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DEPARTMENT OF HOMELAND SECURITY

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

RIN 1615-AC18

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

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

ACTION: Final rule.

SUMMARY: This final rule adjusts certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). It also removes certain fee exemptions, changes fee waiver requirements, alters premium processing time limits, and modifies intercountry adoption processing. USCIS conducted a comprehensive biennial fee review and determined that current fees do not recover the full cost of providing adjudication and naturalization services. Therefore, the Department of Homeland Security (DHS) is adjusting USCIS fees by a weighted average increase of 20 percent, adding new fees for certain immigration benefit requests, establishing multiple fees for nonimmigrant worker petitions, and limiting the number of beneficiaries for certain forms. This final rule is intended to ensure that USCIS has the resources it needs to provide adequate service to applicants and petitioners.

DATES: This final rule is effective [Insert date 60 days from date of publication in the *FEDERAL REGISTER*]. Any application, petition, or request postmarked on or after this date must be accompanied with the fees established by this final rule.

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

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d. 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.

e. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

f. 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 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.

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List of Acronyms and Abbreviations

ABC	Activity-Based Costing
the Act	Homeland Security Act of 2002
ADA	Americans with Disabilities Act

AOP	Annual Operating Plan
APA	Administrative Procedure Act
ASVVP	Administrative Site Visit and Verification Program
ASC	Application Support Center
BLS	Bureau of Labor Statistics
CAA	Cuban Adjustment Act of 1966
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP	U.S. Customs and Border Protection
CEQ	Council on Environmental Quality
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
CNMI	Commonwealth of the Northern Mariana Islands
CUNY	City University of New York
DACA	Deferred Action for Childhood Arrivals
DHS	Department of Homeland Security
DOJ	Department of Justice
DOL	Department of Labor
DOS	Department of State
EAD	Employment Authorization Document
EB-5	Employment-Based Immigrant Visa, Fifth Preference
EIN	Employer Identification Number
E.O.	Executive Order
EOIR	Executive Office for Immigration Review
FBI	Federal Bureau of Investigation
FDMS	Federal Docket Management System
FOIA	Freedom of Information Act
FPG	Federal Poverty Guidelines
FR	<i>Federal Register</i>
FRFA	Final Regulatory Flexibility Analysis
FVRA	Federal Vacancies Reform Act
FY	Fiscal Year
GAO	Government Accountability Office
GDP	Gross Domestic Product
ICE	U.S. Immigration and Customs Enforcement
IEFA	Immigration Examinations Fee Account
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
INA	Immigration and Nationality Act of 1952
INS	Immigration and Naturalization Service
IRS	Internal Revenue Service
ISAF	International Security Assistance Forces
IT	information technology
LCA	Labor Condition Application
LGBTQ	Lesbian, gay, bisexual, transgender, and questioning
IOAA	Independent Offices Appropriations Act
LIFO	Last In, First Out

LPR	Lawful Permanent Resident
MOAs	Memoranda of Agreement
MPP	Migrant Protection Protocols
NACARA	Nicaraguan Adjustment and Central American Relief Act
NAICS	North American Industry Classification System
NARA	National Archives and Records Administration
NEPA	National Environmental Policy Act
NOID	Notice of Intent to Deny
NPRM	Notice of Proposed Rulemaking
NRC	National Record Center
OIG	DHS Office of the Inspector General
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
PA	Privacy Act
PII	Personally Identifiable Information
PRA	Paperwork Reduction Act of 1995
PRC	Permanent Resident Card
Privacy Act	Privacy Act of 1974
Pub. L.	Public Law
RFE	Request for Evidence
RFA	Regulatory Flexibility Act
RIA	Regulatory Impact Analysis
SAVE	Systematic Alien Verification for Entitlements
SBA	Small Business Administration
SCRD	Signature Confirmation Restricted Delivery
Secretary	The Secretary of Homeland Security
SIJ	Special Immigrant Juvenile
SNAP	Supplemental Nutrition Assistance Program
SSI	Supplemental Security Income
Stat.	U.S. Statutes at Large
STEM	Science, Technology, Engineering, and Mathematics
TPS	Temporary Protected Status
TVPA	Trafficking Victims Protection Act of 2000
TVPRA	The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UAC	Unaccompanied Alien Child
UMRA	Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code
USCIS	U.S. Citizenship and Immigration Services
VAWA	Violence Against Women Act
VPC	Volume Projection Committee

I. Executive Summary

A. Purpose of the Regulatory Action

This final rule adjusts certain immigration and naturalization benefit request fees charged by USCIS. It also makes changes related to setting, collecting, and administering fees. Fee schedule adjustments are necessary to recover the full operating costs associated with administering the nation’s lawful immigration system and safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefit, while protecting Americans, securing the homeland, and honoring our values. This final rule also makes certain adjustments to fee waiver eligibility, filing requirements for nonimmigrant workers, premium processing service, and other administrative requirements.

B. Legal Authority

DHS’s authority is in several statutory provisions. Section 102 of the Homeland Security Act of 2002 (the Act),¹ 6 U.S.C. 112, and the Immigration and Nationality Act of 1952 (INA) section 103, 8 U.S.C. 1103, charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. Further, authority for establishing fees is found in 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 and other immigrants”).²

¹ Pub. L. 107-296, 116 Stat. 2135, 2142-44 (Nov. 25, 2002).

² The longstanding interpretation of DHS is that the “including” clause in INA section 286(m) does not constrain DHS’s fee authority under the statute. The “including” clause offers only a non-exhaustive list of some of the costs that DHS may consider part of the full costs of providing adjudication and naturalization services. *See* INA section 286(m), 8 U.S.C. 1356(m); 84 FR 23930, 23932 n.1 (May 23, 2019); 81 FR 26903, 26906 n.10 (May 4, 2016).

C. Summary of the Final Rule Provisions

DHS carefully considered the public comments received. This final rule adopts, with appropriate changes, the regulatory text proposed in the Notice of Proposed Rulemaking (NPRM) published in the *Federal Register* on November 14, 2019. See *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*; Proposed rule, 84 FR 62280. This final rule also relies on all the justifications articulated in the NPRM, except as reflected below.

This final rule makes the following changes as compared to the NPRM:

- Does not provide for the transfer of Immigration Examinations Fee Account (IEFA) funds collected by USCIS to U.S. Immigration and Customs Enforcement (ICE). 84 FR 62287; “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” Proposed Rule; Extension of Comment Period; Availability of Supplemental Information, 84 FR 67243 (Dec. 9, 2019).
- Removes the proposed fee (\$275) for Form I-821D, Consideration of Deferred Action for Childhood Arrivals, filed for renewal of Deferred Action for Childhood Arrivals (DACA). 84 FR 62320, 62362; proposed and new 8 CFR 106.2(a)(38).
- Reassigns National Record Center (NRC) costs that do not directly apply to the genealogy program, thereby setting genealogy fees lower than proposed. 84 FR 62315, 62316, 62362; proposed 8 CFR 106.2(c)(1) and (2); new 8 CFR 106.2(c)(1) and (2).

- Realigns \$10 million of anticipated IEFA costs for the Office of Citizenship to account for citizenship grants appropriations received via the FY 2019 – 2020 DHS appropriation bills. *See Consolidated Appropriations Act, 2019, Pub. L. 116-6, div. A, tit. IV (Feb. 15, 2019) and Consolidated Appropriations Act, 2020, Pub. L. 116-93, div. D, tit. IV (Dec. 20, 2019).*
- Provides a \$50 reduction in the fee for Form I-485, Application to Register Permanent Residence or Adjust Status, filed in the future for principal applicants who pay the \$50 fee for Form I-589 and are subsequently granted asylum. New 8 CFR 106.2(a)(17)(ii).
- Provides that petitioners for and recipients of Special Immigrant Juvenile (SIJ) classification who, at the time of filing, have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency, may submit requests for fee waivers for Form I-485 and associated forms; and explains the documentation requirement for SIJs. New 8 CFR 106.3(a)(2)(i) and (a)(3).
- Provides that an Afghan or Iraqi Interpreter, an Iraqi National employed by or on behalf of the U.S. Government, or an Afghan National employed by the U.S. Government or the International Security Assistance Forces (ISAF) may submit requests for fee waivers for Form I-485 and associated forms.³ New 8 CFR 106.3(a)(2)(ii).

³ As described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109–163 (Jan. 6, 2006) as amended; section 602(b) of the Afghan Allies Protection Act of 2009,

- Provides that requestors who meet the requirements of INA section 245(l)(7), 8 U.S.C. 1255(l)(7) may also request a fee waiver for the Forms N-400, N-600, and N-600K. New 8 CFR 106.3(a)(3).
- Also provides that SIJs who are placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency and Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or ISAF may submit requests for fee waivers for Forms N-400, N-600, and N-600K. New 8 CFR 106.3(a)(2)(i) and (a)(3).
- Clarifies that the Violence Against Women Act (VAWA) self-petitioner classification includes individuals who meet the requirements of INA section 101(a)(51) and anyone otherwise self-petitioning due to battery or extreme cruelty pursuant to the procedures in INA section 204(a) *See* new 8 CFR 106.3(a)(1)(i).
- Consolidates the Director's discretionary provision on fee waivers to remove redundancy. *See* proposed 8 CFR 106.3(b) and (c); 84 FR 62363 (containing the text that is being consolidated). New 8 CFR 106.3(b).
- Moves proposed 8 CFR 106.3(d)(1) and (d)(2) (not permitting a fee waiver for a requestor who is subject to the affidavit of support, already a sponsored immigrant, or subject to the public charge inadmissibility

ground) to 8 CFR 106.3(b)(1) and (b)(2) (governing waivers provided by the USCIS Director), because an affidavit of support and the public charge inadmissibility ground are not applicable to applicants who are otherwise eligible for fee waivers in this rule). New 8 CFR 106.3(b).

- Clarifies the fee waiver request documentation requirements for VAWA, T, and U requestors who may not have access to documentation of household income. New 8 CFR 106.3(f)(5).
- Provides that the fee for forms currently available for online filing with USCIS and filed online will be \$10 lower than the fee for the same paper forms. New 8 CFR 106.2(d).
- Requires a separate \$30 biometric services fee for Form I-765 filed by pending asylum applicants and applicants for status as a long-term resident from the Commonwealth of the Northern Mariana Islands (CNMI). New 8 CFR 106.2(a)(32)(i).
- Separates fee exemptions for Form I-765 for renewal or replacement of an Employment Authorization Document and clarifies the provisions related to VAWA self-petitioners who are eligible for a fee exemption. New 8 CFR 106.2(a)(32).
- Incorporates a \$10 fee for the registration requirement for petitioners seeking to file H-1B petitions on behalf of cap-subject aliens. *See* old 8 CFR 103.7(b)(1)(i)(NNN), 84 FR 60307 (Nov. 8, 2019); new 8 CFR 106.2(c)(11). The final regulation at 8 CFR 103.2(a)(1) also clarifies that all USCIS fees are generally non-refundable, regardless of whether they

apply to a benefit request, another adjudication and naturalization service, or other requests such as H-1B Registration, DACA, Civil Surgeon Designation, and Genealogy requests.

- Updates 8 CFR 244.6(b) to clarify the Temporary Protected Status (TPS) related fee provisions in accordance with the NPRM. *See* 84 FR 62301 (stating that the rule proposed to remove the Form I-765 fee exemption for Temporary Protected Status if the individual is filing an initial TPS application and is under 14 years of age or over 65 years of age).
- DHS will maintain the DACA policy fees as in effect before September 5, 2017, at \$410 for employment authorization and \$85 for biometric services. New 8 CFR 106.2(a)(32)(vi).
- Makes other minor non-substantive and clarifying changes.

DHS summarizes the final fees in Table 1. The table excludes fees established and required by statute and those that DHS cannot adjust. The table only calculates the change in the current fee. If an applicant, petitioner, or requestor must file additional forms as a result of policy changes in this rule, then the individual changes to a single fee may not represent the total change in fees for every circumstance.

