regulations are violated by granting the waiver or exemption.

In addition, DHS proposes to remove the separate fee waiver provisions that relate to applications for temporary protected status (TPS). *See* 8 CFR 244.20. The applicant must show that he or she is unable to pay the prescribed fees to establish eligibility for a waiver of the fee for an application for TPS. Those requirements differ only slightly from the more general fee waiver eligibility in 8 CFR 103.7(c) and the redundant provisions have been the source of confusion. These proposed modifications ensure that waivers and exemptions are applied in a fair and consistent manner.

3. Immigrant Visa Processing Fee

DHS is proposing to collect a fee for processing immigrant visas. USCIS does not currently recover fees for the cost of processing visas issued overseas by DOS, although USCIS offices expend time and effort to process those visas. This practice is inconsistent with Executive Branch guidance in OMB Circular A–25 to recover the full cost of providing a service to the public. Historically, these costs were carried as overhead and spread across all fee-paying applicants. By not collecting a fee for this service while incurring significant associated costs, USCIS is placing additional burdens on all fee-paying applicants. The fee proposed in this rule for immigrant visas was calculated at the amount necessary to fully recover the costs to USCIS for processing these requests. This new fee will result in a smaller increase in the fees proposed for other benefit requests absent this action.

While USCIS does not adjudicate immigrant visas applications, USCIS resources are required to complete the processing of this benefit when an immigrant visa is granted by a DOS

consular officer. An individual receiving a visa from a DOS consulate overseas receives visa documentation and his or her photograph in a sealed application package. The individual takes the application package with him or her for use at the U.S. port of entry. At the port of entry, a U.S. Customs and Border Protection (CBP) officer will inspect the individual and fill out remaining information and collect remaining application documentation. CBP forwards the immigrant visa package to USCIS for review and entry into USCIS data systems. If a deficiency is found, the visa case is referred to a USCIS District Office for resolution. Typical deficiencies include missing documentation, missing biometric information, unacceptable photographs, and mismatches of admission stamp information. Some of the deficiencies are resolved between USCIS and CBP.

When an immigrant visa is deemed complete and satisfactory, USCIS enters the data; scans photographs, signatures and fingerprints; and issues a permanent resident card. USCIS Service Centers often take inquiries from immigrants until the card is received in the mail. USCIS integrates visa documentation within a central alien file (A–File) and, if none exists, a new A–File is created and stored. Of the nine ABC activities, the following activities apply directly to processing immigrant visas:

- *Intake*—USCIS must receive immigrant visa packets from CBP, perform data entry, and create a file for each individual packet.
- *Review Records*—USCIS must ensure that inter-agency forms that are essential to the immigrant visa process are received from the appropriate source and collated into one A-file. Each immigrant visa application becomes a record that must be stored, retrieved, and archived as needed.
- *Issue Document*—Each approved immigrant visa applicant receives a permanent resident card (green card) created by the USCIS Integrated Document Production office.
- *Inform the Public*—USCIS receives and processes applicant and petitioner service inquiries from immigrant visa applicants related to their permanent resident status.
- *Management and Oversight*—All applications processed by USCIS receive a portion of the cost of high-level leadership and non-adjudicative support from Headquarters offices.

The proposed fee to service each of the immigrant visas and issue a permanent resident card, based on these activities, is $165.

4. EB–5 Regional Center Designation Fee

DHS is proposing an immigrant investor fee for individuals, State or local government agencies, partnerships, or any other business entity requesting approval and designation to be a regional center under the Immigrant Investor Pilot Program (Pilot Program). *See* Public Law 102–395, tit. VI, section 610, 106 Stat. 1874 (1992) (8 U.S.C. 1153 note). This program is distinct in certain ways from the basic EB–5 investor program. Foreign investors are encouraged to invest funds in an economic unit known as a "regional center." A regional center is defined under 8 CFR 204.6(e) to mean any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment. USCIS regulations establish eligibility criteria for a regional center and the related reporting requirements. 8 CFR 204.6(m)(3). In conjunction with the new fee, the regional center reporting requirements are proposed to be clarified in this rule. The reporting requirements will make it clearer that the designation as a regional center is subject to maintenance of the eligibility requirements, and the provision of reports to USCIS showing continued compliance. Proposed 8 CFR 204.6(m)(6).

The FY 2010/2011 fee study found that USCIS expends a lot of effort to adjudicate a request for designation as an approved EB–5 regional center. These applicants do not pay fees to cover the costs incurred to carry out this program's activities. As a result, the costs of staff and resources necessary to carry out the regional center program have been paid from revenue derived from other applications. In addition to providing a vehicle for fee collection, the standardized "Application for Regional Center under the Immigrant Investor Pilot Program," (Form I–924); will clarify requirements for a regional center document; improve the quality of applications; better document eligibility for the Pilot Program; alleviate content inconsistencies among applicants' submissions; and support a more efficient process for adjudication of applications.

Of the nine ABC activities, the following apply directly to processing applications for Regional Centers:

- *Intake*—USCIS must receive applications from individuals or entities desiring to receive regional center designation, perform data entry, and create a file for each individual packet.
- *Review Records*—USCIS must ensure that evidence essential to the adjudications process is received from the appropriate source and collated into one file. Each application becomes a record that must be stored, retrieved, and archived as needed.
- *Inform the Public*— USCIS receives and processes applicant and petitioner service inquiries from applicants related to the status of their applications.
- *Fraud Prevention and Detection*—The authenticity of each application must be analyzed in order to prevent immigration benefit fraud.
- *Make Determination*—The Regional Center application requires the submission of extensive documentation and statistical data concerning the geographical region the center will affect. Applicants must also provide thorough business plans, analysis of the potential economic impact the center will have, and proof of immigration status for review by USCIS.
- *Management and Oversight*—All applications processed by USCIS receive a portion of the cost of high-level leadership and non-adjudicative support from Headquarters offices.

Based on these activities, a proposed fee of $6,230 has been calculated for servicing these applications. USCIS estimates that it will receive an average of 132 applications for regional centers per year. Based on the experience USCIS has in administering the regional center and EB–5 investor program, and knowledge of the entities that file the typical application, this fee is affordable and it is reasonable to collect it from the affected applicants. For example, a review of investment subscription agreements and limited partnership membership agreements provided in support of recently submitted proposals during the USCIS adjudication process indicates that multiple investors typically paid from $25,000 to $50,000 each for the opportunity to invest in a project, in addition to the minimum investment required by DHS regulations to be a EB–5 investor.[21] Thus, regardless of the low annual volume estimate, no low volume reallocation of the costs of the EB–5 investor program is being proposed. Thus, the fee of $6,230 will be collected from each applicant.

5. Civil Surgeon Program

DHS is proposing a new fee for individuals requesting civil surgeon designation. Civil surgeons are physicians who are authorized to conduct medical examinations that are required of applicants for certain immigration benefits. 42 CFR part 34. *See also* ch. 373, title III, secs. 325, 361, 58 Stat. 697, 703 (Jul. 1, 1944); 42 U.S.C.

[21] *http://www.uscis.gov/eb-5centers.*

252, 264 (requiring the Secretary of HHS to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States). Section 232(b) of the INA, 8 U.S.C. 1222(b), provides for officers of the United States Public Health Service (USPHS) to conduct physical and mental examinations of arriving aliens. If there are not enough USPHS officers to conduct these examinations, section 232(b) provides for the designation of civilian physicians as "civil surgeons," who are then authorized to conduct the examinations. Under section 451(b) of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, 2195 (2002), the authority to designate civil surgeons transferred on March 1, 2003, from the Attorney General to the Secretary of Homeland Security. 6 U.S.C. 271(b), 557; *see also* 8 CFR part 2.1. The Secretary of Homeland Security has delegated the authority to designate civil surgeons to USCIS. The civil surgeon must conduct all examinations in accordance with Technical Instructions for the Medical Examination of Aliens in the United States, adopted by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services. *See http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.* The INA provides that officers of the United States Public Health Service (USPHS) or civil surgeons, when USPHS officers are not available, conduct physical and mental examinations of arriving aliens. INA section 232(b), 8 U.S.C. 1252(b). The civil surgeon designation is required for physicians wishing to conduct physical and mental examinations of those seeking admission into the United States or applying for adjustment of status. *Id.;* 8 CFR 232.2(b). It is currently within the authority of the District Directors to designate civil surgeons for each district. *See* 8 CFR 232.2(b). Currently, USCIS does not recover the costs of granting civil surgeon designation and managing the Civil Surgeon Program. This is inconsistent with OMB Circular A–25 requirements that USCIS recover the full cost of services provided to the public. DHS, therefore, proposes a fee to correct that oversight in this proposed rule.

In the future, the civil surgeon designation process will be standardized. USCIS will develop a standard designation process and form, maintain an accurate, regularly-updated list of civil surgeons, ensure that the program is self-funded, and improve communication between USCIS and civil surgeons. Six of the nine ABC activities apply to the civil surgeon designation process:

- *Intake*—USCIS must receive requests for civil surgeon designation, perform data entry, and create a file for each individual application.
- *Review Records*—USCIS must ensure that evidence essential to the designations process is received from appropriate sources and collated into one file. Each application becomes a record that must be stored, retrieved, and archived as needed.
- *Inform the Public*—USCIS receives and processes applicant and petitioner service inquiries from applicants related to the status of their applications.
- *Fraud Prevention and Detection*—The authenticity of each application must be analyzed in order to prevent potential immigration benefit fraud.
- *Make Determination*—All physicians applying for civil surgeon designation will be vetted for any adverse actions pending against them by the State medical licensing authorities to determine eligibility.
- *Management and Oversight*—All applications processed by USCIS receive a portion of the cost of high-level leadership and non-adjudicative support from Headquarters offices.

The FY 2010/2011 Fee Study calculated the costs of carrying out each of these activities as, respectively, $26, $61, $85, $24, $350, and $69, for a total proposed fee of $615 for this benefit. Doctors who request a civil surgeon designation will add a payment of $615 to the items that are currently required. Since the estimated number of civil surgeon designation requests is only 3,410 per year, the impact of this proposed fee on other fees is negligible. Nevertheless, even though they amount to only $1.9 million per year, these costs should not be covered by other fee payers.

VI. 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 received in a fiscal year and is used to determine the amount of resources needed. Fee-paying volume is a projection of how many applicants will pay a fee for a request. Since USCIS may waive the fee or allow an exemption for certain classes of applicants, fee-paying volume is used to determine projected revenue.

- *Workload Volume* is a primary cost driver for assigning processing activity costs to immigration benefit requests in the USCIS activity-based cost model. Workload volume is projected for each immigration benefit by Service Centers, National Benefit Center, and District Offices in order to assign costs where the work is performed, and thus where costs are realized.
- *Fee-paying Volume* is used to calculate proposed fees for immigration benefit requests and biometric services. The fee-paying volume for each form is determined by dividing the actual fee revenues per request in FY 2008 by the FY 2008 fee to determine the fee-paying percentage, and then applying that percentage to projected workload volumes. USCIS adjusts FY 2008 fee-paying volumes to reflect filing trends and anticipated changes in order to project FY 2010/2011 fee-paying volumes.

USCIS projects workload volumes based on filing trends in FY 2009 and projected changes for FY 2010/2011. USCIS also utilizes time series model data from the last 15 years developed by the DHS Office of Immigration Statistics (OIS), as well as the best available internal understanding of future developments. Given the size and scope of current negative economic conditions, historical data may not provide sufficient insight into the likelihood or timing of volume increases or decreases. Consequently, USCIS has taken a conservative approach to workload volume estimates for FY 2010/2011.

USCIS reviews short- and long-term volume trends and assesses OIS trend data with representatives of other affected components of DHS. OIS volume estimates by application or petition type are primarily drawn from time series models. The time series models analyze historical receipts data in order to capture patterns (such as level, trend, and seasonality) or correlations in historical events. These patterns and correlations are then extrapolated into the future in order to derive projected receipts. All of the models capture the behavioral relationships and dependencies of receipts to past values. For example, the models factor in the correlation between the number of pending Form I–485, Application to Register Permanent Residence or Adjustment of Status, and the projected number of receipts for the Form I–765, Application for Employment Authorization, and the Form I–131, Application for Travel Document. DHS, USCIS, and OIS will continue to improve both the estimating process and the basis for specific estimates.

Table 10 summarizes the FY 2008/2009 workload volume and the projected workload volume for FY 2010/

2011 based on trends and projected changes by immigration benefit request. The projected workload volume is used in the cost model to determine request costs. USCIS has experienced a general decrease in volume and expects that trend to continue.

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Table 10 – Workload Volume Comparison

Immigration Benefit	FY 2008/2009 Fee Rule Workload Receipts	FY 2010/2011 Projected Workload Receipts	Delta
I-90 Application to Replace Permanent Resident Card	552,025	540,000	(12,025)
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	24,035	17,165	(6,870)
I-129 Petition for a Nonimmigrant Worker	400,000	395,000	(5,000)
I-129F Petition for Alien Fiancé(e)	66,177	54,000	(12,177)
I-130 Petition for Alien Relative	743,823	690,520	(53,303)
I-131 Application for Travel Document	139,000	256,255	117,255
I-140 Immigrant Petition for Alien Worker	135,000	75,000	(60,000)
I-290B Notice of Appeal or Motion	47,645	28,734	(18,911)
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	16,000	17,669	1,669
I-485 Application to Register Permanent Residence or Adjust Status	613,400	526,000	(87,400)
I-526 Immigrant Petition by Alien Entrepreneur	600	1,399	799
I-539 Application to Extend/Change Nonimmigrant Status	220,000	195,000	(25,000)
I-600/600A; I-800/800A Orphan Petitions	29,601	25,241	(4,360)
I-687 Application for Status as a Temporary Resident	500	48	(452)
I-690 Application for Waiver on Grounds of Inadmissibility	3,293	74	(3,219)
I-694 Notice of Appeal of Decision	3,696	50	(3,646)
I-698 Application to Adjust Status From Temporary to Permanent Resident	494	704	210
I-751 Petition to Remove the Conditions of Residence	143,000	183,000	40,000
I-765 Application for Employment Authorization	983,000	720,000	(263,000)
I-817 Application for Family Unity Benefits	5,762	1,750	(4,012)
I-824 Application for Action on an Approved Application or Petition	40,785	20,961	(19,824)
I-829 Petition by Entrepreneur to Remove Conditions	88	441	353
Civil Surgeon Request	N/A	3,410	N/A

Table 10 – Workload Volume Comparison			
Immigration Benefit	**FY 2008/2009 Fee Rule Workload Receipts**	**FY 2010/2011 Projected Workload Receipts**	**Delta**
I-924 Application for Regional Center Under the Immigrant Investor Pilot Program	N/A	132	N/A
N-300 Application to File Declaration of Intention	100	45	(55)
N-336 Request for Hearing on a Decision in Naturalization Proceedings	14,000	4,145	(9,855)
N-400 Application for Naturalization	734,716	693,890	(40,826)
N-470 Application to Preserve Residence for Naturalization Purposes	669	621	(48)
N-565 Application for Replacement Naturalization / Citizenship Document	32,000	29,298	(2,702)
N-600/600K Naturalization Certificate Applications	64,711	45,347	(19,364)
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	45,459	31,432	(14,027)
Immigrant Visa	N/A	215,000	N/A
Total	**5,059,635**	**4,772,331**	**(505,846)**
Biometrics	3,154,330	2,048,177	(1,106,153)
Grand Totals	**8,213,965**	**6,820,509**	**(1,611,999)**

The projected fee-paying volume is used to determine immigration benefit and biometric service unit costs and ultimately the proposed fees. A comparison of 2008/2009 Fee Rule fee-paying volume to projected 2010/2011 fee-paying volume, along with the difference between the two, is outlined in Table 11.

