

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 103, 204, and 205

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

RIN 1615–AC09

### U.S. Citizenship and Immigration Services Fee Schedule

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security (DHS) is adjusting the fee schedule for immigration and naturalization benefit requests processed by U.S. Citizenship and Immigration Services (USCIS). The fee schedule was last adjusted on November 23, 2010. USCIS conducted a comprehensive fee review for the fiscal year (FY) 2016/2017 biennial period and determined that current fees do not recover the full cost of services provided. DHS has determined that adjusting the fee schedule is necessary to fully recover costs and maintain adequate service. DHS published a proposed fee schedule on May 4, 2016.

Under this final rule, DHS will increase fees by a weighted average of 21 percent; establish a new fee of \$3,035 covering USCIS costs related to processing the Employment Based Immigrant Visa, Fifth Preference (EB–5) Annual Certification of Regional Center, Form I–924A; establish a three-level fee for the Application for Naturalization, Form N–400; and remove regulatory provisions that prevent USCIS from rejecting an immigration or naturalization benefit request paid with a dishonored check or lacking the required biometric services fee until the remitter has been provided an opportunity to correct the deficient payment.

**DATES:** This rule is effective December 23, 2016. Applications or petitions mailed, postmarked, or otherwise filed on or after December 23, 2016 must include the new fee.

**FOR FURTHER INFORMATION CONTACT:** Joseph D. Moore, Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2130, telephone 202–272–1969.

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### I. Executive Summary

The Department of Homeland Security (DHS) is adjusting the fee schedule for U.S. Citizenship and Immigration Services (USCIS). USCIS conducted a comprehensive fee review for the FY 2016/2017 biennial period, refined its cost accounting process, and determined that current fees do not recover the full costs of services provided. DHS has determined that adjusting USCIS' fee schedule is necessary to fully recover costs and maintain adequate service.

In this final rule, DHS will:

- Adjust fees by a weighted average increase of 21 percent to ensure that fees for each benefit type are adequate to cover USCIS' costs associated with processing applications and petitions, as well as providing similar benefits to asylum and refugee applicants<sup>1</sup> and certain other immigrants at no charge.
- Establish a new fee of \$3,035 to recover the full cost of processing the Employment Based Immigrant Visa, Fifth Preference (EB–5) Annual Certification of Regional Center, Form I–924A.
- Establish a three-level fee for Application for Naturalization, Form N–400. First, DHS will increase the standard fee for Form N–400 from \$595 to \$640. Second, DHS will continue to charge no fee to applicants who meet the requirements of sections 328 or 329 of the Immigration and Nationality Act of 1952 (INA) with respect to military service and applicants with approved fee waivers. Third, DHS will charge a reduced fee of \$320 for naturalization applicants with family income greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines.
- Remove regulatory provisions that prevent USCIS from rejecting an immigration or naturalization benefit request paid with a dishonored check or lacking the required biometric services fee until the remitter has been provided an opportunity to correct the deficient payment.
- Clarify that persons filing any benefit request may be required to appear for biometrics services or an interview and may be required to pay the biometrics services fee.

<sup>1</sup> Although the President has announced an increase in the refugee admissions ceiling to 110,000, the final fee structure includes costs for only 100,000, which was the anticipated ceiling at the time that the fee review was conducted.

### II. Background

DHS published a notice of proposed rulemaking (NPRM) on May 4, 2016, which proposed adjusting USCIS' fee schedule by a weighted average increase of 21 percent. *See U.S. Citizenship and Immigration Services Fee Schedule; Proposed Rule*, 81 FR 26904. This final rule establishes the first fee adjustment since 2010. It is a result of a comprehensive fee review conducted by USCIS for the FY 2016/2017 biennial period. During the fee review, USCIS determined that current fees do not recover the full costs of processing immigration benefits. This final rule reflects full cost recovery including program costs that DHS excluded in the 2010 final rule. USCIS provided the FY 2016/2017 Immigration Examinations Fee Account (IEFA) Fee Review Supporting Documentation (supporting documentation), which includes budget methodology, and regulatory flexibility analysis, in the public docket. *See <http://www.regulations.gov>*, docket number USCIS–2016–0001.

This final rule includes the addition of fee surcharges applied to certain immigration benefits to fully recover costs related to the USCIS Refugee, Asylum, and International Operations Directorate (RAIO), the Systematic Alien Verification for Entitlements (SAVE) program (to the extent not recovered from users),<sup>2</sup> and the Office of Citizenship.<sup>3</sup> In the 2010 final rule, USCIS assumed it would continue receiving funding for these programs through congressional appropriations. *See U.S. Citizenship and Immigration Services Fee Schedule*, 75 FR 58962, 58966 (Sept. 24, 2010). The 2010 final rule removed asylum, refugee, and military naturalization costs from the fee structure and assumed that immigration fees would not be used to recover the costs of adjudicating asylum, refugee, and military naturalization requests, as well as costs associated with the SAVE program and

<sup>2</sup> The SAVE program was established in 1987 by the Immigration Reform and Control Act, Pub. L. 99–603, sec. 121(c) (Nov. 6, 1986), which required the Commissioner of the Immigration and Naturalization Service to “implement a system for the verification of immigration status . . . so that the system is available to all States by not later than October 1, 1987.” SAVE uses an internet-based service to assist Federal, state, and local benefit-issuing and licensing agencies, and other governmental entities, in determining the immigration status of benefit or license applicants, so that only those applicants entitled to benefits or licenses receive them.

<sup>3</sup> The USCIS Office of Citizenship was established by section 451(f) of the Homeland Security Act of 2002, Pub. L. 107–296, sec. 451(f) (2002). The statute tasks the office with “promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens.”

the Office of Citizenship. The final rule removed all of these costs from the USCIS fee structure, instead assuming that these services would be funded using appropriated funds. *See* 75 FR 58963. That budget request was not fulfilled, and USCIS was left to fund the cost of these programs after having removed the surcharge. *See* Pub. L. 112–10, sec. 1639 (Apr. 15, 2011).<sup>4</sup>

DHS issues this final rule consistent with the Immigration and Nationality Act (INA) section 286(m), 8 U.S.C. 1356(m) (authorizing DHS to charge fees for adjudication and naturalization services at a level to ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants) and the Chief Financial Officers (CFO) Act of 1990, 31 U.S.C. 901–03 (requiring each agency's CFO to review, on a biennial basis, the fees imposed by the agency for services it provides, and to recommend changes to the agency's fees). The NPRM provides additional information on the legal authority, non-statutory guidance, and background on the IEFA fees. *See* 81 FR 26906.

### III. Final Rule

#### A. Changes in the Final Rule

This section details the changes made in this final rule as compared to the NPRM. These changes are summarized as follows:

1. Application to Register Permanent Residence or Adjust Status, Form I–485. DHS has revised the regulatory language regarding the fee for the Application to Register Permanent Residence or Adjust Status, Form I–485, to clarify that the proposed \$750 discounted fee is available for all applicants under 14 years old who submit their Form I–485 with that of a parent. These revisions accord the fee regulations with the current Form I–485 instructions and intake practices. *See* new 8 CFR 103.7(b)(1)(i)(U)(2); 81 FR 26919. The section later in this preamble entitled, “Adjustment of Status, Form I–485, and Interim Benefits,” provides more details about this change.

<sup>4</sup> USCIS received \$29.95 million of the requested \$248 million to fund a portion of the refugee and asylum processing administered under the RAIO Directorate and military naturalization processing in Fiscal Year 2011. USCIS has not received any substantial appropriations for these programs since FY 2011. USCIS received \$2.5 million for the immigrant integration grants program in FY 2014 (Pub. L. 113–76) and FY 2013 (Pub. L. 113–6). USCIS did not receive appropriations for the immigrant integration grants program in FY 2015 or FY 2016. Similarly, USCIS received no FY 2016 discretionary appropriations for the SAVE program or for the Office of Citizenship. *See* DHS Appropriations Act 2016, Pub. L. 114–113, div. F. (Dec. 18, 2015).

2. Dishonored payments. DHS has also clarified the regulations governing USCIS actions when a check used to pay the required fee is dishonored by the remitter's bank. Under this final rule, USCIS will submit all initially rejected payments to the applicant's bank a second time for it to clear or be rejected. 8 CFR 103.2(a)(7)(ii)(D). If the check is rejected again following re-submission by USCIS, it will reject the case for fee non-payment. If the case has been approved, USCIS will send a notice of intent to revoke the approval. The section later in this preamble entitled, "Dishonored Payments," provides more details about this change.

3. Application for Advance Permission to Enter as a Nonimmigrant, Form I-192, and Application for Waiver for Passport and/or Visa, Form I-193. DHS has made adjustments to the proposed fees in the final rule for the Application for Advance Permission to Enter as a Nonimmigrant, Form I-192, and the Application for Waiver for Passport and/or Visa, Form I-193. For the reasons outlined in section IV.B.2.p. of this preamble, the fees that will be charged for Forms I-192 and I-193 will remain at \$585, rather than the proposed fee of \$930 when such forms are submitted to and processed by the U.S. Customs and Border Protection

(CBP). See new 8 CFR 103.7(b)(1)(i)(P)–(Q).

#### B. Corrections

DHS inadvertently listed Application by Refugee for Waiver of Grounds of Excludability, Form I-602, in the NPRM preamble and the supporting documentation. DHS listed Form I-602 in the NPRM as part of Waiver Forms in section IV, Fee Review Methodology, at 81 FR 26916 and tables 8 and 9 at 81 FR 26926–26927. USCIS referenced it on pages 24, 47, 49, and 50 of the accompanying supporting documentation. The docket of this final rule includes a corrected version of the supporting documentation without references to Form I-602. Form I-602 has no fee and DHS should not have included it in these lists or tables. The NPRM did not assume any fee-paying workload for Form I-602; therefore, removing it from the fee schedule does not affect other fees. DHS continues to not charge a fee for Form I-602.

DHS also inadvertently did not include provisions for what would occur if a benefit request was approved before USCIS became aware that the fee payment was dishonored by the remitter institution. See proposed 8 CFR 103.2(a)(7)(ii), 103.7(a)(2); 81 FR 26936–26937. Specifically, DHS proposed to remove the requirement that USCIS

provide notification to the requester whenever an instrument used to pay the filing fee is returned as not payable, with 14 days to cure the deficiency. However, DHS neglected to propose the necessary conforming change to 8 CFR 205.1(a)(2), which provides that the approval of a petition or self-petition made under INA section 204 is automatically revoked if the filing fee and associated service charge are not paid within 14 days of the notification to the remitter that his or her check or other financial instrument used to pay the filing fee has been returned as not payable. The latter provision must be revised to conform it to the proposed change described previously. That oversight has been corrected in this final rule. New 8 CFR 103.7(a)(2)(iii), 205.1(a). This change is discussed in more detail in the response to the public comments regarding dishonored payments.

#### C. Summary of Final Fees

The current USCIS fee schedule and the fees adopted in this final rule are summarized in Table 1. DHS bases the final fees on the FY 2016/2017 estimated cost baseline as outlined in the NPRM. The table excludes fees established and required by statute and those that DHS cannot adjust.

TABLE 1—NON-STATUTORY IEFA IMMIGRATION BENEFIT REQUEST FEES

Form No. <sup>5</sup>	Title	Current fee	Final fee
G-1041	Genealogy Index Search Request	\$20	\$65
G-1041A	Genealogy Records Request (Copy from Microfilm)	20	65
G-1041A	Genealogy Records Request (Copy from Textual Record)	35	65
I-90	Application to Replace Permanent Resident Card	365	455
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.	330	445
I-129/129CW	Petition for a Nonimmigrant Worker	325	460
I-129F	Petition for Alien Fiancé(e)	340	535
I-130	Petition for Alien Relative	420	535
I-131 <sup>6</sup> /I-131A <sup>7</sup>	Application for Travel Document	360	575
I-140	Immigrant Petition for Alien Worker	580	700
I-191	Application for Advance Permission to Return to Unrelinquished Domicile.	585	930
I-192	Application for Advance Permission to Enter as Nonimmigrant	585	<sup>a</sup> 585/930
I-193	Application for Waiver of Passport and/or Visa	585	585
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal.	585	930
I-290B	Notice of Appeal or Motion	630	675
I-360	Petition for Amerasian Widow(er) or Special Immigrant	405	435
I-485	Application to Register Permanent Residence or Adjust Status	985	1,140
I-485	Application to Register Permanent Residence or Adjust Status (certain applicants under the age of 14 years).	635	750
I-526	Immigrant Petition by Alien Entrepreneur	1,500	3,675
I-539	Application to Extend/Change Nonimmigrant Status	290	370
I-600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Petition Processing of Orphan Petition.	720	775
I-800/800A	Petition to Classify Convention Adoptee as an Immediate Relative/Application for Determination of Suitability to Adopt a Child from a Convention Country.	720	775
I-601	Application for Waiver of Ground of Excludability	585	930
I-601A	Application for Provisional Unlawful Presence Waiver	585	630

TABLE 1—NON-STATUTORY IEFA IMMIGRATION BENEFIT REQUEST FEES—Continued

Form No. <sup>5</sup>	Title	Current fee	Final fee
I-612	Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended).	585	930
I-687	Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act.	1,130	1,130
I-690	Application for Waiver of Grounds of Inadmissibility	200	715
I-694	Notice of Appeal of Decision	755	890
I-698	Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA).	1,020	1,670
I-751	Petition to Remove Conditions on Residence	505	595
I-765	Application for Employment Authorization	380	410
I-800A Supp. 3	Request for Action on Approved Form I-800A	360	385
I-817	Application for Family Unity Benefits	435	600
I-824	Application for Action on an Approved Application or Petition	405	465
I-829	Petition by Entrepreneur to Remove Conditions	3,750	3,750
I-910	Application for Civil Surgeon Designation	615	785
I-924 <sup>9</sup>	Application for Regional Center Designation Under the Immigrant Investor Program.	6,230	17,795
I-924A	Annual Certification of Regional Center	0	3,035
I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	215	230
N-300	Application to File Declaration of Intention	250	270
N-336	Request for Hearing on a Decision in Naturalization Proceedings	650	700
N-400	Application for Naturalization	595	640
N-470	Application to Preserve Residence for Naturalization Purposes	330	355
N-565	Application for Replacement Naturalization/Citizenship Document	345	555
N-600/N-600K	Application for Certification of Citizenship/Application for Citizenship and Issuance of Certificate under Section 322.	<sup>10</sup> 600/550	1,170
	USCIS Immigrant Fee <sup>11</sup>	165	220
	Biometric Services Fee	85	85

<sup>5</sup> Form, when used in connection with a benefit or other request to be filed with DHS to request an immigration benefit, means a device for the collection of information in a standard format that may be submitted in a paper format or an electronic format as prescribed by USCIS on its official Internet Web site. The term "Form" followed by an immigration form number includes an approved electronic equivalent of such form as made available by USCIS on its official Internet Web site. See 8 CFR 1.2 and 299.1. Therefore, the word "form" is used in this final rule in both the specific and general sense.

<sup>6</sup> As described in the NPRM, the United States' obligations under the 1967 Protocol relating to the Status of Refugees (incorporating by reference Article 28 of the 1951 U.N. Convention relating to the Status of Refugees) guide the Application for Travel Document fees for a Refugee Travel Document. The USCIS ABC model does not calculate these fees. See 8 CFR 103.7(b)(1)(i)(M)(2) and (3).

<sup>7</sup> On August 31, OMB approved Form I-131A, Application for Travel Document (Carrier Documentation). The new form will be used by Lawful Permanent Residents (LPRs) who are temporarily overseas and have lost their Permanent Resident Card or Reentry Permit, to apply for a Travel Document. See <https://www.uscis.gov/i-131a>.

<sup>8</sup> The fee for Form I-192 will remain \$585 when filed with and processed by CBP.

<sup>9</sup> DHS removed the word "Pilot" from the form title. See new 8 CFR 103.7(b)(1)(i)(WW).

<sup>10</sup> The current fee for applications filed on behalf of a biological child is \$600. The fee for an adopted child is \$550. There is no fee for any application filed by a member or veteran of any branch of the U.S. Armed Forces.

<sup>11</sup> DHS changed the fee name to "USCIS Immigrant Fee." See new 8 CFR 103.7(b)(1)(i)(D).

#### IV. Public Comments on the Proposed Rule

DHS provided a 60-day comment period following publication of the NPRM; 436 comments were posted to [regulations.gov](http://regulations.gov). Although 475 comments were received on the docket, 38 were not posted and one was withdrawn. As noted in the proposed rule, DHS may withhold information provided in comments from public viewing if it determines that such information is offensive or may affect the privacy of an individual. 81 FR 26905.

##### A. General Comments

DHS received comments from a broad spectrum of individuals and organizations, including refugee and immigrant service and advocacy organizations, public policy groups, members of Congress, and private citizens. Some commenters wrote that they supported the fee changes while others were critical of them. Many commenters wrote that they were generally unresponsive of the weighted average increase; others commented on specific form types. Some commenters wrote about alternative methods to reduce costs and inefficiencies.

DHS also received several comments on subjects that are not related to the proposed fees and are outside the scope of the NPRM. With limited exception as explicitly stated below, DHS has not

separately summarized or responded to these comments.

##### B. Relative Amount of Fees

Most commenters stated opposition to the fee increases. Some commenters suggested that fee increases would reduce the number of people seeking immigration benefits. Some commenters stated that the proposed fees did not reflect the actual adjudicative workload of particular benefit types. Several commenters stated that proposed fees were too low, but the clear majority stated that the fees were too high.

Although DHS summarizes and responds to these concerns in more detail below, it emphasizes that, as an initial matter and as articulated in the NPRM, DHS needs to increase USCIS fees by a weighted average increase of 21 percent to offset growing costs and continue to provide an adequate level of service, as provided by section 286(m) of the INA, 8 U.S.C. 1356(m), which authorizes USCIS to "ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge." As reflected in this provision, some USCIS fees must exceed the cost of adjudicating the respective benefit types to cover those benefits provided without charge, such as refugee benefits, asylum benefits, and other fee-exempt, fee-waived or fee-reduced workloads. Furthermore, as explained in the NPRM,

“DHS may reasonably adjust fees based on value judgements and public policy reasons where a rational basis for the methodology is propounded in the rulemaking.” See 81 FR 26907.

An example is the policy decision to include a fee exemption for individuals who are victims of a severe form of human trafficking and who assist law enforcement in the investigation or prosecution of those acts of trafficking (who may qualify for T visas), and individuals who are victims of certain crimes and are being helpful to the investigation or prosecution of those crimes (who may qualify for U visas). The cost of processing those fee-exempt visas must be recovered through fees charged for other benefit requests. See INA secs. 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). Such a decision would inevitably cause an unsustainable reduction in fee revenue unless DHS spread the cost of the fee exemption among other fee-paying applicants and petitioners. Accordingly, consistent with section 286(m) of the INA, 8 U.S.C. 1356(m), DHS sets fees for other fee-paying applicants and petitioners at a level sufficient to recover the full costs of providing all such services.

Similarly, a decision to allow fee waivers for a particular benefit request, or a decision to allow a reduced fee, will also have an impact on other fee-paying applicants and petitioners. For instance, when USCIS determines to hold a fee to a smaller percentage increase than the overall methodology suggests (in this rule, DHS uses an 8 percent weighted average increase for those benefits that it determines should be held to a smaller fee increase<sup>12</sup>), there are cascading effects on other fee-paying applicants and petitioners. These fee-reduced immigration benefit requests may not recover the full cost of their associated workloads or the full cost of their respective fee waivers. The portion of costs that is not recovered is reallocated to other immigration benefit requests.

Correspondingly, when DHS sets a fee for a given benefit request at the level

<sup>12</sup> In this rule, USCIS applies this increase to a number of benefit types, including the Application for Naturalization, Form N-400; Application for Employment Authorization, Form I-765; and adoption-related applications, Forms I-600/600A/800/800A. This smaller increase, which in this rulemaking amounts to 8 percent, is the percentage difference between the current fees and the model output before reallocation, weighted by fee-paying volume. See 81 FR 26915.

suggested by the USCIS fee-setting methodology, without further adjustment, the associated immigration benefit request absorbs a portion of the additional costs associated with the immigration benefit requests that are held down to the 8 percent weighted average increase. These fees recover the full cost of their respective fee waivers, plus some of the fee waiver costs for immigration benefit requests that are held down to the 8 percent weighted average increase.<sup>13</sup> These fees also recover a greater portion of the cost of fee-exempt services.

#### 1. Proposed Fees Are Too High

The largest number of commenters wrote in opposition to the overall increase in fees. Several commenters expressed concern over specific populations (such as families or potential adoptive families) that may be particularly affected by the fee increases. Some commenters believed that a steep increase in fees would result in increased illegal immigration, particularly for individuals who may not be able to afford increased costs associated with existing legal avenues. Some commenters suggested that the increase in fees could discourage certain individuals from attempting to work or ultimately seeking lawful permanent residence resident (LPR) status in the country.

As an initial matter, DHS notes that as stated in the NPRM, it attributes 17 percent of the 21 percent weighted average fee increase to the reinstatement of the surcharge needed to sustain current operating levels of RAIO, the SAVE program, and the Office of Citizenship, as well as to account for a projected loss in fee revenue resulting from a significant increase in the number of fee waivers currently received (and which is expected to continue throughout FY 2016/2017). See 81 FR 26911. The remaining 4 percent is needed to recover the cost of sustaining current operating levels and to allow for limited, strategic investments necessary to ensure the agency's information technology infrastructure is strengthened. Such strengthening is needed to protect against potential cyber intrusions and to build the disaster recovery and back-up capabilities required to effectively deliver on the USCIS mission. See 81 FR 26910. For comparison, the inflation

<sup>13</sup> See Appendix Table 4, Cost Reallocation column in the supporting documentation. These figures represent all additional costs, including the cost of forms that are held to the 8 percent weighted average increase based on policy decisions, that USCIS applies to fees to ensure full cost recovery.

from July 2010 to July 2016 was 9.5 percent.<sup>14</sup>

DHS notes that fees do not merely cover the cost of adjudication time. The fees also cover the resources required for intake of immigration benefit requests, customer support, fraud detection, background checks, and administrative requirements.<sup>15</sup> DHS also reiterates that any further fee adjustments would be zero-sum. Given the need to recover the full cost of the services provided, a decision reducing the fee burden on one population of beneficiaries will ultimately increase the burden on others.

#### a. Barrier to Family Reunification

A number of commenters stated that an increase in fees could potentially prevent family reunification for certain U.S. citizens and lawful permanent residents (LPRs), especially for individuals seeking to reunite with several family members. USCIS understands the importance of facilitating family reunification, as well as the advantages that LPR status and citizenship provide. DHS acknowledges that certain individuals may need to file multiple requests, and thus pay multiple fees, depending on the number of family members they seek to sponsor. Nonetheless, USCIS filing fees are necessary to provide the resources required to do the work associated with such filings. When fees do not fully recover costs, USCIS is unable to maintain sufficient capacity to process requests. Inadequate fees may cause significant delays in immigration request processing, which can result in the burden of longer separation from family members.

DHS recognizes that fees impose a burden on fee-paying applicants and beneficiaries, and it takes steps to mitigate that burden as appropriate. Specifically, after USCIS applies its standard fee-setting methodology to identify the Activity-Based Cost (ABC)<sup>16</sup> model output for each benefit

<sup>14</sup> The semiannual average consumer price index for all urban consumers (CPI-U) was 217.5 in July 2010 and 238.8 in July 2016. The change in the Index over 9 years was 21.3 or 9.5 percent. See U.S. Department of Labor, Bureau of Labor Statistics, All Urban Consumers (CPI-U) Semiannual Average tables, available at [http://www.bls.gov/cpi/cpi\\_dr.htm](http://www.bls.gov/cpi/cpi_dr.htm). DHS has not recently adjusted IEFA fees by CPI-U inflation, but provides this figure as a point of comparison.

<sup>15</sup> See Appendix Table 5: Activity Unit Costs by Immigration Benefit Request After Cost Reallocation of the supporting documentation. Pages 19–20 define the activities in the appendix table.

<sup>16</sup> USCIS uses the ABC model to determine the full cost of processing immigration benefit requests and biometric services. This is the same methodology used in the last four fee reviews and the basis for the current fee structure. The ABC

request, USCIS evaluates the model output and determines whether it should be adjusted. DHS is mindful that departures from the standard USCIS fee-setting methodology result in lower fees for some and higher fees for others. DHS discusses these adjustments in more detail in the remainder of this preamble, including by reference to certain family-based benefit requests, such as the Petition for Alien Relative, Form I-130.

#### b. Impact on Low-Income Individuals; Low Volume Reallocation

Several commenters stated that the proposed rule would harm the ability of low-income applicants and petitioners to afford USCIS services. Some of these commenters suggested that the proposed overall fee increase would result in a reduction in overall filings from low-income applicants and petitioners. Commenters discussed the importance of maintaining an immigration system that is accessible to people at all income levels.

DHS is aware of the potential impact of fee increases on low-income individuals and is sympathetic to these concerns. As a result, DHS not only offers fee waivers, but also uses its fee-setting discretion to adjust certain immigration benefit request fees that USCIS believes may be overly burdensome on applicants, petitioners, and requestors if set at the recommended model output levels. As discussed in the proposed rule and supporting documentation, and consistent with past practice, USCIS proposed to limit fee adjustments for certain benefit requests to a set percentage increase above current fees. USCIS determined this figure by calculating the average percentage fee increase across all model outputs before cost reallocation. In this rule, that calculated figure is 8 percent. This methodology is referred to as Low Volume Reallocation.

The use of Low Volume Reallocation frequently results in lower fees for certain low-income applicants and petitioners, but always results in higher fees for other benefit requests. This is because USCIS relies almost completely on fee revenue to support its operations. DHS is therefore mindful to use low volume reallocation only where compelling circumstances counsel in

model is a business management tool that assigns resource costs to operational activities and then to products and/or services. These assignments provide an accurate cost assessment of each major step towards producing the individual outputs of an organization. For additional information on the ABC model, see pages 17–22 of the supporting documentation.

favor of shifting costs from one benefit request to others.