Table 1: Non-Statutory IEFA Immigration Benefit Request Fees

Immigration Benefit Request	Current Fee	Final Fee	Change (\$)	Percentage Change
I-90 Application to Replace Permanent Resident Card (online filing)	\$455	\$405	-\$50	-11 percent
I-90 Application to Replace Permanent Resident Card (paper filing)	\$455	\$415	-\$40	-9 percent
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	\$445	\$485	\$40	9 percent
I-129 Petition for a Nonimmigrant worker	\$460	N/A	N/A	N/A
I-129CW, I-129E&TN, and I-129MISC	\$460	\$695	\$235	51 percent

Immigration Benefit Request	Current Fee	Final Fee	Change (\$)	Percentage Change
I-129H1	\$460	\$555	\$95	21 percent
I-129H2A - Named Beneficiaries	\$460	\$850	\$390	85 percent
I-129H2B - Named Beneficiaries	\$460	\$715	\$255	55 percent
I-129L	\$460	\$805	\$345	75 percent
I-129O	\$460	\$705	\$245	53 percent
I-129H2A - Unnamed Beneficiaries	\$460	\$415	-\$45	-10 percent
I-129H2B - Unnamed Beneficiaries	\$460	\$385	-\$75	-16 percent
I-129F Petition for Alien Fiancé(e)	\$535	\$510	-\$25	-5 percent
I-130 Petition for Alien Relative (online filing)	\$535	\$550	\$15	3 percent
I-130 Petition for Alien Relative (paper filing)	\$535	\$560	\$25	5 percent
I-131 Application for Travel Document	\$575	\$590	\$15	3 percent
I-131 Refugee Travel Document for an individual age 16 or older	\$135	\$145	\$10	7 percent
I-131 Refugee Travel Document for a child under the age of 16	\$105	\$115	\$10	10 percent
I-131A Application for Travel Document (Carrier Documentation)	\$575	\$1,010	\$435	76 percent
I-140 Immigrant Petition for Alien Worker	\$700	\$555	-\$145	-21 percent
I-191 Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA)	\$930	\$790	-\$140	-15 percent
I-192 Application for Advance Permission to Enter as Nonimmigrant (CBP) ⁴	\$585	\$1,400	\$815	139 percent
I-192 Application for Advance Permission to Enter as Nonimmigrant (USCIS)	\$930		\$470	51 percent
I-193 Application for Waiver of Passport and/or Visa	\$585	\$2,790	\$2,205	377 percent
I-212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	\$930	\$1,050	\$120	13 percent
I-290B Notice of Appeal or Motion	\$675	\$700	\$25	4 percent
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	\$435	\$450	\$15	3 percent
I-485 Application to Register Permanent Residence	\$1,140	\$1,130	-\$10	-1 percent

⁴ Because the FY 2016/2017 fee review and resulting fee change were based on USCIS's costs for processing inadmissibility waivers and not CBP's costs, the Form I-192 fee remained \$585 when filed with and processed by CBP. *See* 8 CFR 103.7(b)(1)(i)(P); 81 FR 73307.

⁵ Currently, there are two fees for Form I-485. *See* 8 CFR 103.7(b)(1)(i)(U). The \$750 fee is applied to "an applicant under the age of 14 years when [the application] is (i) submitted concurrently with the Form I-485 of a parent, (ii) the applicant is seeking to adjust status as a derivative of his or her parent, and (iii) the child's application is based on a relationship to the same individual who is the basis for the child's parent's adjustment of status, or under the same legal authority as the parent." *See* 84 FR 62305. With this rule, DHS removes the reduced child fee. *See* section III.G.11.b. Form I-485 Child Fee. Additionally, DHS adds

Immigration Benefit Request	Current Fee	Final Fee	Change (\$)	Percentage Change
or Adjust Status ⁵	\$750		\$380	51 percent
I-526 Immigrant Petition by Alien Investor	\$3,675	\$4,010	\$335	9 percent
I-539 Application to Extend/Change Nonimmigrant Status (online filing)	\$370	\$390	\$20	5 percent
I-539 Application to Extend/Change Nonimmigrant Status (paper filing)	\$370	\$400	\$30	8 percent
I-589 Application for Asylum and for Withholding of Removal	\$0	\$50	\$50	N/A
I-600/600A Adoption Petitions and Applications	\$775	\$805	\$30	4 percent
I-600A Supplement 3 Request for Action on Approved Form I-600A	N/A	\$400	N/A	N/A
I-601 Application for Waiver of Ground of Excludability	\$930	\$1,010	\$80	9 percent
I-601A Provisional Unlawful Presence Waiver	\$630	\$960	\$330	52 percent
I-612 Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	\$930	\$515	-\$415	-45 percent
I-687 Application for Status as a Temporary Resident	\$1,130	\$1,130	\$0	0 percent
I-690 Application for Waiver of Grounds of Inadmissibility	\$715	\$765	\$50	7 percent
I-694 Notice of Appeal of Decision-	\$890	\$715	-\$175	-20 percent
I-698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	\$1,670	\$1,615	-\$55	-3 percent
I-751 Petition to Remove Conditions on Residence	\$595	\$760	\$165	28 percent
I-765 Application for Employment Authorization (Non-DACA)	\$410	\$550	\$140	34 percent
I-765 Application for Employment Authorization (DACA only) ⁶	\$410	\$410	\$0	0 percent
I-800/800A Adoption Petitions and Applications	\$775	\$805	\$30	4 percent
I-800A Supplement 3 Request for Action on Approved Form I-800A	\$385	\$400	\$15	4 percent
I-817 Application for Family Unity Benefits	\$600	\$590	-\$10	-2 percent
I-824 Application for Action on an Approved Application or Petition	\$465	\$495	\$30	6 percent
I-829 Petition by Investor to Remove Conditions	\$3,750	\$3,900	\$150	4 percent
I-881 Application for Suspension of Deportation or	\$285	\$1,810	\$1,525	535 percent

a \$1,080 fee for certain asylum applicants. *See* section III.G.11.c. Form I-485 Reduced Fee for Asylees and new 8 CFR 106.2(a)(17)(ii).

⁶ DHS will maintain the DACA fees at \$410 for employment authorization and \$85 for biometric services. *See* section III.C.6. Comments on DACA Renewal Fee of this preamble; new 8 CFR 106.2(a)(32)(vi).

⁷ Currently there are two USCISs fees for Form I-881: \$285 for individuals and \$570 for families. *See* 8 CFR 103.7(b)(1)(i)(QQ)(1). EOIR has a separate \$165 fee. DHS does not change the EOIR fee with this rule.

Immigration Benefit Request	Current Fee	Final Fee	Change (\$)	Percentage Change
Special Rule Cancellation of Removal ⁷	\$570		\$1,240	218 percent
I-910 Application for Civil Surgeon Designation	\$785	\$635	-\$150	-19 percent
I-924 Application For Regional Center Designation Under the Immigrant Investor Program	\$17,795	\$17,795	\$0	0 percent
I-924A Annual Certification of Regional Center	\$3,035	\$4,465	\$1,430	47 percent
I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant	\$230	\$1,485	\$1,255	546 percent
N-300 Application to File Declaration of Intention	\$270	\$1,305	\$1,035	383 percent
N-336 Request for Hearing on a Decision in Naturalization Proceedings (online filing)	\$700	\$1,725	\$1,025	146 percent
N-336 Request for Hearing on a Decision in Naturalization Proceedings (paper filing)	\$700	\$1,735	\$1,035	148 percent
N-400 Application for Naturalization (online filing)	\$640	\$1,160	\$520	81 percent
N-400 Application for Naturalization (paper filing) ⁸	\$640	\$1,170	\$530	83 percent
	\$320		\$850	266 percent
N-470 Application to Preserve Residence for Naturalization Purposes	\$355	\$1,585	\$1,230	346 percent
N-565 Application for Replacement Naturalization/Citizenship Document (online filing)	\$555	\$535	-\$20	-4 percent
N-565 Application for Replacement Naturalization/Citizenship Document (paper filing)	\$555	\$545	-\$10	-2 percent
N-600 Application for Certificate of Citizenship (online filing)	\$1,170	\$990	-\$180	-15 percent
N-600 Application for Certificate of Citizenship (paper filing)	\$1,170	\$1,000	-\$170	-15 percent
N-600K Application for Citizenship and Issuance of Certificate (online filing)	\$1,170	\$935	-\$235	-20 percent
N-600K Application for Citizenship and Issuance of Certificate (paper filing)	\$1,170	\$945	-\$225	-19 percent
USCIS Immigrant Fee	\$220	\$190	-\$30	-14 percent
Biometric Services (Non-DACA) ⁹	\$85	\$30	-\$55	-65 percent
Biometric Services (DACA only) ¹⁰	\$85	\$85	\$0	0 percent
G-1041 Genealogy Index Search Request (online filing)	\$65	\$160	\$95	146 percent

⁸ Currently, there are two fees for paper filing of Form N-400. *See* 8 CFR 103.7(b)(1)(i)(BBB). This final rule eliminates the reduced fee option for an applicant whose documented income is greater than 150 percent and not more than 200 percent of the Federal poverty level. *See* section III.G.24.c of this final rule or 84 FR 62317 for the proposed rule.

⁹ As explained in this preamble and NPRM, this rule only requires the separate biometric services fee in certain cases. *See* section III.G.2. Biometric Services Fee of this preamble; 84 FR 62302; new 8 CFR 103.7(a)(2), 106.2(a)(32)(i), and 106.2(a)(37)(iii).

¹⁰ *See* footnote 6.

Immigration Benefit Request	Current Fee	Final Fee	Change (\$)	Percentage Change
G-1041 Genealogy Index Search Request (paper filing)	\$65	\$170	\$105	162 percent
G-1041A Genealogy Records Request (online filing)	\$65	\$255	\$190	292 percent
G-1041A Genealogy Records Request (paper filing)	\$65	\$265	\$200	308 percent

D. Summary of Costs and Benefits

Executive Orders (E.O.) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been designated an “economically significant regulatory action” under section 3(f)(1) of E.O. 12866. Accordingly, it has been reviewed by the Office of Management and Budget (OMB). E.O. 13771 directs agencies to reduce regulation and control regulatory costs. Because the estimated impacts range from costs to cost savings, this final rule is considered neither regulatory or deregulatory under EO 13771. Details on the estimated impacts of this final rule can be found in the rule’s economic analysis, section 2.

This final rule adjusts certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). It also removes certain fee exemptions, changes fee waiver requirements,¹¹ alters premium processing time

¹¹ Also, in this final rule DHS Consolidates the Director’s discretionary provision on fee waivers to remove redundancy. 84 FR 62363. Proposed and new 8 CFR 106.3.

limits, and modifies intercountry adoption processing. This final rule removes the proposed fee that was introduced in the NPRM of this rule for Form I-821D;¹² it does not provide for the proposed transfer of any Immigration Examination Fee Account (IEFA) funds collected by USCIS to ICE;¹³ it reassigns the proposed National Record Center (NRC) costs that do not directly apply to the genealogy program, thereby setting genealogy fees lower than proposed;¹⁴ and it now allows for a \$10 reduction in filing fee for applicants who file online for forms that are electronically available by USCIS rather than submit paper applications.¹⁵

The fee schedule that went into effect on December 23, 2016 was expected to yield approximately \$3.4 billion of average annual revenue during the FY 2019/2020 biennial period. This represents a \$0.9 billion, or 36 percent, increase from the FY 2016/2017 fee rule projection of \$2.5 billion. *See* 81 FR 26911. The projected revenue increase is due to higher fees as a result of the FY 2016/2017 fee rule and more anticipated fee-paying receipts. The FY 2016/2017 fee rule forecasted approximately 5.9 million total workload receipts and 4.9 million fee-paying receipts, excluding biometric services. *See* 81 FR 26923-4. However, the FY 2019/2020 fee review forecasts approximately 8.5 million total workload receipts and 7.0 million fee-paying receipts,

¹² 84 FR 62320, 62362; proposed and new 8 CFR 106.2(a)(2)(38).

¹³ 84 FR 62287, 84 FR 67243. This final rule does not transfer funds to ICE. Therefore, DHS removes \$207.6 million for ICE from its cost baseline, resulting in lower fees than if DHS pursued the transfer of funds.

¹⁴ 84 FR 62315, 62316, 62362; proposed and new 8 CFR 106.2(c)(1) – (c)(2); new 8 CFR 106.2(c)(1) – (c)(2).

¹⁵ New 8 CFR 106.2(d)

excluding biometric services. This represents a 44 percent increase to workload and a 43 percent increase to fee-paying receipt assumptions.¹⁶

For the 10-year implementation period of the rule, DHS estimates the annualized costs of the rule to be \$13,856,291, annualized at either 3- and 7-percent discount rates. DHS estimates the annualized cost savings to be \$6,192,201 to \$22,546,053. DHS estimates the annualized net societal costs and savings of the rule to range from costs of \$7,664,090 to savings of \$8,689,762. Over the 10-year implementation period of the rule, DHS estimates the annualized transfers to the government from applicants/petitioners to be \$551,842,481, annualized at either 3- and 7-percent discount rates. Over the same 10-year implementation period of the rule, DHS estimates the annualized transfers of the rule between different groups of fee-paying applicants and/or petitioners to specific form populations is \$832,239,426, annualized at either 3- and 7-percent discount rates.

The final revenue increase is based on USCIS costs and volume projections available at the time of the USCIS fee review. A full analysis of these regulatory provisions and their impacts can be found in the stand-alone Regulatory Impact Analysis found in the docket of this rulemaking and in the statutory and regulatory requirements section of this preamble.

¹⁶ See FY 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation with Addendum, which is part of the docket for this final rule. DHS revised the volumes to exclude DACA and change fee-paying assumptions for Forms N-400, N-600, and N-600K, as discussed later in this preamble.