Table 11 – Fee-Paying Volume Comparison			
Immigration Benefit	**FY 2008/2009 Fee Rule Fee Paying Receipts**	**FY 2010/2011 Projected Fee Paying Receipts**	**Delta**
I-90 Application to Replace Permanent Resident Card	510,405	518,400	7,995
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	22,382	17,165	(5,217)
I-129 Petition for a Nonimmigrant Worker	399,757	395,000	(4,757)
I-129F Petition for Alien Fiance(e)	44,731	39,960	(4,771)
I-130 Petition for Alien Relative	740,552	690,520	(50,032)
I-131 Application for Travel Document	132,168	192,255	60,087
I-140 Immigrant Petition for Alien Worker	129,743	75,000	(54,743)
I-290B Notice of Appeal or Motion	47,645	28,734	(18,911)
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	4,772	6,957	2,185
I-485 Application to Register Permanent Residence or Adjust Status	555,010	480,000	(75,010)
I-526 Immigrant Petition by Alien Entrepreneur	600	1,343	743
I-539 Application to Extend/Change Nonimmigrant Status	215,629	195,000	(20,629)
I-600/600A; I-800/800A Orphan Petitions	29,260	16,211	(13,049)
I-687 Application for Status as a Temporary Resident	500	43	(457)
I-690 Application for Waiver on Grounds of Inadmissibility	3,293	74	(3,219)
I-694 Notice of Appeal of Decision	3,696	50	(3,646)
I-698 Application to Adjust Status From Temporary to Permanent Resident	331	605	274
I-751 Petition to Remove the Conditions of Residence	130,169	177,510	47,341
I-765 Application for Employment Authorization	859,543	511,200	(348,343)
I-817 Application for Family Unity Benefits	5,762	1,750	(4,012)
I-824 Application for Action on an Approved Application or Petition	40,231	20,961	(19,270)
I-829 Petition by Entrepreneur to Remove Conditions	45	256	211
Civil Surgeon Request	N/A	3,410	N/A
I-924 Application for Regional Center Under the Immigrant Investor Pilot Program	N/A	132	N/A
N-300 Application to File Declaration of Intention	92	45	(47)
N-336 Request for Hearing on a Decision in Naturalization Proceedings	13,948	4,145	(9,803)
N-400 Application for Naturalization	710,461	684,390	(26,071)
N-470 Application to Preserve Residence for Naturalization purposes	669	621	(48)
N-565 Application for Replacement Naturalization/Citizenship Document	30,741	24,903	(5,838)
N-600/600K Naturalization Certificate Applications	64,711	45,347	(19,364)

Table 11 – Fee-Paying Volume Comparison			
Immigration Benefit	**FY 2008/2009 Fee Rule Fee Paying Receipts**	**FY 2010/2011 Projected Fee Paying Receipts**	**Delta**
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	45,459	31,432	(14,027)
Immigrant Visa	N/A	215,000	N/A
Total	**4,742,357**	**4,378,419**	**(582,480)**
Biometrics	2,195,812	1,950,603	(245,209)
Grand Totals	**6,938,169**	**6,329,022**	**(827,689)**

VII. Completion Rates

USCIS uses completion rates, reflective of Immigration Services Officer (ISO) hours per completion, to identify the adjudicative time required to complete specific benefit requests from receipt to final disposition. The rate for each benefit request represents an average, as each case is different and some cases are more complex than others. Completion rates reflect what is termed "touch time," or the time the ISO is actually handling the case. It is not reflective of "queue time," or time spent waiting, for example, for additional information or supervisory approval. Nor does it reflect the total time applicants and petitioners can expect to await a decision on their cases once they are received by USCIS.

All ISOs are required to report completion rate information. In addition to using this data to determine fees, completion rates are a key factor in determining staffing allocations to match resources and workload. For this reason, data reported are scrutinized by field and regional office management officials, and by the Production Management Branch (PMB) at USCIS headquarters to ensure data accuracy. When the data are found to be inconsistent with other offices or with prior reported data, the PMB contacts the reporting office and makes any necessary adjustments. Completion rates, reflected in terms of hours per completion, are summarized in Table 12. Completion rates are calculated using data for the 12-month period of May 2008 through April 2009. While more recent rates are available, USCIS believes that the rates utilized for the rule best reflect actual work times. More recent rates that have not had sufficient review and analysis and may reflect near-term trends and work fluctuations that could skew model outcomes.

Table 12 - Completion Rates by Location and Immigration Benefit [22]
(Adjudicative Work Hours)

Immigration Benefit	Service Centers	National Benefits Center	District Offices	Service-Wide
I-90 Application to Replace Permanent Resident Card [23]	0.22	0.22	0.22	0.22
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	0.32	0.66	0.87	0.36
I-129 Petition for a Nonimmigrant Worker	0.51	N/A	0.15	0.51
I-129F Petition for Alien Fiancé(e)	0.40	1.06	1.71	0.41
I-130 Petition for Alien Relative	0.44	0.82	1.14	0.62
I-131 Application for Travel Document	0.15	0.13	0.61	0.16
I-140 Immigrant Petition for Alien Worker	1.13	N/A	2.25	1.13
I-290B Notice of Appeal or Motion [24]	0.75	1.18	1.87	1.11
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	2.48	N/A	1.42	2.39
I-485 Application to Register Permanent Residence or Adjust Status	1.01	3.66	1.49	1.27
I-526 Immigrant Petition by Alien Entrepreneur	5.03	N/A	5.33	5.03
I-539 Application to Extend/Change Nonimmigrant Status	0.35	0.32	1.52	0.35
I-600/600A; I-800/800A Orphan Petitions	N/A	4.78	1.45	1.81
I-687 Application for Status as a Temporary Resident	2.04	0.34	3.27	2.20
I-690 Application for Waiver on Grounds of Inadmissibility	1.40	2.99	1.70	2.59
I-694 Notice of Appeal of Decision	0.97	1.83	1.84	1.60
I-698 Application to Adjust Status From Temporary to Permanent Resident	1.96	0.69	2.13	1.77
I-751 Petition to Remove the Conditions of Residence	0.63	N/A	1.96	0.77
I-765 Application for Employment Authorization	0.13	0.16	0.49	0.14
I-817 Application for Family Unity Benefits	0.63	0.67	1.59	0.64
I-824 Application for Action on an Approved Application or Petition	0.53	0.95	0.99	0.58
I-829 Petition by Entrepreneur to Remove Conditions	5.90	N/A	7.20	5.98
Civil Surgeon Designation	N/A	1.12	N/A	1.12
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	37.33	N/A	N/A	37.33
N-300 Application to File Declaration of Intention	N/A	N/A	1.84	1.84
N-336 Request for Hearing on a Decision in Naturalization Proceedings	N/A	N/A	1.60	1.60
N-400 Application for Naturalization	9.07	3.58	1.05	1.08
N-470 Application to Preserve Residence for Naturalization Purposes	30.80	N/A	1.54	1.75
N-565 Application for Replacement Naturalization/Citizenship Document	0.33	N/A	0.96	0.36
N-600/N-600K Naturalization Certificate Applications	0.88	N/A	0.90	0.90
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	0.67	0.71	2.11	1.42

[22] Completion rates are calculated using data for the 12-month period of May 2008 through April 2009.

[23] Due to substantial changes in the business processes used to adjudicate the I–90, the completion rate is the 3-year service-wide average from May 2006 through April 2009.

[24] Data for the I–290B was not collected until October 2008, therefore the completion rate time period is the 7-month period of October 2008 through April 2009.

Completion rates for the following immigration benefits are not utilized, due to the special nature of their processing or because there is no fee for the application:

- Application for Posthumous Citizenship (Form N–644); Refugee/Asylee Relative Petition (Form I–730); Application for T Nonimmigrant Status (Form I–914); and, Petition for U Nonimmigrant Status (Form I–918). Applicants for these form types are exempt from paying a fee.
- Biometric Services (processed by the Application Support Centers) are not included for each request type because specific costs can be directly assigned to these services. Factors of volume and completion rates are not necessary to assign processing costs to this product.
- Application for Temporary Protected Status (Form I–821) and Application for Suspension of Deportation or Special Rule Cancellation of Removal (Form I–881) are not included because these programs are temporary and USCIS does not assume their revenue streams will continue.
- The activities associated with processing immigrant visa packages do not include adjudicative hours and costs are driven by volume only.

VIII. Proposed Fee Adjustments

USCIS costs exceed projected revenue by an average of $214 million each year, even after cuts in operations based on, among other things, reduced workload and appropriations for asylum, refugee, SAVE, the Office of Citizenship, and military naturalizations are taken into account. While USCIS has taken action to minimize or decrease its operating costs, the current deficit is too large to close using cost cutting measures alone without a drastically negative impact on service. USCIS must adjust the fee schedule to recover the full cost of processing immigration benefits, and to continue to maintain current service delivery standards.

A. Proposed Adjustments to IEFA Immigration Benefits

After resource costs are identified, they are distributed to USCIS's primary processing activities in the ABC model. This process was more completely described in section V. Table 13 outlines total IEFA costs by activity.

Table 13 – Summary of FY 2010/2011 IEFA Account Costs by Activity with Appropriations for SAVE and Office of Citizenship
(Dollars in Thousands)

Activity	FY 2010	FY 2011	FY 2010/2011
Management and Oversight	$315,939	$301,912	$308,925
Inform the Public	$205,997	$199,735	$202,866
Intake	$114,987	$114,634	$114,811
Capture Biometrics	$167,696	$167,782	$167,739
Conduct IBIS Check	$81,392	$74,672	$78,032
Review Records	$226,413	$224,592	$225,502
Fraud Detection and Prevention	$102,955	$101,934	$102,445
Make Determination	$1,071,270	$983,220	$1,027,245
Issue Document	$43,029	$42,972	$43,001
Total IEFA Costs	**$2,329,678**	**$2,211,454**	**$2,270,566**

Table 14 outlines IEFA costs by activity if FY 2011 appropriations for SAVE and Office of Citizenship are not approved. As noted previously, if appropriations differ from requested amounts, these costs must be recovered from fees.

Table 14 – Summary of FY 2010/2011 IEFA Account Costs by Activity without Appropriations for SAVE and Office of Citizenship
(Dollars in Thousands)

Activity	FY 2010	FY 2011	FY 2010/2011
Management and Oversight	$315,939	$307,715	$311,827
Inform the Public	$205,997	$203,291	$204,644
Intake	$114,987	$114,827	$114,907
Capture Biometrics	$167,696	$168,542	$168,119
Conduct IBIS Check	$81,392	$76,272	$78,832
Review Records	$226,413	$226,427	$226,420
Fraud Detection and Prevention	$102,955	$101,842	$102,399
Make Determination	$1,071,270	$1,004,330	$1,037,800
Issue Document	$43,029	$34,310	$38,670
Total IEFA Costs	**$2,329,678**	**$2,237,556**	**$2,283,617**

The activity costs are then distributed to the applications. Table 15 summarizes total revenue by immigration benefit request.

Table 15 – Total Revenue per Immigration Benefit
(Dollars in Thousands)

Immigration Benefit	Revenue Total with SAVE and Citizenship Appropriations	Revenue Total without SAVE and Citizenship Appropriations	Delta
I-90 Application to Replace Permanent Resident Card	$190,306	$189,505	($801)
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$5,644	$5,713	$69
I-129 Petition for a Nonimmigrant Worker	$128,974	$130,290	$1,316
I-129F Petition for Alien Fiancé(e)	$13,525	$13,643	$119
I-130 Petition for Alien Relative	$289,953	$292,958	$3,005
I-131 Application for Travel Document	$69,206	$69,364	$158
I-140 Immigrant Petition for Alien Worker	$43,467	$44,031	$564
I-290B Notice of Appeal or Motion	$18,051	$18,163	$112
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	$2,802	$2,819	$17
I-485 Application to Register Permanent Residence or Adjust Status	$473,700	$479,339	$5,638
I-526 Immigrant Petition by Alien Entrepreneur	$2,013	$2,042	$30
I-539 Application to Extend/Change Nonimmigrant Status	$56,496	$57,040	$544
I-600/600A; I-800/800A Orphan Petitions	$11,664	$11,736	$72
I-687 Application for Status as a Temporary Resident[25]	$49	$49	$1
I-690 Application for Waiver on Grounds of Inadmissibility	$15	$15	$0
I-694 Notice of Appeal of Decision	$38	$39	$1
I-698 Application to Adjust Status From Temporary to Permanent Resident	$617	$625	$8
I-751 Petition to Remove the Conditions of Residence	$89,585	$90,286	$701
I-765 Application for Employment Authorization	$195,322	$195,994	$672
I-817 Application for Family Unity Benefits	$766	$772	$7
I-824 Application for Action on an Approved Application or Petition	$8,506	$8,615	$109
I-829 Petition by Entrepreneur to Remove Conditions	$959	$973	$14
Civil Surgeon Designation	$711	$719	$9
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	$822	$834	$12
N-300 Application to File Declaration of Intention	$11	$11	$0
N-336 Request for Hearing on a Decision in Naturalization Proceedings	$2,693	$2,710	$17
N-400 Application for Naturalization	$407,212	$407,212	$0
N-470 Application to Preserve Residence for Naturalization Purposes	$203	$205	$1
N-565 Application for Replacement Naturalization/Citizenship Document	$8,583	$8,779	$196
N-600/N-600K Applications for Certificate of Citizenship	$27,114	$27,609	$495
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	$18,396	$18,510	$114
Immigrant Visa	$35,431	$34,892	($539)
Biometric Services	$167,732	$168,122	$390
Grand Total	**$2,270,566**	**$2,283,617**	**$13,051**

[25] The Form I–687 was temporarily available only for Legalization Applications Pursuant to the Northwest Immigrant Rights Project (NWIRP) Settlement Agreement. Filing period ended Jan. 31, 2010.