Nonetheless, as proposed, in this final rule, DHS will continue applying Low Volume Reallocation from the 2010 final rule to the following forms:

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

Also as proposed, DHS will apply the same calculated 8 percent weighted average increase to the following benefit types:

- Application for Provisional Unlawful Presence Waiver, Form I-601A
- Application for Employment Authorization, Form I-765
- Request for Action on Approved Form I-800A, Form I-800A Supplement 3

DHS believes that the use of Low Volume Reallocation will mitigate the potential burden of this final rule on certain low-income applicants and petitioners.<sup>17</sup> DHS intends to continue assessing the affordability of its fees in future fee reviews. This may result in continuing Low Volume Reallocation, otherwise reallocating certain costs, and identifying cost savings. For purposes of this final rule, however, DHS has not materially changed the proposed rule to address the commenters' stated concerns with the proposed overall fee increase.

#### 2. Comments on Specific Fees and Adjustments

While many commenters indicated that they were opposed to the overall increase in fees, some comments

<sup>17</sup> DHS has not estimated the overall effect that this final rule will have on filing volume from low-income applicants. USCIS may consider exploring options to collect and analyze this data in the future.

focused on increases to particular forms or to specific groups of applicants, petitioners, or requestors. Those comments are addressed below.<sup>18</sup>

#### a. Application for Certificate of Citizenship, Forms N-600/600K

In the NPRM, DHS proposed fee increases for the Application for Certificate of Citizenship, Form N-600, and the Application for Citizenship and Issuance of Certificate Under Section 322, Form N-600K. Under the proposed rule, the current \$600 fee for applications filed on behalf of biological children would be increased by \$570, or 95 percent, to \$1,170. The proposed rule also would eliminate the current \$50 discount on applications filed on behalf of adopted children, previously codified at 8 CFR 103.7(b)(1)(i)(AAA), thereby effectively increasing fees for such applications by \$620, or 103 percent. *Id.*

A number of commenters stated that DHS should reconsider the proposed fee increases. Some commenters requested additional information to explain the increases. Certain commenters who submitted comments through a form letter campaign stated that the proposed increases were troubling considering that USCIS had not reported a significant increase in application volume or processing times.

Some commenters stated that the proposed fee increase would result in a significant additional burden for potential adoptive families, who already invest a great deal of time and money in the adoption process. Some stated that Forms N-600 and N-600K should be free or discounted for adopted children, or alternatively maintained at the current fee. A commenter stated that the Department of State (DOS) processes derivative citizens' requests for passports in substantially the same manner that USCIS processes Forms N-600 and N-600K, yet DOS only charges \$120 for a passport book for a child younger than 16 years of age. Other commenters stated that many adopted children automatically derive U.S. citizenship from their parents when they enter the United States, while other children derive U.S. citizenship when their adoptions are completed.<sup>19</sup> Several commenters noted that a passport may be an effective alternative to the certificate for naturalization.

<sup>18</sup> DHS addresses the comments on specific immigration benefit requests in approximate order of the number of commenters who submitted comments on that subject.

<sup>19</sup> See U.S. Citizenship and Immigration Services, Before Your Child Immigrates to the United States (11/18/2014), available at <https://www.uscis.gov/adoption/your-child-immigrates-united-states>.

As noted previously, USCIS based the proposed fee increase for the Forms N-600 and N-600K on the results of its comprehensive biennial fee review, a summary of which was available for comment in the docket accompanying the proposed rule. The biennial fee review helps ensure that fees for USCIS services cover the full cost of processing immigration benefits. In the absence of full cost recovery, USCIS would be unable to sustain an adequate level of service, let alone invest in program improvements.

DHS recognizes that fees impose a burden on fee-paying applicants and beneficiaries, and takes steps to mitigate that burden as appropriate. Specifically, after DHS applies the standard USCIS methodology to identify the model output for each benefit request, DHS evaluates the model output and determines whether it should be adjusted. In the NPRM, DHS proposed to limit a small number of fees to an 8 percent weighted average increase for one or more of the following three reasons: (1) DHS determined that the combined effect of cost, fee-paying volume, and methodology changes since the previous fee rule would otherwise place an inordinate fee burden on individuals requesting these types of benefits; (2) DHS determined that an adjustment was necessary to promote citizenship and immigrant integration or other policies; or (3) DHS lacked data on which to base an appropriate fee. *See* 81 FR 26915. For example, DHS proposed to limit to the 8 percent weighted average increase to the Application for Naturalization and the adoption petition and application fees (explained in the sections of this preamble that discuss those requests).

DHS is mindful that departures from the standard USCIS fee methodology result in lower fees for some and higher fees for others. DHS is careful to use its fee setting discretion in a way that does not result in unnecessary or unjustifiable burdens for fee-paying applicants and petitioners. Accordingly, the proposed rule (like past fee rules) would have set most fees above cost, in adherence to the fee-setting methodology. The fee for Forms N-600 and N-600K is one of those fees.

Setting aside the effect of cost reallocation,<sup>20</sup> DHS attributes the

<sup>20</sup> At least one commenter indicated that the RAI0 surcharge seemed to be a large contributor to the increase in the proposed fee for the Form N-600. The commenter suggested that the RAI0 surcharge should be redistributed to all other forms to reduce the financial burden of the proposed fee increase on adoptive parents. As outlined in the NPRM, Forms N-600 and 600K are not the only forms that recover the cost of RAI0, the SAVE

proposed increase to the fee for Forms N-600 and N-600K to a significant increase in the number of fee waivers granted for such forms.<sup>21</sup> In the 2010 final rule, DHS assumed that every applicant would pay the fee for Forms N-600 and N-600K. However, the fee-paying volume estimate for Forms N-600 and N-600K decreased from 100 percent in FY 2010/2011 to 67 percent in FY 2016/2017 due to applicants receiving fee waivers. The standard fee-setting methodology provides that the costs of waived or exempted fees are to be recovered from fee-paying applicants submitting the same form(s) (in this case, applicants filing Forms N-600 and N-600K).<sup>22</sup> *See* 81 FR 26922. The previous fee for Form N-600 was set under the assumption that 100 percent of filers would pay the fee; as the NPRM explained, however, a third of Form N-600 filers are receiving fee waivers. These waivers account for a large portion of the costs that must now be addressed through the proposed fee increase. In short, the Form N-600 fee in the proposed rule is the result of consistent application of USCIS's fee-setting methodology. No adjustment was made to the fee calculated under the methodology based on other policy considerations.

DHS is setting the fees for several other forms at a level that is less than their projected cost. If DHS similarly limited the fee for an Application for a Certificate of Citizenship, however, it would need to raise other fees to recover these expenses. USCIS estimates that each such instance would increase other fees between \$5 and \$210, with an average increase of \$21.

With respect to comments about the potential impact of the proposed fee increase on adoptive families in particular, DHS notes that Forms N-600 and N-600K are not primarily used by adoptive families. USCIS estimates that adopted children represent less than 10 percent of the workload related to Applications for Certificate of Citizenship.<sup>23</sup> Although DHS could have established a separate fee for adopted children, the cost of such a departure from the standard fee-setting

program, and the Office of Citizenship. USCIS currently distributes these costs to all form types not set below projected cost. *See* 81 FR 26915.

<sup>21</sup> *See* Appendix Table 4 of the supporting documentation.

<sup>22</sup> When DHS holds a fee below cost, the costs that are not covered, including fee waivers, must be paid by other fee paying applicants. Specifically, other immigration benefits whose fees are not held down recover the additional cost.

<sup>23</sup> Based on FY 2015 actual revenue data, less than 10 percent of fee-paying applicants for Forms N-600 or N-600K paid the lower fee for adopted children.

methodology would be borne by other fee-paying applicants and petitioners.<sup>24</sup> Similarly, if DHS set the fee for this benefit request at an equivalent level to the DOS passport fee, DHS would be required to substantially increase other fees to ensure full-cost recovery. DHS agrees with commenters that in many cases, a passport will serve the same purpose as a certificate of citizenship, and for a lower cost to the applicant. Finally, DHS notes that adjudicating a Form N-600 for an adopted child is similar in workload and difficulty to the adjudication of an Application for Certificate of Citizenship for a biological child. There would be no cost-related basis for establishing a separate fee for adopted children.

For the reasons stated above, DHS has not revised the proposed fee in this final rule. Under this final rule, the fee for the Application for Certificate of Citizenship, Form N-600, and the Application for Citizenship and Issuance of Certificate Under Section 322, Form N-600K, will be \$1,170.

#### b. Adoption, Forms I-600/600A/800/800A

In the NPRM, DHS proposed to increase the fee for the (1) Petition to Classify Orphan as an Immediate Relative, Form I-600; (2) Application for Advance Processing of an Orphan Petition, Form I-600A; (3) Petition to Classify Convention Adoptee as an Immediate Relative, Form I-800; and (4) Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I-800A. The proposed increase would change the fee for each of these forms from \$720 to \$775. *See* proposed 8 CFR 103.7(b)(1)(i)(Y), (Z), (JJ)(2), (KK); 81 FR 26939. DHS proposed to hold the increase for these benefit types (among others) to an 8 percent increase because the combined effect of cost, fee-paying volume, and methodology changes since the last fee rule would otherwise place an inordinate fee burden on individuals

<sup>24</sup> DHS will continue its policy of reducing fee burdens on adoptive families in other ways. For instance, DHS will continue to allow fee waivers for the Form N-600. DHS will also continue to cover costs attributable to the adjudication of adoption petitions and applications (Forms I-600/600A/800/800A) through the fees collected from other requests. This policy is described in the following section on "Adoption." Note that in the NPRM, the row for Forms I-600/600A/800/800A was labeled as "orphan petitions." The term "orphan" only applies to Forms I-600 and Form I-600A. The row includes data for all of the adoption forms. Therefore, DHS changed the label for Forms I-600/600A/800/800A from "orphan petitions" to "adoption petitions and applications" in the final rule and in several tables within the supporting documentation. The changes only affect the labels for the rows and do not represent a change in the data or calculations.

requesting these types of benefits. For example, if DHS did not maintain the proposed fee for the Form I-600, this benefit request would have a fee of at least \$2,258. DHS believes it would be contrary to the public interest to impose a fee of this amount on an estimated 15,000 potential adoptive parents each year.

Some commenters wrote in opposition to the proposed fee increases associated with intercountry adoptions or stated that DHS should reconsider these fee increases. Commenters wrote that all adoption-related fees should remain at the current level, be lowered, or be waived when adopting children from foster care. Some commenters stated that these fee increases would lead to decreased intercountry adoptions. At least one commenter wrote that adoptive parents were specifically targeted by the proposed fee increases in the NPRM.

DHS greatly values its role in intercountry adoptions and places high priority on the accurate and timely processing of immigration applications and petitions that enable U.S. families to provide permanent homes for adopted children from around the world. It also recognizes that the financial costs, both foreign and domestic, involved in intercountry adoptions can have significant impacts on these families. DHS has a history of modifying policies to ease burdens associated with international adoption. Prior to 2007, USCIS required prospective adoptive parents who had not found a suitable child for adoption within 18 months after approval of their Application for Advance Processing of Orphan Petition, Form I-600, to submit a fee with their request to extend their approval. Since 2007, USCIS has permitted adoptive parents to request one extension of their Form I-600 approval without charge, including the biometric fee. *See* 72 FR 29864; 8 CFR 103.7(b)(1)(i)(Z). Finally, DHS does not charge an additional filing fee for an adoption petition filed on behalf of the first beneficiary child or birth siblings. *See* 8 CFR 103.7(b)(1)(i)(Z) and 103.7(b)(1)(i)(JJ)(1).

DHS also has a history of setting adoption-related fees lower than the amount suggested by the fee-setting methodology. In the 2010 fee rule, the calculated fee for adoption petitions and applications (Forms I-600/I-600A and I-800/I-800A) was \$1,455, based on projected costs. *See* 75 FR 33461; previous 8 CFR 103.7(b)(1)(i)(Y), (Z), (II), (JJ). Instead of using the model output, DHS increased the fee by only \$50, to \$720. *See* 75 FR 58972. As noted previously, in the FY 2016/2017 fee

review, the model output for the Form I-600 was \$2,258.<sup>25</sup> Nonetheless, DHS proposed setting fees for adoption petitions at \$775. *See* proposed 8 CFR 103.7(b)(1)(i)(Y), (Z), (JJ), (2), (KK). The \$1,483 difference between the model output and the final fee will be recovered from other applications, petitions, and requests. Shifting the adoption petition and application costs to other fees is consistent with past DHS efforts and is in the public interest to support parents of children adopted abroad.

DHS recognizes that fees impose a burden on individuals seeking immigration benefits, and it takes steps to mitigate that burden as appropriate. At the same time, DHS must recover the full costs of the services that USCIS provides, or else risk reductions in service quality, including potential delays in processing. In this case, DHS proposed to apply the reduced (8 percent) fee increase to these benefit requests, for the reasons stated previously and consistent with DHS's practice of holding a number of benefit requests to this reduced fee increase. DHS was mindful that although this departure from the standard fee-setting methodology results in lower fees for adoptive families, it also results in higher fees for others. 81 FR 26915. Any further departure would only heighten the effect on the rest of the fee schedule, and would not be consistent with DHS's overall fee-setting methodology. DHS is therefore finalizing the fee as proposed.

#### c. Petition for a Nonimmigrant Worker, Form I-129

In the NPRM, DHS proposed to increase the fee for the Petition for a Nonimmigrant Worker, Form I-129, from \$325 to \$460. *See* proposed 8 CFR 103.7(b)(1)(i)(I); 81 FR 26937. The proposed fee increase was the result of the application of the standard USCIS fee-setting methodology to this benefit request.

Several commenters objected to the proposed fee increase. Most of the comments on this subject were from agricultural groups or farmers who expressed that the new fee would be too expensive for employers that employ H-2A temporary agricultural workers for seasonal labor. Other commenters objected to the impact that the proposed fee increase would have on performers in the arts. Commenters representing religious organizations also opposed the increase, stating that it would pose a

burden to religious workers in small communities.

Others submitted comments about processing delays. Some commenters noted that delays in processing Forms I-129 affect the incomes of farmers and performers. Some commenters stated that DHS's proposal to increase the Form I-129 fee was undermined by USCIS' failure to process O and P visa requests within the 14 days allotted by statute for certain petitions. *See* INA sec. 214(c)(6)(D), 8 U.S.C.1184(c)(6)(D). Commenters stated that any fee increase should be accompanied by improvements in petition processing and policies, particularly as related to H-1B, L-1, O and P visas.<sup>26</sup>

As noted previously, DHS is authorized to set fees at a level that ensures recovery of the full costs of providing immigration adjudication and naturalization services. Because USCIS relies almost entirely on fee revenue, in the absence of a fee schedule that ensures full cost recovery, USCIS would be unable to sustain an adequate level of service, let alone invest in program improvements. Full cost recovery means not only that fee-paying applicants and petitioners must pay their proportionate share of costs, but also that at least some fee-paying applicants and petitioners must pay a share of the immigration adjudication and naturalization services that DHS provides for vulnerable populations on a fee-exempt, fee-reduced, or fee-waived basis. DHS is therefore mindful to adhere to the standard USCIS fee-setting methodology as often as possible, and to avoid overuse of DHS's discretion to eliminate or reduce fees for special groups of beneficiaries.

The proposed fee for the Form I-129 resulted from application of the standard USCIS fee-setting methodology, because DHS did not find a compelling reason to shift the burden of the Form I-129 fee increase onto other applicants. Following consideration of the public comments, DHS retains the fee level expressed in the proposed rule. It is possible that in a limited number of cases a reduced fee would be more appropriate, but in the interest of fairness to all applicants and petitioners, as well as in the interest of the administration, this final rule sets a single fee for the Form I-129 at \$460, as proposed.<sup>27</sup>

<sup>26</sup> For additional information, see the section entitled, Improve Service and Reduce Inefficiencies.

<sup>27</sup> The Regulatory Flexibility Act discussion in the Statutory and Regulatory Requirements section addresses comments regarding the effect of the rule on small entities. As for processing delays, DHS has further addressed the operational and efficiency

<sup>25</sup> Model output is reflected and further explained in Appendix Table 4: Proposed Fees by Immigration Benefit Request in the supporting documentation.

d. Application To Register Permanent Residence or Adjust Status, Form I-485, and Interim Benefits

In the NPRM, DHS proposed to continue offering travel document and employment authorization renewals free of charge during the pendency of an Application to Register Permanent Residence or Adjust Status, Form I-485, so long as the applicant filed the application with the appropriate fee on or after July 30, 2007. *See* 8 CFR 103.7(b)(1)(i)(M) (HH); proposed 8 CFR 103.7(b)(1)(i)(M), (II); 81 FR 26937. The associated forms are the Application for Travel Document, Form I-131, and Application for Employment Authorization, Form I-765. USCIS refers to travel document and employment authorization renewals as “interim benefits” when they are associated with a pending Form I-485. *See* 81 FR 26918.

DHS received several comments from individuals who applied to adjust status before July 30, 2007, and who thus do not qualify for free interim benefits. These commenters stated that their Form I-485 applications have been pending since before July 30, 2007, and that because of the annual numerical visa limits established by Congress, they would likely need to request additional travel document and employment authorization renewals in the future.<sup>28</sup> Some commenters stated that it is unfair to charge applicants for interim benefits while they are waiting for visas to become available. Another commenter noted that USCIS has recently started requiring refugees and asylees to pay the required fee associated with the Application for Employment Authorization when concurrently filed with Form I-485. The commenter stated that USCIS had not previously required payment of a fee for such an application.

USCIS acknowledges that under current regulations and as proposed, employment-based Form I-485 applicants who filed before July 30, 2007, must continue to pay fees associated with interim benefits. Before the USCIS 2007 fee rule, DHS did not provide free interim benefits, and the Form I-485 fee was calculated without considering the potential costs of providing such benefits. *See* 75 FR 58968, 58982.<sup>29</sup> The 2007 final rule

comments in the section of this preamble entitled, “Improve Service and Reduce Inefficiencies.”

<sup>28</sup> The U.S. Department of State (DOS) manages the allocation of visa numbers and Congress establishes the annual visa numerical limits.

<sup>29</sup> As explained in the 2007 proposed rule, the decision to provide free interim benefits is intended to restructure certain fee arrangements that some perceived as providing disincentives for USCIS to improve efficiency in processing. *See* 72 FR 4894.

increased the Form I-485 fee from \$325 to \$905, or 178 percent, mostly due to the decision to permit interim benefits without additional fees. 72 FR 29861. Because applicants for adjustment of status who filed before July 30, 2007, paid the lesser amount of \$325 when they filed their Form I-485, and because a decision to provide free interim benefits to this population would shift additional costs to other fee-paying applicants and petitioners, DHS has decided to not provide free interim benefits for those pending applicants.

USCIS has taken other actions to alleviate the filing burden and fees on those individuals whose applications are still pending due to the lack of available visas. For example, DHS now provides Employment Authorization Documents (EADs) with 2-year validity periods, instead of previously issued 1-year periods, which effectively reduces the fee per year.<sup>30</sup> In addition, USCIS adopted a policy in December 2010 under which an applicant with a pending Form I-485 that was filed before August 18, 2007, may receive a combination advance parole document and EAD with a 2-year validity period. *See* Policy Memorandum, *Issuance of Advance Parole Employment Authorization Document* (Dec. 21, 2010).<sup>31</sup> These longer approval periods have alleviated some of the burden described by the commenters.

With regard to the comment that USCIS is requiring refugees and asylees to pay for Form I-765 when filing it concurrently with Form I-485, current regulations provide that Form I-765 has no fee if filed in conjunction with a pending or concurrently filed Form I-485 that was filed with a fee on or after July 30, 2007. *See* 8 CFR 103.7(b)(1)(i)(M)(4). There is no fee for a refugee who is filing Form I-485. *See* 8 CFR 103.7(b)(1)(i)(U)(3). Therefore, although USCIS has waived the Form I-765 fee for the first such application filed by a refugee, a Form I-765 filed by a refugee to renew his or her EAD

By bundling the Form I-485 and interim benefit costs, USCIS ensured that an applicant for adjustment of status will pay a single fee and will not pay separate fees for interim benefits, no matter how long the case remains pending. As a result, if USCIS is unable to process the base application within the established processing goals, an applicant who needs to travel or extend his or her employment authorization is not financially disadvantaged by the delay.

<sup>30</sup> USCIS may, in its discretion, determine the validity period assigned to any document issued evidencing an individual's authorization to work in the United States. 8 CFR 274a.12(b).

<sup>31</sup> *See* <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/April/issuance-advance-parole.pdf>.

requires a fee.<sup>32</sup> To renew interim benefits, a refugee who is filing a Form I-765 with Form I-485 must pay the Form I-765 fee or submit a Request for Fee Waiver, Form I-912. Similarly, if the refugee's employment authorization document expires before the Form I-485 is approved, he or she must file Form I-765 with a fee or request another fee waiver. Contrary to the commenter's statement, there has been no change in practice on this point.

Like almost all other applicants for adjustment of status, asylees are generally required to pay a fee for Form I-485; if they pay this fee, they receive free interim benefits as long as their Form I-485 is pending with USCIS. Asylees may request that both their Form I-485 and Form I-765 fees be waived. *See* 8 CFR 103.7(c)(3)(viii) & (c)(4)(iii).<sup>33</sup> However, if USCIS waives the fee for the initial Form I-485, subsequent Form I-765 filings (for instance, to renew or replace a lost or expired EAD) require a fee or a new fee waiver request.<sup>34</sup> Because fee waivers are available, because refugees and asylees are usually not subject to lengthy waiting periods associated with visa availability, and because of the importance of ensuring full-cost recovery, DHS did not find a compelling reason to shift fee burdens onto other fee-paying applicants and petitioners. Accordingly, DHS has not revised this policy in this final rule.

Finally, DHS also proposed to increase the separate Form I-485 fee that applies to a child under the age of 14 years who files a Form I-485 concurrently with the application of a parent seeking classification as an immediate relative of a U.S. citizen, a family-sponsored preference immigrant, or a family member accompanying or following to join a spouse or parent. DHS proposed a fee increase from \$635 to \$750, but did not propose any substantive changes to eligibility for the reduced fee. *See* 81 FR 26919.<sup>35</sup> USCIS received at least one comment requesting that the proposed \$750 discounted fee apply to all children under the age of 14 at any time, regardless of whether their Form I-485

<sup>32</sup> *See* Instructions for I-765, Application for Employment Authorization, available at <https://www.uscis.gov/sites/default/files/files/form-i-765instr.pdf>.

<sup>33</sup> Both fee waivers may be requested on one Request for Fee Waiver. *See* Instructions for Request for Fee Waiver at <https://www.uscis.gov/sites/default/files/files/form/i-912instr.pdf>.

<sup>34</sup> An asylee in this situation, like all individuals seeking to file a Form I-765, may still apply for a fee waiver. *See* 8 CFR 103.7(c)(3)(viii).

<sup>35</sup> Under the proposed rule and in this final rule, the standard fee for a Form I-485 would increase from \$985 to \$1,140.

was filed concurrently with the application of a parent. The commenter noted that such children, like the children who are currently eligible for the reduced Form I-485 fee, cannot work in the United States.

DHS proposed that the discounted Form I-485 fee would only be available when the Form I-485 is filed concurrently with the application of a parent seeking classification as an immediate relative of a U.S. citizen, a family-sponsored preference immigrant, or a family member accompanying or following to join a spouse or parent. See proposed 8 CFR 103.7(b)(1)(i)(U)(2); 81 FR 26938. DHS has considered the commenter's suggestion, but is unable to adopt it. USCIS does not track the completion rates (*i.e.*, adjudication times) for Form I-485 based on the age of the applicant, so the agency does not have data showing a difference in the completion rate correlated to the difference in applicant age. In addition, USCIS does not know the volume of individual Form I-485 filings by children on which to base a separate fee. To set that fee as suggested by the commenter would require deviation from the fee-setting methodology and, as stated previously in this preamble, require the costs for those applications to be shifted to other benefit requests. Therefore, DHS is not expanding the child discount to all children in this final rule.

Nevertheless, while the current and proposed provisions limited the reduced fee only to children who are derivative applicants filing the Form I-485 at the same time as their parent, USCIS has in practice extended the reduced fee provision to all immigrant relative children under the age of 14 who file the Form I-485 at the same time as their parent (*i.e.*, mailed in the same envelope), regardless of whether they are filing as a derivative or a principal applicant. Therefore, to make the regulation text consistent with the form instructions and USCIS practice, this final rule sets the fee for Form I-485 accordingly. See new 8 CFR 103.7(b)(1)(i)(U)(2).

#### e. Application for Travel Document, Form I-131

In the NPRM, DHS proposed to increase the fee for the Application for Travel Document, Form I-131, from \$360 to \$575. See proposed 8 CFR 103.7(b)(1)(i)(M); 81 FR 23937. The proposed fee increase was the result of application of the standard fee-setting methodology to this benefit request.

Some commenters objected to the proposed increase. Some commenters noted that the forecasted fee-paying

volume for Form I-131 has not changed significantly from the 2010 fee rule.<sup>36</sup> Additionally, they pointed out that the Form I-131 has one of the shortest completion rates,<sup>37</sup> indicating that it is not a relatively complex adjudication.<sup>38</sup> Some of these commenters wrote that they have a pending Form I-485 that was filed before July 30, 2007, and that they are thus ineligible for free interim benefits, including being permitted to file Form I-131 without a fee while waiting for an immigrant visa to become available. See previous 8 CFR 103.2(b)(1)(i)(M)(4). Some commenters stated that they have paid the Form I-131 fee several times while waiting for a visa to become available and that applicants from countries with long visa wait times must renew their travel documents every year, sometimes for multiple family members.<sup>39</sup>

As noted previously, the proposed fee increase for the Form I-131 was the result of application of the standard USCIS fee-setting methodology to this benefit request. When DHS departs from the standard USCIS fee-setting methodology to reduce fees for one group, fees for other groups (including, in this case, the fee for Form I-131) must be increased to recover full cost.