E. *Effect on the Department of Justice's Executive Office for Immigration Review (EOIR)*

DHS notes possible ancillary effects of this final rule on the fees charged by the Executive Office for Immigration Review (EOIR). In the NPRM, DHS proposed a fee for a Form I-589 filed with DHS only. Whether the fee also will apply to a Form I-589 filed with EOIR is a matter within the jurisdiction of the Department of Justice (DOJ) rather than DHS, subject to the laws and regulations governing the fees charged in EOIR immigration proceedings. 84 FR 62318. DHS does not directly set any fees for DOJ. DHS did not collaborate with DOJ to calculate or incorporate the costs for DOJ adjudication and naturalization services into the USCIS Activity-Based Costing (ABC) model used for this final rule. After the NPRM was published, DOJ published a rule that proposed to increase the fees for those EOIR applications, appeals, and motions that are subject to an EOIR-determined fee, based on a fee review conducted by EOIR. 85 FR 11866 (Feb. 28, 2020). EOIR also stated that its proposed rule would not affect the fees that have been established by DHS with respect to DHS forms for applications that are filed or submitted in EOIR proceedings. *Id.* at 11871. DOJ did not propose any revisions to 8 CFR 1103.7(b)(4)(ii) in its rule that would change its longstanding use of DHS forms and fees. Rather, EOIR proposed to revise its regulations to make changes conforming to the DHS NPRM, namely the transfer of DHS's fee schedule from 8 CFR 103.7 to the new 8 CFR part 106. *Id.* Consequently, in immigration court proceedings, EOIR will continue to charge fees established by DHS for DHS forms, including the fees that DHS is establishing in this final rule, which include but are not limited to the fees for Form I-485, Application to Register Permanent Residence or Adjust Status; Form I-589,

Application for Asylum and Withholding of Removal Fee;¹⁷ and Form I-601, Application for Waiver of Grounds of Inadmissibility.

F. Effect of the COVID-19 Pandemic on the USCIS Fee Review and Rulemaking

DHS acknowledges the broad effects of the COVID-19 international pandemic on the United States broadly and the populations affected by this rule. USCIS has seen a dramatic decline in applications and petitions during the COVID-19 pandemic which has also resulted in an unprecedented decline in revenue. DHS has no comparable historical data that can be used to project the scope, duration, and total effect this will have on USCIS' revenue. As a result, USCIS is monitoring its revenue collections daily. In April 2020, USCIS projected that USCIS' non-premium revenue for April 2020 through September 2020 would fall approximately 59 percent below USCIS' initial FY 2020 annual operating plan revenue projection based on the dramatic reduction in fees received during the pandemic. The projections show that USCIS would receive \$1.1 billion less in non-premium revenue in the second half of the fiscal year than previously forecast.¹⁸ USCIS cannot absorb that large of a revenue loss and have enough funding to sustain operations at the same level as prior to the pandemic. Therefore, DHS has provided technical assistance identifying for Congress USCIS funding needs to help cover payroll and other fixed costs in FY 2020 (\$571 million) and to have enough carryover (\$650

¹⁷ No fee would apply where an applicant submits a Form I-589 for the sole purpose of seeking withholding of removal under INA section 241(b)(3), 8 U.S.C. 1231(b)(3), or protection from removal under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). *See* 85 FR 11871.

¹⁸ In April 2020, USCIS revised its internal annual operating plan revenue projections based on observed receipt patterns for each form during the pandemic. The annual operating plan revenue projections are not the same as the fee rule revenue projections, and revisions to them do not adjust the results of the USCIS fee review.

million) available during the first quarter of FY 2021 to continue operations while new fees continue to be collected. The additional revenue provided by this rule addresses the difference between the costs of USCIS operations and USCIS revenue for the biennial period as projected at the time of the USCIS fee review. The amount of funding identified in DHS's technical assistance to Congress would restore USCIS' financial situation to its pre-rule status and would not obviate the need for DHS to adjust USCIS' fees to address the projected disparity between costs and revenue identified in this rule.

DHS makes no changes in this rule in response to the pandemic. USCIS considers all available data at the time it conducts its fee review. USCIS conducted most of the FY 2019/2020 fee review in FY 2017, before the emergence of the pandemic. At that time, USCIS did not foresee, and could not reasonably have foreseen, the effects of such a pandemic on USCIS receipt, revenue, or cost projections during the FY 2019/2020 biennial period, and we cannot project the effects at this time. The projections in this rule were based on conventional conditions, and with no way of knowing or being able to predict the long-term effects of COVID-19 at this point, DHS must assume that filing volumes will return to near previous levels within a reasonable period. Thus, DHS proceeds with this rulemaking on the basis of the FY 2019/2020 USCIS fee review and associated projections. Consistent with past practice and as required by the CFO Act, USCIS will evaluate all available data at the time it conducts future fee reviews, including data related to the COVID-19 pandemic and any potential effects on USCIS workload volumes, revenue, or costs. DHS will consider these effects in future fee rules.

II. Background

A. History

On November 14, 2019, DHS published a proposed rule in the *Federal Register* (docket USCIS-2019-0010). *See* 84 FR 62280. In consideration of requests to extend the comment period and to provide additional time for the public to review supplemental information, on December 9, 2019, DHS published a proposed rule; extension of comment period; availability of supplemental information; and extended the comment deadline from December 16, 2019 through December 30, 2019. 84 FR 67243 (Dec. 9, 2019). Then on January 24, 2020, DHS further extended the comment period until February 10, 2020. *See* 85 FR 4243 (Jan. 24, 2020). In addition, DHS announced that it would consider comments received during the entire public comment period, including comments received since December 30, 2019. *Id.* In this final rule, DHS will refer to these three documents collectively as the proposed rule or NPRM.

B. Authority and Guidance

DHS issues this final rule consistent with INA section 286(m), 8 U.S.C. 1356(m) and the Chief Financial Officers (CFO) Act, 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).

This final rule is also consistent with non-statutory guidance on fees, the budget process, and federal accounting principles. *See* OMB Circular A-25, 58 FR 38142 (July 15, 1993) (establishing federal policy guidance regarding fees assessed by federal agencies for government services);¹⁹ Federal Accounting Standards Advisory Board

¹⁹ Available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf> (last viewed 03/06/2020).

Handbook, Version 17 (06/19), Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts, SFFAS 4 (generally describing cost accounting concepts and standards, and defining “full cost” to mean the sum of direct and indirect costs that contribute to the output, including the costs of supporting services provided by other segments and entities.); *id.* at 49-66 (identifying various classifications of costs to be included and recommending various methods of cost assignment);²⁰ *see also* OMB Circular A-11, Preparation, Submission, and Execution of the Budget, section 20.7(d), (g) (June 29, 2018) (providing guidance on the FY 2020 budget and instructions on budget execution, offsetting collections, and user fees).²¹ DHS uses OMB Circular A-25 as general policy guidance for determining user fees for immigration benefit requests, with exceptions as outlined in section III.B. of the preamble. DHS also follows the annual guidance in OMB Circular A-11 if it requests appropriations to offset a portion of IEFA costs.²²

Finally, this final rule accounts for, and is consistent with, congressional appropriations for specific USCIS programs. *See* Consolidated Appropriations Act, 2019, Pub. L. 116-6, div. A, tit. IV (Feb. 15, 2019) and Consolidated Appropriations Act, 2020, Pub. L. 116-93, div. D, tit. IV (Dec. 20, 2019).

²⁰ Available at http://files.fasab.gov/pdf/handbook_sffas_4.pdf (last viewed 03/06/2020).

²¹ Available at https://www.whitehouse.gov/wp-content/uploads/2018/06/a11_2018.pdf (last viewed 03/06/2020).

²² OMB Circulars A-25 and A-11 provide nonbinding internal Executive Branch direction for the development of fee schedules under the Independent Offices Appropriations Act (IOAA) and appropriations requests, respectively. *See* 5 CFR 1310.1.

C. Basis for Fee Adjustments

DHS conducted a comprehensive fee review for the FY 2019/FY 2020 biennial period. It identified a projected average annual cost and revenue differential of \$1,262.3 million between the revenue anticipated under current fees and the anticipated full cost of providing immigration adjudication and naturalization services. DHS revises the estimated cost and revenue differential to \$1,035.9 million in this final rule. In the final rule, DHS has removed \$226.4 million of average annual estimated costs related to the immigration adjudication and naturalization services provided by ICE and the Deferred Action for Childhood Arrival (DACA) policy from the budget projection used to calculate the fees in the NPRM. DHS issues this final rule to adjust USCIS' fee schedule to recover the full cost of providing immigration adjudication and naturalization services.

Table 2: Revised IEFA Non-Premium Cost and Revenue Projections Comparison

IEFA Non-Premium Cost and Revenue Projections Comparison			
Comparison	FY 2019	FY 2020	FY 2019/2020 Average
Non-Premium Revenue	\$3,408,233,376	\$3,408,233,376	\$3,408,233,376
Non-Premium Budget	\$4,331,978,119	\$4,556,386,463	\$4,444,182,291
Difference	(\$923,744,743)	(\$1,148,153,087)	(\$1,035,948,915)

D. Final Rule

Following careful consideration of public comments received, DHS made modifications to the NPRM's regulatory text, as described above. Rationale provided in the background section of the NPRM remains valid, except as described in this regulatory preamble. Section III of this preamble includes a detailed summary and analysis of the public comments. Comments and supporting documents may be reviewed at the Federal

Docket Management System (FDMS) at <http://www.regulations.gov>, docket number USCIS-2019-0010.

III. Response to Public Comments on the Proposed Rule

A. Summary of Public Comments

DHS received a total of 43,108 public comment submissions in Docket USCIS-2019-0010 in response to the NPRM.²³ DHS reviewed all the public comments received in response to the NPRM and addresses relevant comments in this final rule, grouped by subject area. The majority of comment submissions were from individual and anonymous commenters. Other commenters included healthcare providers; research institutes and universities; law firms and individual attorneys; federal, state, local, and tribal elected officials; state and local government agencies; religious and community organizations; advocacy groups; unions; as well as trade and business organizations. While some commenters wrote that they supported the NPRM, the vast majority of commenters opposed all or part of it.

B. Comments Expressing General Support for the NPRM

Comment: Several commenters expressed general support for the NPRM. Most did not state precise reasons for their support. Examples of the rationale for some of the generally supportive comments include: fees are a small price to pay for the benefits of immigration; the burden of immigration should fall on the applicants and not on U.S. taxpayers; the fees will discourage fraudulent immigration; USCIS must have funds to

²³ Of the 43,108 public comment submissions received, 12,114 were posted to www.regulations.gov. The other 30,994 submissions were designated “inactive – do not post” and included form copies, duplicates, and non-germane submissions.

operate; and the rule would benefit the U.S. government. A few commenters suggested that fees should be even higher than DHS proposed. One commenter generally supported the proposal and wrote that the methodology used in the biennial fee review was accurate and fully compliant with statutory requirements set forth at INA sections 286(m) and (n), 8 U.S.C. 1356(m), (n). This commenter said the fee review was also compliant with OMB and Federal Accounting Standards Board standards for budgeting and financial management.

Response: DHS appreciates that some commenters support the NPRM. However, it has not separately summarized these comments and does not make any changes in this final rule because of them.

C. Comments Expressing General Opposition to the NPRM

Many commenters generally opposed the NPRM, including the proposed fees, magnitude of the fee adjustments, charging fees in general, and specific proposed policy changes. DHS summarized and responded to the public comments as follows:

1. Immigration Policy Concerns

Comment: Many commenters opposed fee adjustments for policy reasons generally suggesting that the fees will be harmful. The comments are summarized as follows:

- Immigration is important to the United States and the NPRM betrays or is contrary to American values.
- USCIS has an enormous and far-reaching impact and it is imperative that USCIS consider the harmful human effects of the proposed fee increases.
- The fee increase is an attack on immigrants and vulnerable populations.

- The fees would especially affect people of color; the rule implements and displays the racial animus that officials have expressed, is designed to keep non-white immigrants out of the U.S., limits people of color from becoming lawful permanent residents or U.S. citizens, and would have a negative effect on the Latin population.
- The rule is cruel, inhumane, nationalistic, fascist, racist, xenophobic, intended to limit voting rights to the wealthy, and deter green card holders from seeking citizenship.
- The fee increases will create financial hardships for low-income immigrants and the increased cost of renewing residency cards would make it more difficult for immigrants to obtain employment or provide proof of their immigration status.
- Low income immigrants will be forced to choose between providing for basic needs and pursuing immigration benefits.
- The fee increase is an attack on the immigrant and refugee communities who already face discrimination, language barriers, lack of services, poverty, marginalization, persecution, trauma, and fear.
- High fees could result in healthcare avoidance and other negative impacts on foreign-born individuals, as well as their U.S. citizen family members.
- The rule would harm LGBTQ or HIV positive noncitizens.
- The rule's adverse and disparate impact on immigrants of color renders the proposed rule arbitrary and capricious in contravention of federal anti-discrimination protections.
- The rule creates roadblocks to the integration of immigrants.