Finally, consolidating the budget realignment proposed in the President's budget and this rule, Table 16 depicts the current and proposed USCIS fees for immigration benefits and biometric services. This proposed fee schedule is based on the President's requested appropriation to fund the Asylum/Refugee surcharge and for SAVE and Office of Citizenship being enacted into law. In some applications, DHS proposes to reduce the fees and fee increases are mitigated by the President's requested appropriation; in those applications where a fee reduction is proposed, the President's requested appropriation would further reduce that fee. In one instance, the Application To Extend/Change Nonimmigrant Status (Form I–539), the President's requested appropriation would alter a 2% increase in the modeled fee to a 5% decrease in fee. If a different appropriation is enacted, the final rule will adjust the fee schedule to accommodate the appropriated funding.

Table 16 - Fees by Immigration Benefit Proposed with and without Requested Appropriations.

Immigration Benefit	1. Current Fees	2. ABC Model Fees with No Appropriation	3. Delta 2. / 1.	4. Proposed Fees with President's Requested Appropriation for Asylum / Refugee Surcharge; Military Naturalization; SAVE; and Citizenship	5. Delta 4. / 1.	6. Percentage Change without Appro-priations 2. / 1.	7. Percentage Change With President's Requested Appropriations 4. / 1.
I-90 Application to Replace Permanent Resident Card	$290	$390	$100	$365	$75	34%	26%
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$320	$360	$40	$330	$10	13%	3%
I-129 Petition for a Nonimmigrant Worker	$320	$355	$35	$325	$5	11%	2%
I-129F Petition for Alien Fiancé(e)	$455	$365	($90)	$340	($115)	-20%	-25%
I-130 Petition for Alien Relative	$355	$460	$105	$420	$65	30%	18%
I-131 Application for Travel Document	$305	$390	$85	$360	$55	28%	18%
I-140 Immigrant Petition for Alien Worker	$475	$630	$155	$580	$105	33%	22%
I-290B Notice of Appeal or Motion	$585	$645	$60	$630	$45	10%	8%
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$375	$410	$35	$405	$30	9%	8%
I-485 Application to Register Permanent Residence or Adjust Status	$930	$1,075	$145	$985	$55	16%	6%
I-526 Immigrant Petition by Alien Entrepreneur	$1,435	$1,635	$200	$1,500	$65	14%	5%
I-539 Application to Extend/Change Nonimmigrant Status	$300	$315	$15	$290	($10)	5%	-3%
I-600/600A, I-800/800A Orphan Petitions	$670	$735	$65	$720	$50	10%	7%
I-687 Application for Status as a Temporary Resident	$710	$1,235	$525	$1,130	$420	74%	59%
I-690 Application for Waiver of Grounds of Inadmissibility	$185	$205	$20	$200	$15	11%	8%
I-694 Notice of Appeal of Decision	$545	$860	$315	$755	$210	58%	39%
I-698 Application to Adjust Status From Temporary to Permanent Resident	$1,370	$1,115	($255)	$1,020	($350)	-19%	-26%
I-751 Petition to Remove the Conditions of Residence	$465	$550	$85	$505	$40	18%	9%
I-765 Application for Employment Authorization	$340	$415	$75	$380	$40	22%	12%
I-817 Application for Family Unity Benefits	$440	$475	$35	$435	($5)	8%	-1%
I-824 Application for Action on an Approved Application or Petition	$340	$440	$100	$405	$65	29%	19%
I-829 Petition by Entrepreneur to Remove Conditions	$2,850	$4,080	$1,230	$3,750	$900	43%	32%
Civil Surgeon Designation Registration	$0	$665	$665	$615	$615	0%	0%
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	$0	$6,820	$6,820	$6,230	$6,230	0%	0%
N-300 Application to File Declaration of Intention	$235	$260	$25	$250	$15	11%	6%
N-336 Request for Hearing on a Decision in Naturalization Proceedings	$605	$665	$60	$650	$45	10%	7%
N-400 Application for Naturalization	$595	$595	$0	$595	$0	0%	0%
N-470 Application to Preserve Residence for Naturalization Purposes	$305	$335	$30	$330	$25	10%	8%
N-565 Application for Replacement Naturalization/Citizenship Document	$380	$380	$0	$345	($35)	0%	-9%
N-600/N-600K Applications for Certificate of Citizenship	$460	$655	$195	$600	$140	42%	30%
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	$545	$600	$55	$585	$40	10%	7%
Immigrant Visas	$0	$180	$180	$165	$165	0%	0%
Biometric Services	$80	$85	$5	$85	$5	6%	6%

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B. Proposed Adjustments to Premium Processing Fee

The Immigration and Nationality Act permits certain employment-based immigration benefit applicants to request, for a fee, premium processing. INA sec. 286(u), 8 U.S.C. 1356(u). The premium processing fee is paid in addition to the base filing fee. Premium processing guarantees that USCIS will process an application within fifteen days. *Id;* 8 CFR 103.2(f). The Act provides that premium processing revenue shall be used to fund the cost of offering the service, as well as the cost of infrastructure improvements in adjudications and customer service processes.[26] *Id.* USCIS, therefore, segregates revenue from the premium processing and dedicates it to transitioning USCIS from a paper-based operational environment to a paperless electronic case management environment.[27] This program is an extensive, multi-year effort, estimated for completion over a five-year period. Unlike previous efforts to modernize USCIS, however, the Transformation program will implement near-term improvements as they are developed, allowing USCIS and its customers to benefit more quickly with improved service. Transformation will comprehensively touch every aspect of USCIS business operations such as information collection, storage, and data sharing; customer service and support, adjudicatory processes; staff roles and responsibilities; and information technology.

Transforming USCIS systems from paper to electronic is crucial to the success of improving immigration services. The current business model and supporting systems cannot meet anticipated demand and unanticipated workload surges. Among many improvements, after the transformation initiative is completed, USCIS expects much greater utilization of the electronic submission of applications and supporting documentation. Applicants and petitioners will be able to establish online accounts, track activity on their cases, update personal profiles, and will no longer need to resubmit duplicative biometric and biographic information when applying for future benefits.

DHS proposes to adjust the premium processing fee by the percentage increase in inflation according to the Consumer Price Index (CPI) since the fee's inception. The CPI is issued by the Department of Labor's Bureau of Labor Statistics (BLS) and can found at *http://www.bls.gov/cpi/cpi_dr.htm.* In December 2000, Congress authorized the collection of a premium processing fee in the amount of $1,000.[28] INA sec. 286(u); 8 U.S.C. 1356(u). Although the law provides USCIS with explicit authority to adjust the fee for inflation based on the CPI, USCIS has not adjusted the fee since its inception in 2001. This adjustment was recently recommended by the Government Accountability Office. Government Accountability Office, *Federal User Fees,* GAO–09–180 (Jan. 2009).[29] Therefore, DHS proposes to increase the premium processing fee by applying the inflation rate since the fee's inception in June 2001 until the date of publication of a final rule. For illustrative purposes, the proposed rule uses the September 2009 CPI.

USCIS uses the CPI for all urban consumers (CPI–U) because it is the primary CPI measure. The CPI–U covers approximately 87 percent of the total population.[30] In June 2001, the CPI for all urban consumers was 178.0. In March 2010, the CPI–U was 217.631. The 22 percent increase to the CPI–U applied to the $1,000 fee results in a fee of $1,223 ($1,225 after it is rounded to the nearest $5). This calculation results in a proposed increase in the premium processing fee of $225. The final fee could be different from this proposed amount, because the CPI–U, upon which the fee adjustment is based, varies monthly; however, the final fee rule will be based upon the same methodology. The final rule will establish an amount based upon the latest published monthly CPI before the final rule publication. DHS also proposes to specify that USCIS will use the CPI–U to calculate all future inflation-based fee adjustments and will publish a Notice in the **Federal Register** annually (if applicable) to adjust this fee. *See* Proposed 8 CFR 103.7(b).

C. Removal of Fees Based on Form Numbers

Historically, USCIS has depended on paper files, which can make it difficult to efficiently process immigration benefits. As discussed above, USCIS is modernizing its processes and systems to accommodate and encourage greater use of electronic data submission to include e-filing and electronic interaction. Although it is possible some applicants and petitioners may still choose to file paper forms, USCIS plans to encourage electronic filing. USCIS will continue to describe form names, numbers and filing instructions on its Internet Web site and public information phone scripts; however, USCIS may change form numbers as processes evolve.

To avoid prescribing fees in a manner that could undermine the transformation process, DHS proposes fees based on form titles instead of form numbers. Proposed 8 CFR 103.7(b)(1). Although the current form number is included in the text of the regulation for each fee, introductory text is proposed that will allow the form number to change without affecting the fee. *See* Proposed 8 CFR 103.7(b).

As stated previously, current USCIS form fees and those proposed in this rule are based on the average adjudication costs derived from the ABC model. Many forms are used to request a wide variety of benefits for which the evidentiary and adjudication requirements can be quite disparate. For example, Form I–129, Petition for Nonimmigrant Worker, is used for employers to petition for an alien to come to the United States as an H–1B, H–1C, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, or R–1 nonimmigrant worker. Employers may also use this form to

[26] In the June 2007 Annual Report to Congress, the USCIS Ombudsman stated that "premium processing is less costly than regular USCIS benefits processing because fewer repeat steps are necessary, fewer employees must handle these applications, and delayed processing inquiries are eliminated. USCIS has not provided any credible data to the contrary. The margin of income that USCIS can derive from premium processing is higher than from regular processing." and made the recommendation that "USCIS conduct a thorough, transparent, and independent analysis of premium processing costs as compared with regular processing." Citizenship and Immigration Services Ombudsman, *Annual Report to Congress,* June 2007, (Recommendation AR 2007–07). A subsequent review by the GAO, *Immigration Application Fees: Costing Methodology Improvements Would Provide More Reliable Basis for Setting Fees* (GAO–09–70, Jan. 23, 2009), suggested that a decision to dedicate all premium revenues to transformation may create inequities where persons not paying for premium processing service still pay the cost of premium processing operations. While the substance of the reports addresses two separate matters, the unified concern is that undue cost and fee burdens are being placed on persons who do not receive premium processing services. Preliminary analysis of premium processing costs indicates that the marginal increase in cost of premium processing operations apart from regular processing is small.

[27] USCIS separately tracks, from an accounting standpoint, revenue receipts from each unique source (such as each application type) including premium processing. All Immigration Examinations Fee Account (IEFA) revenue is, however, deposited into a single account including premium processing fees, and all expenditures are made from this single unified account without separate tracking of spending tied to the specific fees. Ultimately, there is no direct, per dollar, matching of premium processing receipts used to fund adjudication costs, expenditures for infrastructure improvements, or USCIS operating expenses.

[28] Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000).

[29] *http://www.gao.gov/new.items/d09180.pdf.*

[30] Consumer Price Index Overview. Bureau of Labor Statistics, Dec. 09, 2009. *http://www.bls.gov/cpi/cpiovrvw.htm#item1.*

request an extension of stay or change of status for an alien as an E–1, E–2, or TN nonimmigrant. The complexity of the evidence required to document eligibility for each of the respective visas varies to some degree based on factors too numerous to outline here. For another example, Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, is used to classify an alien as: (1) An Amerasian; (2) A Widow or Widower; (3) A Battered or Abused Spouse or Child of a U.S. Citizen or Lawful Permanent Resident; or (4) A special immigrant defined as: A Religious Worker, Panama Canal Company Employee, Canal Zone Government Employee, U.S. Government in the Canal Zone Employee; Physician; International Organization Employee or Family Member; Juvenile Court Dependent; Armed Forces Member; Afghanistan or Iraqi national who supported the U.S. Armed Forces as a translator; or an Iraqi national who worked for, or on behalf of, the U.S. Government in Iraq. Several other examples exist. Future fee reviews may explore establishing the fee schedule with an even wider range of discrete fees than provided in this rule to more closely align the level of effort expended or required to the fee. As an initial step toward such refinement, this rule, by not proposing to promulgate fees based on a precise form number, will allow that form number to be changed as part of the initial phases of the transformation process.

To further facilitate USCIS transformation, 8 CFR 103.7(b) is being restructured to clarify those fees that apply only to USCIS. DHS regulations contain provisions that to varying degrees govern facets of all of the immigration components of DHS—USCBP, USCIS and U.S. Immigration and Customs Enforcement (ICE). This rule applies only to USCIS. DHS will divide 8 CFR 103.7(b)(1) into separate regulatory provisions containing those fees that are managed by USCIS only and those that are shared with or managed by another immigration-related component of DHS. Further, 8 CFR 103.7(c) regarding fee waivers is restructured to list fees that can be waived, rather than those that cannot be waived, and moves the provisions of 8 CFR 103.7(c)(1) into more coherent paragraphs. In addition, the current requirement for an "unsworn declaration" in 8 CFR 103.7(c) is overly technical for an individual who may qualify for a fee waiver and that requirement is proposed to be removed. Beyond the restructuring of 8 CFR 103.7(b) and (c), however, DHS does not propose to change any authority other than that of USCIS in any context. While DHS believes these structural changes will clarify fee waiver policies, DHS specifically requests comments on any unintended substantive effects. Finally, DHS proposes to redesignate and revise 8 CFR 103.7(d) to remove extraneous language, outdated terminology and excessive, internal, procedural detail.

D. Collection of Biometrics Fees Overseas

DHS proposes to remove the provision in current regulations that exempts individuals who require fingerprinting and who reside outside of the United States at the time of filing an immigration benefit request from the requirement to submit the service fee for fingerprinting with the application or petition for immigration benefits. *See* current 8 CFR 103.2(e)(4)(ii). USCIS expects to collect biometrics from an increasing number of overseas residents in order to comply with the Adam Walsh Child Protection and Safety Act of 2006, which restricts the ability of any U.S. citizen or lawful permanent resident alien who has been convicted of any "specified offense against a minor" to file certain family-based immigration petitions, unless USCIS determines that the petitioner poses no risk to the intended beneficiaries of the petition. Public Law 109–248, secs. 402(a) and (b), 120 Stat. 587, 622 (2006). Moreover, USCIS believes that overseas residents can or should be required to pay fees commensurate with the services being provided. The cost of conducting biometrics overseas should not be borne by other applicants. Thus, DHS proposes to eliminate this exemption. Projected biometric volumes for the FY 2010/2011 fee review include overseas volumes.