With respect to the Form I-131 in particular, the proposed fee increase was also due in part to USCIS improving its ability to fully account for the costs of this benefit request. The FY 2016/2017 fee review included more complete data on the Application for Travel Document workload than was included in the 2010 final rule. As noted in the supporting documentation, the latest fee review considered the completion rates for work performed by

<sup>36</sup> See 75 FR 26923 for overall workload in table 4 and 75 FR 26924 for fee-paying workload in table 5.

<sup>37</sup> USCIS completion rates are the average hours per adjudication of an immigration benefit request. Adjudication hours are divided by the number of completions for the same time period to determine an average completion rate. For additional information on completion rates, see Appendix IX—Completion Rates on page 57 of the supporting documentation.

<sup>38</sup> See Appendix Table 7: Completion Rates (Projected Adjudication Hours/Completions) on page 58 of the supporting documentation.

<sup>39</sup> Some commenters stated DHS should use a validity period of 2 years instead of 1 year when extensions of Form I-131 are approved for this population. As noted earlier in this preamble, however, USCIS may grant an applicant who has a pending Form I-485 and interim benefits, such as advance parole, an employment authorization combination document with a 2-year validity period if the immigrant visa is not currently available. *Adjudicator's Field Manual* ch. 55.3, par. (a)(2). These longer approval periods have alleviated some of the burden on applicants with long-pending I-485 applications.

International Operations,<sup>40</sup> which adjudicates some Applications for Travel Documents, in the overall completion rates for Applications for Travel Documents. This information was not available for the FY 2010/2011 fee review, but it was included in this review to more accurately represent the cost of adjudicating an Application for Travel Document overseas. The proposed fee increase was due in part to USCIS including costs and time from International Operations in the model output for the Applications for Travel Documents fee. Ultimately, the proposed fee for Form I-131 represents its proportion of USCIS operating costs, as dictated by the standard USCIS fee-setting methodology. If DHS held the fee for Form I-131 below the amount suggested by the FY 2016/2017 fee-setting methodology, then the additional costs would be transferred to other immigration benefit fees.

Because DHS did not find a compelling reason to transfer a portion of the Form I-131 fee increase to other applicants, DHS retains the fee proposed in the NPRM. DHS recognizes that this decision will affect different applicants differently; some applicants may file this application just once, while others may file it multiple times. But in the interest of fairness to all applicants and petitioners, as well as in the interest of sound and efficient adjudications, DHS has decided to not create additional levels of fees for the Form I-131. This final rule sets a fee of \$575 for the Form I-131, with appropriate exceptions for refugee travel documents, as discussed below. Nevertheless, Form I-131 requests for parole filed on behalf of individuals outside the United States, including humanitarian parole, remain eligible for a fee waiver. 8 CFR 103.7(c)(3)(iv).

Finally, at least one commenter questioned why DHS did not propose a new fee for refugee travel documents. As noted in the NPRM, fees for a refugee travel document are set at a level that is consistent with U.S. obligations under Article 28 of the 1951 Convention relating to the Status of Refugees, as incorporated by reference in the 1967 Convention relating to the Status of Refugees. See 81 FR 26917. The fee must remain set at an amount that is consistent with U.S. obligations under Article 28. Therefore, fees for refugee travel documents will remain the same as DOS passport book fees.<sup>41</sup>

<sup>40</sup> See International Operations Cost Allocation on page 26 of the supporting documentation.

<sup>41</sup> The Refugee Travel Document fees are the same as the sum of the U.S. passport book application fee

f. Application for Employment Authorization, Form I-765, and Students

In the NPRM, DHS proposed to increase the fee for the Application for Employment Authorization, Form I-765, from \$380 to \$410. *See* proposed 8 CFR 103.7(b)(1)(i)(II); 81 FR 26938. DHS proposed to limit the increase for these benefit types (among others) to 8 percent for humanitarian and practical reasons. Many individuals seeking immigration benefits face financial obstacles and cannot earn money through lawful employment in the United States until they receive an Employment Authorization Document (EAD). 81 FR 26916.

At least one commenter objected to the potential effect of the proposed Form I-765 fee increase on foreign students seeking work authorization under the Optional Practical Training (OPT) program. The OPT program allows an F-1 nonimmigrant student to file a Form I-765 to request authorization to work in the United States in a position that is directly related to the F-1 student's major area of study. *See* 8 CFR 214.2(f)(10)(ii)(C). OPT provides F-1 students with an opportunity to apply knowledge gained in the classroom to practical work experience off campus.

DHS places a high value on its role in attracting international students and scholars to the United States. Among other things, the contributions to U.S. educational institutions provided by a diverse international student body are invaluable. In recognition of these goals, USCIS devotes many resources to delivering immigration benefits to deserving students, including expending substantial resources, which DHS must recover, to adjudicate their eligibility for EADs. In addition, DHS limited the proposed EAD fee increase in a manner consistent with a number of other fees. *See* 81 FR 26916. Moreover, F-1 students may request fee waivers in cases in which they are unable to afford the fee. In other cases, USCIS will continue to charge the full fee based on the effort and resources expended to process this benefit. This final rule therefore sets the fee at \$410, as proposed. *See* new 8 CFR 103.7(b)(1)(i)(II).

g. Application for Replacement Naturalization/Citizenship Certificate, Form N-565

In the NPRM, DHS proposed to increase the fee for the Application for

Replacement Naturalization/Citizenship Certificate, Form N-565, from \$345 to \$555, or 61 percent. The proposed fee increase was the result of application of the standard fee-setting methodology to this benefit request.

Commenters mentioned that some people could lose proof of citizenship or naturalization due to unforeseen circumstances, such as natural disasters or theft, and that a steep increase might make it more difficult for certain individuals to obtain replacement documents. Other commenters noted that citizens may need a certificate of naturalization or citizenship due to a name change. Commenters stated that the more prohibitively expensive it becomes for foreign-born U.S. citizens to replace documentation of their citizenship, the more difficult it will be for them to work, vote, or pursue other opportunities.

Commenters noted that the completion rate for Form N-565 increased significantly since the 2010 final rule. Some commenters compared the completion rate for Form N-565 to that of the Application to Replace Permanent Resident Card, Form I-90, and stated that the two adjudications should be similar. Those commenters noted that the completion rate for Form I-90 decreased since the 2010 final rule, while the Form N-565 completion rate increased by 64 percent. Some commenters stated that USCIS should further assess why the completion rate for Form N-565 increased to this degree.

DHS acknowledges that the Form N-565 adjudication time has increased over the years, and attributes this increase to the amount of research and review necessary to adjudicate these filings. Form N-565 adjudications require USCIS to fully review A-Files for security check purposes, including discovering name variations or aliases. To verify the naturalization of an applicant, USCIS officers must research all available systems. Yet many filings involve individuals who were naturalized decades ago and whose information is not contained in electronic systems, thus requiring extensive paper-based review. USCIS officers may also have to communicate with the National Archives and Records Administration or the Federal courts to obtain evidence supporting naturalization. In some cases, paper files must be transferred to a field office to conduct an interview of the applicant. Changes in name, marital status, gender, or other facts require evidentiary review to support requested changes in USCIS records. No filing fee is required in cases where the Form N-565 is filed to request correction of a certificate that

contains an error, but even such filings require that USCIS fully review the relevant A-Files. DHS further notes that the processing of Form N-565 often requires the same use of time and resources by USCIS regardless of the basis for the request.

Moreover, the fee for Form I-90 differs from the fee for Form N-565 because the adjudication of the two forms differs. LPRs typically apply for new permanent resident cards every 10 years. Their information is thus generally up-to-date and readily available in an electronic system, thus eliminating the need for full A-File reviews when adjudicating Forms I-90. In addition, Form I-90 adjudication is streamlined and partially automated because the application exists in an electronic environment. Filings that involve information that is up-to-date and available in an electronic system generally require less processing time than filings that require review of physical records or multiple systems, or that require the entry of new data.

As noted, the proposed fee for Form N-565 resulted from application of the standard USCIS fee-setting methodology. Because DHS did not find a compelling reason to shift the burden of the Form N-565 fee increase onto other applicants, DHS retains the position expressed in the proposed rule. This final rule sets the fee for Form N-565 at \$555, as proposed. Applicants who cannot pay the fee may request a fee waiver. 8 CFR 103.7(c)(3)(xv).

h. Petition for Alien Relative, Form I-130

In the NPRM, DHS proposed to increase the fee for the Petition for Alien Relative, Form I-130, from \$420 to \$535. *See* proposed 8 CFR 103.7(b)(1)(i)(L); 81 FR 26937. The proposed fee increase was the result of application of the standard USCIS fee-setting methodology to this benefit request.

Several commenters stated that they generally opposed the proposed increase in the Form I-130 fee because the increase, along with other proposed increases, would result in a significant financial burden for certain individuals, especially for low-income immigrants and their families. Some commenters asserted that the proposed increase of \$115 would be disproportionate to the current adjudication time of 45 minutes. Another commenter suggested that fees be higher for businesses in order to offset the cost for family-based applicants. The same commenter referenced existing additional fees for H-1B visas and asserted that DHS should increase fees for O and P visas

plus the additional execution fee that the Department of State charges for first-time applicants.

to offset the cost of, and reduce the fees for, family-based immigration benefit requests. One commenter noted that Form I-130 filings are not eligible for fee waivers.

DHS appreciates the concerns of commenters, but reiterates that because USCIS is funded almost exclusively by fees, it sets the USCIS fee schedule based on a full cost recovery model. This means that although there is a relationship between the proposed fee and the projected adjudication time of 45 minutes, DHS cannot set fees at a level that would only recover costs for an individual adjudicator's time. In order for USCIS to continue to fulfill its mission, DHS must set fees at a level that accounts for the total resources required for intake of immigration benefit requests, customer support, fraud detection, background checks, and administration. Moreover, because DHS provides some immigration adjudication and naturalization services (including for families) on a fee-exempt, fee-reduced, or fee-waived basis, fee-paying applicants and petitioners must at times pay more than their directly attributable share of costs.

In the case of the Form I-130, the primary reason for the proposed fee increase was the increase in USCIS' cost baseline for FY 2016/2017, and specifically the need to cover the costs of certain fee-exempt services. As noted in the NPRM and in this final rule, the FY 2016/2017 fee schedule adjusts fees to recover the costs related to RAIO, the SAVE program, and the Office of Citizenship. See 81 FR 26910. In the FY 2010/2011 fee review, the model output for Form I-130 was approximately \$368 before cost reallocation. Cost reallocation was smaller in the FY 2010/2011 fee review because USCIS assumed that appropriations would recover surcharges related to RAIO, the SAVE program, and the Office of Citizenship. In the FY 2016/2017 fee review, the model output for Form I-130, before cost reallocation, was approximately \$383.<sup>42</sup> As mentioned in the NPRM, in the FY 2016/2017 fee review, USCIS included RAIO, the SAVE program, and the Office of Citizenship in the cost baseline. As shown in the supporting documentation, the fee includes \$152 above the model output to ensure that IEFA fees recover full cost.<sup>43</sup> The \$152

provides revenue for services that do not otherwise generate revenue (e.g., refugee, asylum, and fee-waived workloads) and for forms that are held to the 8 percent weighted average increase based on policy decisions (e.g., forms N-400 and I-600/600A/800/800A).

DHS recognizes the burden that proposed fee increases impose on families and low-income individuals, and takes steps to mitigate that burden as appropriate. Specifically, after USCIS applies its standard fee-setting methodology to identify the model output for each benefit request, USCIS evaluates the model output and determines whether it should be adjusted. However, downward adjustments for some groups result in upward adjustments for other groups. There are many benefit requests that are used by families and low-income individuals, and it would be unsustainable and arguably unfair for USCIS to consistently shift the costs of all such requests to a completely unrelated subgroup of business immigration applicants and petitioners. With that context in mind, and following review of the public comments received, DHS has determined that the amount recommended under the fee-setting methodology was not inordinately high. Thus, DHS is adjusting the fee for Form I-130 in this final rule, as proposed. Moreover, as stated in the "Fee Waivers and Exemptions" section of this preamble, fee waivers are not provided for forms, such as Form I-130, that require petitioners to have the ability to support their intended beneficiary. DHS believes that this is sound overall policy, especially in light of the effects of fee waivers on the fees paid by other applicants and petitioners.

#### i. Application To Replace Permanent Resident Card, Form I-90

In the NPRM, DHS proposed to increase the fee for the Application to Replace Permanent Resident Card, Form I-90, from \$365 to \$455. See proposed 8 CFR 103.7(b)(1)(i)(G); 81 FR 26937. The proposed fee increase was the result of application of the standard USCIS fee-setting methodology to this benefit request.

A number of commenters objected to the proposed fee increase. Some commenters stated that the proposed fee was unjustified by the projected completion rate of 13 minutes. The

are rounded to the nearest \$5 increment. The sum of the Model Output and the Cost Reallocation columns may not equal the proposed fee because of rounding.

commenters noted that although the proposed fee represents a significant increase, the projected completion rate had decreased slightly since the 2010 final rule. A commenter stated that the proposed increase would impose an unreasonable burden on many low-income applicants, especially when the reason for application may be out of their control, such as owning a prior edition of the card, expiration of the card between the individual's 14th and 16th birthday, a name change, or a change in commuter status.

Some commenters stated that USCIS guidance advises naturalization applicants to file Form I-90 if their permanent resident cards will expire within six months of the filing of their naturalization applications, and that USCIS sometimes requires naturalization applicants to file Form I-90 before completion of the Form N-400 adjudication. These commenters suggested that as a result, some applicants may file a Form I-90 and a Form N-400 in quick succession, and that DHS should reduce the combined fee burden for these two forms. The commenters suggested that DHS provide a discounted or partial fee for naturalization applicants who are required to file Form I-90.

As noted elsewhere in this preamble, because USCIS is funded almost exclusively by fees, DHS sets the USCIS fee schedule based on a full cost recovery model. This means that although there is a relationship between the proposed fee and the projected adjudication time of 13 minutes, DHS cannot set fees at a level that would only recover costs for an individual adjudicator's time. In order for USCIS to continue to fulfill its mission, DHS must set fees at a level that accounts for the total resources required for intake of immigration benefit requests, customer support, fraud detection, background checks, and administration. Moreover, because DHS provides some immigration adjudication and naturalization services on a fee-exempt, fee-reduced, or fee-waived basis, fee-paying applicants and petitioners must pay more than their directly attributable share of costs.

In the case of the Form I-90, the primary reason for the proposed fee increase is the increase in the USCIS cost baseline for FY 2016/2017, and specifically the need to cover the costs of certain fee-exempt services. As noted in the NPRM and this final rule, the FY 2016/2017 fee schedule recovers costs related to RAIO, the SAVE program, and the Office of Citizenship. See 81 FR 26910. In the FY 2010/2011 fee review, the model output fee for Form I-90 was

<sup>42</sup> Projected cost refers to the model output column of Appendix Table 4: Proposed Fees by Immigration Benefit Request in the supporting documentation.

<sup>43</sup> The amount here is the difference between the Model Output and the final fee. Amounts shown in Appendix Table 4: Proposed Fees by Immigration Benefit Request in the supporting documentation are rounded to the nearest dollar and all IEFA fees

approximately \$321 before cost reallocation. Cost reallocation was smaller in the FY 2010/2011 fee review, because USCIS assumed appropriations that would recover the costs for RAIIO, the SAVE program, and the Office of Citizenship. In the FY 2016/2017 fee review, the model output fee for Form I-90 was approximately \$326, also before cost reallocation.<sup>44</sup> But, as mentioned in the NPRM, USCIS included the above mentioned programs in cost reallocation to recover the full cost of those programs. As shown in the supporting documentation, the fee is \$129 above the model output fee to ensure that IEFA fees recover full cost.<sup>45</sup> The \$129 provides revenue for services that do not otherwise generate revenue (e.g., refugee, asylum, and fee-waived workloads) and for request types that are held to the 8 percent weighted average increase based on policy decisions (e.g., Forms N-400 and I-600/600A/800/800A).

DHS recognizes that the proposed Form I-90 fee increase would impose an additional cost burden on filers. But the proposed fee increase results from application of the standard USCIS fee-setting methodology, and a downward adjustment favoring all Form I-90 filers, or a subgroup thereof, would result in upward adjustment of other fees. DHS has decided to impose this fee at the level dictated by the standard USCIS fee-setting methodology, as proposed. If applicants cannot afford to pay the increased Form I-90 fee, they may request a fee waiver. 8 CFR 103.7(c)(3)(ii).

With respect to the comments concerning naturalization applicants who are required to file a Form I-90 if their permanent resident card will expire within six months of filing the naturalization application, DHS notes that this is not a change in practice. LPRs are required to have valid, unexpired Permanent Resident Cards, Forms I-551, in their possession at all times, see INA sec. 264(e), 8 U.S.C. 1304(e), and DHS regulations require LPRs to file Form I-90 when those cards are set to expire in six months, see 8 CFR 264.5(b)(2). For this reason, an LPR with fewer than six months remaining on his or her permanent resident card must generally file Form I-90, with fee,

<sup>44</sup> See Appendix Table 4: Proposed Fees by Immigration Benefit Request in the supporting documentation.

<sup>45</sup> Amounts shown in Appendix Table 4: Proposed Fees by Immigration Benefit Request in the supporting documentation are rounded to the nearest dollar and all IEFA fees are rounded to the nearest \$5 increment. The sum of the Model Output and the Cost Reallocation columns may not equal the proposed fee because of rounding.

even if the LPR has applied for naturalization.<sup>46</sup> In other words, applying for naturalization does not eliminate the need to file Form I-90 when a permanent resident card is about to expire. If Form I-90 is properly filed, or if Form N-400 is filed at least six months before the expiration of the applicant's permanent resident card, the applicant can request an Alien Documentation Identification and Telecommunication (ADIT) stamp in lieu of filing for a new card.

DHS observes that a permanent resident card generally does not expire until 10 years after it is received by the LPR. For individuals who are familiar with the regulatory requirements,<sup>47</sup> this should be sufficient time for the applicant to take appropriate action, including renewing the card or naturalizing before the card expires.<sup>48</sup> Generally, LPRs become eligible to naturalize after 5 years of obtaining LPR status, see, e.g., 8 CFR 316.2(a)(3), and the average processing time for an application for naturalization is approximately 6 months. Therefore, individuals who receive LPR status have ample time during which they may save for fees, gather documents, and apply for naturalization before their permanent resident card expires. Moreover, creating a new process and discounted fee for those Form I-90 applicants who wish to naturalize would increase the administrative burden of administering both Form I-90 and Form N-400. For the reasons stated above, this final rule sets the Form I-90 fee at \$455, as proposed, regardless of whether the applicant will also file Form N-400 in the near term.

#### j. Genealogy, Forms G-1041/1041A

In the NPRM, DHS proposed to increase fees for the Genealogy Index Search Request, Form G-1041, and Genealogy Records Request, Form G-1041A, from \$20 or \$35, depending on the format requested, to a single fee of

<sup>46</sup> For additional information, see <https://www.uscis.gov/i-90> and <https://www.uscis.gov/green-card/after-green-card-granted/renew-green-card>.

<sup>47</sup> USCIS also provides educational products and resources to welcome immigrants, promote English language learning, educate on rights and responsibilities of citizenship, and prepare immigrants for naturalization and civic participation. In addition, USCIS provides grants, materials and technical assistance to organizations that prepare immigrants for citizenship. The USCIS Citizenship Resource Center helps users better understand the citizenship process and gain the necessary skills required to be successful during the naturalization interview and test. See <https://www.uscis.gov/us-citizenship/naturalization-test/applicant-performance-naturalization-test/uscis-citizenship-education-resources-and-initiatives>.

<sup>48</sup> See <https://www.uscis.gov/green-card/after-green-card-granted/renew-green-card>.

\$65. See proposed 8 CFR 103.7(b)(1)(i)(E)-(F); 81 FR 23967. As noted in the NPRM, DHS based the proposed fee increase on the ABC model output fee of \$46 for genealogy services, as well as an additional \$19 to recover the applicable administrative costs associated with funding these services, such as the USCIS Librarian and other genealogy research and information services. 81 FR 26919 (citing INA sec. 286(t)(1), 8 U.S.C. 1356(t)(1)).

Some commenters objected to the proposed fee increase. Some of these commenters compared the genealogy fees to state and local government fees for copies of vital records. Some commenters stated that the quality and efficiency of genealogy services were insufficient to justify the proposed fee increase.<sup>49</sup>

USCIS does not receive any appropriations for its genealogy program and thus depends on genealogy fees to cover costs, without increasing other immigration and naturalization fees to support this work. Genealogy fees have not been adjusted since USCIS created the program in 2008,<sup>50</sup> and such fees are currently insufficient to cover the full costs of the genealogy program. USCIS created the Genealogy Program to serve people performing genealogy research, including historical researchers, genealogists, and other members of the public, without diverting resources from the significant number of Freedom of Information Act requests to which USCIS must respond.<sup>51</sup> USCIS thus proposed to increase the fee to meet the full costs of the program and permit USCIS to respond to requests for such historical records and materials. Notwithstanding the fees charged by other government agencies, which likely face different operational and funding challenges, USCIS must ensure that it has sufficient funding to fulfill its mission. Following consideration of the comments on this subject, DHS has decided to set the final fee at \$65, as proposed.

<sup>49</sup> At least one commenter questioned why USCIS proposed to collect the biometric services fee for the genealogy workload. While DHS is revising 8 CFR 103.2(b)(9) to clarify that any individual filing a benefit request, or any beneficiary of such a request, may be required to appear for biometric collection and pay the biometric services fee, DHS did not propose to and will not collect the biometric services fee for genealogy searches or document requests. See 81 FR 26917.

<sup>50</sup> See 81 FR 26919; Final Rule, Establishment of a Genealogy Program, 73 FR 28026 (May 15, 2008).

<sup>51</sup> Prior to the establishment of the Genealogy Program, genealogy researchers used the Freedom of Information Act process to conduct their research.

k. Petition To Remove Conditions on Residence, Form I-751

In the NPRM, DHS proposed to increase the fee for the Petition to Remove Conditions on Residence, Form I-751, from \$505 to \$595. Proposed 8 CFR 103.7(b)(1)(i)(HH); 81 FR 23968. The proposed fee increase was the result of application of the standard USCIS fee methodology to this benefit request.

Some commenters objected to the proposed fee increase. These commenters stated that Form I-751 is required for people who were granted conditional permanent residence through marriage, including spouses of U.S. citizens and their children, to remove the conditions on their status. The commenters asserted that the new fee is so burdensome that some applicants may miss their deadline to apply, putting those applicants at risk of losing their residency and becoming subject to removal from the United States. A commenter stated that in 2010, DHS increased the I-751 filing fee by \$40. The commenter stated that to now increase it again by another \$90 is unjustified, particularly when USCIS estimates that its projected workload volume for Form I-751 will decrease by 10,000 receipts from 2010/2011 levels. The commenter stated that if I-751 workloads will decrease, there is no justification for an 18 percent fee increase.

As noted previously in this preamble, because USCIS operates almost exclusively on fees, DHS sets the USCIS fee schedule based on a standard full cost recovery model. This means that DHS must account for more than just projected total receipts when setting the fee for a given benefit. For instance, DHS must account for the likelihood of fee waivers by setting fees based on projected total *fee-paying* receipts, not just projected total receipts. And DHS must also account for the costs associated with adjudicating each benefit request. If DHS did not account for fee waivers when setting fees, or for the cost of adjudicating benefit requests, DHS would not recover sufficient revenue to cover the cost of the services that DHS provides. Moreover, because DHS provides some immigration adjudication and naturalization services on a fee-exempt, fee-reduced, or fee-waived basis, fee-paying applicants and petitioners must pay more than their directly attributable share of costs.

In addition, in the case of the Form I-751 specifically, although workload volume decreased 5.5 percent since the 2010 final rule, fee-paying volume decreased at a greater rate of 8.4 percent. Moreover, the completion rate, or the

average hours per adjudication, increased 39 percent since the 2010 final rule. Given that fewer fee-paying applicants are now absorbing the increased costs associated with longer adjudications, DHS believes the proposed \$90 increase since the fee was last set six years ago is reasonable. Although the proposed increase would impose an additional cost burden on filers, it results from application of the standard USCIS fee methodology. A downward adjustment in favor of Form I-751 petitioners would result in upward adjustment of other fees. Furthermore, if the petitioner cannot pay the fee, they may request that the fee be waived. *See* 8 CFR 103.7(c)(3)(vii). Therefore, this final rule sets the Form I-751 fee at \$595, as proposed.

l. Petition for Alien Fiancé(e), Form I-129F

In the NPRM, DHS proposed to increase the fee for the Petition for Alien Fiancé(e), Form I-129F, from \$340 to \$535. *See* proposed 8 CFR 103.7(b)(1)(i)(K); 81 FR 23967. The proposed fee increase was the result of application of the standard USCIS fee methodology to this benefit request.

Some commenters objected to the proposed fee increase, stating that it could discourage family reunification. The commenters stated that the increase would be particularly burdensome because there is no fee waiver option when filing this form.

As noted previously, DHS is authorized to set fees at a level that ensures recovery of the full costs of providing immigration adjudication and naturalization services. Because USCIS relies almost entirely on fee revenue, in the absence of a fee schedule that ensures full cost recovery, USCIS would be unable to sustain an adequate level of service, let alone invest in program improvements. Full cost recovery means not only that fee-paying applicants and petitioners must pay their proportionate share of costs, but also that at least some fee-paying applicants and petitioners must pay a share of the immigration adjudication and naturalization services that DHS provides on a fee-exempt, fee-reduced, or fee-waived basis. DHS is therefore mindful to adhere to the standard USCIS fee methodology as often as possible, and to avoid overuse of DHS's discretion to eliminate or reduce fees for special groups of beneficiaries.

The proposed fee for the Form I-129F resulted from application of the standard USCIS fee methodology. DHS values its role in assisting U.S. citizens who wish to bring a foreign national

fiancé(e) to the United States to marry, and is sensitive to the extra burden that the increased filing fee may impose. But if USCIS were to waive or exempt Form I-129F fees, then other applicants, petitioners, and requestors would pay higher fees to cover the cost. Because DHS did not find a compelling reason to shift the burden of the Form I-129F fee increase onto other applicants, this final rule sets the Form I-129F fee at \$535, as proposed.