- The rule attempts to establish discriminatory policies that have been judicially enjoined and to prevent fair and equal access to the U.S. immigration system.
- The proposed fee increase would prevent many immigrants from seeking and obtaining the right to vote. A commenter questioned whether the increase was intentionally seeking to suppress potential low- and middle-income immigrant voters.
- DHS should remove financial barriers clearly intended to target the poor to encourage people to use the legal immigration process.
- Increased fees and removal of fee waiver categories in the proposed rule would result in more applicants being put into removal proceedings.
- The proposal would worsen USCIS' already bad reputation.
- USCIS is engaging in partisan machinations rather than acting as a neutral federal agency.
- The proposal would increase predatory and fraudulent immigration services scams and USCIS will need to enhance its efforts to combat these harmful practices.
- The proposal would negatively impact familial integrity and family unity and would increase the financial strain on immigrants' household resources that would be better spent on improving the family's welfare.
- The proposal, along with the previous public charge rule, demonstrates DHS' "animus towards low-income immigrants seeking family unity" and urged the agency to instead facilitate family unity regardless of immigrants' finances.

- The proposal would create an “invisible wall” that would block many hard-working noncitizens from accessing immigration benefits and would cause long-term family separation.

Response: DHS proposed adjustments to USCIS’ fee schedule to ensure full cost recovery. DHS did not target any particular group or class of individuals, or propose changes with the intent to deter requests from low-income immigrants seeking family unity or deterring requests from any immigrants based on their financial or family situation or to block individuals from accessing immigrant benefits. With limited exceptions as noted in the NPRM and this final rule, DHS establishes its fees at the level estimated to represent the full cost of providing adjudication and naturalization services, including the cost of relevant overhead and similar services provided at no or reduced charge to asylum applicants or other immigrants. This rule is consistent with DHS’s legal authorities. *See* INA section 286(m), 8 U.S.C. 1356(m). DHS proposed changes in fee waiver policies to ensure that those who benefit from immigration benefits pay their fair share of costs, consistent with the beneficiary-pays principle as described in the Government Accountability Office report number GAO-08-386SP.²⁴

In certain instances, DHS deviates from the beneficiary-pays principle to establish fees that do not represent the estimated full cost of adjudication. For example, DHS proposed a \$50 fee for Form I-589, Application for Asylum and for Withholding of Removal, when filed with USCIS. This fee deviates from the beneficiary-pays principle by holding the fee well below the estimated cost of adjudication. The \$50 fee for

²⁴ GAO, *Federal User Fees: A Design Guide* (May 29, 2008), available at <https://www.gao.gov/products/GAO-08-386SP>. (last accessed Feb. 24, 2020).

affirmative asylum filings is not intended to recover the estimated full cost of adjudication. Instead, it is intended to limit the increase of other fees that must otherwise be raised to cover the estimated full cost of adjudicating asylum applications. Fee adjustments are not intended to advance any policy objectives related to influencing the race or nationality of immigrants, deterring immigration and naturalization, or affecting voting.

DHS adjusts the USCIS fee schedule in this final rule to provide for recovery of the estimated full cost of immigration adjudication and naturalization services. DHS notes that the fees are the same for all people who submit benefit requests regardless of their physical, cultural, or individual characteristics. The commenters state that DHS has discriminatory intent or pretext for this rulemaking, but they provide no evidence to support that statement. DHS has complied with all relevant legal and statutory authorities, including the Immigration and Nationality Act (INA) and the Administrative Procedure Act (APA). DHS rejects the claim that its justifications for adjusting the fees are pretextual or intended to obscure its true intent, or that nefarious reasons like voter suppression and racial animus are behind the fee adjustments, and DHS declines to make any changes in this final rule on these bases.

2. Other General Opposition

Comment: Many commenters expressed general opposition to the proposed increase in USCIS fees. Commenters stated:

- USCIS should find a way to increase its margins without causing detriment to the populations it serves.

- The NPRM was not justifiable and USCIS should increase its own efficiency instead of charging more and providing less service.
- The rule’s objectives are pretextual, and its goal of fully recovering costs is undermined by the series of USCIS policies and practices that increase the agency’s costs and inefficiencies. USCIS fails to describe alternatives to those policies and practices in the proposed rule.
- USCIS should not increase fees when it has inefficiencies such as performing three different background and biological checks on a single applicant.
- USCIS policy failings and inefficient resource allocation are creating the need for increased fees. Commenters provided examples such as the following:
 - Failure to revise policies to keep costs within current fees;
 - Failure to hire and train already budgeted staff;
 - Extensive and frivolous use of a Request for Evidence (RFE) and Notice of Intent to Deny (NOID);
 - “Extreme vetting”;
 - Lengthy suspension of longstanding premium processing services for certain applications;
 - The current lockbox system;
 - Increased and unnecessary in-person interviews;
 - Ramped up denaturalization efforts;
 - Resources spent litigating improperly denied applications; and
 - Actions that increased appeals and motions.

Many of these commenters said the NPRM does not account for agency inefficiencies resulting from these policies or how increased revenue would mitigate them and that USCIS should end them before seeking additional fees from applicants.

After listing several policy changes leading to USCIS inefficiencies, one commenter said these policies and requiring fee increases would, in key respects, transfer the costs of the agency's own inefficiencies to the public. The commenter also wrote that the NPRM suggests that the agency could expand implementation of at least some of these "misguided measures." The commenter concluded that it is therefore unsurprising that the NPRM fails to provide any meaningful evidence that the changes it proposes would relieve case processing delays or otherwise improve agency performance; rather, the proposed rule assumes that lengthy delays will persist.

Response: DHS will continue to explore efficiencies that improve USCIS services. DHS may incorporate corresponding cost savings into future biennial fee reviews and rulemakings accordingly. Nevertheless, USCIS must recover the estimated full cost of providing immigration adjudication and naturalization services, including services provided at no or reduced charge to asylum applicants and other immigrants. DHS declines to make changes in this final rule in response to these comments.

Comment: Several commenters suggested tax solutions instead of fee increases. One commenter stated that because they were an American, the U.S. government should raise the commenter's taxes instead of raising fees for citizenship applications. Another commenter suggested that the U.S. government should tax large corporations to fund public services. One commenter opposed the regulation for three reasons: the department managers should be requesting additional funding from Congress to meet legal

requirements, reimbursements between USCIS and DHS “are not to be addressed directly by the users of services required to be provided by the executive branch,” and the executive branch is required to provide certain services regardless of cost.

Response: DHS has no opinion on whether Congress should pass any new laws to address fees for adjudication and naturalization services. However, DHS reiterates that this final rule complies with current laws. Consistent with DHS’ statutory authority, user fees are the primary source of funding for USCIS. *See* INA section 286(m), 8 U.S.C. 1356(m). This final rule adjusts those user fees to provide for full cost recovery to USCIS. DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter stated that new administrative procedures instituted in the last 3 years serve as barriers to naturalization and immigration rather than as security precautions.

Response: Under the law, DHS must fund USCIS operations, including the vetting of individuals who want to enter the United States, using fees. The security screening, background checks, and interviews are all vitally necessary to ensuring that bad actors do not exploit the legal immigration system to enter the United States and undertake actions that harm citizens and conflict with our national values. USCIS must carry out those functions as part of the vetting process and these functions are funded by fees.

Comment: Some commenters said that USCIS should maintain the current fee schedule as-is and revisit the issue after further review of the efficiency and effectiveness of current policies, or possible review of the U.S. system of immigration policy by future terms of Congress.

Response: In its FY 2019/2020 fee review, USCIS estimated that there is a gap of more than \$1 billion annually between the revenue collections projected under the previous fee schedule and the resources USCIS needs to meet its operational needs to address incoming workloads. Therefore, if DHS did not adjust fees in this final rule, USCIS' pending caseload would likely continue to grow and applicants and petitioners would experience longer processing times. DHS declines to adopt the commenter's suggestion in this final rule.

3. Proposed Fees Are Unconstitutional²⁵

Comment: Several commenters wrote that the proposed USCIS fee rule violates one or more provisions of the United States Constitution. These comments are summarized as follows:

- By removing fee waivers for most categories of cases, USCIS is conditioning fundamental rights, such as the ability to vote, on the ability to pay, engaging in discrimination prohibited by the Constitution because it affects one race more than another, and using the “beneficiary pays” principle as a pretextual argument to conceal an intent to discriminate against racial minorities.
- Raising the citizenship application fee to over \$1,000 is like imposing a “poll” tax on future voters, which is outlawed by the 24th amendment to the U.S. Constitution.
- Naturalization is an especially important immigration benefit, as it is the only one referenced in the Constitution.

²⁵ For constitutional claims against the \$50 asylum fee see the General Comments on the Asylum Fee section of this preamble.

- Depriving low-income immigrants of their due process rights through significant economic obstacles to immigration benefits is contrary to the Equal Protection Clause of the 14th Amendment.²⁶
- The intent of the rule is unconstitutional because it is intended to directly exclude individuals based on their economic class.

Response: DHS is not adjusting the USCIS fee schedule with any undisclosed motivation or intent other than to recover the estimate full cost of adjudication and naturalization services. The new fees are not insubstantial, but DHS disagrees with the commenters' assertions that the fees in this final rule will have an effect on the economic class or number of applicants. DHS has no data that would indicate that the populations noted by the commenters will be precluded from submitting benefit requests. As stated in other parts of this final rule, DHS must study the adequacy of its fee schedule biennially. If this final rule results in a significant reduction in the number of requests submitted for immigration benefits, DHS can adjust to address that result in a future fee rule. Therefore, DHS does not agree that the new fees violate the U.S. Constitution.

4. Rule Will Have Negative Effects on Applicants

Comment: Many commenters wrote that the NPRM, including the fee schedule and limited fee waivers, would have negative effects on applicants, including the following:

- Impede legal immigration;
- Block low-income immigrants from achieving citizenship and the associated benefits;

²⁶ The commenter likely meant the equal protection component of the Fifth Amendment Due Process Clause.

- Disproportionately impact Asian immigrants and Asian Americans;
- Encourage illegal immigration;
- Prevent immigrants from being contributing members of society;
- Cause immigrants to rely on public assistance;
- Make it difficult to become documented;
- Cost DHS more money for deportations;
- Prevent nonimmigrants and their families from accessing the American Dream;
- Make it difficult for immigrants to make a better life for themselves and their families;
- Make it more difficult for immigrant residents in South Carolina to maintain lawful status, secure work authorization, and provide support for their families;
- Make it more difficult for people to immigrate and for lawyers to obtain clients;
- Dissuade citizens and lawful permanent residents (LPRs) from bringing their family members to the U.S and family support is a relevant factor in economic mobility;
- Promote “healthcare avoidance” and exacerbate medical needs when immigrants finally emerge in care systems, resulting in increased costs for the health and human services sectors;
- Cause significant negative effects on Latino immigrants;
- Punish immigrants who did their utmost to obey immigration laws;
- Adversely impact populations already much less likely to apply for and obtain naturalization, such as survivors of domestic violence, sexual assault, and human trafficking. Further discouraging naturalization among these populations would

harm their chances of reuniting with family through immediate relative petitions and undermine applicants' sense of security in the United States.

- The fee increases making naturalization less accessible for low-income immigrants would yield poor health outcomes among children.
- The proposal, along with other policies, serves to disrupt access to programs that address social determinants of health and contribute to individuals' and families' well-being.

Response: DHS is unable to quantify how many people will not apply because they do not have access to fee waivers and we acknowledge that some individuals will need to save, borrow, or use a credit card in order to pay fees because they may not receive a fee waiver. DHS also recognizes that if individuals borrow or use a credit card, they are likely also responsible for the filing fee, and any additional interest cost accruing on the loan or credit card. DHS does not know the price elasticity of demand for immigration benefits, nor does DHS know the level at which the fee increases become too high for applicants/petitioners to apply. However, DHS disagrees that the fees will result in the negative effects the commenters' suggested. DHS believes that immigration to the United States remains attractive to millions of individuals around the world and that its benefits continue to outweigh the costs noted by the commenters. Therefore, DHS believes the price elasticity for immigration services is inelastic and increases in price will have no impact on the demand for these services. This is true for all immigration services impacted by this rule. DHS also does not believe that the NPRM is in any way discriminatory in its application and effect. Therefore, DHS declines to make changes in this final rule in response to these comments.

5. Rule Will Have Negative Effects on the Economy and Employers

Comment: Multiple commenters stated that the NPRM would have negative direct and indirect impacts on local, state, regional and the United States' economy, as well as businesses and employers. These comments are summarized as follows:

- Immigrants provide crucial labor in agriculture, construction, healthcare, hospitality, and other industries, and they need an ample workforce from which to draw.
- Lawful permanent residents becoming citizens is important to the economy of the United States, and those positive economic impacts reach across generations.
- Immigrants can contribute more to the economy with access to legal documentation.
- Higher fees affect lower-skilled laborers who are in demand in several industries. Immigrants are key contributors to the U.S. labor force and the proposed fee change would impede immigration to the detriment of the labor force.
- The rule could cost the United States potential future taxpayers. This impact could result in a long-term economic loss.
- Immigrants are the backbone of industry and the economy, often responsible for significant job creation and innovation.
- An increase in fees will negatively affect U.S. companies that pay immigration fees on behalf of their employees.
- The proposed fee increases will result in the decrease of immigration applications, negatively affecting the government.