IX. Statutory and Regulatory Reviews

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (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 fifty thousand 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 small 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 alien's fees for certain immigration benefit applications. Consequently, 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); Civil Surgeon Designation; and the new Application for Regional Center under the Immigrant Investor Pilot Program (Form I–924).

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. Nevertheless, DHS is publishing this initial regulatory flexibility analysis to aid the public in commenting on the small entity impact of its proposed adjustment to the USCIS Fee Schedule. In particular, DHS requests information and data that would lead the agency to a different conclusion. DHS also seeks comment on significant alternatives that accomplish the objectives of this rulemaking and that minimize the rule's economic impact on small entities.

1. A Description of the Reasons Why the Action by the Agency Is Being Considered

DHS proposes to adjust certain immigration and naturalization benefit fees charged by USCIS. USCIS has refined its cost accounting process and determined that current fees do not recover the full costs of services provided. 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 II 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 on behalf of an alien. These applications include Form I–129 (Petition for Nonimmigrant Worker), Form I–140 (Immigrant Petition for Alien Worker), Civil Surgeon Designation, and Form I–924 (Application for Regional Center). Annual numeric estimates of the small entities impacted by this fee increase total: Form I–129 (87,220 entities), Form

I–140 (44,500 entities), Civil Surgeon Designation (1,200 entities), and Form I–924 (132 entities).

This rule applies to small entities, including businesses, non-profit organizations, and governmental jurisdictions filing for the above benefits. Forms I–129 and I–140, will see a number of industry clusters impacted by this rule (*see* Appendix A of the Small Entity Analysis for a list of impacted industry codes). The fee for Civil Surgeon designation will impact physicians seeking to be designated as a Civil Surgeon. Finally, the Form I–924, will impact any entity requesting approval and designation to be a Regional Center under the Immigrant Investor Pilot Program.

(a) Petition for a Nonimmigrant Worker (Form I–129) and Immigrant Petition for an Alien Worker (Form I–140)

USCIS proposes to increase the fee for Petition for a Nonimmigrant Worker (Form I–129) from $320 to $325, a $5 (1.5%) increase. USCIS proposes to increase the fee for Immigrant Petition for an Alien Worker (Form I–140) from $475 to $580, a $105 (22%) increase. In order not to underestimate the economic impact of this proposed rule on small entities, this analysis uses a fee structure based on fees without including appropriated funds. Therefore, the fees analyzed here are Form I–129 at $355 ($35 increase) and Form I–140 at $630 ($155 increase).

Using fiscal year 2008 data on actual filings of Form I–129 and I–140 petitions, USCIS collected internal data for each filing organization including the name, Employer Identification Number (EIN), city, State, zip code, and number/type of filings. Each entity may make multiple filings; for instance, there were 525,709 I–129 and I–140 petitions, but only 148,289 unique entities.

Since the filing statistics do not contain information such as the revenue of the business, a third party source of data was necessary to help find this information. USCIS utilized the comprehensive online database from Reference USA to help determine an organization's small entity status and then applied SBA guidelines to the entities under analysis.[31]

USCIS devised a methodology to conduct the small entity analysis based on a representative sample of the potentially impacted population. To achieve a 95% confidence level and a 5% confidence interval on a population of 148,289 entities, USCIS used the standard statistical formula to determine a minimum sample size of 383 entities was necessary.

USCIS conducted searches on 891 randomly selected entities from a population of 148,289 unique entities. Based on past experience, USCIS expected to be able to find about 50 to 60 percent of the filing organizations in the Reference USA database, which includes information on approximately 14 million U.S. entities.

Accordingly, USCIS created a sample size much greater than the 383 minimum necessary in order to allow for these non-matches (filing organizations that could not be found in the Reference USA database). The 891 searches resulted in 512 instances where the name of the filing organization was successfully matched with Reference USA and 379 instances where the name of the filing organization was not found in the Reference USA database. Based on previous experience conducting regulatory flexibility analyses, USCIS assumes filing organizations not found in the Reference USA database are likely to be small entities and in order not to underestimate the number of small entities impacted by this rule, USCIS makes the conservative assumption to consider all of these 379 non-matched entities as small entities for the purpose of this analysis. Further, 52 of the 512 matched entities did not contain revenue or employee count data. Additional Internet research allowed us to classify all 52 as small entities: 5 small non-profit/small governmental jurisdiction and 47 small businesses. Among the 512 matches, 336 were determined to be small entities based on their revenue or employee count and their NAICS code. Combining non-matches (379), small non-profit/governmental jurisdiction (22), matches missing data (52), and small entity matches (336), enables us to classify 789 of 891 entities as small.

With an aggregated total of 789 out of a sample size of 891, DHS inferred that a majority, or 88.6%, of the entities filing Form I–129 and Form I–140 petitions were small entities. Furthermore, 332 of the 891 searched were small entities with the sales revenue data needed in order to estimate the economic impact of the proposed rule. Since these 332 were a small entity subset of the random sample of 891 searches, they were statistically significant in the context of this research.

In order to calculate the economic impact of this rule, DHS estimated the total costs associated with the proposed fee increase for each entity, divided by sales revenue of that entity. For example, an entity with $100,000 in sales revenue filed one Form I–129 and one Form I–140. Based on the proposed fee increase of $35 for Form I–129 and $155 for Form I–140, this would amount to a 0.19% economic impact on the entity.[32]

Among the 332 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0%. In fact, using the above methodology, the greatest economic impact imposed by this fee change totaled 0.19% and the smallest totaled 0.00002%. The average impact on all 332 small entities with revenue data was 0.055%.

Finally, the impact on small entities was examined by looking at each form separately. Since entities can file multiple forms, the analysis considers exactly how many forms each entity submitted. For example, an entity with $100,000 in sales revenue that filed four Form I–129s would experience an economic impact of 0.14% of revenue; while an entity with sales revenue of $500,000 filing three Form I–140s would experience an economic impact of 0.093% All small entities filing Form I–129s experienced an average impact of 0.0215% (range of impact from 0.000004% to 0.525%). Similarly, the average impact on filers of Form I–140 of 0.0491% was also insignificant (range of impact from 0.00002% to 0.155.

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

(b) Civil Surgeon Designation

USCIS estimates that it will receive a request for designation as a civil surgeon from 1,160 doctors in both FY 2010 and FY 2011. According to the Small Business Administration (SBA) Small Business Size Regulations at 13 CFR part 121, offices of physicians (except mental health professionals) are considered small entities when their annual sales are less than $10 million. USCIS has no records on the average annual revenue for the doctors registered as civil surgeons. For the purposes of this analysis, it is assumed that they all have annual gross revenue of under $10 million.[33] Therefore, it is

[31] The Reference USA Web site can be found at: *http://www.referenceusagov.com.*

[32] Reference USA reports sales revenue for entities as a range of values. For this analysis, DHS utilized the lower end of the range in order to assure the potential economic impact of the proposed rule was not underestimated. For example, if Reference USA reported a filing organization had revenue between $500,000 and $750,000, this analysis assumed the revenue was $500,000.

[33] NAICS Code 62111. *See* U. S. Small Business Administration Table of Small Business Size

Continued

estimated that approximately 1,200 individuals per year that would file a request for designation as a civil surgeon would be affected by this rule, with all of them being classified as small entities.

The rule proposes to establish a processing fee of $615 for the Civil Surgeon Program. This analysis utilized fees calculated without any appropriated funds, resulting in a $665 fee for the Civil Surgeon analysis.

To illustrate whether or not a rule could have a significant impact, guidelines suggested by the SBA Office of Advocacy provide that the cost of the proposed regulation may exceed one percent of the gross revenues of the entities in a particular sector or five percent of the labor costs of the entities in the sector.[34]

According to the U.S. Department of Labor, Bureau of Labor Statistics (BLS), Office of Occupational Employment Statistics, the median annual wage for Family and General Practitioners is about $161,490. Thus, the costs added by this rule are only 0.41 percent of the salary costs for one doctor.[35] As stated before, the average total revenue of the civil surgeon is unknown. Nonetheless, for the new $665 fee to exceed one percent of annual revenues, sales would be required to be $66,500 per year or less.

USCIS believes that the costs of this rulemaking to small entities would not exceed one percent of the gross revenues of the entities in the affected sector. Using the average annual labor costs and the percentage of the affected entities' annual revenue stream as guidelines, USCIS believes that the civil surgeon designation fee proposed by this rule would not have a significant economic impact on a substantial number of small entities.

(c) Application for Regional Center Under the Immigrant Investor Pilot Program (Form I–924)

The Immigrant Investor Program, also known as EB–5, was created by Congress in 1990 under 203(b)(5) of the Immigration and Nationality Act (INA) to stimulate the U.S. economy through job creation and capital investment by alien investors. Alien investors have the opportunity to obtain lawful permanent residence in the United States for themselves, their spouses, and their minor unmarried children by making a certain level of capital investment and associated job creation or preservation. There are two distinct EB–5 pathways for an alien investor to gain lawful permanent residence: the Basic Program and the Regional Center Pilot Program. Both programs require that the alien investor make a capital investment of either $500,000 or $1,000,000 (depending on whether the investment is in a Targeted Employment Area or not) in a new commercial enterprise located within the United States.

USCIS proposes a $6,230 Immigrant Investor fee for entities requesting approval and designation as a Regional Center under the Immigrant Investor Pilot Program. The new application process will require the same information from applicants that is currently required, but will standardize/simplify the reporting format. This analysis utilized fees calculated without any appropriated funds, resulting in a $6,820 fee for the EB–5 Regional Center analysis.

DOS reports that 4,218 EB–5 visas were issued in 2009.[36] USCIS estimates that 1,687 of these are primary aliens (investors) and the remainder are dependents.[37] Typically, ninety percent of EB–5 investors participate in Regional Center-related projects, while the others invest individually. Therefore, USCIS estimates FY 2009 Regional Center investors at 1,518 aliens.[38] As of October 1, 2009, there were 79 USCIS-approved Regional Centers, which equates to an average of 19.2 new investors per Regional Center in FY 2009.

Each Regional Center receives a minimum investment from every alien investor of $500,000. A search of Regional Center Web sites shows that most charge each investor a "syndication fee" of $20,000 to $50,000.[39] Further, during the application process, Regional Centers are required to provide a detailed statement regarding the amount and source of non-alien capital and a description of the planned promotional efforts. Combining the data, an average of 19.2 new investors, each investing $500,000, leads to an average additional investment per Regional Center of $9.6 million in FY 2009. While Regional Centers are prohibited from using alien investments to pay for overhead expenses, comparing FY 2009 average Regional Center investor receipts to the $6,820 application fee provides a reasonable context in which to consider the economic impact of the proposed fee. The proposed Regional Center fee of $6,820 would represent only 0.07104% of the $9.6 million average additional investment per Regional Center in FY 2009. The proposed application fee of $6,820 is only collected once and is not a recurring fee.

The data indicates there are 79 approved Regional Centers in the United States and its territories. An analysis of these 79 Regional Centers shows 66 of these Regional Centers are owned by small businesses and possibly one of these Regional Centers is owned by a small non-profit organization. Consequently 67 of the existing 79 Regional Centers, or 85%, are small entities. Based on increased interest in the EB–5 program, USCIS estimates at least 132 new Regional Centers will be approved each year over the next two years. Since the overwhelming majority of these Regional Centers are small entities, for the purpose of this analysis, DHS will assume all 132 new Regional Centers are small entities.

In summary, even though a significant number of these Regional Centers are small entities, considering this proposed fee represents only 0.07104% of the average additional investment per Regional Center in FY 2009, DHS believes this $6,820 fee does not constitute a significant economic impact on these entities. Nevertheless, DHS has prepared an Initial Regulatory Flexibility Analysis, included it in the proposed rule, and requests public comment on the impact of this rule on small entities.

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

(a). *Forms I–129 and I–140:*

The proposed rule does not directly impose any new or additional "reporting" or "recordkeeping" requirements on filers of Form I–129. The proposed rule does not require any new professional skills for reporting.

USCIS proposes to increase the fee for Petition for a Nonimmigrant Worker (Form I–129) from $320 to $325, a $5 (1.5%) increase. USCIS proposes to

Standards Matched to North American Industry Classification System Codes. *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[34] *See* SBA Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* 18,.available at: *http://www.sba.gov/advo/laws/rfaguide.pdf.*

[35] $665 divided by $161,490.

[36] *http://www.travel.state.gov/visa/frvi/statistics/statistics_4581.html.*

[37] 4,218/2.5 = 1,687 investors. USCIS estimates that 2.5 visas are issued for each primary alien.

[38] 90% × 1,687 = 1,518.

[39] Three exemplar Web sites are provided: *http://www.cmbeb5visa.com/faq_timeline.aspx; http://www.unyrc.com/process.html; http://www.eb5dc.com/resources/CARc_AILA_Price_Plan_2_25_10_Extension.pdf.* Additionally, a list of USCIS approved Regional Centers is available online at: *http://www.uscis.gov/eb-5centers.*

increase the fee for Immigrant Petition for an Alien Worker (Form I–140) from $475 to $580, a $105 (22%) increase. In order not to underestimate the economic impact of this proposed rule on small entities, this analysis uses a fee structure based on fees without including appropriated funds. Therefore, the fees analyzed here are Form I–129 at $355 ($35 increase) and Form I–140 at $630 ($155 increase).

In order to calculate the economic impact of this rule, DHS estimated the total costs associated with the proposed fee increase for each entity, divided by sales revenue of that entity. For example, an entity with $100,000 in sales revenue filed one Form I–129 and one Form I–140. Based on the proposed fee increase of $35 for Form I–129 and $155 for Form I–140, this would amount to a 0.19% economic impact on the entity.[40]

Among the 332 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0%. In fact, using the above methodology, the greatest economic impact imposed by this fee change totaled 0.19% and the smallest totaled 0.00002%. The average impact on all 332 small entities with revenue data was 0.055%.

Analyzed individually by form and weighted by the number of petitions actually filed, the economic impact upon small entities was also insignificant. All small entities filing I–129 experienced an average impact of 0.0215% (range of impact from 0.000004% to 0.525%). Similarly, the average weighted impact on filers of Form I–140 of 0.0491% was also insignificant (range of impact from 0.00002% to 0.155%). These results agree with the results of the combined sample.

(b) *Civil Surgeon Designation:*

The proposed rule does not directly impose any new or additional "reporting" or "recordkeeping" requirements on filers of Form I–129, Form I–140, or Civil Surgeon Designation. Also, the proposed rule does not require any new professional skills for reporting. The rule proposes to establish a processing fee of $615 for the Civil Surgeon Program. This analysis utilized fees calculated without any appropriated funds, resulting in a $665 fee for the Civil Surgeon analysis.