Moreover, as a general matter, DHS does not waive fees for petitions that require the beneficiaries to demonstrate that they will be able to support themselves financially, or that require the filing of an affidavit of support. A citizen who files Form I-129F must document his or her ability to financially support his or her foreign national fiancé(e). Because a few waiver options would be inconsistent with this financial support requirement, DHS declines to allow fee waivers for this form.

m. Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360

In the NPRM, DHS proposed to increase the fee for the Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360, from \$405 to \$435. Proposed 8 CFR 103.7(b)(1)(i)(T); 81 FR 23968. DHS proposed to hold the increase for these benefit types to an 8 percent increase<sup>52</sup> because the combined effect of cost, fee-paying volume, and methodology changes since the last fee rule would otherwise place an inordinate fee burden on individuals requesting these types of benefits. *See* 81 FR 26915.

Some commenters objected to the proposed fee increase because of its potential effect on religious workers. The commenters stated that religious workers must file additional forms and pay the required fees to obtain LPR status. The commenters noted that these workers benefit the United States by becoming integral parts of their religious ministries, participating in community outreach, and making specific connections with immigrants who speak the same language. For these reasons, the commenters requested that the agency not finalize the proposed fee increase.

Form I-360 may be used to obtain any of a large number of immigration benefits, some of which allow petitioners to file the form on a fee-exempt basis.<sup>53</sup> Many petitioners may

<sup>52</sup> The proposed increase was 7.4 percent due to rounding.

<sup>53</sup> *See* <https://www.uscis.gov/i-360>.

use the Form I-360 on a fee-exempt basis. For example, there is no fee for a petitioner seeking classification as an Amerasian; an individual self-petitioning as a battered or abused spouse, parent, or child of a United States citizen or LPR; a petitioner seeking Special Immigrant Juvenile status; or an Iraqi or Afghan national who worked for, or on behalf of, the U.S. Government in Iraq or Afghanistan. Previous 8 CFR 103.7(b)(1)(i)(T)(1)-(4).

For those petitioners who are not fee-exempt, DHS recognizes that fee increases impose a burden, and DHS takes steps to mitigate such burdens as appropriate. At the same time, DHS must recover the full costs of the services that USCIS provides, or else risk reductions in service quality. In this case, DHS proposed to apply the reduced fee increase (8 percent) to the Form I-360, for the reasons stated previously and consistent with DHS's practice of holding a number of benefit requests to this reduced fee increase. DHS was mindful that this departure from the standard fee methodology would also result in higher fees for others. *See* 81 FR 26915. Although DHS acknowledges the importance of the religious worker program to many communities, any further departure would only heighten the effect on the rest of the fee schedule, and would not be consistent with DHS's overall fee methodology. In addition, unlike many of the fee-exempt Form I-360 petitioners, religious workers fall into the category of employment-based immigrants for whom petitioners must demonstrate the ability to pay a salary. *See, e.g.,* 8 CFR 204.5(g)(2) (requiring a petition which requires an offer of employment to be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage). This final rule therefore sets the fee for Form I-360 at \$435, as proposed.

n. Notice of Appeal or Motion, Form I-290B

DHS proposed to increase the fee for the Notice of Appeal or Motion, Form I-290B, from to \$630 to \$675. Proposed 8 CFR 103.7(b)(1)(i)(S); 81 FR 26938. DHS proposed to hold the increase for these benefit types to 8 percent<sup>54</sup> because the combined effect of cost, fee-paying volume, and methodology changes since the last fee rule would otherwise place an inordinate fee burden on the particular individuals requesting these types of benefits. *See* 81 FR 26915.

<sup>54</sup> The proposed increase was 7.1 percent due to rounding.

Some commenters objected to the proposed fee increase. Commenters stated that the resulting fee, though waivable,<sup>55</sup> could hinder individuals from receiving benefits for which they are eligible. The commenters noted that the time involved in submitting fee waiver requests jeopardized the chance of meeting the 30-day filing deadline for appeals. Commenters also expressed disappointment in the appeals process in general, opining that it was particularly burdensome for those attempting to rectify USCIS errors. Commenters also stated that USCIS should allow credit card payments for filing Form I-290B.

DHS appreciates the concerns of the commenters and does not intend to hinder individuals from receiving benefits for which they are eligible. At the same time, DHS must recover the full costs of the services that USCIS provides, or else risk reductions in service quality. In this case, DHS proposed to apply the reduced fee increase (8 percent) to these benefit requests, for the reasons stated previously and consistent with DHS's practice of holding a number of benefit requests to this reduced fee increase. DHS was mindful that although this departure from the standard fee methodology would result in lower fees for Form I-290B filers, it would also result in higher fees for others. 81 FR 26915. Any further departure would only increase the effect on the rest of the fee schedule, and would not be consistent with DHS's overall fee methodology. DHS addresses requests for service quality improvements and credit card payments later in this preamble. DHS has made no changes to the fee in this final rule as a result of these comments, and is finalizing the Form I-290B fee at \$675, as proposed.

o. Application for Civil Surgeon Designation, Form I-910

In the NPRM, DHS proposed to increase the fee for the Application for Civil Surgeon Designation, Form I-910, from \$615 to \$785. *See* proposed 8 CFR 103.7(b)(1)(i)(TT); 81 FR 26939. Form I-910 is used to request recognition of a physician as a civil surgeon for purposes of performing mandatory medical examinations on intending

<sup>55</sup> If the Form I-290B is being filed to appeal or reopen the denial of an immigration benefit request that is exempt or where a fee has been waived, the Form I-290B fee may also be waived by USCIS if the applicant or petitioner demonstrates that he or she is unable to pay the fee. 8 CFR 103.7(c)(3)(vi) and 103.7(c)(1)(iii). Further, there is no fee for Form I-290B when an Iraqi or Afghan national who worked for, or on behalf of, the U.S. Government in Iraq or Afghanistan appeals a denial of a petition for a special immigrant visa. 8 CFR 103.7(b)(1)(i)(S).

immigrants to determine whether they are inadmissible based on health-related grounds. *See* 8 CFR 232.2(b). The proposed fee increase was the result of application of the standard USCIS fee methodology to this benefit request.

At least one commenter stated that the proposed increase may have a chilling effect on requests from physicians to become approved civil surgeons. The commenter suggested the possibility of employing a tiered-fee structure, in which USCIS would offer a lower application fee in exchange for a physician's commitment to discount fees for vulnerable children and youth and other indigent applicants.

As noted, the proposed fee increase for the Form I-910 was the result of application of the standard USCIS fee methodology to this benefit request. When DHS departs from the standard USCIS fee methodology to reduce fees for one group, fees for other groups increase to recover full cost. With respect to the proposal to establish a tiered fee structure for the application, implementing such fees would require eligibility and evidentiary requirements for each fee and income level established. This would add administrative complexity, and further increase costs. Additionally, USCIS would not know whether such civil surgeons complied with their commitments to charge lower fees without regulating and monitoring those civil surgeons, and incurring the time and costs to do so. Accordingly, no changes were made in this final rule, which sets the Form I-910 fee at \$785, as proposed.

p. Application for Advance Permission To Enter as a Nonimmigrant, Form I-192, and Application for Waiver of Passport and/or Visa, Form I-193

In the NPRM, DHS proposed to increase the fee for the Application for Advance Permission to Enter as a Nonimmigrant, Form I-192, and Application for Waiver of Passport and/or Visa, Form I-193, from \$585 to \$930. *See* proposed 8 CFR 103.7(b)(1)(i)(P); 81 FR 26938. The proposed fee increase was the result of application of the standard USCIS fee methodology to this benefit request. In the FY 2016/2017 fee review, USCIS grouped these benefit requests with other similar benefit requests, specifically, Forms I-191, I-212, I-601, and I-612.

One commenter stated that for certain filers, CBP, and not USCIS, adjudicates the benefit request.<sup>56</sup> The commenter stated that it would be unfair to increase

<sup>56</sup> The commenter acknowledged that USCIS adjudicates Form I-192 for T and U nonimmigrants.

the fee for Form I-192 applications adjudicated by CBP, because those adjudications do not increase USCIS costs.<sup>57</sup> The commenter stated that the proposed increase in the fee for Form I-192 would burden Canadian and Bermudan nonimmigrant waiver applicants in particular, because unlike other nonimmigrant waiver applicants who submit their applications at the same time as visa applications at no additional charge, Canadians and Bermudans do not require a visa to enter the United States, and thus pay the full filing fee to submit the waiver application. The commenter stated that an increase in the filing fee will hurt local economies in border towns because “every dollar spent on a waiver application is a dollar not spent on tourism or retail.” The commenter did not provide further data or analysis on the potential impact of the proposed fee increase on such economies.

In response to this comment, DHS is not implementing the fee increase proposed in the NPRM with respect to those Forms I-192 filed with and processed by CBP, and all Forms I-193. CBP uses the fee revenue from these forms to defray its own costs related to such processing. The FY 2016/2017 fee review and resulting proposed fee change was based on USCIS’s costs for processing inadmissibility waivers. Therefore, under this final rule, DHS adjusts only the fee for those Forms I-192 filed with and processed by USCIS. Consequently, Form I-192 will have two fees—\$585 for those filed with CBP and \$930 for those filed with USCIS. New 8 CFR 103.7(b)(1)(i)(P). All filings of Form I-193 are processed by CBP and thus DHS will also not adjust the current \$585 fee. New 8 CFR 103.7(b)(1)(i)(Q).

### C. Fee Waivers and Exemptions

DHS proposed no changes to the USCIS fee waiver policies in the NPRM. DHS noted, however, that the lost revenue from fee waivers and exemptions has increased markedly, from \$191 million in the FY 2010/2011 fee review to \$613 million in the FY 2016/2017 Fee Review. DHS also explained the fee waiver process. See 81 FR 26922. DHS received a number of comments on its fee waiver and exemption policies. Some commenters on this subject requested that DHS permit fee waivers for additional immigration benefit requests. Others asked that DHS make more requests exempt from fee requirements.

<sup>57</sup> The commenter did not mention Form I-193 applications, but such applications are similarly affected by this rulemaking.

Applicants, petitioners, and requestors who pay a fee cover the cost of processing requests that are fee-waived or fee-exempt. *Id.*<sup>58</sup> While a number of commenters suggested that USCIS expand the range of applications and petitions for which USCIS would consider a fee waiver, none provided a compelling argument for why a particular form that is not eligible for fee waivers should be made eligible in this final rule.

For example, one commenter recommended that USCIS make fee waivers available for all applications. DHS recognizes that some applicants cannot pay filing fees, and has established a fee waiver process for certain forms and benefit types. USCIS carefully considers the merits of each fee waiver request before making a decision. Expansion of fee waiver policy to include all immigration benefit request fees would significantly increase administrative and adjudicative costs. Although DHS recognizes that filing fees impose a heavy burden on people of limited financial means, the costs of allowing fee waivers across the board would be borne by all other fee payers, because the cost of providing services with a discount or without a fee must be transferred to those who pay a full fee. Thus, USCIS takes a relatively careful position with respect to transferring costs from one applicant to another through the expansion of fee waiver eligibility.

DHS notes that, in response to stakeholder concerns about the fee waiver process and rejections of fee waiver requests, USCIS recently published a new Request for Fee Waiver, Form I-912. It revised the form to clarify the instructions, make the form less complex, and reduce the number of incomplete fee waiver requests that are ultimately rejected. In addition, because many applicants have had difficulty providing all the requested information in the spaces provided on the previous form, USCIS also included text boxes that provide space for explanations. Those boxes reduce the need for attachments, and make the form more user-friendly.

As for fee exemptions, DHS already exempts from fees those requests with compelling circumstances. These exemptions include benefit requests for a range of humanitarian and protective services, such as refugee and asylum processing, assisting victims of crime

<sup>58</sup> USCIS compares fee-paying receipts to the total number of receipts to determine a fee-paying percentage for each immigration benefit request. See page 16 of the supporting documentation in the rulemaking docket for an explanation of fee-paying volume and methodology.

and human trafficking, and other related services. USCIS also may allow fee exemptions based on economic necessity in the event of incidents such as an earthquake, hurricane, or other natural disasters affecting localized populations by using the authority of the Director of USCIS at 8 CFR 103.7(d). DHS proposed no new exemptions in the NPRM, and knows of no compelling reason for exempting a new group of applicants, petitioners, or requestors from a fee. Therefore, DHS has added no new exemptions in this final rule.

### D. Naturalization

In the NPRM, DHS proposed to increase the fee for the Application for Naturalization, Form N-400, from \$595 to \$640. Proposed 8 CFR 103.7(b)(1)(i)(BBB); 81 FR 26939. DHS proposed to hold the increase for the Form N-400 to the reduced fee increase (8 percent)<sup>59</sup> to support naturalization. DHS also proposed an additional fee option for those non-military naturalization applicants with family incomes greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines. Proposed 8 CFR 103.7(b)(1)(i)(BBB)(1); 81 FR 26939. Specifically, DHS proposed that such applicants would receive a 50 percent discount, resulting in a fee of \$320 for Form N-400. DHS proposed this reduced fee option to limit any potential economic disincentives that some eligible naturalization applicants may face when deciding whether or not to seek U.S. citizenship. The lower fee is intended to help ensure that those who have become eligible for naturalization are not prohibited from naturalizing due to their economic means.

Several commenters stated that the price of this benefit is already too high. Another commenter stated that the fee for Form N-400 should be increased based on the value of U.S. citizenship, not just the costs associated with adjudicating the form. And, while generally opposed to the fee increase, several commenters wrote in support of USCIS’ efforts to alleviate some of the associated burdens by establishing a three-level fee for Form N-400, including a fee of \$320 for certain low-income applicants who do not qualify for the existing fee waiver. The commenters stated that by doing so, USCIS will expand the pool of potential applicants.

DHS agrees with commenters that citizenship is a benefit that deserves special consideration and promotion. Therefore, DHS did not propose a fee

<sup>59</sup> The proposed increase was a 7.5 percent due to rounding.

that reflected all of the costs associated with the relative complexity of the adjudication. The Application for Naturalization fee has not changed in nearly a decade. Additionally, the fee established in this rule for Form N-400 is less than it would be if the 2007 fee were simply adjusted for inflation. According to the Bureau of Labor Statistics, the semiannual average inflation from July 2007 to July 2016 was 16.1 percent.<sup>60</sup> If adjusted only for inflation, the current \$595 fee would be \$690, which is \$50 more than the \$640 fee set by this rule. DHS has not previously adjusted Form N-400 by CPI-U inflation, but provides this as a point of comparison.

As for the comment requesting that the Form N-400 fee be based on the value of U.S. citizenship, doing so would require quantifying that value, which assuming it is appropriate or even possible to do precisely, would be beyond the scope established by the proposed rule. The USCIS ABC model is based on estimated operational costs, and DHS has set the fee at a level that adheres to the fee review methodology, which includes full cost recovery. See new 8 CFR 103.7(b)(1)(i)(BBB). DHS therefore sets the fee for Form N-400 at \$640, as proposed.

#### E. Improve Service and Reduce Inefficiencies

Many of the comments received that opposed fee increases cited delays in processing times and dissatisfaction with customer service. Some of these commenters stated that they would embrace the fee increases if they resulted in faster processing and improved customer service. A few commenters asserted that if DHS implements any type of USCIS fee increase, then USCIS should guarantee that it will reduce benefit request processing times. At least one commenter recommended increasing the fees further so there would be no excuse for delays in processing. Other commenters wrote about expanding electronic filing and receipting to reduce mail handling and shipping of paper. USCIS acknowledges that since its last adjusted fees in FY 2010, the agency has experienced elevated processing times compared to the goals established in the 2007 fee rule. See 72 FR 29858-29859. These processing delays have

contributed to case processing backlogs. This can partially be attributed to having removed the surcharge previously applied to the IEFA fee schedule to recover costs related to RAIO, the SAVE program, and the Office of Citizenship. This was done in anticipation of congressional appropriations for these programs, consistent with the President's budget requests. As the anticipated budget request was not granted, since FY 2012 USCIS has used other fee revenue to support these programs. Under this final rule, DHS will adjust USCIS fees by a total weighted average increase of 21 percent; the total 21 percent weighted average increase will be allocated as follows:

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

Through this final rule, USCIS expects to collect sufficient fee revenue to sustain current operating levels of RAIO, the SAVE program, and the Office of Citizenship. This change will allow USCIS to discontinue diverting other fee revenue to fund these programs, thereby increasing the resources available to fund additional personnel<sup>61</sup> needed to improve case processing, reduce backlogs, and move toward processing times that are in line with the commitments in the FY 2007 fee rule.

While the agency remains committed to achieving the processing goal commitments in the 2007 fee rule, it acknowledges that these goals remain ambitious. By its very nature, the fee review cycle uses historical staffing and workload information to establish future needs, and as a result, cannot identify the exact resources necessary to guarantee future processing goals. In addition, superseding priorities may

arise, which could not have been known at the time fee cycle calculations were made, that may impact USCIS' ability to meet customer expectations. USCIS will need to continue addressing emergent issues and their associated costs, which may impact case processing efficiency and backlogs. Nevertheless, the agency holds the 2007 processing goals to be among its highest priorities and recommits to achieving them as quickly as possible.

In addition, USCIS is committed to providing stakeholders and customers with the information they need, when they need it. To that end, USCIS is transforming how it calculates and posts processing time information to improve the timeliness of such postings, but more importantly, to achieve greater transparency of USCIS case processing. For instance, to make current published processing time information more transparent and less complex for customers to interpret, USCIS is evaluating the feasibility of calculating processing times using data generated directly from case management systems, rather than with self-reported performance data provided by Service Centers and Field Offices. Preliminary findings suggest that USCIS will be able to publish processing times sooner and with greater transparency by showing different processing times for each office and form type. USCIS is also considering publishing processing times using a range rather than using one number or date. This approach would show that, for example, half of cases are decided in between X and Y number of months.

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

DHS appreciates the comments requesting expansions of electronic filing, and USCIS is actively planning the expansion of its online case management system for the submission and adjudication of immigration benefits. As of the end of FY 2016, approximately 17 percent of the agency's intake was processed through

<sup>60</sup> The semiannual average consumer price index for all urban consumers (CPI-U) was 205.7 in July 2007 and 238.8 in July 2016. The change in the Index over 9 years was 33.1 or 16.1 percent. See U.S. Department of Labor, Bureau of Labor Statistics, All Urban Consumers (CPI-U) Semiannual Average tables, available at [http://www.bls.gov/cpi/cpi\\_dr.htm](http://www.bls.gov/cpi/cpi_dr.htm).

<sup>61</sup> For additional information on staffing, see second bullet on pg. 13, Alignment of USCIS Staffing Allocation Model with the Fee Review on pg. 26, and Appendix XIII Table 12: IEFA Positions by Office in the supporting documentation.

online filing and we are striving to increase that level.

In sum, DHS appreciates the commenters' concerns for timely service. USCIS continually strives to meet timely adjudication goals while balancing security, eligibility analysis, and integrity in the immigration system. Fees have not been adjusted since 2010 and that fee rule did not include the surcharge for RAIIO, the SAVE program, and the Office of Citizenship, which has resulted in the reprioritization of resources to cover those program costs. This fee rule is intended to address such shortfalls and provide resources necessary to ensure adequate service. USCIS would be unable to adequately perform its mission if DHS allowed fee levels to remain insufficient while USCIS continued to develop its search for additional efficiencies.

#### F. Premium Processing

Premium processing is a program by which filers may request 15-calendar-day processing of certain employment-based immigration benefit requests if they pay an extra amount. 8 CFR 103.7(b)(1)(i)(RR) and (e); proposed 8 CFR 103.7(b)(1)(i)(SS); 81 FR 26939. In 2000, Congress set the premium processing fee at \$1,000 and authorized USCIS to adjust the fee for inflation, as determined by the Consumer Price Index (CPI). Section 286(u) of the INA, 8 U.S.C. 1356(u). USCIS adjusted the premium processing fee to \$1,225 by using the CPI in the 2010 final rule.<sup>62</sup> See 75 FR 58979. DHS proposed no change to premium processing fees or regulations because forecasted premium processing revenue is sufficient to cover the projected costs of providing the premium service and other permissible infrastructure investments.

Several commenters wrote to request that USCIS expand premium processing to other forms, including family-based immigration benefit requests, naturalization, relief for victims of crimes who assist law enforcement, and forms related to the EB-5 Immigrant Investor Program. Some commenters stated that using premium processing revenue may alleviate backlogs. Other commenters stated that premium processing is essentially mandatory to ensure the timely and efficient processing of their employment-based petitions.

Assuming DHS has the general authority to offer expedited processing fees to additional forms, the timing

<sup>62</sup> Premium processing fees are increased using the CPI through statutory authority. See INA sec. 286(u), 8 U.S.C. 1356(u).

requirements of many adjudications involve considerations that are out of USCIS' control. For example, background checks, the timing of which are not controlled by USCIS, are required for: The Application for Temporary Protected Status, Form I-821; the Application for Naturalization, Form N-400; the Application for Provisional Unlawful Presence Waiver, Form I-601A; and the Application to Register Permanent Residence or Adjust Status, Form I-485. These and many other forms are not suited for expedited processing. USCIS already seeks processing efficiencies where available and shifts workload to balance volume surges, seasonal demands, and competing priorities.

In addition, where expedited processing may be possible, it would be extraordinarily time-intensive to determine the appropriate fee amount, target adjudication timeframe, and staffing levels needed to implement a new expedited processing program. Expanding the premium processing program would require USCIS to estimate the costs of a service that does not currently exist with sufficient confidence that it can deliver the service promised and not impair service for other immigration benefit requests. Nevertheless, USCIS will continue considering additional premium processing services and its ability to improve services without creating new challenges. DHS made no changes in this final rule as a result of these comments.

#### G. Immigrant Investors

In the NPRM, DHS proposed a number of changes to fees related to the Employment-Based Immigrant Visa, Fifth Preference (EB-5) "Immigrant Investor" Program.<sup>63</sup> Specifically, DHS

<sup>63</sup> The EB-5 program was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The EB-5 "regional center program" was later added in 1992 by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993. Pub. L. 102-395, sec. 610, 106 Stat 1828 (Oct. 6, 1992). The EB-5 immigrant classification allows qualifying individuals, and any accompanying or following to join spouses and children, to obtain lawful permanent resident (LPR) status if the qualifying individuals have invested, or are actively in the process of investing, \$1 million in a new commercial enterprise. See INA sec. 203(b)(5)(A) and (C), 8 U.S.C. 1153(b)(5)(A) and (C). To qualify, the individual's investment must benefit the U.S. economy and create full-time jobs for 10 or more qualifying employees. INA sec. 203(b)(5)(A)(ii), 8 U.S.C. 1153(B)(5)(A)(ii). If the investment is in a Targeted Employment Area (TEA) (*i.e.*, a rural area or an area that has unemployment of at least 150% of the national average), the required capital investment amount is \$500,000 rather than \$1 million. INA sec. 203(b)(5)(C)(ii), 8 U.S.C. 1153(b)(5)(C)(ii); 8 CFR 204.6(f)(2). Entrepreneurs

proposed to increase the fee for the Application for Regional Center Under the Immigrant Investor Program, Form I-924, from \$6,230 to \$17,795. See proposed 8 CFR 103.7(b)(1)(i)(WW); 81 FR 26939. DHS proposed to establish a new fee for the Annual Certification of Regional Center, Form I-924A, at \$3,035. See proposed 8 CFR 103.7(b)(1)(i)(XX); 81 FR 26939. DHS proposed to increase the fee for the Immigrant Petition by Alien Entrepreneur, Form I-526, from \$1,500 to \$3,675. See proposed 8 CFR 103.7(b)(1)(i)(W); 81 FR 26938. Finally, DHS proposed to hold the fee for the Petition by Entrepreneur to Remove Conditions, Form I-829, at \$3,750. See proposed 8 CFR 103.7(b)(1)(i)(PP); 81 FR 26939. With the exception of the proposed fee for Form I-829, each proposed EB-5 fee increase was the result of application of the standard USCIS fee methodology to the applicable benefit request.

Several commenters objected to the proposed increases, noting that these are some of the highest proposed fee increases, while the related benefit requests have some of the longest processing times. Another commenter wrote to applaud the increase to EB-5 fees in general, but requested that USCIS conduct site visits and evaluate whether regional centers are misrepresenting themselves to investors.

As an initial matter, and as noted previously, DHS is authorized to set fees at a level that ensures recovery of the full costs of providing immigration adjudication and naturalization services. Because USCIS relies almost entirely on fee revenue, in the absence of a fee schedule that ensures full cost recovery, USCIS would be unable to sustain an adequate level of service, let alone invest in program improvements. Full cost recovery means not only that fee-paying applicants and petitioners must pay their proportionate share of costs, but also that at least some fee-paying applicants and petitioners must pay a share of the immigration adjudication and naturalization services that DHS provides on a fee-exempt, fee-reduced, or fee-waived basis. DHS is therefore mindful to adhere to the standard USCIS fee methodology as often as possible, and to avoid overuse

may meet the job creation requirements through the creation of indirect jobs by making qualifying investments within a new commercial enterprise associated with a regional center approved by USCIS for participation in the regional center program. INA sec. 203(b)(5), 8 U.S.C. 1153(b)(5); 8 CFR 204.6(e) and (m)(7). For more information on the EB-5 program, see <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/about-eb-5-visa>.

of DHS's discretion to eliminate or reduce fees for special groups of beneficiaries.