- The increased fees will create a financial barrier to protection from deportation and work authorization, thus making it more expensive to participate on the U.S. economy.
- Immigrants will be the primary source of future U.S. labor growth. Limiting working class immigration is contrary to the interests of the U.S. society and economy. Similarly, naturalization boosts American democracy, economy, and diversity.
- Increased fees will negatively affect the U.S. workforce because employees who may be eligible to naturalize will no longer have access to naturalization.
- The fees would be detrimental to immigrant students' success and the nation's economic prosperity.
- Improved immigration status allows low-income immigrants to rise out of poverty and contribute economically to their communities with access to better jobs and opportunities.
- The rule will damage regional and national economies by stymieing immigration and the benefits that flow from it.
- The proposed rule would have a negative ripple effect on U.S. citizens because of the economic benefits derived from immigrants.
- These changes would not only impact individual applicants who may be unable to work due to delays in their pursuit of work authorization, but also family members and employers who may have to lay off valuable employees.

- Immigrant communities in rural areas with high levels of poverty live paycheck to paycheck and the proposed fee increases would make immigration benefits less accessible to working-class and vulnerable individuals.
- Raising fees would undermine the jobs and wages of domestic workers with limited education performing low-skill jobs.
- The proposed rule would increase unemployment among immigrant workers.
- The proposed fee increases and the revocation of fee waivers would increase economic and administrative burdens on State and local government workforces.
- The destabilizing effects of barriers to naturalization would create undue financial burdens on municipalities that outweigh any stated benefits of the proposal.
- Immigrant entrepreneurs and small business owners generate “tens of billions of dollars” in business revenue.
- Immigrants make important contributions in research and science. Four of eight Nobel Prize Laureates from the United States in 2019 were foreign born and 34 percent of all Nobel Prize Laureates from the United States were immigrants.
- Scientific discovery is dependent on the ability to travel freely and the rule would limit the ability of scholars to study and work in the United States.
- The proposal would adversely impact the direct care and nursing home industries’ abilities to hire and retain sufficient staff. These industries are increasingly reliant on immigrants to staff positions.
- The H-2A program provides the citrus industry with reliable foreign labor. The cost increase for H-2A petitions was excessive and other cost in the industry were also increasing.

- The increased fees, coupled with restrictions to fee waivers, would result in many fewer residents accessing a desired immigration status for which they are eligible simply because they cannot afford to apply.
- Impeding an individual's ability to achieve a secure immigration status because of poverty is unacceptable and unconscionable.

Response: DHS knows that immigrants make significant contributions to the U.S. economy, and this final rule is in no way intended to impede or limit legal immigration. DHS's rule in no way is intended to reduce, limit, or preclude immigration for any specific immigration benefit request, population, industry, or group. DHS agrees that immigrants are an important source of labor in the United States and contribute to the economy. DHS does not have data that would indicate that the fees in this rule would make a U.S. employer that is unable to find a worker in the United States forego filling a vacant position rather than submitting a petition for a foreign worker with USCIS. DHS saw no or limited decreases in the number of benefit requests submitted after its fee adjustments in 2007, 2010, and 2016 and has no data that would indicate that the fees for family based benefit requests, lawful permanent residence, and naturalization in this final rule would prevent applicants from being filed. DHS agrees that immigrants are crucial for agriculture, construction, healthcare, hospitality, almost all industries, immigrants are a source of future U.S. labor growth, many immigrants are successful entrepreneurs, and that welcoming new citizens helps the U.S. economy. DHS acknowledges in its analyses accompanying this rule that the higher fees must be paid by U.S. companies that hire foreign nationals, but DHS has no data that indicates that higher fees will affect the supply of lower-skilled laborers, impede immigration to the detriment of the labor force,

result in aliens being unable to work, cause employers to lay off employees, undermine the jobs and wages of domestic workers with limited education performing low-skill jobs, or increase unemployment among immigrant workers. DHS knows that immigrants make important contributions in research, science, and we have no data that supports the assertion that the increased fees and restrictions on fee waivers would result in many fewer residents accessing a desired immigration status for which they are eligible simply because they cannot afford to apply.

Comment: A commenter requested that DHS more thoroughly analyze the costs of impeding access to naturalization, which include long-term reduced economic and social mobility for affected populations.

Response: DHS recognizes the contributions that naturalized citizens make to American society. However, USCIS must fund itself through fees unless DHS receives a Congressional appropriation to do so. DHS does not have any data to establish that these fees, though required, are a significant impediment to naturalization or economic and social mobility. DHS saw no or limited decreases in the number of benefit requests submitted after its fee adjustments in 2007, 2010, and 2016 (e.g. N-400 filing volumes grew from less than 600,000 in FY 2009 to approximately 750,000 in FY 2011; similarly, N-400 filing volumes grew from less than 800,000 in FY 2015 to nearly 1 million in FY 2017). In an effort to apply fees more equitably to the beneficiary of each benefit request, DHS must increase the fee for Form N-400, Application for Naturalization, in this final rule. As stated in the proposed rule and elsewhere in this final rule, DHS performs a biennial review of the fees collected by USCIS and may recommend changes to future

fees. DHS declines to conduct further analysis on this issue or make changes in this final rule in response to this comment.

Comment: Many commenters wrote about the benefits of naturalization, the effect of naturalization on the economy and how the current application fee and proposed fee discourages naturalization. These comments are summarized as follows:

- Immigrants contribute to the economy by paying taxes, and they should have easy access to naturalization.
- Naturalization increases support for American political institutions, workforce diversity, strengthens employee productivity and retention, and creates well-informed community members.
- Raising fees for naturalization could discourage immigrants from seeking citizenship, negatively affecting the economy.
- Naturalization is a key driver in allowing immigrants to fully integrate into our society, economically contribute to the U.S. economy.
- Everyone benefits from residents naturalizing.
- Naturalization increases net taxable income, GDP, individual earnings, employment rates, homeownership, federal, state, and city tax revenues, and higher education, etc.
- Naturalization decreases government benefit expenditures.
- Citizenship promotes social benefits, higher rates of health insurance, English proficiency, quality of employment, and buy-in to U.S. democratic principles.
- Naturalization increases engagement in civic life.

- The proposal would increase profits for private companies that benefit from financial obstacles to naturalization.
- In its proposal, DHS incorrectly stated that naturalization applicants will find some way to come up with the fee and failed to prove that the proposal would not shrink revenues due to a reduction in submitted applications.
- The proposed fee increases would place citizenship and the “American dream” out of reach for many immigrants.
- Costs associated with naturalization were already prohibitively high and DHS should refrain from any efforts to make naturalization and other immigration benefits even less accessible.
- Research from the Journal on Migration and Human Security that found there were approximately 9 million LPRs eligible to naturalize and the proposed naturalization fee increase would make naturalization unaffordable for low-income and working-class people.
- The Immigrant Legal Resource Center and Stanford University’s Immigration Policy Lab study demonstrates current fee levels already prevent a considerable share of low-income immigrants from applying for citizenship, as well as a 40 percent increase in application rates when low-income immigrants are given vouchers to cover application fee costs.
- Compliance with immigration and naturalized citizenship laws was already an “arduous and risky” process and USCIS should estimate the impact on compliance for immigrants seeking to follow such laws.

- USCIS should implement a system to account for individuals who cannot afford to comply with immigration and citizenship laws due to the proposed fee increases.
- An analysis from the American Immigration Council shows that the cost of citizenship has become a systemic barrier and the proposal would raise naturalization fees even higher.
- An analysis from the Center for Migration Studies that found 39 percent of those eligible for naturalization live in households with incomes below 150 percent of Federal Poverty Guidelines (FPG) and the proposal would price out naturalization-eligible individuals from pursuing citizenship to the detriment of their families and communities.
- A hypothetical family of four would have to pay an additional \$3,115 over a 3-year period to maintain their status and secure citizenship.
- The “road to naturalization eligibility may be lengthy, unpredictable and costly,” and the proposed fee increases and changes to fee waiver eligibility would impact immigrants who must file concurrent applications for spousal petitions, work authorizations, and adjustment of status. These changes would cost \$4,680 over a 4-year period, an amount the commenter described as “prohibitive.”
- Existing costs for immigration benefits already pose challenges for immigrant families and DHS should not increase fees by such an unprecedented amount.

Response: DHS recognizes the economic and societal value of nonimmigrants, immigration, and naturalization. DHS agrees that new citizens and naturalization are of

tremendous economic and societal value and generally agrees with the points made by, and the studies cited by, commenters. DHS is not adjusting the USCIS fee schedule with an intent to impede, reduce, limit, or preclude naturalization and did not propose to adjust the USCIS fee schedule to reduce, limit, or preclude immigration in any way for any specific immigration benefit request, population, industry or group, including members of the working class. However, DHS must adjust the USCIS fee schedule to recover the full cost of providing immigration adjudication and naturalization services. While fully aware of the benefits that immigrants provide to society, DHS must fund USCIS with fees unless DHS receives a Congressional appropriation to do so.

DHS acknowledges that the fee for Form N-400, Application for Naturalization is increasing by a greater percentage than the total increase in USCIS costs and the average increase in fees generally. The fee for this form is increasing more than for most other forms because DHS has historically held the fee for Form N-400, Application for Naturalization, below the estimated cost to USCIS of adjudicating the form in recognition of the social value of citizenship. Immigration services provide varying levels of social benefit, and previously DHS accounted for some aspect of the social benefit of specific services through holding fees below their cost. However, in this final rule DHS is emphasizing the beneficiary-pays principle of user fees. This approach means that the fee for Form N-400 will now represent the estimated full cost to USCIS of adjudicating the form, plus a proportional share of overhead costs and the costs of providing similar services at reduced or no charge to asylum applicants and other immigrants. In other words, the fee for Form N-400 will now be determined in the same manner as most other USCIS fees. Because DHS has held the fee for Form N-400 below full cost in the past,

adjusting to full cost requires an increase in excess of the volume-weighted average increase of 20 percent. If DHS did not increase the fee for Form N-400 this amount, other fees would need to increase further to generate the revenue necessary to recover full cost, including the costs of the N-400 not covered by its fee. DHS believes the increase in the fee for Form N-400 is fully justified. Finally, DHS does not believe the new Form N-400 fee will deter naturalization or that the new fees established in this final rule will prevent immigrants from receiving immigration benefits. DHS saw no or limited decreases in the number of benefit requests submitted after its fee adjustments in 2007, 2010, and 2016 (e.g. N-400 filing volumes grew from less than 600,000 in FY 2009 to approximately 750,000 in FY 2011; similarly, N-400 filing volumes grew from less than 800,000 in FY 2015 to nearly 1 million in FY 2017). Therefore, DHS declines to make any changes in this final rule in response to this comment.

Comment: One commenter stated that the higher fees would result in fewer clients for their advocacy organization. As a result, the group might have to let go of some staff. Another commenter wrote that the proposal would harm its city's efforts to create a welcoming environment for immigrants. The commenter described programs like Citizenship Day in Boston intended to make immigration legal services more accessible and said the proposal would undermine these efforts. The proposed fee changes and elimination of fee waivers would harm agencies that carry out the DOJ's Office of Legal Access Programs mission as those agencies would lose clients as naturalization and other applications become less affordable, resulting in a reduction of funding and potential staff layoffs. The commenter also said these agencies would need to change their

informational and educational materials if the proposed rule is implemented, resulting in increased design, printing, and distribution costs.

A commenter stated that while it does not provide direct social or legal services, it frequently fields questions from transgender individuals and their family members, attorneys, and other organizations about government policies and individuals' legal rights, including questions about immigration. The commenter wrote that if the proposed rule is adopted, it will need to expend considerable resources to comprehend and explain changes to the public and will see an increase in requests for information. The commenter said USCIS should also consider the impact of the proposed rule on organizations like theirs, and on organizations that provide direct services to immigrants applying for immigration benefits.

A commenter said the proposal would harm its organization's mission and ability to sustain itself financially. The commenter said 90 percent of its funding comes from the State of Washington's allocation for the Washington New Americans Program and is tied to certain contractual obligations, including that the organization complete 1,000 naturalization applications, host various workshop events, and screen around 2,000 green card holders for eligibility each year, among other conditions. The commenter said its ability to meet these numbers and its success rate would be adversely impacted if the proposed fee increases and elimination of fee waivers become finalized. One commenter wrote that the proposal would present challenges for non-profit organizations providing legal assistance to low-income immigrants because it would reduce the number of clients who connect with services for which they are eligible, and would require increased outreach by an already overworked staff.