To illustrate whether or not a rule could have a significant impact, guidelines suggested by the SBA Office of Advocacy provide that the cost of the proposed regulation may exceed one percent of the gross revenues of the entities in a particular sector or five percent of the labor costs of the entities in the sector.[41]

According to the U.S. Department of Labor, Bureau of Labor Statistics (BLS), Office of Occupational Employment Statistics, the median annual wage for Family and General Practitioners is about $161,490. Thus, the costs added by this rule are only 0.41 percent of the salary costs for one doctor.[42] As stated before, the average total revenue of the civil surgeon is unknown. Nonetheless, for the new $665 fee to exceed one percent of annual revenues, sales would be required to be $66,500 per year or less.

Therefore, USCIS believes that the costs of this rulemaking to small entities would not exceed one percent of the gross revenues of the entities in the affected sector. Using both the average annual labor costs and the percentage of the affected entities' annual revenue stream as guidelines, the evidence suggests that the civil surgeon designation fee proposed by this rule would not have a significant economic impact on a substantial number of small entities.

(c) *Form I–924:*

A standardized form and instructions for the filing of proposals requesting the Regional Center designation does not currently exist. The lack of a standardized form has resulted in confusion on the part of the public regarding the specific documentation that is required in order to meet the eligibility requirements. Applicants have not paid any fees to cover costs associated with program activities. As a result, costs have been paid by fee-paying applicants and petitioners within the fee levels of other applications.

The new Form I–924, Application for Regional Center under the Immigrant Investor Pilot Program, will serve the purpose of standardizing requests for benefits and ensuring that the basic information required to determine eligibility is provided by applicants which will alleviate content inconsistencies among applicants' submissions. Form I–924 will support a more efficient process for adjudication of Regional Center proposals. Also, the proposed rule does not require any new professional skills beyond those currently in place.

USCIS proposes a $6,230 Immigrant Investor fee for entities requesting approval and designation as a Regional Center under the Immigrant Investor Pilot Program. The new application process will require the same information from applicants that is currently required, but will standardize/simplify the reporting format. This analysis utilized fees calculated without any appropriated funds, resulting in a $6,820 fee for the EB–5 Regional Center analysis.

DOS reports that 4,218 EB–5 visas were issued in 2009.[43] USCIS estimates that 1,687 of these are primary aliens (investors) and the remainder are dependents.[44] Typically, ninety percent of EB–5 investors participate in Regional Center-related projects, while the others invest individually. Therefore, USCIS estimates FY 2009 Regional Center investors at 1,518 aliens.[45]As of October 1, 2009, there were 79 USCIS-approved Regional Centers, which equates to an average of 19.2 new investors per Regional Center in FY 2009.

Each Regional Center receives a minimum investment from every alien investor of $500,000. A search of Regional Center Web sites shows that most charge each investor a "syndication fee" of $20,000 to $50,000.[46] Further, during the application process, Regional Centers are required to provide a detailed statement regarding the amount and source of non-alien capital and a description of the planned promotional efforts. Combining the data, an average of 19.2 new investors, each investing $500,000, leads to an average additional investment per Regional Center of $9.6 million in FY 2009. While Regional Centers are prohibited from using alien investments to pay for overhead expenses, comparing FY 2009 average Regional Center investor receipts to the $6,820 application fee provides a reasonable context in which to consider the economic impact of the proposed fee. The proposed Regional Center fee of

[40] Reference USA reports sales revenue for entities as a range of values. For this analysis, DHS utilized the lower end of the range in order to assure the potential economic impact of the proposed rule was not underestimated. For example, if Reference USA reported a filing organization had revenue between $500,000 and $750,000, this analysis assumed the revenue was $500,000.

[41] *See* SBA Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* 18, available at: *http://www.sba.gov/advo/laws/rfaguide.pdf.*

[42] $665 divided by $161,490.

[43] *http://www.travel.state.gov/visa/frvi/statistics/statistics_4581.html.*

[44] 4,218/2.5 = 1,687 investors. USCIS estimates that 2.5 visas are issued for each primary alien.

[45] 90% × 1,687 = 1,518.

[46] Three exemplar Web sites are provided: *http://www.cmbeb5visa.com/faq_timeline.aspx; http://www.unyrc.com/process.html; http://www.eb5dc.com/resources/CARc_AILA_Price_Plan_2_25_10_Extension.pdf.* Additionally, a list of USCIS approved Regional Centers is available online at: *http://www.uscis.gov/eb-5centers.*

$6,820 would represent only 0.07104% of the $9.6 million average additional investment per Regional Center in FY 2009. The proposed application fee of $6,820 is only collected once and is not a recurring fee.

In summary, even though a significant number of these Regional Centers are small entities, considering this proposed fee represents only 0.07104% of the average additional investment per Regional Center in FY 2009, DHS believes this $6,820 fee does not constitute a significant economic impact on these entities. Nevertheless, DHS has prepared an Initial Regulatory Flexibility Analysis, included it in the proposed rule, and requests public comment on the impact of this rule on small entities.

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. As noted below, DHS seeks comment and information about any such rules.

6. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities, Including Alternatives Considered *Such as:* (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (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; (4) any exemption from coverage of the rule, or any part thereof, for such small entities

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants. In addition, DHS must fund the costs of providing services without charge by using a portion of the filing fees that are collected for other immigration benefits. Without an increase in fees, USCIS will not be able to provide petitioners with the same level of service for immigration and naturalization benefits. DHS has considered the alternative of maintaining fees at the current level with reduced services and increased wait times. While most immigration benefit fees apply to individuals, as described above, some also apply to small entities. USCIS seeks to minimize the impact on all parties, but in particular small entities. An alternative to the increased economic burden of the proposed rule is to maintain fees at their current level for small entities. The strength of this alternative is that it assures no additional fee-burden is placed on small entities; however, this alternative also would cause negative impacts to small entities.

Without the fee adjustments proposed in this rule, significant operational changes would be necessary. Given current filing volume and other economic considerations, additional revenue is necessary 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, travel, and training. Depending on the actual level of workload received, these operational changes would result in longer application 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 less customer service.

7. Questions for Comment To Assist Regulatory Flexibility Analysis

- Please provide comment on the numbers of small entities that may be impacted 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.
- Please provide comment on any significant alternatives DHS should consider in lieu 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 Immigration and Nationality Act and the Chief Financial Officers Act requirements.
- Please identify all relevant Federal, State or local rules that may duplicate, overlap or conflict with the proposed rule.

B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken before an agency promulgates any notice of rulemaking "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." 2 U.S.C. 1532(a). 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, 2 U.S.C. 658(6), 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. 2 U.S.C. 658(7)(A)(ii). Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Small Business Regulatory Enforcement Fairness Act

This rulemaking is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rulemaking will result in an annual effect on the economy of more than $100 million, 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; and the full cost of similar benefits provided to other immigrants, as specified in the proposed regulation, at no charge. The increased costs will be recovered through the fees charged for various immigration benefit applications.

D. Executive Order 12866

This rule is considered by the Department of Homeland Security to be an economically significant regulatory action under Executive Order 12866, section 3(f)(1), Regulatory Planning and Review. Accordingly, this rule has been reviewed by the Office of Management and Budget.

The implementation of this rule would provide USCIS with an average of $209 million in FY 2010 and FY 2011 annual fee revenue, based on a projected annual fee-paying volume of 4.4 million immigration benefit requests and 1.9 million requests for biometric services, over the fee revenue that would be collected under the current fee structure. This increase in revenue will be used pursuant to 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 applications and associated support benefits; the full cost of providing similar benefits to asylum

and refugee applicants; and the full cost of similar benefits provided to others at no charge.

If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit requests, USCIS would be forced to enact additional significant spending reductions resulting in a reversal of the considerable progress it 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 revenue increase is based on USCIS costs and projected volumes that were 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 and has included an accounting statement detailing the annualized costs of the proposed rule below.

Accounting Statement, FY 2010 through FY 2011 (2009 Dollars)

Category	Primary Estimate	Minimum Estimate	Maximum Estimate
Benefits			
Un-quantified Benefits	Maintain current level of service with respect to processing times, customer service, and efficiency levels.		
Transfers			
Annualized Monetized Transfers at 3%	$209,264,850	$209,264,850	$355,791,970
Annualized Monetized Transfers at 7%	$209,264,850	$209,264,850	$355,791,970

E. Executive Order 13132

This rulemaking 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, the Department of Homeland Security has determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

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

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. Accordingly, DHS is requesting comments on two information collections for 60-days until August 10, 2010. Comments on these information collections should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection: Immigration Investor Pilot Program

DHS proposes to require the use of new Form I–924, Application for Regional Center under the Immigrant Investor Pilot Program, and Form I–924A, Supplement to Form I–924. This form is considered an information collection and is covered under the Paperwork Reduction Act.

a. *Type of information collection:* New information collection.

b. *Abstract:* This collection will be used by individuals and businesses to file a request for USCIS approval and designation as a regional center on behalf of an entity under the Immigrant Investor Pilot Program.

c. *Title of Form/Collection:* Application for Regional Center under the Immigrant Investor Pilot Program.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–924 and Form 924A; U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Individuals and businesses.

f. *An estimate of the total number of respondents:* 132 respondents filing Form I–924, and 116 respondents filing Form I–924A.

g. *Hours per response:* Form I–924 at 40 hours per response, and Form I–924A at 3 hours per response.

h. *Total Annual Reporting Burden:* 4,428 hours.

Overview of Information Collection: Civil Surgeons Fee

This rule proposes a fee for applying for a civil surgeon designation. To apply for a civil surgeon designation, USCIS requires a civil surgeon submit the following information:

- A letter to the District Director requesting consideration,
- A copy of a current medical license (in the State in which the physician seeks to complete immigration medical examinations),
- A current resume that shows at least 4 years of professional experience (not including residency or medical school), and
- Two signature cards showing the physician's name and signature.

This information collection is required to determine whether a physician meets the statutory and regulatory requirement for civil surgeon designation. For example, all documents are reviewed to determine whether the physician has a currently valid medical license and whether the physician has had any action taken against him or her by the medical licensing authority of the State. If the civil surgeon designation request is accepted, the physician is

included in USCIS' Civil Surgeon locator and is authorized to complete Form I–693 for an applicant's adjustment of status.

a. *Type of information collection:* New information collection.

b. *Abstract:* This information collection is required to determine whether a physician meets the statutory and regulatory requirement for civil surgeon designation.

c. *Title of Form/Collection:* Application for Civil Surgeon Designation Registration.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number; U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Individuals and businesses.

f. *An estimate of the total number of respondents:* 1,200 respondents.

g. *Hours per response:* One hour.

h. *Total Annual Reporting Burden:* 1,200 hours.

Comments concerning these collections and forms can be submitted to the Department of Homeland Security, USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210.

The changes to the proposed fees will require minor amendments to immigration benefit and petition forms to reflect the new fees. The necessary changes to the annual cost burden and to the forms will be submitted to OMB using OMB Form 83–C, Correction Worksheet, when this proposed rule is submitted to OMB as a final rule.

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.

8 CFR Part 244

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

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

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

§ 103.2 [Amended]

2. Section 103.2 is amended by:

a. Removing paragraph (e)(4)(ii);

b. Redesignating paragraphs (e)(4)(iii), and (e)(4)(iv), as paragraphs (e)(4)(ii), and (e)(4)(iii), respectively; and by

c. Removing paragraph (f).

3. Section 103.7 is amended by:

a. Revising paragraphs (b) and (c);

b. Redesignating paragraph (d) as paragraph (f);

c. Adding new paragraphs (d) and (e); and by

d. Revising newly redesignated paragraph (f).

The revisions and additions read as follows:

§ 103.7 Fees.

* * * * *

(b) *Amounts of fees.* (1) *Prescribed fees and charges.* (i) *USCIS fees.* A request for immigration benefits submitted to USCIS must include the required fee as prescribed under this section. The fees prescribed in this section are associated with the benefit, the adjudication, and 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 prescribe 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 (Biometric Fee).* For capturing, storing, and using biometric information (Biometric Fee). A service fee of $85 will be charged for any individual who is required to have biometric information captured, stored, and used in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), whose application fee does not already include the charge for biometric services. No biometric service fee is charged when:

(*1*) A written request for an extension of the approval period is received by USCIS prior to the expiration date of approval of an Application for Advance Processing of Orphan Petition, if a Petition to Classify Orphan as an Immediate Relative has not yet been submitted in connection with an approved Application for Advance Processing of Orphan Petition. This extension without fee is limited to one occasion. If the approval extension expires prior to submission of an associated Petition to Classify Orphan as an Immediate Relative, then a complete application and fee must be submitted for a subsequent application.

(*2*) There is no fee for the associated benefit request that was, or is, being submitted.

(D) *Immigrant visas.* For processing immigrant visas issued by the Department of State in embassies or consulates: $165.

(E) Request for a search of indices to historical records to be used in genealogical research (Form G–1041): $20. The search fee is not refundable.

(F) Request for a copy of historical records to be used in genealogical research (Form G–1041A): $20 for each file copy from microfilm, or $35 for each file copy from a textual record. In some cases, the researcher may be unable to determine the fee, because the researcher will have a file number obtained from a source other than USCIS and therefore not know the format of the file (microfilm or hard copy). In this case, if USCIS locates the file and it is a textual file, USCIS will notify the researcher to remit the additional $15. 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) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name: $365.

(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), in lieu of one lost, mutilated, or destroyed: $330.

(I) *Petition for a Nonimmigrant Worker (Form I–129).* For filing a petition for a nonimmigrant worker: $325.

(J) *Petition for Nonimmigrant Worker in CNMI (Form I–129CW).* For an employer to petition on behalf of one or more beneficiaries: $325 plus a supplemental CNMI education funding fee of $150 per beneficiary per year. The

CNMI education funding fee cannot be waived.

(K) *Petition for Alien Fiancé(e) (Form I–129F).* For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: $340; 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 an alien relative for issuance of an immigrant visa under section 204(a) of the Act: $420.

(M) *Application for Travel Document (Form I–131).* For filing an application for travel document: $360. There is no fee for filing for a Refugee Travel Document or advance parole 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: $580.

(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: $585.

(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: $585.

(Q) *Application for Waiver for Passport and/or Visa (Form I–193).* For filing an application for waiver of passport and/or visa: $585.

(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 in lieu of deportation: $585.

(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: $630. The fee will be the same for appeal of a denial of a benefit request with one or multiple beneficiaries.

(T) *Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360).* For filing a petition for an Amerasian, Widow(er), or Special Immigrant: $405. The following requests are exempt from this fee:

(*1*) A petition seeking classification as an Amerasian;

(*2*) A self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident; or

(*3*) A Special Immigrant Juvenile.