The proposed fees for three of the four EB-5 Program forms resulted from application of the standard USCIS fee methodology,<sup>64</sup> because DHS did not find a compelling reason to shift the burden of adjudicating these forms onto other applicants. In addition, the relatively high fees for these requests result in part from the high costs associated with adjudicating them. For instance, USCIS has recently implemented several changes to refine and improve the delivery, security and integrity of the EB-5 Program. USCIS established the Immigrant Investor Program Office (IPO) in Washington, DC in 2012. Since that time, IPO has regularly added staff positions to focus both on managing the program and ensuring identification of fraud, national security, or public safety concerns within the program. In addition, USCIS plans to conduct increased site visits to regional centers and associated commercial enterprises to verify information provided in regional center applications and investor petitions and to clarify its EB-5 regulations. Currently, USCIS is in the process of hiring and training additional adjudicators, economists, and support staff needed to adjudicate the benefit requests associated with the EB-5 program. Part of the increase in fees for EB-5-related adjudications will bolster the fraud detection and national security capabilities of USCIS to investigate fraud and abuse at all levels of the EB-5 process, including investigating projects that receive funds from EB-5 investors and auditing regional center annual reports to enhance compliance with the program. See 81 FR 26918. Each of these factors contributed to the proposed EB-5 Program fees.

In the immediately succeeding section, as well as in the Paperwork Reduction Act section of this preamble, DHS responds to additional comments on the proposed EB-5 fees.

#### 1. Application for Regional Center Under the Immigrant Investor Program, Form I-924

In the NPRM, DHS proposed to increase the fee for the Application for Regional Center Under the Immigrant Investor Program, Form I-924, from \$6,230 to \$17,795. See proposed 8 CFR 103.7(b)(1)(i)(WW); 81 FR 26939. The proposed fee increase was the result of

application of the standard USCIS fee methodology to the benefit request.

At least one commenter wrote to oppose the proposed Form I-924 fee increase due to the possible impact on EB-5 regional centers. The commenter recommended a possible reduced fee for centers in existence for fewer than 5 years. The same commenter stated dissatisfaction with the level of customer service that USCIS has provided and suggested that USCIS create an electronic platform for EB-5 regional centers to monitor their applications and cases. Other commenters stated that the proposed fee increase were unreasonable and inflated, especially in light of long processing delays. At least one commenter stated that regional centers in rural and high-unemployment areas are less capable of withstanding long processing delays. The same commenter stated that the proposed 286 percent fee increase for the Form I-924 should be accompanied by an assurance that processing times would be cut by 75 percent. The commenter stated that an alternative to processing time reductions would be to create a process in which regional centers would be automatically approved if USCIS does not provide a notice of action within 4 months, or if USCIS does not summarily reject a petition for which there have been prior approvals on the same project. Another commenter stated that DHS could adopt a tiered fee structure for Form I-924 based on whether the associated investment project was an actual or exemplar project. At least one commenter mentioned the potential for legislation to alter the regional center requirements.

USCIS understands the desire of EB-5 regional centers to receive prompt and courteous service, and the agency strives to provide the best level of service possible. As the program has grown and applicants and projects have become more advanced, the current fee level has proven to be inadequate to ensure that USCIS has the resources it needs. The proposed fee increase was determined using USCIS's standard fee-setting methodology, based on the number of hours required to adjudicate Form I-924. These adjudications require economists and adjudications officers to thoroughly review extensive business documents, economic impact analyses, and other project-related documents. The proposed fee increase was, in part, calculated to allow USCIS to hire additional staff to process Forms I-924 and provide better and more thorough service.

Currently, USCIS does not have the data to quantify alternative fees for

regional centers in existence for fewer than 5 years. In addition, USCIS does not track Form I-924 completion rates based on whether the project involves a rural or urban area, an area of high or low employment, or an actual or exemplar project. USCIS also cannot commit to across-the-board processing time reductions as adjudications involve case-by-case review of complex applications and related supplementary information, nor can it implement a process that automatically approves a regional center without a complete adjudication. Moreover, USCIS does not prioritize Form I-924 workloads based on whether regional center projects involve a rural or urban area, or an area of high or low employment. DHS may consider exploring the feasibility of such a change in the future, but will not implement a change at this time.

With respect to the commenter that identified the possibility of legislative changes, USCIS greatly appreciates the work of stakeholders towards reauthorization of the Regional Center Program and reform of the EB-5 program more generally. USCIS is cognizant of potential legislative changes to the EB-5 program and is also aware that such changes may require adjustments to USCIS adjudication processes. In the event that legislative changes are enacted, USCIS would assess any significant changes and reassess program requirements, adjudication process, and required fees. For now, however, and for the reasons stated previously, this rule sets the Form I-924 fee at \$17,795, as proposed.

#### 2. Immigrant Petition by Alien Entrepreneur, Form I-526

In the NPRM, DHS proposed to increase the fee for the Immigrant Petition by Alien Entrepreneur, Form I-526, from \$1,500 to \$3,675. See proposed 8 CFR 103.7(b)(1)(i)(W); 81 FR 26938. The proposed fee increase was the result of application of the standard USCIS fee methodology to the benefit request.

Some commenters wrote to request additional information on the proposed fee increase. Another commenter stated that a lack of processing efficiency can cause problems for Form I-526 applicants. Specifically, the commenter stated that EB-5 project sponsors sometimes agree to put an investor's money in escrow until the Form I-526 is approved. If the form is denied, project sponsors return those funds to the investor; if approved, the project sponsor uses those funds on the project. The commenter stated that such projects can languish when the investor's money is held in escrow for lengthy periods of

<sup>64</sup> The proposed fee for the Form I-829 was above the model output, as described in the proposed rule.

time. According to the commenter, although escrow arrangements provide substantial benefits to program integrity, they are becoming commercially untenable due to Form I-526 processing times. The commenter also asserted that projects themselves are also hurt by lengthy processing times, as projects may be well underway by the time USCIS denies the forms.

USCIS has taken multiple steps towards reducing Form I-526 processing times. As previously mentioned, USCIS is in the process of hiring and training additional adjudications officers, economists, and support staff for these form types. Additionally, USCIS is working to revise the EB-5 regulations and is preparing revisions to the EB-5 Policy Manual. USCIS is also improving the forms and form instructions for the EB-5 program. The EB-5 program fee increases will further these agency efforts with the goal of improving operational efficiencies while enhancing predictability and transparency in the adjudication process. USCIS understands that long delays in Form I-526 adjudications negatively impact both immigrant investors and the projects awaiting the release of their investment funds from escrow. USCIS strives to process Form I-526 filings as soon as practicable. In addition, regarding the release of escrowed funds, USCIS permits EB-5 financing to replace interim financing where the financing to be replaced was contemplated as temporary financing that would be replaced.<sup>65</sup> DHS made no changes to the proposed Form I-526 fee as a result of these comments, and is finalizing the fee at \$3,675, as proposed.

### 3. Petition by Entrepreneur To Remove Conditions, Form I-829

In the NPRM, DHS proposed to hold the fee for the Petition by Entrepreneur to Remove Conditions, Form I-829, at \$3,750. *See* proposed 8 CFR 103.7(b)(1)(i)(PP); 81 FR 26939. While the fee model calculated a fee of \$2,353, DHS proposed to maintain the current fee for such petitions. *See* 81 FR 26918. Because of the recent and continued growth and maturation of the EB-5 Program, associated costs over the next few fiscal years are uncertain. Among other things, the final parameters of the program are still evolving, such as the number of USCIS employees and facilities necessary to carry out

enhanced review of EB-5 filings, as well as site visits. This uncertainty makes it unclear whether EB-5 related fees will fully fund EB-5 program activities. DHS therefore proposed to keep the Form I-829 at the current fee, above the full cost recovery calculation, to shield USCIS against potential, but likely rising costs.<sup>66</sup>

At least one commenter indicated current USCIS processing times for Form I-829 extend beyond the 1-year automatic extension of the entrepreneur's conditional residence, imposing an additional burden on petitioners traveling outside of the United States. The commenter stated that delays in processing Form I-829 mean that investments must remain at risk for an extended period of time. The commenter added that USCIS could increase the efficiency of Form I-829 adjudications by consolidating the business-related portions of multiple Forms I-829 associated with a single investment project into a single adjudication. Another commenter recommended that USCIS implement electronic filing of this and other forms related to the Immigrant Investor Program to increase efficiency.

USCIS recognizes that lengthy Form I-829 processing times place a strain on EB-5 investors who are awaiting approval of their applications to adjust to LPR status. USCIS is working diligently to add staffing, and the agency plans to publish regulatory action, policy guidance, and revised forms with the goal of improving service delivery to applicants and improving the integrity of the EB-5 program. In part due to the tentative nature of these plans, DHS has no way to reliably quantify any potential cost savings that might be associated with these actions, and therefore could not propose to reduce the Form I-829 fee to account for such savings.

DHS appreciates the suggestions for improving EB-5 processing times. DHS clarifies that USCIS already has processes in place to streamline adjudication of the business-related portions of multiple Forms I-829 associated with a single, new investment project. Specifically, when USCIS receives a regional center-associated Form I-829 that involves a new commercial enterprise, USCIS reviews the first two petitions associated with that new commercial

enterprise to determine if there are specific project-related issues that would apply to all petitioners associated with the new commercial enterprise. After completing that review, USCIS commences adjudication of all Forms I-829 associated with that new commercial enterprise filed within a given period. Similarly, when USCIS receives a regional center-associated Form I-829 that involves a previously reviewed commercial enterprise, USCIS immediately assigns that petition for adjudication. In other words, USCIS currently adjudicates Form I-829 petitions in "first in, first out" order by new commercial enterprises. USCIS constantly searches for new ways to increase efficiencies in the adjudications process, and for that reason cannot commit to a uniform queuing practice in this rule, or reduce associated fees in anticipation of heretofore unrealized savings.

USCIS does not have immediate plans to allow electronic filing for EB-5 requests, but appreciates commenters' desire to avoid voluminous paper filings. USCIS plans to allow electronic filing for EB-5 requests in the future. DHS made no changes to the proposed Form I-829 fee, or the policies regarding EB-5 adjudications, as a result of these comments. The final rule sets the Form I-829 fee at \$3,750, as proposed.

### H. Methods Used To Determine Fee Amounts

As described previously and in the NPRM, the standard USCIS fee-setting methodology is intended to ensure full cost recovery for USCIS immigration adjudication and naturalization services. DHS based the proposed USCIS fees on the estimated costs of providing immigration benefit adjudication and naturalization services. In addition, to the extent possible, and with limited exception, DHS based the proposed USCIS fees on the relative identifiable costs associated with providing each particular benefit or service. This fee methodology is consistent with government-wide fee-setting guidelines outlined by OMB Circular A-25, 58 FR 38142 (July 15, 1993);<sup>67</sup> the principles of the Chief Financial Officers Act of 1990, 31 U.S.C. 901-03; and the Federal Accounting Standards Advisory Board (FASAB) guidelines.<sup>68</sup> Additional information about the fee methodology can be found in this preamble, the preamble for the

<sup>65</sup> See Policy Memorandum, *EB-5 Adjudications Policy* (May 30, 2013) at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20\(Approved%20as%20final%205-30-13\).pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20(Approved%20as%20final%205-30-13).pdf).

<sup>66</sup> If DHS had decided to adjust the fee consistent with the adjustment that DHS made to most other fees, the proposed fee would have decreased to \$3,280. The proposed fee would have been higher than the model output because of Cost Reallocation. Other fees would also have been adjusted accordingly.

<sup>67</sup> Office of Management and Budget, Circular A-25, User Charges, available at [http://www.whitehouse.gov/omb/circulars\\_a025/](http://www.whitehouse.gov/omb/circulars_a025/).

<sup>68</sup> Handbook, Version 14 (06/15), available at [http://files.fasab.gov/pdf/files/handbook\\_sffas\\_4.pdf](http://files.fasab.gov/pdf/files/handbook_sffas_4.pdf).

proposed rule, and the supporting documentation accompanying this rulemaking.<sup>69</sup>

DHS received a number of comments regarding the methods that DHS uses to determine fee amounts. Commenters made statements about the need for full cost recovery without appropriations, the decision to exclude revenue from certain benefits in the proposed fee schedule, potential alternative fee methodologies, and the potential for cost reductions. DHS responds to these comments below.

#### 1. Recovery of Full Cost Without Appropriations

Some commenters suggested that USCIS seek appropriations to reduce immigration benefit request fees. Some commenters opposing the fee increase mentioned that immigrants in the United States pay Federal income taxes, Social Security taxes, and other fees and questioned whether those are being accounted for in USCIS fee calculations. Commenters stated that appropriations could help reduce processing times or fund programs that do not recover full cost on their own, such as RAIO, the SAVE program, and the Office of Citizenship.

DHS acknowledges that immigrants pay both Social Security and various Federal taxes and fees, but the decision whether to fund USCIS services through tax revenues belongs to the U.S. Congress. And in recent years, such funding has been unavailable. As noted in the NPRM, USCIS is almost entirely funded by fees and must recover the full cost of its operations. *See* 81 FR 26905–26912. Fees collected from individuals and entities filing immigration benefit requests are deposited into the IEFA and used to fund the cost of immigration benefits and naturalization. *Id.* USCIS has not received any substantial appropriations since FY 2011. Similarly, USCIS received no FY 2016 discretionary appropriations for the SAVE program or the Office of Citizenship. *See* DHS Appropriations Act 2016, Public Law 114–113, div. F. (Dec. 18, 2015) and 81 FR 26912. USCIS did not receive appropriations for refugee and asylum processing or the

SAVE program after FY 2011. USCIS received \$2.5 million for the immigrant integration grants program in FY 2013 (Pub. L. 113–6) and FY 2014 (Pub. L. 113–76), but the agency did not receive appropriations for that program in FY 2015 or FY 2016. The only USCIS appropriations for FY 2016 provided funding for the E-Verify employment eligibility verification program. *See* Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. IV (Dec. 18, 2015) (DHS Appropriations Act 2016). Other than as described, USCIS receives no appropriations to offset the cost of adjudicating immigration benefit requests. *Id.* As a consequence of this funding structure, taxpayers do not bear any costs related to the IEFA and bear only a nominal burden to fund USCIS. However, in the event appropriations are provided that will materially change IEFA fees, then DHS could pursue a rulemaking to adjust fees appropriately.

Finally, one commenter questioned why SAVE fees charged to local, state, and Federal agencies do not recover the full cost of the SAVE program. USCIS collects SAVE fees from federal government agencies under the authority of the Economy Act, 31 U.S.C. 1535, and from state or local government agencies under the authority of the Inter-Governmental Cooperation Act, 31 U.S.C. 6501. SAVE fees are included in Memoranda of Agreement (MOAs) with user agencies, which are updated based on the established periods of performance. As noted in the proposed rule, SAVE fees impact the IEFA fees established in this rule only as necessary to fund the SAVE costs that remain after taking into account revenue received under the MOAs. *See* 81 FR 26911. Fees charged to SAVE users do not cover the full cost of the SAVE program; rather, they only cover the estimated per-query cost of operating the verification system. IEFA funds are used to cover other costs of the program, especially personnel and overhead expenses. In short, then, the funding structure for SAVE is a dual one, in which some costs are covered by reimbursements, and other costs from IEFA funds. Congress has supported this funding arrangement in the past, noting ongoing budget constraints.<sup>70</sup> As the commenter requests, USCIS and DHS regularly examine SAVE fees, and may modify them in the future.

#### 2. Exclusion of Temporary or Uncertain Costs, Items, and Programs

As noted in the NPRM, DHS excluded from the fee model the costs and revenue associated with certain

programs that are time-limited or that may otherwise be narrowed or terminated, including because they are predicated on guidance and not preserved in regulations or statute.<sup>71</sup> *See* 81 FR 26914–26915. This exclusion applies to the Application for TPS, Form I–821; Consideration of Deferred Action for Childhood Arrivals (DACA), Form I–821D; and Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100) (Nicaraguan Adjustment and Central American Relief Act (NACARA)), Form I–881. As stated in the NPRM, DACA and TPS are both administrative exercises of discretion that may be granted on a case-by-case basis for particular periods of time. Both TPS and DACA, and the individual grants under each, are subject to intermittent renewal or extension at DHS’s discretion. For NACARA, the eligible population will eventually be exhausted due to relevant eligibility requirements, including the date by which an applicant was required to have entered the United States. Given that these initiatives or programs are temporary by definition and at the discretion of DHS, USCIS excluded the associated cost and workload from the fee review and did not propose to allocate overhead and other fixed costs to these workload volumes. *See* 81 FR 26915.

Some commenters wrote to question the rationale for excluding DACA and TPS from the fee review. Several commenters stated that it is a financial burden to have to renew DACA every 2 years and to renew TPS every 18 months. Other commenters stated that, by their own estimates, the cost of administering DACA is less than the revenue that the program generates. Some commenters stated that fee increases to Forms I–765 and I–131 would deter DACA and TPS renewals and initial applications.

Following consideration of the comments received, DHS retains its earlier position. The practice of excluding these initiatives or programs that are temporary by definition from the fee review mitigates an unnecessary revenue risk, by ensuring that USCIS

<sup>69</sup>The USCIS fee methodology is not intended to yield a profit for the agency nor the Federal Government. The sole purpose of USCIS IEFA fees is to achieve full cost recovery to allow the agency to provide an adequate level of service. USCIS filing fees are not designed to function as tariffs, to generate general revenue to support broader policy decisions, or to deter certain behavior. As previously stated in this final rule, filing fees are generally not intended to influence public policy in favor of or in opposition to immigration, support broader infrastructure, or cover costs beyond USCIS.

<sup>70</sup>H.R. Rep. No. 112–492 (May 23, 2012).

<sup>71</sup>As noted in the proposed rule, for the purposes of this rulemaking, DHS is including all requests funded from the IEFA in the term “benefit request” or “immigration benefit request” although the form or request may not be to request an immigration benefit. For example, DACA is solely an exercise of prosecutorial discretion by DHS and not an immigration benefit, and would fit under the definition of “benefit request” solely for purposes of this rule. For historic receipts and completion information, see USCIS immigration and citizenship data available at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data>.

will have enough revenue to recover full cost regardless of DHS's discretionary decision to continue these initiatives. This allows DHS to maintain the integrity of its ABC model, ensure recovery of full costs, and mitigate revenue risk from unreliable sources.

For these reasons, the cost of adjudicating requests associated with these policies was not considered, and this final rule excludes from the ABC model the costs and revenue associated with aforementioned policies, as proposed.

### 3. Setting Fees by Benefit Type

A commenter stated that IEFA fees should be based on the specific immigration benefit sought by a filer, rather than the specific form type used. The commenter noted that USCIS tracks completion rate (*i.e.*, adjudication time) by form number, and that the agency generally establishes a fee for the form type rather than the benefit being sought through the filing, even if the same form can be used to obtain different immigration benefits. For example, Form I-129 is used to request several types of nonimmigrant visa classifications, and a different fee could conceivably be calculated for each such classification.<sup>72</sup>

USCIS already sets some of its fees based on benefit sought, rather than form type used. For example, USCIS sets different fees for Form I-131 depending on the benefit sought, and the agency provides fee exemptions to certain filers of Form I-360. For other forms that have multiple uses, USCIS has not calculated the completion rate with enough precision to determine fees based on the benefits sought by filers of those forms. USCIS officers are required to manually report the time they spend on adjudicating forms; requiring reporting for sub-uses of those forms would divert time from processing requests. In addition, tracking whether filers are submitting the appropriate fees for the specific benefit sought would increase complexity for the agency and the public, potentially adding to processing delays. Nonetheless, DHS will continue considering this comment and may further refine its fee-setting methodology in the future to determine if different fees for the same form can be justified, as well as accurately and efficiently determined, without causing confusion and delay for adjudicators and the public. DHS made no changes

<sup>72</sup> Currently, the fee is the same for each Form I-129 filed. This fee has historically been calculated based on the average level of complexity for the adjudication of the form.

in this final rule as a result of this comment.

### 4. Income-Based Fee Structure

Some commenters stated that DHS should generally base fees on the filer's income level or cost of living. Although USCIS is adopting a limited income-based fee structure in the naturalization context, adjusting all fees based on income or cost of living would be administratively complex and would require even higher costs to administer. A tiered fee system would require staff dedicated to income verification and necessitate significant information system changes to accommodate multiple fee scenarios for every form. The costs and administrative burden associated with implementing such a system would require additional overall fee revenue. As a result, DHS does not support making the entire fee schedule contingent on income or cost of living and DHS has made no changes in this final rule as a result of these comments.

### 5. Reduction in USCIS Costs

A number of commenters recommended that USCIS reduce costs internally instead of raising fees to fully recover costs. For instance, some commenters stated that USCIS employees' salaries were too high. No commenters proposed a methodology that DHS could use to adjust the proposed fee schedule to account for unrealized cost reductions.

USCIS is continually exploring opportunities to increase efficiency and reduce unnecessary costs without negatively affecting the delivery of benefits. Although USCIS will continue seeking out cost reductions, and may incorporate the results of such cost reductions in future fee reviews, DHS cannot set aside the need for full cost recovery indefinitely. Accordingly, DHS made no changes in this final rule as a result of these comments.

#### I. Dishonored Payments

In the NPRM, in a set of proposals separate and distinct from the proposed fee schedule, DHS proposed to eliminate three rules requiring that cases be held while deficient payments are corrected. See proposed 8 CFR 103.2(a)(7)(ii), 103.7(a)(2); 81 FR 26936; *see also* previous 8 CFR 103.2(a)(7)(ii), (a)(2); 8 CFR 103.17(b)(1). Instead, DHS proposed that if a financial instrument used to pay a fee were returned as unpayable after one re-presentation, USCIS would reject the filing and impose a standard \$30 charge. The purpose of the proposed change was to reduce the USCIS administrative costs for holding and tracking immigration

benefit requests when the accompanying payment has already been rejected.

DHS received several comments concerning these proposed changes. Some commenters suggested that USCIS maintain the current procedure or allow for several attempts to process a payment. These commenters noted that some payment problems are due to circumstances beyond the filer's control. These commenters stated that dishonored payments may result from errors at a USCIS Lockbox facility or a temporary disruption to a bank or Automated Clearing House (ACH)<sup>73</sup> network. These commenters also stated that the rejection of a benefit request can have serious repercussions for the filer. Commenters asserted that a payment failure may be especially disruptive if, for example, an underlying labor certification application for Form I-140 is about to expire, a derivative applicant is about to age out of eligibility, the priority date for an application for adjustment of status is scheduled to retrogress, or an applicant's current status will expire imminently and the pendency and approval of the application would otherwise result in an extension of status. These commenters stated that time-sensitive immigration benefit requests could be delayed by months or years because of the proposed changes. One commenter also noted that the rejected filings may require over a month to be returned to filers.

DHS agrees that ACH and bank network outages can sometimes result in a rejection or delay payments for a few days.<sup>74</sup> In the past, USCIS has addressed the possibility of ACH and network outages by arranging for the Department of the Treasury (Treasury) to automatically re-present a rejected payment twice to see if it clears on the second or third attempt before sending the filer the bill for the rejected payment.<sup>75</sup> Re-depositing a rejected

<sup>73</sup> The ACH Network is a nationwide electronic fund transfer system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment-related information among participating financial institutions.

<sup>74</sup> Treasury notifies USCIS of the reasons the payment was dishonored. Sometimes the reason is a lack of funds and sometimes the reason is a system outage. DHS will apply the dishonored payment provisions in this rule to all dishonored payments, regardless of the reason provided by Treasury. DHS believes that the safeguards described in the remainder of this section appropriately balance the interests of applicants and beneficiaries, on the one hand, and USCIS's interest in sound and efficient administration, on the other.

<sup>75</sup> USCIS implemented this internal policy in an effort to reduce the number of bad checks under the

check, known as “re-presentment,” was not required by the regulations, but USCIS arranged for Treasury to do this as a courtesy to filers.<sup>76</sup>

To address the concerns raised by commenters that a dishonored payment may be due to circumstances beyond the filer’s control, DHS has decided to continue this practice, and to codify it (with slight revision) in this final rule. To make sure that a payment rejection is the result of insufficient funds and not due to USCIS error or network outages, USCIS (through Treasury) will re-submit rejected payment instruments to the appropriate financial institution one time. *See* new 8 CFR 103.2(a)(7)(ii)(D).<sup>77</sup> In effect, DHS will implement as a regulatory requirement the current practice under which USCIS re-presents rejected payments, but this rule will only require USCIS to re-submit the payment once, not twice. USCIS estimates that this change, based on its experience with how many days are required for financial instruments to clear, will provide a total of approximately 10 days before Treasury notifies USCIS that the payment (including re-presentment) has failed. The change codifies in regulation a practice that reduces instances in which requests are erroneously rejected because a bank erroneously rejects the relevant financial instrument.

This final rule also corrects an oversight in the NPRM related to how USCIS treats benefit requests that have already been approved when the agency learns that the financial instrument used to pay the associated fee is unpayable. Under current 8 CFR 103.2(a)(7)(ii), if USCIS has approved a benefit request before the payment has cleared, and the filer, having received notice of failed payment, fails to pay the filing fee and associated service charge within 14 days, USCIS automatically revokes the approval, or reopens or denies the request, due to improper filing. *See, e.g.,* previous 8 CFR 103.2(a)(1) (“Each benefit request or other document must be filed with fee(s) as required by regulation.”); 8 CFR 103.5(a)(5). As a result, a filer could not retain an

assumption that the payor may deposit funds during the intervening period and to preclude the need for USCIS to hold the bad check case while the payor has 14 days to correct it.

<sup>76</sup> DHS notes that the proposed rule’s preamble erroneously stated that “DHS is proposing that USCIS will not begin processing the benefit request until the payment has cleared.” *See* 81 FR 26920. No provisions were proposed that would require USCIS to hold cases. As in the past, USCIS strives to intake and begin processing every benefit request as soon as practicable, without regard for whether or not the payment has cleared.

<sup>77</sup> This policy will not apply to credit card payments.

approved benefit if the financial instrument used to pay the fee was subsequently returned as unpayable.<sup>78</sup> Unfortunately, the proposed rule erroneously omitted this existing regulatory authority, *see* proposed 8 CFR 103.2(a)(7)(ii); 81 FR 26936, and also erroneously failed to include conforming updates to a related provision, *see* previous 8 CFR 205.1(a)(2) (providing for automatic revocation of certain petitions “[i]f the filing fee and associated service charge are not paid within 14 days of the notification to the remitter that his or her check or other financial instrument used to pay the filing fee has been returned as not payable”).