Another commenter wrote that the proposal would interfere with state and local non-profit programs that provide services to help individuals navigate the immigration process. The commenter said that if the proposal is implemented, such programs in Washington State anticipate that the increased demand for fee reimbursement will outpace other services. The commenter wrote that many organizations providing immigration services are dependent on reasonable application fees and would be at risk of disappearing if fees increase above current levels. Another commenter said the proposal would interfere with its organizational mission and would hamper the work done by other non-profit entities serving immigrant communities. The commenter wrote that its organization is funded primarily by city and state grants, with specific funding attached to specific numbers of low-income immigrants served and that the proposal would undermine its ability to meet grant requirements. The commenter said in the previous year, it had processed hundreds of applications that it would not have been able to file under the proposed removal of fee waivers for certain application types. Many commenters wrote that the proposed fee increases would deter immigrants from using qualified legal services, an outcome that the commenters stated would complicate USCIS processing. The commenter said that if these actors are left unchecked, they will end up diverting thousands of dollars away from the agency.

Commenters said the proposed fee increases and elimination of fee waivers would disrupt organizations that provide legal assistance and other services to immigrants because of a reduction in the number of clients served, an inability to meet contractual requirements, and loss of financial support through contracts or grants. One commenter said their city partners with immigration legal service organizations to help immigrants

secure needed benefits because income-based barriers to such benefits already exist. One commenter said their office assists 1,000 constituents annually who already face burdens navigating the immigration system.

Some commenters suggested that because the fee increases will discourage many immigrants from utilizing qualified legal assistance to assist with applications, USCIS will encounter challenges and inefficiencies in processing due to less complete or less accurate applications being filed. Other commenters wrote that the proposal would increase the prevalence of “notario” fraud and other types of consumer fraud against immigrants, who would be more likely to turn to dishonest providers of legal and other assistance due to the proposed fee increases. Another commenter agreed that the fee increases would decrease immigrants’ ability to afford counsel, and referred to a 2014 study from Stanford Law School that found detained immigrants were three times more likely to win deportation cases when they were assisted by attorneys. The commenter also cited research from the New York Immigrant Family Unity Project from November 2017 that demonstrated for every 12 individuals who received counsel under the organization’s “universal representation model,” 11 would have been deported without access to an attorney. The commenter concluded that non-profit organizations that are already under-resourced will have to step in to provide services if immigrants lack income to hire attorneys. Some commenters suggested that the proposed rule would not only impact immigrant populations, but also legal aid organizations providing services to such populations and students who benefit from programs and clinics designed to support low-income populations.

Response: DHS recognizes the value of the various groups that assist individuals navigate its regulations and forms. However, USCIS strives to develop rules and forms that are user-friendly, can be easily completed by the public, and require no legal or professional assistance. As stated before, DHS is changing USCIS fees to recover the costs of administering its adjudication and naturalization services. DHS is not changing USCIS fees with the intent to deter requests from low-income immigrants seeking family unity or deterring requests from any immigrants based on their financial or family situation. Previous fee adjustments had no discernible effect on the number of benefit requests filed. This final rule amends fee waiver requirements and divides the Form I-129 into multiple forms, but otherwise makes no major changes to any immigration benefit requests. DHS will continue to explore efficiencies that improve USCIS services. DHS may incorporate corresponding cost savings into future biennial fee reviews and rulemakings accordingly. Therefore, DHS declines to make any changes in this final rule as a result of these comments.

Comment: One commenter cited a Bureau of Labor Statistics study (2017-2018), which indicates that the unemployment rate for foreign-born men (3.0 percent) was smaller than the unemployment rate for native-born men (4.2 percent), as a benefit to the United States.

Response: DHS appreciates the comment and agrees that foreign-born workers are dependable employees who are important to the U.S. economy.

6. Comments on the DACA Renewal Fee

Comment: Many commenters generally opposed higher DACA fees. Commenters stated:

- Current DACA fees are high and an increase to renewal fees would make it difficult for people to afford legal immigration processes.
- It would be unjust to charge students and families to pay more to maintain DACA.
- Many DACA recipients are in school, early in their careers, or have young children, and therefore cannot afford the fee increases.
- DACA fees would make it difficult for individuals to renew their work permits and they could lose the ability to work legally in the United States. The proposed fee increase would cause emotional and financial hardships for the families of DACA recipients.
- DACA fees will suppress/undermine the DACA policy while legal status is undetermined.
- The DACA renewal fee will discourage DACA recipients from seeking citizenship.
- High fees are the reason only 800,000 of the 1.3 million DACA-qualified individuals have requested DACA.
- The fee increases will reduce the number of DACA recipients who are able to renew their deferred action and complete higher education. DACA recipients often live paycheck-to-paycheck and must support family members financially. The renewal fees already present a burden and the proposed increase would exacerbate the hardship.

- DACA is a prerequisite for in-state tuition in many states, and increased fees would cause many DACA recipients to lose their DACA and give up their pursuit of higher education.
- DACA has been instrumental in helping many recipients access better educational and professional opportunities and better support their families.
- Many DACA recipients have lived in the United States since early childhood, and this rule would place them in danger of removal from the only country they consider home.
- DACA recipients have, in some cases, shown to be dedicated to serving their communities through Teach For America.
- Without the contributions of DACA recipients the United States would lose \$433.3 billion in GDP and \$24.6 billion in Social Security and Medicare contributions.
- DACA renewals should be funded by increased taxes rather than by placing the burden on DACA requestors, who are vulnerable.
- USCIS needs to offer justification for increasing DACA fees from an economic standpoint.

Response: In light of the concerns raised by commenters, as well as the recent Supreme Court Decision in *DHS et al v. Regents of the Univ. of Cal. et al*, No. 18-587 (S.Ct. June 18, 2020), DHS will not impose a fee for Form I-821D. Therefore, there is no fee for Form I-821D, Consideration of Deferred Action for Childhood Arrivals, in this final rule, and USCIS will not receive revenue from Form I-821D. DHS has removed the estimated costs and staff directly attributable to the DACA policy from its cost baseline used in its

fee calculations for this final rule, consistent with past practice. *See* 81 FR 26903, 26914 (May 4, 2016) (explaining that USCIS excludes from the fee calculation model the costs and revenue associated with programs and policies that are temporary in nature such as DACA). In this final rule, DHS adjusts other fees to recover the anticipated overhead and cost reallocation that the NPRM associated with DACA fees, including Forms I-765 and I-821D.

In light of the recent Supreme Court ruling and attendant changes to DHS' operations relating to the DACA policy DHS will maintain the DACA fees as in effect before the rescission on September 5, 2017 at \$410 for employment authorization and \$85 for biometric services. New 8 CFR 106.2(a)(32)(vi).

D. Comments on Legal Adequacy of the Rule

Comment: Multiple commenters stated that the rule was arbitrary and capricious, contrary to law, and in violation of the Administrative Procedure Act for various reasons, summarized as follows:

- The fee increase is excessive particularly for naturalization and adjustment of status.
- Fee increases will frustrate the substantive policies promoted in the INA.
- The proposal was a pretext for decreasing legal immigration.
- The fee of \$2,000 to change the status of a single family member is a thinly veiled effort to bring the recently enjoined public charge regulations and health insurance proclamation to life and circumvent the judicial injunctions on that rule.
- In emphasizing the beneficiary-pays principle, the rule abandons prior motivations to tailor fees based on users' ability to pay. The 2008 Government

Accountability Office (GAO) report to Congress entitled, *Federal User Fees: A Design Guide*, undermines USCIS' sudden switch to the beneficiary-pays principle, and USCIS has elevated the beneficiary-pays principle as a pretext for restricting and deterring legal immigration against the will of Congress.

- The rule's objectives are pretextual, and its goal of fully recovering costs is undermined by the series of USCIS policies and practices that increase the agency's costs and inefficiencies. USCIS fails to describe alternatives to those policies and practices in the proposed rule.
- The proposed rule fails to determine a social good that results from equity among application fees, with no evidence, data, or rational connection between that good and the stated goal of equity.
- The agency failed to adequately describe the terms or substance of the proposed rule in accordance with APA.
- The NPRM's rationale and fee increases are arbitrary because the amount of revenue that would be generated is much bigger than the projected shortfall at USCIS and some fees would increase more than others.
- Not all fees are being changed proportionally or rationally, and some fee decreases and increases appear completely arbitrary and do not align with the agency's reasoning.
- The rule lacks a detailed description of how or why the costs of adjudication have increased so dramatically as to necessitate such a large fee increase.
- The rule cites to INA section 286(m) multiple times for the Congressional mandate that authorizes the DHS to charge fees "at a level that will recover the

full costs of adjudication,” but fee increases should be supported with details of what those “costs” actually are, and they should be itemized in a way that clearly justifies the price.

- The public has the right to know the specific details of the projected budget shortfall and how proposed fee changes would be allocated to meet the projected deficit.
- Some fee increases were larger than others.
- It is arbitrary to eliminate fee caps for some but not all categories, and the rationale provided for not limiting fee increases for some benefit requests is inadequate. If limited fee increases were continued for all previously limited requests some proposed fees could increase by as much as \$1,185 with the average of those changes being an increase of \$12 per immigration benefit request.
- The rule contains clear and measurable hypocrisy in that USCIS claims that prior policy must fall in the face of the agency’s newfound insistence on the “beneficiary-pays principle,” but it violates this principle for certain form types because USCIS proposes to maintain a 5 percent limit on fee increases without specific justification for each.
- The proposed rule’s invocation of the “beneficiary-pays principle” is not made in good faith in that USCIS is still willing to support subsidies for some users (e.g. adoptive parents and religious institutions) and even a high premium on others (e.g., “regional center” investment groups).“regional center” investment groups).

- Contrary to DHS's rationales for the rule, increased fees will not improve USCIS' efficiency or allow the agency to provide better service to applicants.

Response: INA section 286(m), 8 U.S.C. 1356(m) authorizes DHS to recover the full cost of providing immigration adjudication and naturalization services, including the cost of services provided at reduced or no charge to asylum applicants and other immigrants through the USCIS fee schedule. This final rule complies with the INA, as DHS estimated the cost of providing immigration adjudication and naturalization services over the biennial period and adjusts USCIS' fee schedule to recover those costs. DHS has explained its rational basis for adjusting USCIS fees in the proposed rule and this final rule. The docket and administrative record document the bases for the changes and show that the fee adjustments in this final rule are not motivated by any purpose other than those expressly stated in this rulemaking. This final rule intends to recover the estimated full cost of providing immigration adjudication and naturalization services and is not a pretext to implement the Inadmissibility on Public Charge Grounds final rule, as indicated by a commenter. DHS notes that the Public Charge final rule was implemented nationwide on February 24, 2020, after the Supreme Court of the United States stayed the last remaining injunction on that final rule on February 21, 2020.

This final rule also complies with the APA. DHS issued an NPRM in the *Federal Register* on November 14, 2019, and a Supplemental Notice on December 9, 2019. DHS accepted public comments on the proposed rule through February 10, 2020. DHS fully considered the issues raised in the public comments and made some adjustments in response, as detailed in responses throughout this final rule.

DHS disagrees with commenters' assertions that the fees established in this final rule are unjustified because the fees differ in amount or are not being changed "proportionally." In most instances, DHS sets the fees based on the estimated full cost of providing the relevant immigration adjudication or naturalization service. Some services cost USCIS more to provide than others, resulting in fees that differ in relation to how costly the applicable service is. Furthermore, the costs to USCIS of providing a given service may evolve over time in a manner that is different than the cost of providing another service. Thus, when DHS adjusts the USCIS fee schedule, not all fees are adjusted "proportionally." For example, as DHS explains in the NPRM and elsewhere in this rule, DHS determined that it would be appropriate to limit the fee increase for several forms while not limiting the fee increase for other forms to reduce the cost burden placed upon other fee-paying applicants, petitioners, and requestors.

DHS reiterates that this final rule complies with the all current laws. Therefore, DHS declines to make changes in this final rule in response to these comments.

Comment: Numerous issues permeate the NPRM and result in such a vague rule change as to invalidate the entire proposal. The NPRM fails to disclose the actual weighted average fee increase or fee increases associated with individual form types and many unrelated changes are proposed without supporting documentation for each of these proposed changes. The commenter wrote that other open-ended language in this proposal also improperly subverts the legal requirements of this notice process by granting exclusive powers to the Attorney General to set such fees and fee waiver regulations and create such USCIS forms without future public notices. The commenter wrote that other open-ended language in this proposal also improperly subverts the legal requirements of

this notice process by granting exclusive powers to the Attorney General to set such fees and fee waiver regulations and create such USCIS forms without future public notices.