(*4*) An Iraqi national who worked for or on behalf of the U.S. Government in Iraq.

(U) *Application to Register Permanent Residence or Adjust Status (Form I–485).* For filing an application for permanent resident status or creation of a record of lawful permanent residence:

(*1*) $985 for an applicant 14 years of age or older; or

(*2*) $635 for an applicant under the age of 14 years when it is:

(*i*) Submitted concurrently for adjudication with the Form I–485 of a parent;

(*ii*) The applicant is seeking to adjust status as a derivative of his or her parent; and

(*iii*) The child's application is based on them being a close relative of the same individual who is the basis for the child's parent's adjustment of status..

(*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, or when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized alien 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: $1,500.

(X) *Application To Extend/Change Nonimmigrant Status (Form I–539).* For filing an application to extend or change nonimmigrant status: $290.

(Y) *Petition To Classify Orphan as an Immediate Relative (Form I–600).* For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act. Only one fee is required when more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters: $720.

(Z) *Application for Advance Processing of Orphan Petition (Form I–600A).* For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.): $720. 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 prior to the expiration date of approval.

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

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

(AA) *Application for Waiver of Ground of Inadmissibility (Form I–601).* For filing an application for waiver of grounds of inadmissibility: $585.

(BB) *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: $585.

(CC) *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.

(DD) *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: $200.

(EE) *Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act (or a Petition Under Section 210A of the Act) (Form I–694).* For appealing the denial of an application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: $755.

(FF) *Petition To Remove the Conditions of Residence Based on Marriage (Form I–751).* For filing a petition to remove the conditions on residence based on marriage: $505.

(GG) *Application for Employment Authorization (Form I–765).* $380; 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.

(HH) *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 $720 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 $720 is required, regardless of the sequence of submission of the immigration benefit.

(II) *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: $720.

(JJ) *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: $360.

(KK) *Application for Family Unity Benefits (Form I–817).* For filing an application for voluntary departure under the Family Unity Program: $435.

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

(MM) *Application for Action on an Approved Application or Petition (Form I–824).* For filing for action on an approved application or petition: $405.

(NN) *Petition by Entrepreneur To Remove Conditions (Form I–829).* For filing a petition by entrepreneur to remove conditions: $3,750.

(OO) 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 the Department of Homeland Security, 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 shall be $570.

(*2*) $165 for adjudication by the Immigration Court (a single fee of $165 will be charged whenever applications are filed by two or more aliens in the same proceedings). (*3*) The $165 fee is not required if the Form I–881 is referred to the Immigration Court by the Department of Homeland Security.

(PP) Application for authorization to issue certification for health care workers (Form I–905): $230.

(QQ) *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 request for premium processing fee will be adjusted annually by notice in the **Federal Register** based on inflation according to the Consumer Price Index (CPI). The fee to request premium processing: $1,225. The fee for Premium Processing Service may not be waived.

(RR) *Civil Surgeon Designation.* For filing an application for civil surgeon designation: $615.

(SS) *Application for Regional Center under the Immigrant Investor Pilot Program (Form I–924).* For filing an application for regional center under the Immigrant Investor Pilot Program: $6,230.

(TT) *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: $215.

(UU) *Application to File Declaration of Intention (Form N–300).* For filing an application for declaration of intention to become a U.S. citizen: $250.

(VV) *Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the Act) (Form N–336).* For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act: $650.

(WW) *Application for Naturalization (Form N–400).* For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged): $595.

(XX) *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: $330.

(YY) *Application for Replacement Naturalization/Citizenship Document (Form N–565).* For filing an application for a certificate of naturalization or declaration of intention in lieu 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: $345.

(ZZ) *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 for applications filed on behalf of a biological child: $600. For applications filed on behalf of an adopted child: $550.

(AAA) *Application for Citizenship and Issuance of Certificate under Section 322 (Form N–600K).* For filing an application for citizenship and issuance of certificate under section 322 of the Act: $600, for an application filed on behalf of a biological child and $550 for an application filed on behalf of an adopted child.

(ii) *Other DHS immigration fees.* The following fees are applicable to one or more of the immigration components of DHS:

(A) *DCL System Costs Fee.* For use of a Dedicated Commuter Lane (DCL) located at specific Ports of Entry of the United States by an approved participant in a designated vehicle: $80.00, with the maximum amount of $160.00 payable by a family (husband, wife, and minor children under 18 years-of-age). Payable following approval of the application but before use of the DCL by each participant. This fee is non-refundable, but may be waived by the district director. If a participant wishes to enroll more than one vehicle for use in the PORTPASS system, he or she will be assessed with an additional fee of: $42 for each additional vehicle enrolled.

(B) *Form I–17.* For filing a petition for school certification: $1,700, plus a site visit fee of $655 for each location listed on the form.

(C) *Form I–68.* For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act: $16.00. The maximum amount payable by a family (husband, wife, unmarried children under 21 years of age, parents of either husband or wife) shall be $32.00.

(D) *Form I–94.* For issuance of Arrival/Departure Record at a land border Port-of-Entry: $6.00.

(E) *Form I–94W.* For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border Port-of-Entry under section 217 of the Act: $6.00.

(F) *Form I–246.* For filing application for stay of deportation under part 243 of this chapter: $155.00.

(G) *Form I–570.* For filing application for issuance or extension of refugee travel document: $45.00

(H) *Form I–823.* For application to a PORTPASS program under section 286 of the Act—$25.00, with the maximum amount of $50.00 payable by a family (husband, wife, and minor children under 18 years of age). The application fee may be waived by the district director. If fingerprints are required, the inspector will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks prior to accepting the application fee. Both the application fee (if not waived) and the fingerprint fee must be paid to CBP before the application will be processed. The fingerprint fee may not be waived. For replacement of PORTPASS documentation during the participation period: $25.00.

(I) *Form I–901.* For remittance of the I–901 SEVIS fee for F and M students: $200. For remittance of the I–901 SEVIS fee for certain J exchange visitors: $180. For remittance of the I–901 SEVIS fee for J–1 au pairs, camp counselors, and participants in a summer work/travel program: $35. There is no I–901 SEVIS fee remittance obligation for J exchange visitors in Federally-funded programs with a program identifier designation prefix that begins with G–1, G–2, G–3 or G–7.

(J) Special statistical tabulations—a charge will be made to cover the cost of the work involved: DHS Cost.

(K) Set of monthly, semiannual, or annual tables entitled "Passenger Travel Reports via Sea and Air": $7.00. Available from DHS, then Immigration & Naturalization Service, for years 1975 and before. Later editions are available from the United States Department of Transportation, contact: United States Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

(L) Classification of a citizen of Canada to be engaged in business activities at a professional level pursuant to section 214(e) of the Act (Chapter 16 of the North American Free Trade Agreement): $50.00.

(M) Request for authorization for parole of an alien into the United States: $65.00.

(iii) *Fees for copies of records.* Fees for production or disclosure of records under 5 U.S.C. 552 shall be charged in accordance with the regulations of the Department of Homeland Security at 6 CFR 5.11.

(iv) *Adjustment to fees.* The fees prescribed in paragraph (b)(1)(i) of this section may be adjusted annually by publication of an inflation adjustment. The inflation adjustment will be announced by a publication of a notice in the **Federal Register**. The adjustment shall be a composite of the Federal civilian pay raise assumption and non-pay inflation factor for that fiscal year issued by the Office of Management and Budget for agency use in implementing OMB Circular A–76, weighted by pay and non-pay proportions of total funding for that fiscal year. If Congress enacts a different Federal civilian pay raise percentage than the percentage issued by OMB for Circular A–76, the Department of Homeland Security may adjust the fees, during the current year or a following year to reflect the enacted level. The prescribed fee or charge shall be the amount prescribed in paragraph (b)(1)(i) of this section, plus the latest inflation adjustment, rounded to the nearest $5 increment.

(v) *Fees for immigration court and Board of Immigration Appeals.* Fees for proceedings before immigration judges and the Board of Immigration Appeals are provided in 8 CFR 1103.7.

(c) *Waiver of fees.* (1) *Eligibility for a fee waiver.* Discretionary waiver of the fees provided in paragraph (b)(1)(i) of this section are limited as follows:

(i) The party requesting the benefit is unable to pay the prescribed fee.

(ii) A waiver based on inability to pay is consistent with the status or benefit being sought including requests that require demonstration of the applicant's ability to support himself or herself, or individuals who seek immigration status based on a substantial financial investment.

(2) *Requesting a fee waiver.* To request a fee waiver, a person requesting an immigration benefit must submit a written request for permission to have their request processed without payment of a fee with their benefit request. The 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. There is no appeal of the denial of a fee waiver request.

(3) *USCIS fees that may be waived.* No fee relating to any application, petition, appeal, motion, or request made to U.S. Citizenship and Immigration Services may be waived except for the following:

(i) Biometric Fee,

(ii) Application to Replace Permanent Resident Card;

(iii) Petition for a CNMI-Only Nonimmigrant Transitional Worker,

(iv) Application for Advance Permission to Return to Unrelinquished Domicile,

(v) Notice of Appeal or Motion,

(vi) Application for Employment Authorization,

(vii) Application for Family Unity Benefits

(viii) Application for Temporary Protected Status,

(ix) Application to File Declaration of Intention, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA),

(x) Application for Naturalization,

(xi) Application to Preserve Residence for Naturalization Purposes.

(xii) Application for Replacement Naturalization/Citizenship Document,

(xiii) Application for Certificate of Citizenship, and

(xiv) Application for Citizenship and Issuance of Certificate under Section 322.

(4) The following fees may be waived only in the case of an alien in lawful nonimmigrant status under sections 101(a)(15)(T) or (U) of the Act; an applicant under section 209(b) of the Act; an approved VAWA self-petitioner; or an alien to whom section 212(a)(4) of the Act does not apply with respect to adjustment of status:

(i) Application for Advance Permission to Enter as Nonimmigrant;

(ii) Application for Waiver for Passport and/or Visa;

(iii) Application to Register Permanent Residence or Adjust Status;

(iv) Application for Waiver of Grounds of Inadmissibility.

(5) *Immigration Court fees.* The provisions relating to the authority of the immigration judges or the Board to waive fees prescribed in paragraph (b) of this section in cases under their jurisdiction can be found at 8 CFR 1003.8 and 1003.24.

(6) *Fees under the Freedom of Information Act (FOIA).* FOIA fees may be waived or reduced if DHS determines that such action would be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(d) *Exceptions and exemptions.* The Director of USCIS may approve and suspend exemptions from any fee required by paragraph (b)(1)(i) of this section or provide that the fee may be waived for a case or specific class of cases that is not otherwise provided in this section, if the Director determines that such action would be in the public interest, and the action is consistent with other applicable law. This discretionary authority will not be delegated to any official other than the USCIS Deputy Director.

(e) *Premium processing service.* A person submitting a request to USCIS may request 15 calendar day processing of certain employment-based immigration benefit requests.

(1) *Submitting a request for premium processing.* A request for premium processing must be submitted on the form prescribed by USCIS, including the required fee, and submitted to the address specified on the form instructions.

(2) *15-day limitation.* The 15 calendar day processing period begins when USCIS receives the request for premium processing accompanied by an eligible employment-based immigration benefit request.

(i) If USCIS cannot reach a final decision on a request for which premium processing was requested, as evidenced by an approval notice, denial notice, a notice of intent to deny, or a request for evidence, USCIS will refund the premium processing service fee, but continue to process the case.

(ii) USCIS may retain the premium processing fee and not reach a conclusion on the request within 15 days, and not notify the person who filed the request, if USCIS opens an investigation for fraud or misrepresentation relating to the benefit request.

(3) *Requests eligible for premium processing.*

(i) USCIS will designate the categories of employment-related benefit requests that are eligible for premium processing.

(ii) USCIS will announce by its official Internet Web site, currently *http://www.uscis.gov,* those requests for which premium processing may be requested, the dates upon which such availability commences and ends, and any conditions that may apply.

(f) *Authority to certify records.* The Director of USCIS or such officials as he or she may designate, may certify records when authorized under 5 U.S.C. 552 or any other law to provide such records.

PART 204—IMMIGRANT PETITIONS

4. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1641; 8 CFR part 2.

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

§ 204.6 Petitions for employment creation aliens.

* * * * *

(m) * * *

(6) *Termination of participation of regional centers.* To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of intent to terminate the participation of a regional center in the pilot program if a regional center fails to submit the required information or upon a determination 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. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided thirty days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If USCIS determines that the regional center's participation in the Pilot Program should be terminated, USCIS shall notify the regional center of the decision and of the reasons for termination. The regional center may appeal the decision within thirty days after the service of notice to the USCIS as provided in 8 CFR 103.3.

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PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

4. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 244.20 [Removed]

5. Section 244.20 is removed.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

6. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; Title VII of Public Law 110–229; 8 CFR part 2.

7. Section 274a.12 is amended by revising paragraphs (a)(8) and (a)(11) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) * * *

(8) An alien admitted to the United States as a nonimmigrant pursuant to the Compact of Free Association between the United States and of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau;

* * * * *

(11) An alien whose enforced departure from the United States has been deferred in accordance with a directive from the President of the United States to the Secretary. Employment is authorized for the period of time and under the conditions established by the Secretary pursuant to the Presidential directive;

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. 2010–13991 Filed 6–9–10; 8:45 am]

BILLING CODE 9111–97–P

EXHIBIT B

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

March 13, 2011 **PM-602-0011.1**

Policy Memorandum

SUBJECT: 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

Purpose
This Policy Memorandum (PM) provides guidance on processing fee waiver requests filed pursuant to 8 CFR 103.7(c) as amended by changes made in the final rule "U.S. Citizenship and Immigration Services Fee Schedule," published in the *Federal Register* (FR) on September 24, 2010. See 75 FR 58961.

Scope
Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees. This PM supersedes and rescinds all preceding fee-waiver guidance, including the following memoranda:

- Michael A. Pearson memorandum, *Fee Waiver Relating to Employment Authorization for Victims of Trafficking*, dated May 25, 2001
- William R. Yates memorandum, *Adjustment of Fees of the Immigration Examinations Fee Account*, dated February 1, 2002
- Johnny N. Williams memorandum, *Fee Surcharges and Refund of Fee Surcharges*, dated January 23, 2003
- William R. Yates memorandum, *Correction regarding the fees for filing Form N-600, Application for Certificate of Citizenship, and Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322*, dated July 23, 2003
- William R. Yates memorandum, *Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c)*, dated March 4, 2004
- William R. Yates memorandum, *Adjustment of the Immigration Benefit Application Fee Schedule*, dated April 15, 2004
- William R. Yates memorandum, *Fee Waivers for Hurricane Katrina Victims*, dated September 19, 2005
- Don Neufeld memorandum, *Adjustment of the Immigration Benefit Application Fee Schedule*, dated July 12, 2007

- Don Neufeld memorandum, *Fee Waiver Guidelines as Established by the Final Rule of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, Revisions to Adjudicators' Field Manual (AFM) Chapters 10.9(a) (AFM Update AD07-19)*, dated July 20, 2007
- Michael L. Aytes and Rendell Jones memorandum, *Fee Waivers for Victims of Southern California Wildfires*, dated November 27, 2007

Authority
This PM is issued under the authority of Title 8 CFR 103.7(c) and INA section 286(m).