As the NPRM and this rule make clear, however, the ability of USCIS to collect fees is a fundamental aspect of its ability to function. USCIS must be able to continue requiring proper fee payments as a condition of eligibility for immigration benefits. Individuals who file a benefit request with a fee payment that is dishonored should, therefore, have no expectation that they might benefit from early processing of their filing.

Given that background, the only alternative to continuing to provide for revocation would be for USCIS to hold each benefit request until the financial instrument used to pay the fee has finally cleared or been rejected. In the interest of administrative efficiency and prompt processing of benefit requests, DHS has rejected that alternative. Therefore, DHS has provided in this final rule that if a remittance in payment of any fee submitted with a request is not honored by the bank or financial institution on which it is drawn, and the request was approved, USCIS will initiate revocation of the approval by issuing a notice of intent to revoke (NOIR). *See* new 8 CFR 103.7(a)(2)(iii).<sup>79</sup> The applicant, petitioner or requestor will be provided an opportunity to respond to the NOIR with evidence that the payment was honored and the revocation would be in error. To assuage concerns about procedural safeguards in

<sup>78</sup> In such a case, USCIS would either (1) revoke the approval automatically, (2) send a notice of intent to revoke the approval, or (3) reopen the approved case and deny it. *See, e.g.,* 8 CFR 103.5(a)(5) (motion by Service officer); 205.1(a)(2) (automatic revocation of immigrant petitions); 205.2 (revocation on notice); 214.2(h)(11)(iii)(A)(5), (l)(9)(iii)(A)(5), (o)(8)(iii)(A)(5), (p)(10)(iii)(A)(5), (q)(9)(iii)(D) & (r)(18)(iii)(A)(5); 274a.14(b) (revocation for erroneous approval); *see also, e.g.,* 6 U.S.C. 112; INA secs. 103, 204, 205, 214, 216, 216A, 244, 274A, and 286; 8 U.S.C. 1103, 1154, 1155, 1184, 1186a, 1186b, 1254a, 1324a, and 1356.

<sup>79</sup> DHS considers an NOIR process to provide superior notice to requestors, as compared to the automatic revocation provision in previous 8 CFR 103.2(a)(7)(ii).

such a situation, USCIS has decided to provide a notice in advance of the revocation in response to public comments that stated that a mistake by USCIS or a contractor could result in a dishonored payment. The applicant, petitioner or requestor may not, however, pay the rejected fee in response to the NOIR.

DHS emphasizes that this provision applies if *any* fee submitted with a benefit request is returned as dishonored. If a benefit request requires multiple fees, all fee instruments submitted with the request must be honored by the remitting bank; if any one fee instrument is dishonored after approval of the request, USCIS will revoke the approval after notice and will retain any filing fees properly paid. For instance, for the past five fiscal years, an average of 231 petitions per year were submitted with a Request for Premium Processing Service, Form I-907, accompanied by a check that was dishonored by the remitting bank. If a benefit approved under these circumstances is not revoked, petitioners would have the perverse incentive to request premium processing services in order to receive a swift approval, knowing they would not suffer any consequences once the bank dishonors the payment submitted for premium processing.<sup>80</sup> If the bank dishonors the Form I-907 payment after USCIS has approved the benefit request underlying the Form I-907, USCIS may revoke the approval after notice and, in that event, would retain the filing fees for the underlying benefit.<sup>81</sup>

In short, USCIS is fee funded and it must be able to adjudicate requests, including those which it has committed to approve in an expedited manner, without concerns that the fee payment will be declined. Accordingly, under this final rule, USCIS will intake the benefit request, deposit the fee, and begin processing the filing. If the payment is rejected, Treasury will re-present the payment instrument on USCIS’s behalf. If the payment is rejected on the second try, Treasury will notify USCIS and USCIS, solely under

<sup>80</sup> Currently, in the case of a request for premium processing, if the Form I-907 check is returned for insufficient funds, USCIS will process the case as a regular submission and will not revoke the approval even if the Form I-907 check is never honored. Unless DHS can also revoke the underlying petition, some premium processing requestors will benefit from a swift adjudication for which they have not paid.

<sup>81</sup> Just as USCIS does not refund filing fees for a denied benefit, USCIS will not refund filing fees for a revoked benefit. After USCIS has fully adjudicated the request, it will have performed the same amount of work and expended the same resources for the adjudication that it would have expended if the case had been approved or denied.

its own authority, will reject the filing for fee non-payment. If the filing has been approved, USCIS will initiate revocation of the approval. *See id.* The elimination of the 14-day waiting period will reduce the need for special handling of cases involving a dishonored payment. The requirement to re-present rejected payments will address commenters' concerns about rejections that occur through no fault of the filer. And the requirement to revoke an approved request if the payment has ultimately been rejected will help ensure the integrity of the benefits adjudication system.

#### J. Refunds

In the NPRM, DHS proposed a minor change in the provision regarding USCIS fee refunds. *See* proposed 8 CFR 103.2(a)(1); 81 FR 26936. In general, and except for a premium processing fee under 8 CFR 103.7(e)(2)(i), USCIS does not refund a fee regardless of the decision on the immigration benefit. However, USCIS will refund a fee if the agency determines that an administrative error occurred resulting in the incorrect collection of a fee. *See* 81 FR 26920–26921. DHS proposed to revise 8 CFR 103.2(a)(1) to provide that fees are “generally” not refunded. This would address concerns that the current regulatory text does not explicitly permit refunds at DHS discretion. DHS currently grants such refunds because as electronic filings and associated electronic payments have increased, there has been an increase in the number of erroneous payments where refunds are appropriate.

Some commenters stated that they supported the regulatory change to clarify that USCIS does not generally allow refunds, but that a refund may occur as a result of administrative error or unnecessary payment. *See* 81 FR 26936. DHS has made no change based on these comments. DHS is finalizing this provision as proposed.

#### K. Visa Allocation

Some commenters wrote that they generally opposed the fee increases in the proposed rule due to long waits for immigrant visas. Although these long waits are due to visa retrogression in oversubscribed categories, some attributed it to USCIS processing inefficiencies and questioned a fee hike in the face of such delays.<sup>82</sup> Some commenters stated that USCIS should

be able to move visa priority dates forward if fee increases are implemented.

Significant improvements have been made in the visa coordination process between DHS and the Department of State (DOS). In September 2015, DOS, in coordination with DHS, revised the procedures for determining immigrant visa availability and authorization for issuance for both employment-based and family-sponsored applicants for adjustment of status in the United States. *See* Department of State Visa Bulletin for October 2015.<sup>83</sup> These revisions were made to better align with DOS' immigrant visa overseas consular processing application procedures and to enhance DOS' ability to better predict overall immigrant visa demand and determine cut-off dates for visa issuance published in the Visa Bulletin. *Id.*

DHS appreciates the concerns raised by individuals who may have been affected by long visa waits and visa retrogression. However, requests to make further revisions to the visa allocation process and priority dates must be done in coordination with DOS and are outside the scope of this rulemaking.

#### L. Credit Card Payments

Finally, some commenters criticized USCIS for not allowing credit card payments for additional immigration benefit requests. USCIS accepts credit card payments made in person at all domestic field offices that accept payments.<sup>84</sup> USCIS began allowing credit card payments for paper-filed Applications for Naturalization, Forms N–400, on September 19, 2015.<sup>85</sup> Currently, this is the only immigration benefit that can be paid for with a credit card when filed by mail. USCIS also accepts credit card payments for immigration benefit requests made through the electronic immigration system. DHS made no changes in this final rule as a result of these comments. Nonetheless, in the future, USCIS will allow credit cards payments for all immigration benefit request fees when they are filed at a Lockbox facility as

soon as this capability can be made available.

### V. Statutory and Regulatory Reviews

#### A. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(6), DHS examined the impact of this rule on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than 50,000 people). Below is a summary of the small entity analysis. A more detailed analysis is available in the rulemaking docket at <http://www.regulations.gov>.

Individuals rather than entities submit the majority of immigration and naturalization benefit applications and petitions. Entities that will be affected by this rule are those that file and pay the fees for certain immigration benefit applications and petitions. There are four categories of benefits that DHS analyzed in the Initial Regulatory Flexibility Analysis (IRFA) for this rule: Petition for a Nonimmigrant Worker, Form I–129; Immigrant Petition for an Alien Worker, Form I–140; Application for Civil Surgeon Designation, Form I–910; and the Application for Regional Center Designation Under the Immigrant Investor Program, Form I–924.<sup>86</sup> Additionally, DHS has analyzed as part of the following Final Regulatory Flexibility Analysis (FRFA) requests related to genealogy information, Forms G–1041 and G–1041A, and the Petition for Amerasian Widow(er) or Special Immigrant, Form I–360, in response to public comment on the impact to small entities that file these forms.

Following the review of available data, DHS does not believe that the increase in fees in this final rule will have a significant economic impact on a substantial number of small entities that are filing Form I–129, Form I–140, or Form I–910. However, DHS does not have sufficient data on the revenue collected through administrative fees by regional centers to definitively determine the economic impact on small entities that may file Form I–924. DHS also does not have sufficient data on the requestors that file genealogy forms to determine whether such filings were made by entities or individuals,

<sup>86</sup> Also captured in the dataset for Form I–924 is the Supplement Form I–924A, which regional centers must file annually to certify their continued eligibility for regional center designation.

<sup>82</sup> Visa retrogression occurs when more people apply for a visa in a particular category or country than there are visas available for that month <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/visa-retrogression>.

<sup>83</sup> Available at <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-october-2015.html>.

<sup>84</sup> *See* U.S. Citizenship and Immigration Services, Paying Immigration Fees (7/7/2014), available at <https://www.uscis.gov/forms/paying-immigration-fees>.

<sup>85</sup> *See* USCIS to Welcome More Than 36,000 Citizens During Annual Constitution Day and Citizenship Day Celebrations (9/17/2015), available at <https://www.uscis.gov/news/news-releases/uscis-welcome-more-36000-citizens-during-annual-constitution-day-and-citizenship-day-celebrations>.

and thus is unable to determine if the fee increase for genealogy searches is likely to have a significant economic impact on a substantial number of small entities. Finally, DHS has added in this FRFA an analysis of the effects on small entities from the fee increase for Form I-360 and does not believe that the increase in fees will have a significant economic impact on these small entities. DHS is publishing this FRFA to respond to public comments, and provide further information on the likely impact of this rule on small entities.

#### 1. A Statement of the Need for, and Objectives of, the Rule

DHS issues this final rule consistent with INA section 286(m),<sup>87</sup> which authorizes DHS to charge fees for adjudication and naturalization services at a level to “ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants,” and the CFO Act,<sup>88</sup> which requires each agency’s CFO to review, on a biennial basis, the fees imposed by the agency for services it provides, and to recommend changes to the agency’s fees. DHS is adjusting the fee schedule for DHS immigration and naturalization benefit applications after conducting a comprehensive fee review for the FY 2016/2017 biennial period and determining that current fees do not recover the full costs of services provided. DHS has determined that adjusting the fee schedule is necessary to fully recover costs and maintain adequate service.

#### 2. A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, A Statement of the Assessment of the Agency of Such Issues, and A Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

DHS published the NPRM along with the IRFA on May 4, 2016 (81 FR 26903) with the comment period ending July 6, 2016. During the 60-day comment period, DHS received 475 comments from interested individuals and organizations. DHS received several comments that directly or indirectly referred to aspects of the small entity analysis or IRFA presented with the

NPRM. The comments, however, did not result in any major revisions to the small entity analysis in this final rule that are relevant to the effects on small businesses, small organizations, and small governmental jurisdictions presented in this FRFA. DHS summarizes and responds to these comments in this Final Rule.

#### a. Comments on Form I-129

One commenter wrote about the 42-percent increase (\$135) of the fee for the Petition for a Nonimmigrant Worker, Form I-129. The commenter explained that such a significant increase in visa fees for H-2A category visas for temporary agricultural workers will negatively affect the ability of both large and small farmers to use those visas to ensure a sufficient and stable work force. Form I-129, which is used to petition for H-2A workers, is often used by a large and an increasing portion of small business employers according to this commenter. The commenter discussed the impact this 42-percent increase has on an employer hiring only one employee compared to an employer hiring 100 employees. This commenter was especially concerned with the impact of this rule on smaller farmers, many of whom petition for 1 to 5 workers, but whose farming operations could not continue without these workers. This commenter also stated that the impact of the rule on small entities was not quantitatively considered and/or disclosed.

Several other commenters wrote about the fee increase for Form I-129 and its impact on small entities in terms of small traveling musicians that cross over the border, particularly those along the United States and Canadian border. The commenters stated that these musicians routinely perform in small venues or small festivals and it currently takes about 3 separate performances to recoup the expenses of the current fee for Form I-129. The commenters stated that this increase in fees presents considerable hardship for these small performers and also compromises the ability to organize small tours that would result in break-even revenues.

Other commenters also wrote about the increase for Form I-129 and its impact on small religious orders and communities who petition for foreign-born religious workers. The commenters stated that this increase is particularly burdensome since extensions have to

continually be filed for work authorizations as well. They noted that these added costs impact smaller parishes and lower-income neighborhoods disproportionately. In addition to the fee increases for Form I-129, these commenters also expressed similar concern for Forms I-360 and I-485.

DHS respectfully disagrees with the commenter who stated that the impact of the rule on small entities was not quantitatively considered and/or disclosed. DHS used recent data to examine the direct impacts to small entities for Forms I-129, I-140, I-910, and I-924. DHS prepared an IRFA that complied with the Regulatory Flexibility Act (RFA) and that was published with the NPRM. DHS also published a more comprehensive small entity analysis of the potential impact of the Form I-129 fee increase on [www.regulations.gov](http://www.regulations.gov) in the docket for this rule along with other supporting documentation. DHS has also added an analysis of Forms G-1041, G-1041A, and I-360 in this FRFA in response to public comments.

In terms of the range for Form I-129, among the 284 small entities with reported revenue data identified in the small entity analysis, all experienced an economic impact of considerably less than 1.0 percent of revenue in the analysis, with the exception of two entities. Using the methodology described in the comprehensive small entity analysis, the greatest economic impact imposed by this fee change totaled 2.55 percent. This small entity with the highest economic impact imposed by the fee increase is in the theater companies and dinner theaters industry, which submitted 18 of the total 482,190 Form I-129 petitions in the 12-month period analyzed. The small entity with the second highest economic impact (2.05 percent) imposed by the fee increase is in the custom computer programming services industry, which submitted 50 of the total 482,190 Form I-129 petitions. DHS notes that out of the 10 small entities that face the highest economic impact due to this fee increase, a majority are in industries that are not related to musicians, farmers, or religious organizations. Table 2 shows the industry in which these top 10 impacted small entities belong, as well as the number of petitions submitted by each entity.

<sup>87</sup> See 8 U.S.C. 1356(m).

<sup>88</sup> See 31 U.S.C. 901-03.

TABLE 2—FORM I-129 NAICS INDUSTRY OF THE SMALL ENTITIES WITH THE HIGHEST ECONOMIC IMPACT IMPOSED BY THE FEE INCREASE \*

NAICS Industry	Number of petitions submitted	Economic impact on entity's revenue imposed by fee increase (percent)
Theater Companies and Dinner Theaters .....	18	2.55
Custom Computer Programming Services .....	50	2.05
All Other Business Support Services .....	2	0.90
Dance Companies .....	4	0.90
Other Scientific and Technical Consulting Services .....	7	0.53
Computer Systems Design Services .....	2	0.46
All Other Business Support Services .....	1	0.45
Custom Computer Programming Services .....	3	0.37
All Other Business Support Services .....	2	0.34
All Other Business Support Services .....	2	0.34

Source: DHS, USCIS, Office of Performance and Quality.  
\* North American Industry Classification System (NAICS).

DHS also analyzed the 284 small entities with reported revenue data in our sample of Form I-129 petitions to see how many small entities were specifically in NAICS codes related to musicians, farmers, or religious organizations. Of these small entities, a total of 26 small entities were found in one of these related NAICS, 3 of the small entities were in the agricultural industry; 8 small entities were in the performing arts, spectator sports, and related industries; and 15 small entities were religious organizations. Looking only at this subset of 26 entities, only one small entity had an economic impact above 1 percent with one other small entity just under 1 percent, both of which were in the performing arts industries. The 24 other small entities in these categories had economic impacts that were well below 1 percent. Twelve of these small entities had an economic impact between 0.34 percent and 0.10 percent, while the remaining 12 small entities had economic impacts below 0.10 percent. Therefore, while DHS sympathizes with small farmers, small traveling musicians, and small religious

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

#### b. Comments on Forms I-360 and I-485

DHS also received comments about the impact of this rule on small religious organizations who file on behalf of religious workers utilizing Forms I-485 and I-360. Form I-485, Application to Register Permanent Residence or Adjust Status, was not considered in this small entity analysis because it is submitted by individuals seeking to receive benefits, not entities. DHS selected forms that are filed by entities for the small entity analysis in the NPRM. DHS recognizes, however, that entities may also file the Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360, on behalf of a religious worker and acknowledges it is appropriate to include Form I-360 in the small entity analysis for the final rule.

The fee for Form I-360 will increase from \$405 to \$435, a \$30 (7 percent) increase. DHS was able to obtain

internal data on petitioners who file Form I-360 for Special Immigrant Religious Workers provided by the Office of Performance and Quality for this final rule. There were a total of 4,399 religious foreign worker Form I-360 petitions submitted in FY 2015 by 1,890 unique entities. Of these 1,890 unique entities, approximately 96 percent were churches, mosques, synagogues, temples, or other places of worship. Due to the overwhelming number of entities that were places of worship and therefore, likely designated as non-profit organizations, DHS assumed that all 1,890 entities are small.

Of the unique entities, about 51 percent of entities had submitted just one petition in the FY 2015 (Table 3). Over 83 percent submitted only one or two petitions. At the other end of scale, only about half a percent of entities submitted more than 20 petitions. An average of 2.4 petitions per entity was submitted in FY 2015. Based on a \$30 increase in fees per petition for Form I-360, the average additional cost to these entities is \$72.<sup>89</sup>

TABLE 3—FORM I-360 PETITIONS PER ENTITY

Petitions per entity	Entities	Percentage of total (percent)	Cumulative percentage (percent)
1 .....	959	50.7	50.7
2 .....	617	32.6	83.3
3 .....	91	4.8	88.2
4 .....	78	4.1	92.3
5 .....	21	1.1	93.4
6 to 10 .....	87	4.6	98.0
11 to 20 .....	30	1.6	99.6
21 to 50 .....	5	0.3	99.9

<sup>89</sup> Calculation: 2.4 average petitions per entity × \$30 increase in fees = \$72 average additional cost to entities.

TABLE 3—FORM I-360 PETITIONS PER ENTITY—Continued

Petitions per entity	Entities	Percentage of total (percent)	Cumulative percentage (percent)
51+ .....	2	0.1	100.0
Total .....	1,890	100.0	

Source: DHS, USCIS, Office of Performance and Quality.

DHS also analyzed the costs imposed by this rule on the petitioning entities relative to the costs of the typical employee’s salary. Guidelines suggested by the Small Business Administration (SBA) Office of Advocacy indicate that the impact of a rule could be significant if the cost of the regulation exceeds 5 percent of the labor costs of the entities in the sector.<sup>90</sup> According to the Bureau of Labor Statistics (BLS), the mean annual salary is \$48,150 for clergy,<sup>91</sup> \$45,160 for directors of religious activities and education,<sup>92</sup> and \$35,160 for all other religious workers.<sup>93</sup> Based on an average of 2.4 religious workers petitioned-for per entity, the additional average annual cost will be \$72 per entity.<sup>94</sup> Thus, the additional costs per entity imposed by this rule represent only 0.15 percent of the average salary for clergy, 0.16 percent of the average salary for directors of religious of activities and education, and 0.20 percent of the average salary for all other religious workers. Therefore, using average annual labor cost guidelines, the

additional regulatory compliance costs imposed by this rule are not significant.

c. Comments on Forms G-1041 and G-1041A

Several commenters also expressed concern about the impact the proposed increase in fees related to genealogy searches would have on individual businesses. The commenters stated that such large increases in fees would be prohibitive to many individual genealogists that submit requests. Some commenters suggested that the fee increase should be phased-in over several years to help mitigate the impact of this total cost increase.

DHS appreciates the comments on the impact this fee increase will have on the individual businesses who request information from the genealogy program. The fee for Genealogy Index Search Request, Form G-1041, will increase from \$20 to \$65 (a 225 percent increase). The fee for Genealogy Index Search Request, Form G-1041, will increase from \$20 to \$65 (a 225 percent increase). Currently there are two fees for the Genealogy Records Request,

Form G-1041A; the appropriate fee depends on whether the filing requests copies from microfilm (currently \$20) or copies from textual records (currently \$35). The new fee for Form G-1041A will increase to \$65, regardless of the type of media involved. This represents a fee increase of 86 to 225 percent over current fee levels.

Based on DHS records related to the genealogy program, an average of 4,022 Index Search requests and 2,166 Records requests were made annually over the 4 calendar year span from 2012 to 2015 (Table 4). However, DHS does not have sufficient data on these requests to determine whether they were submitted by entities or individuals. Additionally, DHS cannot break out how many Genealogy Records Requests are copies from microfilm or from textual records. The case management tracking system used by DHS for these genealogy requests does not allow for requestor data to be readily pulled, nor does it allow for a break out in the Form G-1041A requests by record type.

TABLE 4—GENEALOGY FORM RECEIPTS [Calendar Year]

Form Type	2012	2013	2014	2015	Average
Genealogy Index Search Request, Form G-1041 .....	3361	3662	4167	4897	4022
Genealogy Records Request, Form G-1041A .....	2066	2219	2036	2344	2166

Source: DHS, USCIS, Immigration Records and Identity Services Directorate.

DHS has previously determined that requests for historical records are usually made by individuals.<sup>95</sup> If professional genealogists and researchers submitted such requests in the past, they did not identify themselves as commercial requesters and thus could not be segregated in the data. Genealogists typically advise

clients on how to submit their own requests. For those that submit requests on behalf of clients, DHS does not know the extent to which they can pass along the fee increases to their individual clients. Therefore, DHS does not currently have sufficient data to definitively assess the impact on small entities for these requests.

DHS has decided to recover the full cost of the genealogy program from the genealogy program fees. As previously stated in this final rule, reducing the filing fee for any one benefit request submitted to DHS simply transfers the additional cost to process this request to other immigration and naturalization filing fees. Furthermore, DHS is not able

<sup>90</sup> Office of Advocacy, Small Business Administration, “A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act”: [https://www.sba.gov/sites/default/files/rfaguide\\_0512\\_0.pdf](https://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf).

<sup>91</sup> Bureau of Labor Statistics, U.S. Department of Labor, “Occupational Employment Statistics, May 2015, “Clergy”: <http://www.bls.gov/oes/current/oes212011.htm>.

<sup>92</sup> Bureau of Labor Statistics, U.S. Department of Labor, “Occupational Employment Statistics, May 2015, “Directors of Religious Activities and Education”: <http://www.bls.gov/oes/current/oes212021.htm>.

<sup>93</sup> Bureau of Labor Statistics, U.S. Department of Labor, “Occupational Employment Statistics, May 2015, “Religious Workers, All Other”: <http://www.bls.gov/oes/current/oes212099.htm>.

<sup>94</sup> Calculation: 2.4 average petitions per entity × \$30 new petition fee = \$72 additional total cost per entity.

<sup>95</sup> See “Establishment of a Genealogy Program; Proposed Rule,” 8 CFR 103, 299 (Apr. 20, 2006), available at <https://www.regulations.gov/document?D=USCIS-2006-0013-0001>.

to accommodate a phased-in approach of costs over several years due to the statutory guidelines on how DHS is able to increase its fees.

d. Comments on Form I-924A

One commenter indicated that fees for the new Form I-924A would create particular burdens on regional centers with less than 30 investors. The new fee for the annual filings of Supplement Form I-924A is \$3,035.

As discussed in the small entity analysis of this final rule, while DHS cannot definitively claim that there is no significant economic impact to these small entities based on existing information at the time of this final rule, DHS would assume existing regional centers that have revenues equal to or less than \$303,500 per year<sup>96</sup> (some of which DHS assumes would be derived from administrative fees charged to individual investors) could experience a significant economic impact if DHS assumes a fee increase that represents 1 percent of annual revenue is a "significant" economic burden under the RFA. DHS also assumes newly designated regional centers that have revenues equal to or less than \$1,779,500 per year<sup>97</sup> could also experience a significant impact.

Searching through several public Web sites, DHS gathers that administrative fees charged to investors could range between \$30,000 and \$100,000 per investor.<sup>98</sup> DHS was able to obtain some sample data on 440 regional centers operating 5,886 projects. These 5,886 projects had a total of 54,506 investors, averaging 124 investors per regional center.<sup>99</sup> Assuming an average of 124 investors is a representative proxy for regional centers, and that \$30,000 is the minimum administrative fee charged by regional centers, then such fees would represent approximately \$3,720,000 in revenue. In that case, DHS expects that the proposed filing fee increase for Form I-924 and the creation of a new fee for Form I-924A would not cause a significant economic impact to these entities.

DHS does not currently have information on how many regional

centers may have 30 or fewer investors. However, DHS expects that the fee for the annual filing of Form I-924A is greater than 1 percent of annual revenue for only those regional centers with 10 or fewer investors.<sup>100</sup> Regional centers with 11 or more investors are not likely to experience a significant economic impact due to this rule. While DHS cannot definitively state the number of regional centers that have fewer than 10 investors, we do not believe it is a substantial number of regional centers.

3. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

No comments were filed by the Chief Counsel for Advocacy of SBA.

4. A Description of and an Estimate of the Number of Small Entities To Which the Rule Will Apply or an Explanation of Why No Such Estimate is Available

Entities affected by this final rule are those that file and pay fees for certain immigration benefit applications and petitions on behalf of a foreign national. These applications include Petition for Nonimmigrant Worker, Form I-129; Immigrant Petition for Alien Worker, Form I-140; Civil Surgeon Designation, Form I-910; Application for Regional Center Designation Under the Immigrant Investor Program, Form I-924; and Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360. Annual numeric estimates of small entities affected by this fee increase total (in parentheses): Form I-129 (70,211), Form I-140 (17,812), Form I-910 (589), Form I-924 (412), and Form I-360 (1,890).