Response: DHS has provided sufficient details of the bases for the fee adjustments in the NPRM, this final rule, and supporting documentation. As clearly stated earlier, the INA authorizes the use of fees for funding USCIS. However, the law does not prescribe a method for USCIS fee setting. As explained in the supporting documentation that accompanies this final rule, USCIS follows guidance provided by OMB Circular A-25 and has leveraged an ABC methodology in the last five fee reviews. USCIS' use of commercially available ABC software to create financial models has enabled it to align with the Federal Accounting Standards Advisory Board's (FASAB's) *Statement of Federal Financial Accounting Standards Number 4* on managerial cost accounting concepts, which provides guidelines for agencies to perform cost assignments in the following order of preference: 1) Directly tracing costs wherever feasible and economically practicable; 2) Assigning costs on a cause-and-effect basis; or 3) Allocating costs on a reasonable and consistent basis.²⁷

USCIS is a worldwide operation of thousands of employees with myriad responsibilities and functions. The commenter's expectations of absolute precision are unattainable for setting the fees for such a large organization that provides a wide range of services and immigration benefit requests. DHS has provided rational connection to the law, its needs, policy choices, calculations, and fees established in this final rule, even

²⁷ FASAB, *Statement of Federal Financial Accounting Standards 4*, available at http://files.fasab.gov/pdf/files/handbook_sffas_4.pdf (last viewed 03/06/2020).

if the rational basis may require following mathematical calculations and defensible estimates.

DHS declines to make changes in this final rule in response to the comment.

Comment: Some commenters said that the excessive fee increase and limiting fee waivers would indirectly make wealth a dispositive requirement for immigration benefits, effectively adopting a “wealth test” for citizenship and similar immigrant benefits that will deter non-citizens from seeking lawful immigration status in violation of the INA and which the legislature never intended. A commenter said DHS’s proposal to eliminate most fee waivers and exemptions, coupled with dramatic fee hikes for most immigrants, breaks from decades of executive practice and ignores clear Congressional intent to create a fair and accessible immigration system. The commenter said DHS has declined, despite congressional requests, to consider the effect of eliminating reduced fees on applicants for naturalization or to maintain fee waivers for such applicants.

A commenter said USCIS’ policy of recovering the full cost of application processing is a choice, not a legal requirement. Specifically, the commenter said USCIS cites INA section 286(m), 8 U.S.C. 1356(m) as the basis of its policy, but this section states merely that the agency “may be set at a level that will ensure recovery of the full costs of providing all such services.” Therefore, the statute is permissive, not mandatory. The commenter went on to say that USCIS also cites OMB Circular A-25, but this document is only policy guidance that lacks the force of law and, by its own terms, provides for exceptions to this general policy. The commenter also said that since USCIS has used its discretion to set fees for several forms at levels that would not recover its full costs, it should go further in shifting costs away from applications that would help

working immigrant families acquire, maintain, or document lawful status and citizenship. Similarly, another commenter said USCIS is not required by law to recover its costs on the backs of applicants, many of whom are low-income; the relevant section of the INA is permissive, not mandatory.

A commenter said the proposed rule ignores Congressional intent, citing a 2018 House Appropriations Committee report (H. Rep. No. 115-948) and the bipartisan, bicameral conference report accompanying the omnibus appropriations act for Fiscal Year 2019 (H. Rep. No. 116-9), both of which stated that “USCIS is expected to continue the use of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee. USCIS is also encouraged to consider whether the current naturalization fee is a barrier to naturalization for those earning between 150 percent and 200 percent of the federal poverty guidelines (FPG), who are not currently eligible for a fee waiver.” Although the NPRM states that “USCIS appreciates the concerns of this recommendation and fully considered it before publishing this proposed rule,” the commenter said USCIS provides no evidence that it either “appreciates” or “fully considered” these directives from Congress. Instead, the commenter said the agency is eliminating fee waivers and naturalization fee reductions in direct contravention of Congressional will. A couple of other commenters also cited the same Congressional directives, stating that DHS has ignored these directives without rational explanation.

Another commenter said that, by solely focusing on “full cost recovery” regardless of an immigrant’s ability to pay and under the false pretense of equity, DHS is restricting immigration to only those who can afford it. The commenter said this is a “backhanded attempt” to introduce a merit-based immigration system without legislation.

The commenter said Congress has already shown it does not wish to enact a merit-based immigration system and the DHS should not be able to go around the will of Congress. Similarly, another commenter said the changes serve to circumvent Congressional oversight of the immigration system by effectively eliminating statutory paths to immigration status by making them unaffordable and inaccessible to those who qualify.

Another commenter said these fees would effectively impose a means test for U.S. residence and citizenship, and that these immigration benefits is of such importance that any related policy should be determined by Congressional legislation. A commenter said a limit should be placed on USCIS' ability to raise fees without Congressional approval, concluding that such policies should only be passed by Congressional authority.

A commenter said the administration is attempting to reshape American immigration policy, ignoring Congress' plenary power and attempting to make the immigration process established by Congress inaccessible to eligible immigrants. Similarly, another commenter said USCIS is imposing financial tests cloaked under the rule-making process to reshape the demographics of the American society by excluding those who are not wealthy and asylum-seekers who are largely from Central America, Latin America, Africa, and Asia.

A commenter said the rule would significantly deter family-based immigration, contrary to Congressional intent. The commenter said that the effect of the rule will promote employment-based immigration at the expense of family-based immigration because immigrants who arrive on employment-based visas are typically well-educated, can speak English proficiently, have sufficient assets, and have solid employment

prospects. The commenter said the effect of the proposed rule will be to favor wealthy or higher-skilled immigrants over families, and in turn reverse over a half century of bedrock immigration policy in the United States. The commenter concluded that Congress did not delegate DHS the authority to implement such sweeping reform of our immigration laws.

Another commenter said Congress needs a clear expenditure plan in order to monitor if the funds are being used as warranted, which is not present in the current proposal. Similarly, a commenter said the proposed fee schedule is inconsistent with statutory framework because it lacks a valid analysis as to how the proposal might achieve the policy objectives it “allegedly would further.”

Response: DHS adjusts the fees for immigration benefit requests in this final rule to recover the estimated full cost of providing immigration adjudication and naturalization services, as provided by law. In adjusting the fees, DHS is not imposing a “wealth test” or otherwise attempting to erect barriers to immigration and rejects any implication that its justifications for adjusting the fees are pretexts to obscure any other motivation.

INA section 286(m), 8 U.S.C. 1356(m) authorizes DHS to recover the full cost of providing immigration adjudication and naturalization services, including the cost of services provided at no charge to asylum applicants and other immigrants through the USCIS fee schedule. This final rule complies with the INA, as DHS estimated the cost of providing immigration adjudication and naturalization services over the biennial period and adjusts USCIS’ fee schedule to recover those costs.

This final rule also complies with the APA. DHS issued an NPRM in the *Federal Register* on November 14, 2019, and a Supplemental notice on December 9, 2019. DHS

accepted public comments on the proposed rule through February 10, 2020. DHS fully considered the issues raised in the public comments and made some adjustments in response, as detailed elsewhere in this final rule. DHS provides responses to those comments in this final rule.

Comment: One commenter stated that the proposed rule was not ripe for comment, because DHS did not provide a final, definitive set of fees but instead provided a range of potential outcomes that were possible.

Response: DHS disagrees that the proposed rule was not ripe for comment. DHS provided multiple options for proposed fee schedules and explained that the final outcome would be one of the proposed scenarios or another outcome within the range of the alternatives proposed. The fee schedule adopted in this final rule falls within the range of outcomes DHS provided in the NPRM. The policies implemented in this final rule are identical to, or are logical outgrowths of, those contained in the NPRM.

The intent of the comment period provided under the APA is to allow agencies to consider public feedback on proposed rules and make changes as appropriate. Because a single change made in response to public comments may affect multiple fees, it is impossible to provide a final set of fees in an NPRM unless it were to be adopted without any modification, thereby negating the value of public feedback. Therefore, the NPRM was fully ripe for public comment, and DHS declines to make any adjustments in response to this comment.

Comment: Two commenters wrote that the NPRM has no force or effect because Mr. Wolf does not have a valid legal claim to the office of DHS Secretary. The commenters detailed the required line of succession required by Executive Order 13753 after the

departure of Secretary Nielsen, which according to the commenters should not have led to Mr. McAleenan. The commenters then stated that, even if President Trump lawfully departed from E.O. 13753 when Mr. McAleenan was designated, his authority was limited to 210 days under the Vacancies Act, but Mr. McAleenan purported to serve as Acting Secretary for a year and a half. The commenters stated that, because Mr. Wolf's appointment to Secretary was a result of Mr. McAleenan's unlawful amendment to the order of succession, Mr. Wolf has no valid legal claim to the office of the Secretary, and the action he has taken in promulgating the proposed rule shall have "no force or effect."

Similarly, other commenters said the rule violates the Appointments Clause and the Federal Vacancies Reform Act (FVRA) because it was promulgated under the unlawful authority of Kenneth Cuccinelli. The commenters detailed the requirements of the FVRA and the succession line leading to Mr. Cuccinelli's appointment. The commenters concluded that, since Mr. Cuccinelli has not succeeded to the Acting Director of USCIS position pursuant to the FVRA, his designation was void, and thus, the rule that was proposed under his purported authority should have "no force or effect" and its adoption would be unlawful.

Another commenter said it is improper to issue a significant rule when the authority of DHS and USCIS leadership is in question. The commenter said the significant changes proposed are egregious when the agency lacks confirmed leadership to exercise authority pursuant to the law. The commenter wrote that legal challenges to the authority of agency leadership are currently pending and a letter from the House Committee on Homeland Security to the GAO that questions the legality Chad Wolf's appointment as Acting DHS Secretary and Kenneth Cuccinelli's appointment as Senior

Official Performing the Duties of the Deputy Secretary. The commenter wrote that the lack of responsible authorities makes it inappropriate for the agency to make the radical and untested policy shifts it proposes.

Response: DHS disagrees that Mr. Cuccinelli was unlawfully appointed in violation of the Appointments Clause or the Federal Vacancies Reform Act. In any event, it is unnecessary to discuss the merits of Mr. Cuccinelli's appointment, because the proposed rule only proposed changes to DHS regulations and requested comments. It did not effectuate any change that would be amount to a final action taken by Mr. Cuccinelli or any DHS official. In addition, neither the NPRM nor this final rule were signed by Mr. Cuccinelli. Thus, while DHS believes that Mr. Cuccinelli is lawfully performing the duties of the Director of USCIS and using the title Senior Official Performing the Duties of Director of USCIS, and the Senior Official Performing the Duties of the Deputy Secretary of Homeland Security, whether that is true is immaterial.

The NPRM was signed by Kevin K. McAleenan and this final rule is signed by Chad F. Wolf, both as Acting Secretary of Homeland Security. Contrary to the comment, Secretary Wolf is validly acting as Secretary of Homeland Security. Under INA section 103(a)(1), 8 U.S.C. 1103(a)(1), the Secretary of Homeland Security is charged with the administration and enforcement of the INA and all other immigration laws (except for the powers, functions, and duties of the Secretary of State and Attorney General). The Secretary is also authorized to delegate his or her authority to any officer or employee of the agency and to designate other officers of the Department to serve as Acting Secretary. *See* 8 U.S.C. 103 and 6 U.S.C. 113(g)(2). The HSA further provides that

every officer of the Department “shall perform the functions specified by law for the official’s office or prescribed by the Secretary.” 6 U.S.C. 113(f).

On April 9, 2019, then-Secretary Nielsen, who was Senate confirmed, used the authority provided by 6 U.S.C. 113(g)(2) to establish the order of succession for the Secretary of Homeland Security. This change to the order of succession applied to any vacancy. Exercising the authority to establish an order of succession for the Department pursuant to 6 U.S.C. 113(g)(2), superseded the FVRA and the order of succession found in E.O. 13753.

As a result of this change and pursuant to 6 U.S.C. 113(g)(2), Mr. McAleenan, who was Senate confirmed as the Commissioner of CBP, was the next successor and served as Acting Secretary without time limitation. Acting Secretary McAleenan was the signing official of the proposed rule. Acting Secretary McAleenan subsequently amended the Secretary’s order of succession pursuant to 6 U.S.C. 113(g)(2), placing the Under Secretary for Strategy, Policy, and Plans position third in the order of succession below the positions of the Deputy Secretary and Under Secretary for Management. Because these positions were vacant when Mr. McAleenan resigned, Mr. Wolf, as the Senate confirmed Under Secretary for Strategy, Policy, and Plans, was the next successor and began serving as the Acting Secretary. Therefore, both the NPRM and this final rule were lawfully signed by the Acting Secretary of Homeland Security.

Comment: A commenter opposed the proposal because it would result in family separation and would run counter to the family-based immigration system Congress intended to create through the INA. Another commenter wrote that the proposal conflicts

with the principle of family unity because it interferes with the right to choose to live with family members and disrupts the INA's goal of family unity.

Response: In adjusting the USCIS fee schedule in this final rule, DHS complies with all relevant legal authorities. DHS does not intend to erect barriers to family unity or reunification. This final rule adjusts the USCIS fee schedule to recover the estimated full cost of providing immigration adjudication and naturalization services.

DHS declines to adjust this final rule in response to these comments.