Background
The final rule "U.S. Citizenship and Immigration Services Fee Schedule," effective November 23, 2010, establishes a new fee schedule for immigration-benefit requests. It also amends the regulations governing fee-waiver eligibility. USCIS has developed the new Form I-912, Request for Fee Waiver, in an effort to facilitate the fee-waiver request process. The form will become available for public use on November 23, 2010. As the use of a USCIS-published fee-waiver request form is not mandated by regulation, USCIS will continue to consider applicant-generated fee-waiver requests (i.e., those not submitted on Form I-912) that comply with 8 CFR 103.7(c).

Policy
It is USCIS policy that individuals may apply for and be granted a fee waiver for certain immigration benefits and services based on an inability to pay. Please consult the revisions to *AFM* Chapter 10.9 in this PM for the complete list of forms and services that are eligible for a fee waiver.

Implementation
USCIS released Form I-912 to provide a standard means for submitting fee-waiver requests. The form is intended to bring clarity and consistency to the fee-waiver process. The Form I-912 instructions provide applicants with guidance on properly completing Form I-912 and submitting supporting documentation. The Form I-912 instructions also give information on the methodology that USCIS uses to make a decision on a fee-waiver request. USCIS uses the same methodology whether the request is submitted on a Form I-912 or via an applicant-generated request. USCIS will continue to consider applicant-generated fee-waiver requests (i.e., those not submitted on Form I-912), but those requests must meet the criteria described in *AFM* Chapter 10.9 in order for the fee to be waived. All pending and newly submitted fee waiver requests will be reviewed under the guidelines in that chapter.

In general, fee-waiver requests will be reviewed by considering, in a step-wise fashion, whether the applicant is receiving a means-tested benefit, whether the applicant's household income level renders him or her unable to pay, or whether recent financial hardship otherwise renders him or her unable to pay. This PM also provides examples of required or acceptable supporting documentation.

Revisions to the *AFM*

1. Effective March 13, 2011, Chapter 10.9 of the *AFM* is revised to read:

10.9 Waiver of Fees.

(a) Submission of Request. A person requesting a waiver of fees for an application, petition, appeal, motion, service or other matter may submit either a **Form I-912**, **Request for Fee Waiver**, or a written request for permission to have their immigration benefit request processed without payment of the required fee as provided in **8 CFR 103.7(c)** and this chapter. There is no fee required for filing a fee-waiver request.

(1) Applicability. These guidelines apply to filing fees for those applications, petitions, motions, and requests contained in 8 CFR 103.7(b)(1)(i) and (c).

(2) General Fee Waivers. USCIS may waive fees for the following based on an inability to pay:

- Biometrics services fee;
- Form I-90, Application to Replace Permanent Resident Card;
- Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile;
- Form I-751, Petition to Remove Conditions on Residence;
- Form I-765, Application for Employment Authorization;
- Form I-817, Application for Family Unity Benefits;
- Form I-821, Application for Temporary Protected Status;
- Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA));
- Form N-300, Application to File Declaration of Intention;
- Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA);
- Form N-400, Application for Naturalization;
- Form N-470, Application to Preserve Residence for Naturalization Purposes;
- Form N-565, Application for Replacement of Naturalization/Citizenship Document;
- Form N-600, Application for Certification of Citizenship; and
- Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322.

(3) Conditional Fee Waivers. If the application or petition is not listed in paragraph (a)(2) of this chapter, USCIS may waive a fee based on an inability to pay and subject to the conditions specified:

- Form I-131, Application for Travel Document, only for those applying for humanitarian parole (i.e., only for persons that are applying for an Advance Parole Document under Application Type "e" or "f" in Part 2 of the Form I-131);
- Form I-192, Application for Advance Permission to Enter as Nonimmigrant for an applicant who is exempt from the public charge grounds of inadmissibility of section 212(a)(4) of the Immigration and Nationality Act (INA), either by statute or by policy;
- Form I-193, Application for Waiver for Passport and/or Visa for an applicant who is exempt from the public charge grounds of inadmissibility of section 212(a)(4) of the INA, either by statute or by policy;
- Form I-290B, Notice of Appeal or Motion, if the underlying application was fee exempt, the fee was waived, or it was eligible for a fee waiver;
- Form I-485, Application To Register Permanent Residence or Adjust Status, for the following individuals:
  - An Afghan and Iraqi Interpreter who has received a Special Immigrant Visa;
  - A "Registry" applicant filing under section 249 of the INA who has maintained continuous residence in the United States since before January 1, 1972; or
  - An applicant who is exempt from the public charge grounds of inadmissibility under section 212(a)(4) of the INA, including but not limited to the following circumstances:
    - Applications filed by asylees under section 209(b) of the INA;
    - Applications for Special Immigrant Juveniles;
    - Applications under the Cuban Adjustment Act, the Haitian Refugee Immigration Fairness Act (HRIFA), and the Nicaraguan Adjustment and Central American Relief Act (NACARA), or similar provisions; and
    - Applications filed by Lautenberg Parolees.
- Form I-601, Application for Waiver of Grounds of Inadmissibility for an applicant who is exempt from the public charge grounds of inadmissibility of section 212(a)(4) of the INA.

(4) Humanitarian Fee Waivers. Based on an inability to pay, USCIS may waive any fees associated with the filing of any benefit request by a VAWA self–petitioner or under sections 101(a)(15)(T) (T visas), 101(a)(15)(U) (U visas), 106 (battered spouses of A, G, E–3, or H nonimmigrants), 240A(b)(2) (battered spouse or child of a lawful permanent resident or U.S. citizen), and 244(a)(3) (Temporary Protected Status), of the Act (as in effect on March 31, 1997). This would include filings not otherwise eligible for a fee waiver or eligible only for conditional fee waivers such as Forms I-212, I-485, I-539, and I-601.

(5) Documentation. Whether the request is submitted on **Form I-912** or in the form of a written statement, the applicant may submit additional documentation to provide proof of his or her inability to pay. Fee-waiver requests should be decided based upon the request for a fee waiver and any additional documentation submitted in support of the fee waiver request. A fee-waiver request may be approved in the

absence of such additional documentation provided that the applicant's request is sufficiently detailed to substantiate his or her inability to pay the fee. If USCIS determines that the individual did not substantiate his or her inability to pay, then the fee waiver request should be denied.

(6) Submission of Both Fee and Fee Waiver Request. When a form is submitted with both the appropriate fee for the form and a fee-waiver request, the form should be processed, if otherwise acceptable, as properly filed with fee. No subsequent consideration should be given to, nor action taken on the fee-waiver request.

(b) Review of Request.

(1) Inability to Pay. Each fee-waiver request is unique and should be considered on its own merits. A fee-waiver request may be granted when USCIS has determined that the individual is unable to pay the fee. Inability to pay the fee is based on the individual's overall financial picture and household situation, as may be established according to the steps and criteria described below.

(2) Determining Inability to Pay and Adjudicating the Fee-Waiver Request. In determining whether the individual is unable to pay the fee and should be granted a fee waiver, the USCIS employee must proceed according to the following steps and criteria:

- Step 1. Is the individual receiving a means-tested benefit?

    - The individual may demonstrate that he or she is receiving a "means-tested benefit." A means-tested benefit is a benefit where a person's eligibility for the benefit, or the amount of the benefit, or both, are determined on the basis of the person's income and resources, including those that may lawfully be deemed available to the person by the benefit-granting agency. Examples of means-tested benefit programs are Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Income, and Temporary Assistance for Needy Families.

    - To demonstrate that the individual (or the individual's spouse or the head of the household in which the individual resides) is receiving a means-tested benefit, the applicant should provide proof in the form of a letter, notice, or other official document(s) containing the name of the agency granting the benefit. The document(s) submitted must show the name of the recipient of the means-tested benefit and the name of the benefit received.

    - If the individual provides sufficient proof of the means-tested benefit, the fee waiver will normally be approved, and no further information will be required.

- Step 2. Is the individual's household income at or below 150 percent of the Federal Poverty Guidelines at the time of filing?

  - The individual may demonstrate that his or her household income, on which taxes were paid for the most recent tax year, is at or below 150 percent of the Federal Poverty Level as established in the most recent poverty guidelines. Those guidelines are revised annually by the Secretary of Health and Human Services and are available at http://aspe.hhs.gov/poverty. For fee-waiver review purposes, a household may include an applicant, spouse, parent(s) living with the applicant, and any of the following family members:
    - An unmarried child or legal ward under 21 years of age living with the applicant;
    - An unmarried child or legal ward over 21 years of age but under 24 years of age who is a full-time student and living with the applicant when not at school; or
    - An unmarried child or legal ward for whom the applicant is the legal guardian because the individual is physically or mentally disabled to the extent that he or she cannot adequately care for him or herself and cannot establish, maintain, or re-establish his or her own household.

  - The applicant may submit documentation as follows to demonstrate that his or her household income is at or below 150 percent of the Federal Poverty Guidelines at the time of filing:
    - Evidence of current employment or self-employment such as recent pay statements, W-2 forms, statement(s) from the individual's employer(s) on business stationery showing salary or wages paid, or income tax returns (proof of filing of a tax return).
    - Documentation establishing other financial support or subsidies – such as parental support, alimony, child support, educational scholarships and fellowships, pensions, Social Security, veteran's benefits, etc. Financial support or subsidy may include monetary contributions for the payment of monthly expenses received from adult children, dependents, and other people who are living in the individual's household, etc.
    - If available, the individual's Federal tax return(s), listing the members of the household.
    - If the applicant is filing on behalf of, or as a Special Immigrant Juvenile (SIJ), the fee waiver request should be supported by one of the following forms of evidence:
      - A recent state or juvenile court order establishing dependency or custodial assignment of the SIJ; or
      - A letter from a foster care home or similar agency overseeing the SIJ's custodial placement that describes the SIJ's inability to pay; or

- An approval notice on a Form I-797, Notice of Action, for a Form I-360, filed for the SIJ.

o If the individual provides sufficient proof that his or her household income is at or below 150 percent of the Federal Poverty Guidelines at the time of filing, the fee waiver will normally be approved, and no further information will be required.

- Step 3. Is the individual under financial hardship, due to extraordinary expenses or other circumstances, that renders the individual unable to pay the fee?

o The individual may demonstrate that he or she is under financial hardship due to extraordinary expenses or other circumstances affecting his or her financial situation to the degree that he or she is unable to pay the fee. Examples include unexpected and uninsured (or underinsured) medical bills, situations that could not normally be expected in the regular course of life events, or a medical emergency or catastrophic illness affecting the individual or the individual's dependents. If the individual is under financial hardship, the individual should demonstrate that he or she has suffered a sufficiently negative financial impact as a result of this hardship in a reasonably recent period preceding the filing of the fee-waiver request so as to render the applicant's income during that period insufficient to pay the fee.

o The applicant may submit documentation as follows to demonstrate that he or she is under financial hardship that renders him or her unable to pay the fee:
  - Documentation of all assets owned, possessed, or controlled by the individual and by his or her dependents. Assets include real estate, property, cash, checking and savings accounts, stocks, bonds, and annuities (except for pension plans and Individual Retirement Accounts (IRAs)).
  - Documentation concerning liabilities and expenses owed by the individual and his or her dependents, and any other expenses for which the individual is responsible. Liabilities and expenses include the cost of rent, mortgages, lease, the average monthly cost of food, utilities, child care and elder care, medical expenses, any tuition costs, commuting costs, and monthly payments of any lawful debts.
  - If the applicant cannot provide evidence of income, he or she should provide a description of the financial hardship and why he or she cannot provide any evidence of income. Affidavits from churches and other community-based organizations indicating that the applicant is currently receiving some benefit from that entity may be used as evidence of income.

- Any other documentation or evidence that demonstrates the individual's inability to pay the fee based on his or her overall financial picture and household situation.
- In reviewing all documentation and information submitted, consider whether cash or assets exist aside from income which could be liquidated without the applicant incurring a hardship. For example, the applicant may own stocks or other assets that could be easily liquidated.

(c) Processing Fee Waiver Requests.

(1) Effective Date. As of November 23, 2010, all pending and newly submitted fee waiver requests must be reviewed under these guidelines. These guidelines apply only to application and petition filing fees contained in **8 CFR 103.7(b)**.

(2) Notation on Form. After careful review of the fee-waiver request and supporting documentation, the fee-waiver approval or denial should be recorded in the receipt block of the underlying form for which the applicant is requesting a fee waiver. The fee-waiver decision should also be noted on the **Form I-912, Request for Fee Waiver**, if that is how the applicant submitted the request. In addition, the signature of the approving officer and any relevant comments should be written on the Form I-912. If the fee-waiver request is denied, send the applicant Form G-1054, Request for Fee Waiver Denial Letter. If reviewing an electronic version of the fee-waiver request, record the fee-waiver approval or denial in an electronic system and note the name of the USCIS employee making the fee-waiver decision.

2. The *AFM* **Transmittal Memoranda** button is revised by adding, in numerical order, the following entry:

AD 11-26 03/13/2011	**Chapter 10.9**	Provides guidance on considering and approving requests for fee waivers.

Use
This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information
Questions or suggestions regarding this PM should be addressed through appropriate channels to Headquarters Management Directorate, Office of Intake and Document Production.

EXHIBIT C

Request for Fee Waiver

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-912
OMB No. 1615-0116
Expires: 10/31/2021

For USCIS Use Only	Application Receipted At (Select **only one** box)	
	☐ **USCIS Field Office**	☐ **USCIS Service Center**
	☐ Fee Waiver Approved ☐ Fee Waiver Denied	☐ Fee Waiver Approved ☐ Fee Waiver Denied
	Date:_____ Date:_____	Date:_____ Date:_____

► **START HERE - Type or print in black ink.**

If you need extra space to complete any section of this request or if you would like to provide additional information about your circumstances, use the space provided in Part 8. Additional Information. Complete and submit as many copies of Part 8., as necessary, with your request.