This rule applies to small entities including businesses, not-for-profit organizations, and governmental jurisdictions filing for the above benefits. Form I-129 and Form I-140 will see a number of industry clusters affected by this rule (see Appendix A of the Small Entity Analysis for a list of affected industry codes). Of the total 444 small entities in the sample for Form I-129, most entities were small businesses (401), with 41 small not-for-profit entities and only 2 small governmental jurisdictions. Similarly, of the total 393 small entities in the sample for Form I-140, most entities were small businesses (364), with 26 small not-for-profit entities and 3 small governmental jurisdictions. The fee for the

Application for Civil Surgeon Designation, Form I-910, will apply to physicians requesting such designation. There were 322 small entities in the sample for Form I-910, consisting of two small governmental jurisdictions and 320 small entities that were either small businesses or small not-for-profits. DHS was unable to further break down the composition of small entities between small businesses and small not-for-profits due to difficulties in determining the structure of these small entities. The Form I-924 will apply to any entity requesting approval and designation as a regional center under the Immigrant Investor Program or filing an amendment to an approved regional center application. Also captured in the dataset for Form I-924 is the Supplement Form I-924A, which regional centers must file annually to certify their continued eligibility for regional center designation. The Form I-360 will apply to any entity petitioning on behalf of a religious worker.

DHS does not have sufficient data on the requestors for the genealogy forms, Forms G-1041 and G-1041A, to determine if entities or individuals submitted these requests. DHS has previously determined that requests for historical records are usually made by individuals.<sup>101</sup> If professional genealogists and researchers submitted such requests in the past, they did not identify themselves as commercial requestors and thus could not be segregated in the data. Genealogists typically advise clients on how to submit their own requests. For those that submit requests on behalf of clients, DHS does not know the extent to which they can pass along the fee increases to their individual clients. Therefore, DHS does not currently have sufficient data to definitively assess the estimate of small entities for these requests.

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

The fee for the Petition for a Nonimmigrant Worker, Form I-129, will increase from \$325 to \$460, a \$135 (42 percent) increase. DHS used a 12-month period of data on filings of Form I-129 from September 1, 2014 to August 31, 2015, to collect internal data for each filing organization including the name, Employer Identification Number, city, state, ZIP Code, and number/type of filings. Each entity may make multiple filings; for instance, there were 482,190 Form I-129 petitions, but only 84,490

<sup>96</sup> Calculation: 1 percent of \$303,500 = \$3,035 (the new proposed fee for Form I-924A).

<sup>97</sup> Calculation: 1 percent of \$1,779,500 = \$17,995 (the new proposed fee for Form I-924).

<sup>98</sup> Yen, Christine et al., "A Report on Source of Funds: Perils of the Administrative Fee." EB5 Investors Magazine (Aug. 20, 2015), available at: <http://www.eb5investors.com/magazine/article/A-Report-on-Source-of-Funds>; see also Green, Merritt. "The Costs of an EB-5 Regional Center Project Investment." (June 27, 2014), available at: <http://www.generalcounselaw.com/the-cost-of-an-eb-5-regional-center-project-investment/>.

<sup>99</sup> Department of Homeland Security, USCIS, Immigrant Investor Program Office.

<sup>100</sup> Assuming \$30,000 administrative fee × 10 investors = \$300,000 regional center revenue.

<sup>101</sup> See "Establishment of a Genealogy Program; Proposed Rule," 8 CFR 103, 299 (Apr. 20, 2006), available at: <https://www.regulations.gov/document?D=USCIS-2006-0013-0001>.

unique entities that filed those petitions. Since the filing statistics do not contain information such as the revenue of the business, DHS looked for this information by researching databases from third-party sources. DHS used the subscription-based online database from Hoover's, as well as three open-access databases from Manta, Cortera, and Guidestar, to help determine an organization's small entity status and apply SBA size standards.

DHS devised a methodology to conduct the small entity analysis based on a representative sample of the affected population for each form. To achieve a 95 percent confidence level and a 5 percent confidence interval on a population of 84,490 unique entities for Form I-129, DHS used the standard statistical formula to determine a minimum sample size of 382 entities was necessary. Based on past experience, DHS expected to find about 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, DHS selected a sample size approximately 40 percent larger than the minimum necessary in order to allow for non-matches (filing organizations that could not be found in any of the four databases). Therefore, DHS conducted searches on 534 randomly selected entities from the population of 84,490 unique entities for Form I-129.

The 534 searches for Form I-129 resulted in 444 small entities, 287 of which were determined to be small entities based on their reported revenue or employee count and their NAICS code. Combining non-matches (130), matches missing data (27), and small entity matches (287), enables us to classify 444 of the 534 entities as small for Form I-129.

With an aggregated total of 444 out of a sample size of 534 entities searched, DHS inferred that a majority, or 83.1 percent, of the entities filing Form I-129 petitions during the period were small entities. Furthermore, 284 of the 534 entities searched were small entities with the sales revenue data needed to estimate the economic impact of the rule. Because these 284 small entities were a subset of the random sample of 534 searches, they were statistically significant in the context of this research. In order to calculate the economic impact of this rule, DHS estimated the total costs associated with the fee increase annually for each entity, divided by the annual sales revenue of that entity.<sup>102</sup> Based on the fee increase of \$135 for Form I-129, this will amount

to an average impact of 0.08 percent on all 284 small entities with reported revenue data.

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

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

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

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

DHS used the same methodology as with Form I-129 to conduct the small entity analysis based on a representative sample of the affected population. To achieve a 95 percent confidence level and a 5 percent confidence interval on a population of 23,284 unique entities for Form I-140, DHS used the standard statistical formula to determine that a minimum sample size of 378 entities was necessary. Again, based on past experience, DHS expected to find about 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, DHS oversampled in order to allow for non-matches (filing organizations that could not be found in any of the four databases).

DHS conducted searches on 514 randomly selected entities from the population of 23,284 unique entities for Form I-140. The 514 searches resulted in 430 instances where the name of the filing organization was successfully matched in the databases and 84 instances where the name of the filing organization was not found in the databases. Based on previous experience conducting regulatory flexibility analyses, DHS assumes filing organizations not found in the online databases are likely to be small entities. In order not to underestimate the number of small entities affected by this

rule, DHS makes the conservative assumption to consider all of the non-matched entities as small entities for the purpose of this analysis. Among the 430 matches for Form I-140, 290 were determined to be small entities based on their reported revenue or employee count and their NAICS code. Combining non-matches (84), matches missing data (19), and small entity matches (290), enables us to classify 393 of 514 entities as small for Form I-140.

With an aggregated total of 393 out of a sample size of 514 entities searched, DHS inferred that a majority, or 76.5 percent, of the entities filing Form I-140 petitions during the period were small entities. Furthermore, 287 of the 514 entities searched were small entities with the sales revenue data needed to estimate the economic impact of the rule. Because these 287 small entities were a subset of the random sample of 514 searches, they were statistically significant in the context of this research. Similar to the analysis involving Form I-129, DHS estimated the total costs associated with the Form I-140 fee increase annually for each entity, divided by the annual sales revenue of that entity in order to calculate the economic impact of this rule.

Among the 287 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0 percent in the analysis. Using the above methodology, the greatest economic impact imposed by this fee change totaled 0.68 percent and the smallest totaled 0.000002 percent. The average impact on all 287 small entities with revenue data was 0.04 percent. The evidence suggests that the additional fee imposed by this rule does not represent a significant economic impact on these entities.

Additionally, DHS analyzed any cumulative impacts to small entities resulting from the fee increases to both Forms I-129 and I-140. DHS isolated those entities that overlapped in both samples of Forms I-129 and I-140 by Employer Identification Number (EIN). Only three entities had EINs that overlapped in both samples. Of these three entities, two of them were small entities and one was not a small entity. Only one entity submitted multiple Form I-129 petitions, while all three entities submitted multiple Form I-140 petitions. Due to little overlap in entities in the samples and the relatively minor impacts on revenue of fee increases of Forms I-129 and I-140, DHS does not expect the combined impact of these two forms to be an economically significant burden on a substantial number of small entities.

<sup>102</sup> Total Cost to Entity = (Number of Petitions × \$135)/Entity Sales Revenue.

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

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

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

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

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

Similar to the analysis involving Forms I-129 and I-140, DHS estimated the total costs associated with the Form I-910 fee increase for each entity. Among the 238 small entities with reported revenue data, all experienced an economic impact considerably less

than 1.0 percent in the analysis. The greatest economic impact imposed by this fee change totaled 0.61 percent and the smallest totaled 0.00002 percent. The average impact on all 238 small entities with revenue data was 0.09 percent. The evidence suggests that the additional fee imposed by this rule does not represent a significant economic impact on these entities.

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

Congress created the EB-5 Program in 1990 under section 203(b)(5) of the INA to stimulate the U.S. economy through job creation and capital investment by foreign investors. Foreign investors have the opportunity to obtain LPR status in the United States for themselves, their spouses, and their minor unmarried children through a certain level of capital investment and associated job creation or preservation. There are two distinct EB-5 pathways for a foreign investor to gain LPR status: The Basic Program and the Regional Center Program. Both options require a capital investment from the foreign investor in a new commercial enterprise located within the United States. The capital investment amount is generally set at \$1,000,000, but may be reduced to \$500,000 if the investment is made in a "Targeted Employment Area."

A regional center is an economic entity, public or private, that promotes economic growth, regional productivity, job creation, and increased domestic capital investment. Regional centers pool funds into development loans or equity for commercial and real estate development projects. As of July 15, 2016, there were 847 DHS-approved regional centers.<sup>103</sup> Entities seeking designation as regional centers file Form I-924 along with supporting materials. Approved regional centers are currently required to file the Supplement to Form I-924, Form I-924A, on an annual basis to demonstrate continued eligibility for regional center designation. DHS is proposing to change the name of the Form I-924A annual filing to "Annual Certification of Regional Center."

DHS is increasing the fee for the Application for Regional Center Designation Under the Immigrant Investor Program, Form I-924, from \$6,230 to \$17,795, an \$11,565 (186 percent) increase. Additionally, DHS introduces a filing fee of \$3,035 for Form I-924A. In establishing this fee,

<sup>103</sup> USCIS Immigrant Investor Regional Centers: <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers#table>.

DHS is also clarifying the related regulations that provide for the annual regional center review related to Form I-924A. Currently, there is no procedure for regional centers seeking to withdraw their designation and discontinue their participation in the program. Formal termination is currently processed by DHS issuing a Notice of Intent to Terminate and a subsequent termination notice. The withdrawal procedure will allow a regional center to proactively request withdrawal without the need for the more formal notices sent out by DHS. This procedure will reduce administrative costs and time for the Department, while timely clarifying status to the requesting regional center. Over a 13-month period of August 1, 2014 through August 31, 2015, DHS received a total of 412 Form I-924 applications.<sup>104</sup> These applications include the request for newly designated regional centers, as well as requests for continued designation for existing regional centers.

DHS was not able to determine the numbers of regional centers that are considered small entities. Regional centers are difficult to assess because there is a lack of official data on employment, income, and industry classification for these entities. Regional centers also pose a challenge for analysis as their structure is often complex and can involve many related business and financial activities not directly involved with EB-5 activities. Regional centers can be made up of several layers of business and financial activities that focus on matching foreign investor funds to development projects to capture above market return differentials. While DHS attempted to treat the regional centers similar to the other entities in this analysis, we were not able to identify most of the entities in any of the online databases. Furthermore, while regional centers are an integral component of the EB-5 program, DHS does not collect data on the administrative fees the regional centers charge to the foreign investors who are investing in one of their projects. DHS did not focus on the bundled capital investment amounts (either \$1 million or \$500,000 per investor) that the regional center invests into a new commercial enterprise. Such investment amounts are not necessarily indicative of whether the regional center is appropriately characterized as a small entity for purposes of the RFA.

Due to the lack of regional center revenue data, DHS assumes regional centers collect revenue through the

<sup>104</sup> Supplemental Form I-924A (Supplement to Form I-924) is captured in this dataset.

administrative fees charged to investors. Searching through several public Web sites, DHS gathers that administrative fees charged to investors could range between \$30,000 and \$100,000 per investor.<sup>105</sup> DHS assumes administrative fees charged to investors are \$30,000 per investor for the purposes of this analysis. DHS does not know the extent to which these regional centers can pass along fee increases to individual investors. Passing along the costs from this rule could reduce or eliminate the economic impacts to the regional centers. While DHS cannot definitively state there is no significant economic impact to these small entities based on existing information, DHS assumes existing regional centers that have revenues equal to or less than \$303,500 per year<sup>106</sup> (some of which we assume will be derived from administrative fees charged to individual investors) could experience a significant economic impact if we assume a fee increase that represents 1 percent of annual revenue is a “significant” economic burden under the RFA. DHS also assumes newly designated regional centers that have revenues equal to or less than \$1,779,500 per year<sup>107</sup> could also experience a significant impact.

DHS was able to obtain some sample data on 440 regional centers operating 5,886 projects. These 5,886 projects had a total of 54,506 investors, averaging 124 investors per regional center.<sup>108</sup> Assuming an average of 124 investors is a representative proxy of the regional centers, and that \$30,000 is the minimum administrative fee charged by regional centers, then such fees will represent approximately \$3.7 million in revenue. In that case, DHS expects that the filing fee increase for Form I-924 and the creation of a new fee for Form I-924A will not cause a significant economic impact to these entities.

e. Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360

As previously described in this analysis, the fee for Form I-360 will increase from \$405 to \$435, a \$30 (7

percent) increase. DHS was able to obtain internal data for FY 2015 showing 1,890 unique entities submitted 4,399 Form I-360 petitions for religious workers. Of these 1,890 unique entities, approximately 96 percent were churches, mosques, synagogues, temples, or other places of worship, and DHS thus chose to consider all 1,890 entities to be small entities. Most entities only submitted 1 or 2 petitions. As previously described, DHS analysis showed that the costs per entity imposed by this rule represent only 0.15 percent of the average salary for clergy; 0.16 percent of the average salary for directors of religious of activities and education, and 0.20 percent of the average salary for all other religious workers. As all of these are under the 5 percent average annual labor cost SBA guidelines, DHS determined that the additional regulatory costs imposed by this rule are not significant.

##### 5. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

This final rule imposes higher fees for filers of Forms I-129, I-140, I-910, I-924, I-924A, and I-360. The new fee structure, as it applies to the small entities outlined above, results in the following fees: Form I-129 (\$460), Form I-140 (\$700), Form I-910 (\$785), Form I-924 (\$17,795), Form I-924A (\$3,035), and Form I-360 (\$435). This final rule does not require any new professional skills for reporting.

##### 6. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

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 applicants. In addition, DHS must fund the costs of providing services without charge by using a portion of the filing fees

collected for other immigration benefits. Without an increase in fees, DHS will not be able to maintain the level of service for immigration and naturalization benefits that it now provides. DHS has considered the alternative of maintaining fees at the current level with reduced services and increased processing times, but has determined that this will not be in the interest of applicants and petitioners. Therefore, this alternative was rejected.

While most immigration benefit fees apply to individuals, as described previously, some also apply to small entities. DHS seeks to minimize the impact on all parties, but in particular small entities. Another alternative to the increased economic burden of the fee adjustment is to maintain fees at their current level for small entities. The strength of this alternative is that it assures that no additional fee-burden is placed on small entities; however, small entities will experience negative effects due to the service reductions that will result in the absence of the fee adjustments in this final rule.

Without the fee adjustments provided in this rule, significant operational changes to DHS would be necessary. Given current filing volume and other economic considerations, DHS requires additional revenue to prevent immediate and significant cuts in planned spending. These spending cuts would include reductions in areas such as Federal and contract staff, infrastructure spending on information technology and facilities, and training. Depending on the actual level of workload received, these operational changes would result in longer processing times, a degradation in customer service, and reduced efficiency over time. These cuts would ultimately represent an increased cost to small entities by causing delays in benefit processing and reductions in customer service.

##### 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.<sup>109</sup> While this rule may result in the expenditure of more than \$100 million by the private sector annually, the rulemaking is not a “Federal

<sup>105</sup> See Yen, Christine et al., “A Report on Source of Funds: Perils of the Administrative Fee.” EB5 Investors Magazine (Aug. 20, 2015), available at: <http://www.eb5investors.com/magazine/article/A-Report-on-Source-of-Funds>; see also Green, Merritt, “The Costs of an EB-5 Regional Center Project Investment.” (June 27, 2014), available at: <http://www.generalcounselaw.com/the-cost-of-an-eb-5-regional-center-project-investment/>.

<sup>106</sup> Calculation: 1 percent of \$303,500 = \$3,035 (the new fee for Form I-924A).

<sup>107</sup> Calculation: 1 percent of \$1,779,500 = \$17,995 (the new fee for Form I-924).

<sup>108</sup> DHS, USCIS, Immigrant Investor Program Office.

<sup>109</sup> See 2 U.S.C. 1532(a).

mandate” as defined for UMRA purposes,<sup>110</sup> as the payment of immigration benefit fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States.<sup>111</sup> Therefore, no actions were deemed necessary under the provisions of the UMRA.

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

This rulemaking is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rulemaking will result in an annual effect on the economy of more than \$100 million (adjusted annually for inflation) in order to generate the revenue necessary to fully fund all adjudication and naturalization services. The increased costs will be recovered through the fees charged for various immigration benefit requests. As small businesses may be impacted under this regulation, DHS has prepared a RFA analysis.

**D. Congressional Review Act**

The Congressional Review Act<sup>112</sup> requires rules to be submitted to Congress before taking effect. DHS will submit a report regarding the issuance of this final rule before its effective date, as required by 5 U.S.C. 801 to Congress and the Comptroller General of the

United States. This rule is deemed a major rule and will therefore have a 60-day delayed effective date.

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

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

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated an “economically significant regulatory action” under section 3(f)(1) of Executive Order 12866. Accordingly, OMB has reviewed this final rule.

DHS projects an annual budget of \$3.038 billion in FY 2016/2017, a \$767 million (34 percent) increase over the FY 2010/FY 2011 fee review-adjusted annual budget of \$2.271 billion. This final rule is estimated to provide DHS with an average of \$546 million in annual fee revenue above the FY 2010/ FY 2011 levels, based on a projected annual fee-paying volume of 4.9 million immigrant benefit requests and 2.6

million requests for biometric services.<sup>113</sup> DHS will use this increase in revenue under subsections 286(m) and (n) of the INA, 8 U.S.C. 1356(m) and (n), to fund the full costs of processing immigration benefit requests and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants at no charge; and the full cost of providing similar benefits to others at no charge.

If DHS does not adjust the current fees to recover the full costs of processing immigration benefit requests, it will be forced to make reductions in services provided to applicants and petitioners. These will reverse the considerable progress DHS 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 DHS costs and volume projections available at the time the rule was drafted. DHS has placed in the rulemaking docket a detailed analysis that explains the basis for the annual fee increase.

DHS has included an accounting statement detailing the annualized impacts of the rule in Table 5 below. DHS makes a correction from the NPRM by adding in the opportunity costs of time for filing Form I-942 as discussed later in this analysis. Thus, DHS notes the higher cost in this final rule.

TABLE 5—ACCOUNTING STATEMENT, FY 2016 THROUGH FY 2017

Category	Primary estimate	Maximum estimate
<b>Benefits:</b>		
Un-quantified Benefits .....	Maintain current level of service with respect to processing times, customer service, and efficiency levels.	
<b>Costs:</b>		
Quantified Costs .....	\$717,724 .....	\$717,724
<b>Transfers:</b>		
Annualized Monetized Transfers at 3 percent.	546,429,650 .....	546,429,650
Annualized Monetized Transfers at 7 percent.	546,429,650 .....	546,429,650
Category	Effects	Source
Effects on State, local, and/or tribal governments.	For those state, local, and/or tribal governments that submit petitions for non-immigrant and immigrant workers, they will face an increase in filing fees.	Final Rule, Executive Order 12866/13563 Analysis.
Effects on small businesses .....	For those small businesses that submit petitions for nonimmigrant and immigrant workers, they will face an increase in filing fees.	Final Rule, Executive Order 12866/13563 Analysis, Small Entity Analysis.

<sup>110</sup> See 2 U.S.C. 658(6).

<sup>111</sup> See 2 U.S.C. 658(7)(A)(ii).

<sup>112</sup> See 5 U.S.C. 801 *et seq.*

<sup>113</sup> This estimate is based on FY 2016/FY 2017 fee study volume projections.

2. Amendments and Impacts of Regulatory Change

This rule is intended to adjust current fees to ensure that DHS is able to recover the full costs of the immigration services it provides and maintain adequate service.<sup>114</sup> In addition to increasing fees, this final rule includes the following provisions: Provisions that DHS will reject an immigration benefit request paid with a dishonored check; provisions that DHS will reject an application that does not include the required biometric services fee; the institution of a reduced fee for the Application for Naturalization, Form N-400; and provisions that DHS will provide fee refunds at its discretion.

a. Dishonored Payments

This final rule changes how DHS will treat a benefit request filing accompanied by fee payment (in the form of check or other financial instrument) that is subsequently returned as not payable.<sup>115</sup> Current regulations provide that when a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter will be notified and requested to pay the filing fee and associated service charge within 14 calendar days, without extension.<sup>116</sup> If the benefit request is pending and these charges are not paid within 14 days, the benefit request will be rejected as improperly filed. In addition, a receipt issued by a DHS officer for any remittance will not be binding upon DHS if the remittance is found uncollectable, and legal and statutory deadlines will not be deemed to have been met if payment is not made within 10 business days after notification by DHS of the dishonored payment.<sup>117</sup> In

accordance with these current provisions, when a payment is returned as not payable, DHS places the immigration benefit request on hold, and suspends adjudication. If payment fails, DHS assesses a \$30 penalty and pursues the unpaid fee and penalty using administrative debt collection procedures.<sup>118</sup> If payment (the unpaid fee plus \$30) is made within the allotted 14 day time period, DHS resumes processing the benefit request. If a payment is not corrected by the applicant, DHS rejects the filing for nonpayment.<sup>119</sup>

In this final rule, DHS is eliminating provisions that require USCIS to hold benefit request filings while deficient payments are corrected. Under the amendment, if a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, DHS will now reject the filing when Treasury notifies DHS that the payment has failed; USCIS will no longer hold the filing and provide 14 days for the deficient payment to be corrected.

To ensure that a payment rejection is the result of insufficient funds and not due to ACH and bank network outages, DHS has made a minor revision to the proposed amendment in the NPRM. Under the final rule, DHS will submit all rejected payments to the applicant's bank two times (once upon original deposit and once again if the original attempt to deposit the payment is unsuccessful). Based on the typical time required for a payment instrument to clear a financial institution, this will allow approximately 5 additional days for payments to clear.<sup>120</sup> DHS estimates the new mandatory rejected payment re-presentment requirement will therefore provide approximately 10 days for

payments to be corrected before DHS receives notification that the payment has failed and rejects the filing or imposes the \$30 returned check fee.<sup>121</sup>

Under the new process, DHS will continue to intake benefit requests, attempt to deposit fees, and begin processing filings as soon as possible.<sup>122</sup> In cases where the payment is initially rejected, Treasury will re-attempt to deposit the payment. However, if the payment is rejected a second time, Treasury will notify DHS and DHS, solely under its own authority, will reject the filing for non-payment of the required fee. In such cases where the benefit request has already been approved when DHS is notified of the failed payment, DHS will send the approved applicant or petitioner a notice of intent to revoke the approval. Regardless of the disposition of the benefit request, if the payment to DHS is rejected, the remitter will be charged a \$30 returned check service charge.<sup>123</sup> In order to estimate the number of applicants who will make a payment that is ultimately dishonored, DHS analyzed the count of all returned and subsequently corrected payments of a credit card or check from fiscal years 2012 to 2015.<sup>124</sup> In FY 2015, a total of 10,818 payments were returned (Table 6). Of those 10,818 returned payments, 6,399 (59.2 percent) were later corrected. The average annual number of returned payments from FY 2012 to FY 2015 was 9,781 with an annual average of 6,478 payments (66.2 percent) later corrected. Assuming all included the current service fee of \$30, the resulting total annual cost to applicants for returned payments is \$293,430.<sup>125</sup>

TABLE 6—COUNT OF RETURNED AND CORRECTED CREDIT CARD/CHECK PAYMENTS, FY 2012–2015

Year	Total returned payments	Total corrected payments	Percentage of corrected payments
2015	10,818	6,399	59.2
2014	9,200	6,467	70.3
2013	9,785	6,496	66.4
2012	9,322	6,550	70.3

<sup>114</sup> For comparison between current fees, USCIS estimates for costs of underlying services, and changes to fees, see Appendix VI, Table 4 in the supporting documentation.

<sup>115</sup> USCIS will immediately reject and not accept for processing any applications and petitions submitted with invalid payments, e.g., an unsigned check or invalid bank account on an electronic payment. The subsequent identification as not payable will occur when an attempt is made to process the payment through a bank, but the bank does not honor the payment (e.g., because of insufficient funds).

<sup>116</sup> See 8 CFR 103.2(a)(7)(ii).

<sup>117</sup> See 8 CFR 103.2(a)(7)(ii), 103.7(a)(2).

<sup>118</sup> See 8 CFR 103.7(a)(2).

<sup>119</sup> See 8 CFR 103.2(a)(7)(ii).

<sup>120</sup> See 8 CFR 103.2(a)(7)(ii)(D).

<sup>121</sup> A commenter wrote that a fee payment may be submitted even when the applicant knows the account lacks the funds to cover the payment because a document is due to expire or a deadline is approaching.

<sup>122</sup> USCIS will not store and hold any case. The adjudicator will intake and begin processing every benefit request as soon as practicable and will presume that all fee payments are valid. If the payment is rejected (which could take 10-days to know) and the adjudicator has not approved the request, Treasury will notify USCIS of the rejected

payment, and USCIS will collect the request package and reject it. If the fees have been deposited and the benefit request has not yet been adjudicated, USCIS will process a refund. If the request is approved, USCIS may revoke after notice without a refund.