Part 1. Basis for Your Request (Each basis is further explained in the **Specific Instructions** section of the Form I-912 Instructions)

Select at least one basis or more for which you may qualify and provide supporting documentation for any basis you select. You only need to qualify and provide documentation for one basis for U.S. Citizenship and Immigration Services (USCIS) to grant your fee waiver. If you choose, you may select more than one basis; you must provide supporting documentation for each basis you want considered.

1. ☐ My household income is at or below 150 percent of the Federal Poverty Guidelines (FPG). (Complete **Parts 2. - 3.**, and **Parts 5. - 7.**)
2. ☐ I have a financial hardship. (Complete **Part 2.**, and **Parts 4. - 7.**)

Part 2. Information About You (Requestor)

Provide information about yourself if you are requesting a fee waiver for a petition or application you are filing. If you are a parent or legal guardian filing for a child or person with a physical disability or developmental or mental impairment, provide information about the child or person for whom you are filing this request.

1. Full Legal Name

Family Name (Last Name)	Given Name (First Name)	Middle Name

2. Other Names Used (if any)

Provide all other names you have ever used, including aliases, maiden name, and nicknames.

Family Name (Last Name)	Given Name (First Name)	Middle Name

3. Alien Registration Number (A-Number) (if any)
► **A-**

4. USCIS Online Account Number (if any)
►

5. Date of Birth (mm/dd/yyyy)

6. U.S. Social Security Number (if any)
►

7. Marital Status

☐ Single, Never Married ☐ Married ☐ Divorced ☐ Widowed ☐ Marriage Annulled ☐ Separated

☐ Other (Explain)

Part 2. Information About You (Requestor)

8. List and provide the total number of applications and petitions for which you are requesting a fee waiver.

Form	Number
Total Number	

9. Are you applying for or have status or a granted approval as a battered spouse of an A, G, E-3, or H nonimmigrants; a battered spouse or child of a lawful permanent resident or U.S. citizen under INA section 240A(b)(2); a T nonimmigrant; a person with Temporary Protected Status; a U nonimmigrant; or a VAWA self -petitioner?

☐ Yes

☐ No

A. Receipt Number (if applicable)

►

Part 3. Household Income

Your Employment Status

1. Employment Status

☐ Employed (full-time, part-time, seasonal, self-employed) ☐ Unemployed or Not Employed ☐ Retired

☐ Other (Explain)

2. If you are currently unemployed, since when have you been unemployed (mm/dd/yyyy)?

A. If you are currently unemployed, are you currently receiving unemployment benefits?

☐ Yes

☐ No

Information About Your Spouse

3. If you are married or separated, does your spouse live in your household?

☐ Yes (add your spouse to the table below and provide his or her income in **Item Number 9.** below)

☐ No

A. If you answered "No" to **Item Number 3.**, does your spouse provide any financial support to your household?

☐ Yes (provide financial support income in **Item Number 10.** below)

☐ No

Your Household Size

4. Are you the person providing the primary financial support for your household?

☐ Yes

☐ No

Part 3. Household Income (continued)

If you answered "Yes" to **Item Number 4.**, type or print your name on the line marked "self" in the table below. Also provide income in **Item Number 8.** below. If you answered "No" to **Item Number 4.**, type or print your name on the line marked "self" in the table below and add the head of household's name on the line below yours.

Household Size								
Full Name	Date of Birth	Relationship to You	Married		Full-Time Student		Is any income earned by this person counted towards the household income?	
			Yes	No	Yes	No	Yes	No
		Self	☐	☐	☐	☐	☐	☐
			☐	☐	☐	☐	☐	☐
			☐	☐	☐	☐	☐	☐
			☐	☐	☐	☐	☐	☐
Total Household Size (including self)								

Your Annual Household Income

5. Did you file a federal tax return for the last year?

☐ Yes

☐ No

If you answered "No" to **Item Number 5.**, provide an answer to **Item Number 7.**

6. Did your household members file tax returns for the last year?

☐ Yes

☐ No

If you answered "No" to **Item Number 6.**, provide an answer to **Item Number 7.**

If you answered "No" to **Item Number 6.**, which household member(s) did not file a tax return?

7. If you or your household member did not file a tax return for the last year, select the reason for not filing and provide an explanation. See I-912 Instructions for required documentation.

☐ I/we plan to file the tax return before the due date this year.

☐ I/we are not required to file a tax return for the current or previous year.

☐ I/we filed for an extension.

☐ I/we are not going to file.

Explanation:

Part 3. Household Income (continued)

Provide information about your income and the income of all family members counted as part of your household. You must list all amounts in U.S. dollars.

8. Your Annual Income $

9. Annual Income of All Family Members Counted as Part of Your Household (Do not include the amount provided in **Item Number 8.**) $

10. Total Additional Income or Financial Support (Do not include the amount provided in **Item Numbers 8.** or **9.**) $

If you received additional income on a continuing monthly or annual basis for the most recent full year, and it is NOT listed in your Federal tax return, provide the amount of additional income below (for example, child support). Attach evidence of the additional income. You must add all of the additional income and financial support amounts and put the total amount in the space provided. Type or print "0" in the total box if no additional income is received.

Type of Income			Annual Amount (in dollars)
Parental Support	☐ Yes	☐ No	
Spousal Support (Alimony)	☐ Yes	☐ No	
Child Support	☐ Yes	☐ No	
Educational Stipends	☐ Yes	☐ No	
Royalties	☐ Yes	☐ No	
Pensions	☐ Yes	☐ No	
Unemployment Benefits	☐ Yes	☐ No	
Social Security Benefits	☐ Yes	☐ No	
Veteran's Benefits	☐ Yes	☐ No	
Financial Support from Adult Children, Dependents, Other People Living in the Household	☐ Yes	☐ No	
Other: (Explanation Below)	☐ Yes	☐ No	
Total Additional Income and Financial Support			

11. Total Annual Household Income (add the amounts from **Item Numbers 8.**, **9.**, and **10.**) $

12. Has anything changed since the date you filed your Federal tax returns? (For example, your marital status, income, or number of dependents.) ☐ Yes ☐ No

If you answered "Yes" to **Item Number 12.**, provide an explanation below. Provide documentation if available. You may also use this space to provide any additional information about your circumstances that you would like U.S. Citizenship and Immigration Services (USCIS) to consider.

Part 4. Financial Hardship

If you selected **Item Number 2.** in **Part 1.**, complete this section.

1. If you or any family members have a situation that has caused you to incur expenses, debts, or loss of income, describe the situation in the box below. Specify the amounts of the expenses, debts, and income losses in as much detail as possible. Examples may include medical expenses, job loss, eviction, victimization, and homelessness.

2. If you have cash or assets that you can quickly convert to cash, list those in the table below. For example, bank accounts, stocks, or bonds. (Do not include retirement accounts.)

Assets	
Type of Asset	**Value** (U.S. Dollars)
Total Value of Assets	

3. Total Monthly Expenses and Liabilities $ ____

Provide the total monthly amount of your expenses and liabilities. You must add all of the expense and liability amounts and type or print the total amount in the space provided. Type or print "0" in the total box if there are none. Select the types of expenses or liabilities you have each month and provide evidence of monthly payments, where possible.

- ☐ Rent and/or Mortgage
- ☐ Food
- ☐ Utilities
- ☐ Child and/or Elder Care
- ☐ Insurance
- ☐ Loans and/or Credit Cards
- ☐ Car Payment
- ☐ Commuting Costs
- ☐ Medical Expenses
- ☐ School Expenses
- ☐ Other ____

Part 5. Requestor's Statement, Contact Information, Certification, and Signature

NOTE: Read the **Penalties** section of the Form I-912 Instructions before completing this section.

You must complete, sign, and date Form I-912 and provide the required documentation. If an individual is under 14 years of age, a parent or legal guardian may sign the request on their behalf. USCIS rejects any Form I-912 that is not signed and may deny a request that does not provide required documentation.

NOTE: Select the box for either **Item A.** or **B.** in **Item Number 1.** If applicable, select the box for **Item Number 2.**

1. Requestor's Statement Regarding the Interpreter

A. ☐ I can read and understand English, and I have read and understand every question and instruction on this request and my answer to every question.

B. ☐ The interpreter named in **Part 6.** read to me every question and instruction on this request and my answer to every question in _____, a language in which I am fluent, and I understood everything.

2. Requestor's Statement Regarding the Preparer

☐ At my request, the preparer named in **Part 7.**, _____, prepared this request for me based only upon information I provided or authorized.

Requestor's Contact Information

3. Requestor's Daytime Telephone Number

4. Requestor's Mobile Telephone Number (if any)

5. Requestor's Email Address (if any)

Requestor's Certification

Copies of any documents I have submitted are exact photocopies of unaltered, original documents, and I understand that USCIS may require that I submit original documents to USCIS at a later date. Furthermore, I authorize the release of any information from any and all of my records that USCIS may need to determine my eligibility for the immigration benefit that I seek.

I further authorize release of information contained in this request, in supporting documents, and in my USCIS records, to other entities and persons where necessary for the administration and enforcement of U.S. immigration law.

I certify, under penalty of perjury, that I provided or authorized all of the information in my request, I understand all of the information contained in, and submitted with, my request, and that all of this information is complete, true, and correct.

WARNING: If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-912, USCIS will deny your fee waiver request and may deny any other immigration benefit. In addition, you may face severe penalties provided by law and may be subject to criminal prosecution.

Requestor's Signature

6. Requestor's Signature

Date of Signature (mm/dd/yyyy)

NOTE TO ALL REQUESTORS: If you do not completely fill out this request or fail to submit required documents listed in the Instructions, USCIS may deny your request.

Part 6. Interpreter's Contact Information, Certification, and Signature

Interpreter's Full Name

1. Interpreter's Family Name (Last Name) | Interpreter's Given Name (First Name)

2. Interpreter's Business or Organization Name (if any)

Interpreter's Mailing Address

(USPS ZIP Code Lookup)

3. Street Number and Name | Apt. Ste. Flr. Number

City or Town | State | ZIP Code

Province | Postal Code | Country

Interpreter's Contact Information

4. Interpreter's Daytime Telephone Number

5. Interpreter's Mobile Telephone Number (if any)

6. Interpreter's Email Address (if any)

Interpreter's Certification

I certify, under penalty of perjury, that:

I am fluent in English and _____, which is the same language specified in **Part 5.**, **Item B.** in **Item Number 1.**, and I have read to this requestor in the identified language every question and instruction on this request and his or her answer to every question. The requestor informed me that he or she understands every instruction, question, and answer on the request, including the **Requestor's Certification**, and has verified the accuracy of every answer.

Interpreter's Signature

7. Interpreter's Signature | Date of Signature (mm/dd/yyyy)

Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Request, if Other Than the Requestor

Preparer's Full Name

1. Preparer's Family Name (Last Name) | Preparer's Given Name (First Name)

2. Preparer's Business or Organization Name (if any)

Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Request, if Other Than the Requestor (continued)

Preparer's Mailing Address

3. Street Number and Name | Apt. Ste. Flr. ☐ ☐ ☐ | Number

City or Town | State | ZIP Code

Province | Postal Code | Country

Preparer's Contact Information

4. Preparer's Daytime Telephone Number

5. Preparer's Mobile Telephone Number (if any)

6. Preparer's Email Address (if any)

Preparer's Statement

7. **A.** ☐ I am not an attorney or accredited representative but have prepared this request on behalf of the requestor and with the requestor's consent.

B. ☐ I am an attorney or accredited representative and my representation of the requestor in this case ☐ extends ☐ does not extend beyond the preparation of this request.

NOTE: If you are an attorney or accredited representative, you may need to submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, or G-28I, Notice of Entry of Appearance as Attorney In Matters Outside the Geographical Confines of the United States, with this request.

Preparer's Certification

By my signature, I certify, under penalty of perjury, that I prepared this request at the request of the requestor. The requestor then reviewed this completed request and informed me that he or she understands all of the information contained in, and submitted with, his or her request, including the **Requestor's Certification**, and that all of this information is complete, true, and correct. I completed this request based only on information that the requestor provided to me or authorized me to obtain or use.

Preparer's Signature

8. Preparer's Signature | Date of Signature (mm/dd/yyyy)

Part 8. Additional Information

If you need extra space to provide any additional information within this request, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this request or attach a separate sheet of paper. Type or print your name and A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

1. Family Name (Last Name) | Given Name (First Name) | Middle Name

2. A-Number (if any) ► **A-**

3. **A.** Page Number **B.** Part Number **C.** Item Number

D.

4. **A.** Page Number **B.** Part Number **C.** Item Number

D.

5. **A.** Page Number **B.** Part Number **C.** Item Number

D.

6. **A.** Page Number **B.** Part Number **C.** Item Number

D.

EXHIBIT D

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

October 25, 2019 PA-2019-06

Policy Alert

SUBJECT: Fees for Submission of Benefit Requests

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual regarding submission and acceptance of fees for immigration benefit requests.

Background

In general, requestors must include any required fees with the submission of a benefit request to USCIS.[1] Certain forms or categories of requestors may be exempt from fees. USCIS also has the regulatory authority to waive certain fees if the requestor is unable to pay the fee of the immigration benefit being sought.[2] USCIS is now updating its policies on fee waiver requests.

This guidance, contained in Volume 1, is effective December 2, 2019 and applies prospectively to fee waiver requests postmarked on or after that date. On that date, this policy update will supersede the guidance found in Chapters 10.9 and 10.10 of the Adjudicator's Field Manual (AFM), related AFM appendices, and related policy memoranda. USCIS will accept requests filed on the previous or latest edition of the Request for Fee Waiver (Form I-912), or other ways of submitting requests as provided in the related AFM guidance, that are postmarked before December 2, 2019. For requests postmarked on or after that date, USCIS will only accept the latest edition of Form I-912 and will adjudicate such requests under the updated policy.[3]

Policy Highlights

- Establishes the eligibility criteria for fee waivers based on inability to pay: household income at or below 150 percent of the Federal Poverty Guidelines, or financial hardship.
- Establishes that the Request for Fee Waiver (Form I-912) must be submitted and written statements will no longer be accepted on or after December 2, 2019.
- Clarifies documentation requirements for fee waivers, including income tax transcripts.
- Clarifies that requestors seeking to waive fees for immigration benefits based on the Violence Against Women Act[4] or T or U nonimmigrant status are not required to provide income documentation for the abuser or human trafficker.

Citation: Volume 1: General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 3, Fees [1 USCIS-PM B.3] and Chapter 4, Fee Waivers [1 USCIS-PM B.4].

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[1] See 8 CFR 103.7(a)(1).
[2] See 8 CFR 103.7(c). USCIS is primarily funded by application and petition fees. See INA 286(m).
[3] See https:www.uscis.gov/i-912 for the latest edition of Form I-912.
[4] See Pub. L. 103–322 (September 13, 1994).