<sup>123</sup> See amended 8 CFR 103.7(a)(2).

<sup>124</sup> Corrected payments include any payment collected by USCIS after the return of an initial payment.

<sup>125</sup> Calculation: 9,781 (average number of returned payments) × \$30 (current service fee charge) = \$293,430 (total cost for returned payments).

TABLE 6—COUNT OF RETURNED AND CORRECTED CREDIT CARD/CHECK PAYMENTS, FY 2012–2015—Continued

Year	Total returned payments	Total corrected payments	Percentage of corrected payments
Average .....	9,781	6,478	66.2

Source: Department of Homeland Security, Immigration and Customs Enforcement, Burlington Finance Center.

As stated previously, with the implementation of this final rule, the regulations will no longer require DHS to hold benefit requests, and applicants will no longer be allowed to correct payments directly. Instead, all rejected payments will be re-presented to the relevant financial institution a second time, which will allow approximately another 5 days for it to clear.<sup>126</sup> DHS' current policy is to re-present a rejected payment twice to see if it clears on the second or third attempt before sending the filer the bill for the rejected payment. Under this final rule, Treasury will only re-present the payment on one occasion to save time. The average 9,781 returned payments (Table 6) will now be rejected unless the payments clear when re-presented by Treasury. This re-presentation by Treasury has no additional cost since Treasury currently includes this step in the process to deposit DHS fee payments. DHS anticipates that the prospect of rejection will encourage filers to provide the correct filing fees at the time they submit their benefit requests. However, DHS recognizes that there will continue to be filers who file benefit requests with incorrect or deficient fees.

For filers, filing fees are a required and fundamental aspect of the benefit being requested. By providing a 14-day window to correct dishonored payments, the regulation currently permits a benefit request paid with a dishonored payment instrument to secure a place in line ahead of a benefit request that was accompanied by a proper payment, including in programs that are time sensitive or involve numerically limited visas. In all cases, rejected filings may be refiled immediately with the proper payment but there are some slight differences depending on whether the submission is paper-based or electronically filed. The DHS online filing system will permit the rejected applications to remain accessible for the applicant to print and view. The original rejected electronic submission will not be available for resubmission with a new payment; however, the rejected submission may be used as a reference when a new application is being completed. In cases

where the rejected submission is paper-based, the entire application/petition/request and supporting documentation are returned when rejected and can generally be refiled with the proper payment instrument.

The changes in this final rule will provide several benefits to DHS. These changes lower DHS administrative costs for holding and tracking benefit requests during the 14-day period currently provided to correct dishonored payments. The holding and tracking of benefit requests requires physical storage space that will no longer be required with these revisions. DHS currently incurs administrative costs through tracking payments in postage costs and adjudicator time among other costs. This change in process also provides parity to those individuals who file benefit requests with the correct fees, particularly in programs that are time sensitive or involve numerically limited visas.

DHS recognizes the unique impact that these changes may have in the context of the H-1B program regulations, which make visa numbers available to petitions in the order in which the petitions are filed.<sup>127</sup> The H-1B regulations allow the final receipt date to be any of the first 5 business days on which petitions subject to the applicable numerical limit may be received. DHS then conducts a random selection among the petitions received during any of those 5 business days, known as the "H-1B lottery." Currently, petitions remain eligible for the H-1B lottery despite having failed payments, as long as the payments are corrected within the provided 14-day or 10-day timeframe.<sup>128</sup> Under the changes in this final rule, however, DHS will remove petitions from the H-1B lottery as soon as DHS receives notification of a failed payment, typically within 10 days of the receipt date. DHS does not have data at this time to estimate the impact on how many petitions may be affected by these changes. DHS is also unable to monetize the cost to the applicant of having a petition removed from selection for the H-1B lottery.

b. Failure To Pay the Biometric Services Fees

DHS is also eliminating provisions governing non-payment of the biometric services fee in this final rule. Currently, if a benefit request is received by DHS without the correct biometric services fee, DHS will notify the filer of the deficiency and take no further action on the benefit request until payment is received.<sup>129</sup> Failure to submit the correct biometric services fee within the time allotted in the notice will result in denial of the benefit request. If the required biometric services fee is missing, DHS suspends adjudication and places the benefit request on hold. If payment is made within the allotted time, DHS resumes processing the benefit request. If the biometric services fee is not paid, the benefit request is denied as abandoned.

Through this final rule, DHS is deleting the regulatory provisions that permitted benefit requests to be held while deficient payments are corrected. As a result of these deletions, DHS will reject a benefit request if, for instance, it is received without the correct biometric services fee, as specified in the form instructions.

In order to analyze the number of people who do not pay the correct biometric services fee, DHS updated the numbers from the NPRM with more recent data and gathered 7 months of data from DHS lockbox facilities.<sup>130</sup> The data covers the period from December 1, 2015 to June 30, 2016. During this 7-month period, DHS lockbox facilities accepted 2,624,825 benefit requests. Of these, a total of 6,179 (.24 percent) of filers were issued a notice alerting them that their biometric services fees were missing. Assuming this 7-month trend is typical of the number of deficient biometric services fee notices, the new provision will affect less than 1 percent of all benefit requests received at DHS lockbox facilities. As previously mentioned, rejected filings may be refiled immediately. While filers do not incur monetary costs (except for

<sup>129</sup> See 8 CFR 103.17(b)(1).

<sup>130</sup> While USCIS prefers to base assumptions on a longer time period (ideally 5 years), 7 months was the longest time period for which this data was available.

<sup>126</sup> See 8 CFR 103.2(a)(7)(ii)(D).

<sup>127</sup> See 8 CFR 214.2(h)(8)(ii)(B).

<sup>128</sup> See 8 CFR 103.2(a)(7)(ii).

additional postage fees) associated with the rejection of a benefit request, reapplying for benefits with the correct fees requires time. Again, DHS anticipates this new provision will encourage individuals to file with the appropriate fees.

Additionally, this change will streamline DHS' process for handling benefit requests when biometrics services fees are not submitted when required. DHS costs are reduced by eliminating the administrative handling costs associated with holding cases while biometric services fees are collected.

#### c. Reduced Fee for Application for Naturalization

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

DHS will increase the Form N-400 fee from \$595 to \$640, a \$45 (8 percent) increase in this final rule. The biometric services fee will remain unchanged at \$85. Therefore, the new costs of Form N-400 plus the biometric services fee will total \$725. DHS is introducing an additional fee option for those non-military naturalization applicants with family incomes greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines. Specifically, applicants will receive a 50 percent discount and only be required to pay a filing fee of \$320 for the N-400, plus an additional \$85 biometric services fee (for a total of \$405). This reduced fee option is intended to limit any potential economic disincentives that some eligible naturalization applicants face when deciding whether or not to seek citizenship. The lower fee will help ensure that those who have worked hard to become eligible for naturalization are not limited by their economic means. In order to qualify for this fee, the eligible applicant will have to submit the newly created Form I-942, Request for Reduced Fee, along with their Form N-400. Form I-942 will require the names of everyone in the household and documentation of the household income to determine if the applicant's household income is greater

than 150 and not more than 200 percent of the Federal Poverty Guidelines.

As described in the NPRM, DHS estimates that approximately 11 percent of all Form N-400 applicants, excluding military applicants, could qualify for the reduced fee. Given the non-military Form N-400 volume projection estimate of 821,500 annually, over the biennial period, DHS expects that 90,365 filers will be included in the population eligible for the fee reduction.<sup>131</sup> While these 90,365 filers represent only the current number of applicants who will be eligible for the fee reduction, DHS anticipates an increase in Form N-400 filings as a result of the changes in this final rule. DHS anticipates that the reduced fee for applicants with qualifying incomes will remove economic barriers associated with the costs of associated fees and thus encourage more eligible applicants to file their Form N-400 applications. While DHS anticipates an increase in Form N-400 filings due to this fee reduction, we cannot predict how many more eligible applicants will file their N-400 applications at this time.

DHS has factored the estimated revenue loss from this product line into its fee model, so those costs are reallocated over other fee paying benefit requests. While the costs of the reduced fee are being reallocated to other fee-paying customers, DHS believes the benefits of facilitating access to citizenship outweighs the cost reallocation impacts.

As previously mentioned, an eligible applicant will have to submit a Form I-942 along with a Form N-400 application to qualify for this reduced fee. While DHS is not imposing an additional fee for Form I-942, DHS has estimated the opportunity cost of time to applicants to complete the form. The total annual opportunity cost of time for applicants will be \$717,724, if all 90,365 eligible applicants apply for the reduced fee.<sup>132</sup> The Federal minimum wage rate<sup>133</sup> of \$7.25 was used as the hourly wage rate because the anticipated applicants are asserting they cannot afford to pay the full DHS fee and DHS thus assumes that such applicants earn less than average incomes. The BLS reports the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. Using these data from

<sup>131</sup> Calculation: 821,500 \* 11 percent.

<sup>132</sup> Total Opportunity Costs of Time to Applicants = Expected Filers (90,365) \* (Full Cost of Employee Benefits (\$10.59) \* Time Burden (.75 hr.)).

<sup>133</sup> U.S. Department of Labor, Wage and Hour Division. The minimum wage in effect as of July 13, 2016. See <http://www.dol.gov/general/topic/wages/minimumwage>.

BLS, DHS calculated compensation-to-wage multiplier of 1.46 to estimate the full opportunity costs to applicants, including employee wages, salaries, and the full costs of benefits, such as paid leave, insurance, and retirement.<sup>134</sup> To anticipate the full opportunity cost of time to applicants, we multiplied the Federal minimum wage rate by 1.46 to account for the full cost of employee benefits for a total of \$10.59. The time burden estimate was developed by DHS with an average of 45 minutes (or .75 of an hour) to complete Form I-942, resulting in an opportunity cost of time per petition of \$7.94.<sup>135</sup> This additional burden is offset by the benefits received from the \$320 fee reduction.

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

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

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

DHS is codifying the process of continuing to provide these refunds in cases involving obvious DHS error. Individuals will continue to request a refund through the current established process, which requires calling the customer service line or submitting a written request for a refund to the office having jurisdiction over the relevant immigration benefit request.

Any DHS refunds provided are generally due to obvious DHS errors resulting from electronic system

<sup>134</sup> The compensation-to-wage multiplier is calculated as follows: (All Workers Total Employee Compensation per hour)/(Wages and Salaries per hour). See Economic News Release, U.S. Department of Labor, BLS, Table 1. Employer Costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (Sept. 2015), available at <http://www.bls.gov/news.release/pdf/ecec.pdf>.

<sup>135</sup> Calculation: \$10.59 hourly wage rate \* .75 hours.

behavior issues or human error. The anticipation of increased electronic filings in the future also spurs the need for this provision. Currently, DHS provides fee refunds to applicants as shown in Table 7. Over the past 3 fiscal

years, DHS issued an annual average of 5,363 refunds, resulting in an average of \$2.1 million refunded. This is approximately \$396 per refund. These numbers and amounts of refunds do not include premium processing refunds

regulated under 8 CFR 103.7(e)(2)(i). In the context of the total number of fees collected by DHS across all benefits, this average amount of refunds is still less than 1 percent of the total fees collected.

TABLE 7—AMOUNT AND NUMBER OF FEE REFUNDS PROVIDED BY USCIS

Fiscal year	Amount refunded	Number of refunds
2013 .....	\$2,674,290	7,405
2014 .....	1,805,006	4,198
2015 .....	1,890,638	4,485
Average .....	2,123,311	5,363

Source: Department of Homeland Security, U.S. Immigration and Customs Enforcement, Burlington Finance Center.

The changes in the final rule will benefit applicants who accidentally submit payments twice. DHS anticipates this to be a bigger issue as more forms and associated fees begin to be collected through electronic means. Applicants will recoup any fees that were submitted erroneously due to electronic systems issues. DHS benefits by having clear regulatory authority concerning the relatively few cases in which refunds are provided.

There may be some administrative costs associated with the issuance of refunds. DHS may see a potential initial increase in requests for refunds due to the visibility of this rule; however, DHS does not anticipate a sustained increase as DHS is not anticipating any changes to the conditions for issuing refunds. There may also be a potential increase in the time burden costs for DHS adjudicators to process these potential initial increases in refund requests. DHS does not have cost estimates at this time indicating the number of hours required to process and issue these refunds. There may also be some opportunity costs of time to filers who submit refund requests; however, DHS anticipates this cost is offset by the benefit gained in receiving a refund.

*F. Executive Order 13132 (Federalism)*

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

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

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

*H. Family Assessment*

DHS has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, *Public Law 105-277*, 112 Stat. 2681 (1998). By increasing immigration benefit request fees, this action will impose a slightly higher financial burden on some families that petition for family members to join them in the United States. On the other hand, the rule will provide USCIS with the funds necessary to carry out adjudication and naturalization services and provide similar services for free to disadvantaged populations, including asylees, refugees, individuals with Temporary Protected Status, and victims of human trafficking. DHS has determined that the benefits of the action justify the financial impact that it will place on some families.

*I. Paperwork Reduction Act—Comments on the Proposed Information Collection Changes*

Under the Paperwork Reduction Act of 1995, all Departments are required to submit to OMB, for review and approval, any reporting and recordkeeping requirements inherent in a rule. *See* 44 U.S.C. 3507. This final rule requires changes to OMB control number 1615-0052, the Application for Naturalization, Form N-400, to collect information necessary to document the applicant's eligibility for the reduced fee proposed in this final rule at 8 CFR 103.7(b)(1)(i)(AAA)(1); OMB control number 1615-0061, Annual Certification of Regional Center, Form I-924A, and the Application for Regional

Center Designation Under the Immigrant Investor Program, Form I-924, to add the instructions necessary to require the annual fee; and OMB control number 1615-NEW, Request for Reduced Fee, Form I-942, to document the applicant's eligibility for the reduced fee. DHS specifically requested public comments on the proposed changes to the forms and form instructions in the NPRM in accordance with 5 CFR 1320.11(a). OMB reviewed the request filed in connection with the NPRM and also filed comments in accordance with 5 CFR 1320.11(c). DHS summarized the comments received from the public and responded below:

1. Request for Reduced Fee, Form I-942

USCIS received some comments on the Request for Reduced Fee, Form I-942, which was part of the NPRM docket. USCIS proposed to require Form I-942 for an applicant to request the \$320 reduced fee for the Application for Naturalization. The comments indicated that the Form I-942's sections related to preparer and interpreter certifications were unnecessarily lengthy, as was the section for signatures of additional family members. The comments stated that these sections make the form appear longer and more onerous than it needs to be. The commenters also recommended that the form be optional, similar to the optional Request for Fee Waiver, Form I-912.

USCIS designed the Request for Reduced Fee to be very similar to the Request for Fee Waiver. USCIS anticipates that preparers will benefit from having similar forms with similar formats. Additionally, USCIS does not believe that Form I-942 should be optional for reduced fee requests in the same way that Form I-912 is optional. With respect to Form I-912, USCIS recognizes that applicants may be able to address certain criteria, such as financial hardship, in a letter more

easily than through a form. However, the proposed sole basis for submitting a Request for Reduced Fee is the applicant's household income level. See 81 FR 26916. To qualify for the reduced fee, an applicant's household income must be greater than 150 and not more than 200 percent of the Federal Poverty Guidelines. *Id.* USCIS believes that such income information is more easily conveyed to the agency, and accessed by the agency, if it is presented in a uniform manner through a form, rather than through a letter. To provide additional flexibility to reduced fee applicants, USCIS has also decided to permit multiple family members living in the same household who are each submitting an Application for Naturalization, and who are each within the relevant income levels for the reduced fee, to jointly submit one Form I-942 with their naturalization applications.<sup>136</sup> USCIS determined that permitting multiple requests on one form would impose less of a burden overall than requiring multiple members of the same household to file separate reduced fee requests. As a result of these comments, DHS changed the form to permit multiple family members to file on Form I-942 with respect to multiple naturalization applications.

## 2. Annual Certification of Regional Center, Form I-924A

At least one commenter recommended standardizing the questions for Form I-924A and indicated that the form provides little to no value to USCIS. USCIS believes the revised form and instructions better explain the annual reporting process and requirements, and provide more useful information to USCIS, than the previous version of the form. In addition, USCIS believes the revised forms address the commenter's concerns by eliminating many redundant and lengthy questions and instructions. While the form contains new questions, it is intended to result in more comprehensive reviews and to require fewer and simpler follow-up inquiries from USCIS in response to annual I-924A filings. DHS made no changes to the draft form or the proposed rule as a result of these comments. The form and fee are finalized as proposed. New CFR 204.6(m).

<sup>136</sup>In such cases, each family member who is requesting a reduced fee for their Application for Naturalization must sign the Form I-942. Applicants must submit the Form I-942 in the same envelope as the naturalization applications for which they are requesting fee waivers.

## 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 205

Administrative practice and procedure, Immigration.

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

## PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

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

**Authority:** 5 U.S.C. 301, 552, 552(a); 6 U.S.C. 112, 8 U.S.C. 1101, 1103, 1154, 1155, 1185, 1186a, 1186b, 1254a, 1304, 1324a, 1356; 31 U.S.C. 9701; Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112-54.

■ 2. Section 103.2 is amended by:

- a. Revising paragraph (a)(1);
- b. Revising paragraph (a)(7); and
- c. Revising paragraph (b)(9).

The revisions read as follows:

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

(a) \* \* \*

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

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

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

(A) Signed with valid signature;

(B) Executed;

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

(D) *Submitted with the correct fee(s).* If a check or other financial instrument used to pay a fee is returned as unpayable, USCIS will re-submit the payment to the remitter institution one time. If the instrument used to pay a fee is returned as unpayable a second time, the filing will be rejected and a charge will be imposed in accordance with 8 CFR 103.7(a)(2).

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

(b) \* \* \*

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

(i) Appear before the scheduled date and time;

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

(iii) Withdraw the benefit request.

\* \* \* \* \*

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

### § 103.7 Fees.

\* \* \* \* \*

(a) \* \* \*

(2) Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. Remittances must be made payable in accordance with the guidance specific to the applicable U.S. Government office when submitting to a Department of Homeland Security office located outside of the United States. Remittances to the Board of Immigration Appeals must be made payable to the "United States Department of Justice," in accordance with 8 CFR 1003.8. If a remittance in payment of a fee or any

other matter is not honored by the bank or financial institution on which it is drawn:

(i) A charge of \$30.00 will be imposed;

(ii) The provisions of 8 CFR 103.2(a)(7)(ii) apply, no receipt will be issued, and if a receipt was issued, it is void and the benefit request loses its receipt date; and

(iii) If the benefit request was approved, the approval may be revoked upon notice. If the approved benefit request requires multiple fees, this provision will apply if any fee submitted is not honored. Other fees that were paid for a benefit request that is revoked under this provision will be retained and not refunded. A revocation of an approval because the fee submitted is not honored may be appealed to the USCIS Administrative Appeals Office, in accordance with 8 CFR 103.3 and the applicable form instructions.

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

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

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

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

(1) An applicant under 8 CFR 204.3 submits to USCIS a written request for an extension of the approval period of an Application for Advance Processing of an Orphan Petition (Application), if the request is submitted before the approval period expires and the applicant has not yet filed a Petition to Classify Orphan as an Immediate Relative (Petition) in connection with the approved Application. The applicant may submit only one

extension request without having to pay an additional biometric services fee. If the extension of the approval expires before the applicant files an associated Petition, then the applicant must file either a new Application or a Petition, and pay a new filing fee and a new biometric services fee.

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

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

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

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

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

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

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

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

(vii) Application To Adjust Status under Section 245(i) of the Act, Supplement A to Form I-485, from an unmarried child less than 17 years of age, or when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized foreign national and who is qualified for and has applied for voluntary departure under the family unity program from an asylee under paragraph (b)(1)(i)(V) of this section; or

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

(D) *USCIS Immigrant Fee*. For DHS domestic processing and issuance of required documents after an immigrant visa is issued by the U.S. Department of State: \$220.

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

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

(G) *Application to Replace Permanent Resident Card*, Form I-90. For filing an application for a Permanent Resident Card, Form I-551, to replace an obsolete

card or to replace one lost, mutilated, or destroyed, or for a change in name: \$455.

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

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

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

(K) *Petition for Alien Fiancé(e)*, Form I-129F. For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: \$535; there is no fee for a K-3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a United States citizen on a Petition for Alien Relative, Form I-130.

(L) *Petition for Alien Relative*, Form I-130. For filing a petition to classify status of a foreign national relative for issuance of an immigrant visa under section 204(a) of the Act: \$535.

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

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

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

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

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

(N) *Immigrant Petition for Alien Worker*, Form I-140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act: \$700.

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

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

the United States Government: \$930. If filed with and processed by CBP: \$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 instead of deportation: \$930.

(S) *Notice of Appeal or Motion*, Form I-290B. For appealing a decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction: \$675. The fee will be the same for appeal of a denial of a benefit request with one or multiple beneficiaries. There is no fee for an appeal or motion associated with a denial of a petition for a special immigrant visa filed by or on behalf of an individual seeking special immigrant visa or status as an Iraqi or Afghan national who was employed by or on behalf of the U.S. Government in Iraq or Afghanistan.

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

(1) A petition seeking classification as an Amerasian;

(2) A self-petition for immigrant status as a battered or abused spouse, parent, or child of a U.S. citizen or lawful permanent resident; or

(3) A petition for special immigrant juvenile status; or

(4) A petition seeking special immigrant visa or status as an Iraqi or Afghan national who was employed by or on behalf of the U.S. Government in Iraq or Afghanistan.

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

(1) \$1,140 for an applicant 14 years of age or older; or

(2) \$750 for an applicant under the age of 14 years who submits the application concurrently with the Form I-485 of a parent.

(3) There is no fee if an applicant is filing as a refugee under section 209(a) of the Act.

(V) *Application to Adjust Status under Section 245(i) of the Act*,

Supplement A to Form I-485.

Supplement to Form I-485 for persons seeking to adjust status under the provisions of section 245(i) of the Act: \$1,000. There is no fee when the applicant is an unmarried child less than 17 years of age, when the applicant is the spouse, or the unmarried child less than 21 years of age of an individual with lawful immigration status and who is qualified for and has applied for voluntary departure under the family unity program.

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

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

(Y) *Petition to Classify Orphan as an Immediate Relative*, Form I-600. For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act. Only one fee is required when more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters: \$775.

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

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

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

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

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

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

(CC) *Application for Waiver of the Foreign Residence Requirement (under*

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

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

(EE) *Application for Waiver of Grounds of Inadmissibility under Sections 245A or 210 of the Immigration and Nationality Act*, Form I-690. For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: \$715.

(FF) *Notice of Appeal of Decision under Sections 245A or 210 of the Immigration and Nationality Act* (or a petition under section 210A of the Act), Form I-694. For appealing the denial of an application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: \$890.

(GG) *Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Pub. L. 99-603)*, Form I-698. For filing an application to adjust status from temporary to permanent resident (under section 245A of Pub. L. 99-603): \$1,670. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

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

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

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

(1) There is no fee for the first Form I-800 filed for a child on the basis of an approved Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I-800A, during the approval period.

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

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

regardless of the sequence of submission of the immigration benefit.

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

(LL) *Request for Action on Approved Application for Determination of Suitability to Adopt a Child from a Convention Country*, Form I-800A, Supplement 3. This filing fee is not charged if Form I-800 has not been filed based on the approval of the Form I-800A, and Form I-800A Supplement 3 is filed in order to obtain a first extension of the approval of the Form I-800A: \$385.

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

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

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

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

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

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

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

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

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

(SS) *Request for Premium Processing Service*, Form I-907. \$1,225. The Request for Premium Processing Service fee:

(1) Must be paid in addition to, and in a separate remittance from, other filing fees.

(2) May be adjusted annually by notice in the **Federal Register** based on inflation according to the Consumer Price Index (CPI).

(3) May not be waived.

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

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

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

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

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

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

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

(AAA) *Request for a Hearing on a Decision in Naturalization Proceedings (Under section 336 of the Act)*, Form N-336. For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act: \$700.

There is no fee if filed on or after October 1, 2004, by an applicant who has filed an Application for Naturalization under sections 328 or 329 of the Act with respect to military service and whose application has been denied.

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

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

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

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

(DDD) *Application for Replacement Naturalization/Citizenship Document*,

Form N-565. For filing an application for a certificate of naturalization or declaration of intention in place of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act: \$555. There is no fee when this application is submitted under 8 CFR 338.5(a) or 343a.1 to request correction of a certificate that contains an error.

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

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

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

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

(III) *9-11 Response and Biometric Entry-Exit Fee for H-1B Visa*. For certain petitioners who employ 50 or more employees in the United States if more than 50 percent of the petitioner's employees are in H-1B, L-1A or L-1B nonimmigrant status: \$4,000. Collection of this fee is scheduled to end on September 30, 2025.

(JJJ) *9-11 Response and Biometric Entry-Exit Fee for L-1 Visa*. For certain petitioners who employ 50 or more employees in the United States, if more than 50 percent of the petitioner's employees are in H-1B, L-1A or L-1B nonimmigrant status: \$4,500. Collection of this fee is scheduled to end on September 30, 2025.

\* \* \* \* \*

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

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

(a) *Use of biometric information*. An individual may be required to submit biometric information by law, regulation, **Federal Register** notice or

the form instructions applicable to the request type or if required in accordance with 8 CFR 103.2(b)(9). \* \* \*

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

§ 103.17 Biometric services fee. \* \* \* \*

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

PART 204—IMMIGRANT PETITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) USCIS will notify the regional center of the final decision. If USCIS

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

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

\* \* \* \*

PART 205—REVOCATION OF APPROVAL OF PETITIONS

■ 9. The authority citation for part 205 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

■ 10. Section 205.1 is amended by removing and reserving paragraph (a)(2).

§ 205.1 Automatic revocation.

(a) \* \* \*

(2) [Reserved]

\* \* \* \*

Jeh Charles Johnson, Secretary.

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