Comment: A commenter wrote that the proposed transfer of \$112.3 million in IEFA ICE fees violates the Appropriations Clause of the Constitution. The commenter wrote that the use of the IEFA to fund any activities of ICE circumvented the Appropriations Clause and other laws that prohibit the transfer of funds without statutory authorization. Another commenter wrote that enactment of the FY 2020 appropriations package in December clarified USCIS' understanding of its Congressional mandate and spending authority, but that the agency had failed to acknowledge this package in its January 2020 notice regarding the fee proposal. The commenter wrote that funding provided by Congress in that bill should have resolved open questions about the fee schedule, and that USCIS' failure to propose a fee schedule based on "no transfer of funding" in its January 2020 notice precludes the public from providing fully informed feedback.

Response: DHS is not moving forward with the proposed transfer of IEFA funds to ICE in this final rule. Please see the ICE Transfer Section (Section III.L) of this final rule for more information.

Comment: Multiple commenters requested that DHS extend the public comment period to 60 days to allow more time to review the proposed rule and to develop responses.

Commenters stated that the length of the NPRM was greater than that of earlier fee rules, but commenters had less time to respond to this rule. Multiple commenters suggested that the timing of the comment period over multiple holidays hindered the ability of the public to respond to the proposed rule.

Response: DHS understands that the general policy of the Executive Branch is that agencies should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days, for rules that are determined to be significant by OMB's Office of Information and Regulatory Affairs (OIRA). *See* E.O. 12866, Regulatory Planning and Review, 58 FR 51735 (Oct 4, 1993), Sec. 6(a)(1). (E.O. 12866). However, circumstances may warrant a shorter comment period and the minimum required by the APA is 30-days. 5 U.S.C. 553(d). On January 24, 2020, DHS reopened the comment period for an additional 15-days and accepted public comments through February 10, 2020. *See* 85 FR 4243. Thus, the public was provided a comment period of 61 days to review the NPRM, revised information collections, supporting documents, other comments, and the entire docket contents. In addition, comments received between December 30, 2019, and January 24, 2020, were also considered. As a result, although in three separate notices, the public was afforded more time to comment than required by E.O. 12866, the APA, and the Paperwork Reduction Act (PRA).

Comment: One commenter wrote that USCIS promised to provide public review of its cost model software; however, it did not provide access when the commenter reached out to the provided contact. Later, that same commenter along with several other commenters submitted a comment that referenced a February 3, 2020, meeting during

which USCIS hosted a demonstration of its ABC cost-modeling software, as promised in the original proposed rule. A commenter wrote that USCIS gave stakeholders just one week to write comments on the cost-assignment software before the end of the comment period. The commenter said USCIS should never force stakeholders to review and provide a formal response to a complex financial proposal within the space of just one week, and it should not impose such an impossible deadline upon analysis of a sophisticated tool that is the foundation of the rule. A commenter asked why the public's ability to provide informed comment on the software was unfairly limited to an in-person demonstration with no phone or online access, asserting that the process limited the ability of stakeholders to request and analyze relevant information. Another commenter also said USCIS' presentation did not allow meaningful public engagement. Another commenter wrote that none of the information received was made available to the rest of the public, which the commenter said would have generated additional important perspectives.

Response: DHS met all requirements under the APA in affording commenters who requested a meeting with DHS to review the ABC software the opportunity to provide public comments. The public was offered a chance to meet with USCIS experts and review the software and every party who requested an appointment to review the software was provided an appointment and a review. DHS did not provide additional time beyond the end of the public comment period for the meeting participants to provide feedback because doing so would have advantaged the feedback of those commenters relative to the rest of the public.

DHS declines to make changes in this final rule in response to the comment.

Comment: A commenter said DHS has not complied with the Treasury General Appropriations Act by failing to assess whether the proposed rule strengthens or erodes the stability or safety of the family, increases or decreases disposable income or poverty of families and children, and is warranted because the proposed benefits justify the financial impact on the family.

Response: As stated in the Family Assessment Section of this final rule (Section IV.H), DHS does not believe that this rulemaking will have a negative financial impact on families. DHS disagrees with commenter's assertions about the effects of the proposed fees and does not agree that the data provided by the commenter indicates that the fees established in this final rule will affect the financial stability and safety of immigrant families. As stated elsewhere in response to similar comments, based on the number of filings received after past fee increases, DHS does not anticipate that the fees would affect application levels or that it will create barriers to family reunification or stymie noncitizens seeking to adjust their status or naturalize. DHS must have sufficient revenue to operate USCIS or its service to all people who file immigration benefit requests could suffer, persons who are not eligible could improperly be approved for a status, or a person who wants to harm the United States and its residents may not be properly vetted. Thus, the benefits of the fees outweigh the costs they impose.

E. Comments on Fee Waivers

Comment: Many commenters, without providing substantive rationale or supporting data, stated that they oppose the elimination of fee waivers in the rule. Some commenters stated that fee waivers are a matter of public policy and reflect American values. The commenters further stated that the rule would increase dependence on debt to finance

applications, the fees are already difficult to pay, and this change will allow only affluent individuals and families to immigrate legally. Commenters indicated that the elimination of almost all fee waivers would cause a substantial burden and prevent large numbers of people from accessing immigration relief and submitting a timely application, and even force applicants to forgo the assistance of reputable and licensed counsel in order to save money to pay the fees.

Commenters also stated that fee waivers should continue to be available for low-income individuals and their elimination would result in financial hardship for immigrant and mixed-status families, resulting in immigrants delaying or losing immigration status due to financial considerations. Commenters also discussed the benefits of fee waivers to immigrants, including helping families to improve their stability, to financially support themselves, and to fully integrate into their communities while allowing them to allocate funds for higher education. Commenters further stated that fee waivers help families be secure, stable, and financially stronger, and help them integrate into their communities. Commenters stated that the proposed fee increases and elimination of fee waivers would prevent many individuals and families from engaging with the legal immigration system, including putting benefits such as naturalization, lawful permanent residence, and employment authorization out of reach for people who face financial hardship and low-income individuals by serving as a “metaphorical border wall.” Commentators indicated that fee waivers are commonly used by low-income and vulnerable immigrants, especially students and their families, and the rule would leave essential immigration benefits accessible primarily to the affluent.

A commenter disagreed with USCIS' statement in the NPRM that changes in fee waiver policy would not impact application volume because research suggests price increases for naturalization applications are a significant barrier for lower income noncitizens. Another commenter provided data from several sources and wrote that immigrants tend to have higher rates of poverty and that fee waivers are an important asset for immigrants looking to maintain legal status. Another commenter stated that fee waivers serve to permit those with an "inability to pay" the same opportunity as others and denying access to fee waivers divides the "opportunity pool." Another commenter wrote that applicants may, instead of going into debt, have to forego other expenses such as housing, childcare, transportation, and healthcare in order to apply. A commenter wrote that the elimination of fee waivers would force families to forego necessities such as food, shelter, transportation, education, and healthcare to pay for proof of lawful status that allows them to work. A commenter wrote that USCIS eliminating the fee waiver altogether for non-humanitarian applications directly contradicts USCIS' previous statements regarding the revision to Form I-912.

Response: To align fee waiver regulations more closely with the beneficiary-pays principle, DHS proposed to limit fee waivers to immigration benefit requests for which USCIS is required by law to consider a fee waiver. *See* proposed 8 CFR 106.3. DHS acknowledges that this is a change from its previous approach to fee setting and believes that these changes will make USCIS' fee schedule more equitable for all immigration benefit requests by requiring fees to be paid mostly by those who receive and benefit from the applicable service. Additionally, DHS believes that making these changes to the fee waiver policy would ensure that fee-paying applicants do not bear the costs of fee-

waived immigration benefit requests. DHS does not agree that individuals will be prevented from filing applications or receiving immigrant benefits.

DHS provided notice in its FY 2016/2017 USCIS fee rule that in the future it may revisit the USCIS fee waiver guidance with respect to what constituted inability to pay under the previous regulation, 8 CFR 103.7(c). *See U.S. Citizenship and Immigration Services Fee Schedule*, Proposed Rule, 81 FR 26903 – 26940, 26922 (May 4, 2016). INA section 286(m), 8 U.S.C. 1356(m) authorizes, but does not require, that DHS set fees to recover the full cost of administering USCIS adjudication and naturalization services. That statute also authorizes setting such fees at a level that will recover the costs of services provided without charge, but it does not require that DHS provide services without charge.

DHS declines to make changes in this final rule in response to these comments.

Comment: Several commenters stated that USCIS has neither explained its significant departure from its prior reasoning and practice nor satisfactorily justified limiting fee waivers for naturalization and several other application categories. A commenter stated that the proposed changes concerning fee waivers represents such a “massive and inadequately explained shift in policy” that it would create a crippling burden on low-income immigrants compounded with previous recent fee waiver changes.

Response: DHS understands that the NPRM and this final rule represent a change from previous guidance on fee waivers. Due to the cost of fee waivers and inconsistency of current regulations with the beneficiary-pays principle emphasized in the NPRM and this final rule, DHS is limiting fee waivers to immigration benefit requests for which USCIS is required by law to consider a request or where the USCIS Director exercises favorable

discretion as provided in the regulation, as well as a few other instances. In addition, DHS is allowing fee waivers for certain associated humanitarian programs including petitioners and recipients of SIJ classification and those classified as Special Immigrants based on an approved Form I-360 as an Afghan or Iraqi Translator or Interpreter, Iraqi National employed by or on behalf of the U.S. Government, or Afghan National employed by or on behalf of the U.S. government or employed by the International Security Assistance Forces. Although these changes do limit the number of people eligible for fee waivers, as previously discussed, the changes also limit increases to fees for forms that previously had high rates of fee waiver use.

Comment: Some commenters provided information specific to a geographic area or political subdivision. One commenter added that reductions in fee waivers would in turn cause sweeping consequences to applicants, safety net programs, and state and county economies. One commenter wrote that the proposal would significantly harm New York as a whole because fee waivers allow indigent and low-income immigrants to obtain lawful status, which puts them on the path to social and economic security. The commenter cited data showing that New York's immigrants account for \$51.6 billion of the State's tax revenue and stated that New York would lose much needed support if fewer immigrants are unable to legally work and live in the United States. Another commenter cited data showing that immigrant-led households in Oregon paid \$1.7 billion in federal taxes and over \$736.6 million in State taxes and stated that the proposed change would prohibit many of these immigrant from fully participating in their local economies. Another commenter calculated the costs a family with an income of 150

percent of the FPG level would face living in Boston, writing that fee waivers are vital to such families maintaining their immigration status or naturalizing.

Response: DHS disagrees that the fee waiver regulations in this final rule would prohibit immigrants from participating in local and state economies or affect safety net programs. This final rule does not prevent any person from submitting a benefit request to USCIS or prohibit immigrants from obtaining services or benefits from state or local programs. DHS declines to make changes in this final rule in response to this comment.

Comment: Another commenter stated that limiting fee waivers would result in a greater number of applicants delaying submitting applications due to financial hardship. The commenter wrote that applicants would therefore live without authorization for which they are lawfully eligible for a longer time period, resulting in negative impacts to their financial and emotional security.

Response: DHS acknowledges that the changes in the fee waiver provisions may impose a burden on applicants who may have previously been eligible for a fee waiver. However, DHS does not have data indicating that individuals will delay submitting applications and petitions in response to the fee waiver policy changes. USCIS accepts credit cards to pay for a USCIS request sent to one of the USCIS Lockboxes. While DHS acknowledges that the use of a credit card may add interest expenses to the fee payment, a person can generally use a debit or credit card to pay their benefit request fee and does not have to delay their filing until they have saved the entire fee. DHS declines to make changes in this final rule in response to this comment.

Comment: A few commenters said that eliminating fee waivers is a racist attempt to prevent immigration from poorer countries. Commenters indicated that eliminating fee

waivers would be discriminatory against immigrants who have limited incomes, who are willing to work for everything they get, want a better life for their children, desire to improve their communities, and the rule would put immigration benefits out of reach for people who face financial hardship.

Response: DHS changes to fee waiver availability in this rule have no basis in race or discriminatory policies. DHS is not limiting fee waivers to discriminate against any group, nationality, race, or religion, to reduce the number of immigrants, or limit applications for naturalization. Rather, the change is to alleviate the increase of fees for other applicants and petitioners who must bear the cost of fee waivers as previously discussed. DHS does not anticipate a reduction in receipt volumes because of the fee waiver policy changes. DHS declines to make changes in this final rule in response to these comments.

Comment: A few commenters stated that the curtailment of fee waivers disregards a Senate Appropriations Committees' directive that USCIS was to "report on the policies and provide data on the use of fee waivers for four fiscal years in 90 days," which is not provided in the NPRM.

Response: DHS has previously provided the required reports to Congress. The Congressional reporting requirements do not include a limit on USCIS fees or limit the authority of DHS to provide discretionary fee waiver eligibility criteria or guidelines. They also do not require publication in the NPRM or the Federal Register as the commenter implies. Therefore, DHS does not believe this final rule disregards the directive for reporting to Congress and declines to make changes in this final rule in response to these comments.

1. Limits on Eligible Immigration Categories and Forms

Comment: Many commenters stated that USCIS should maintain fee waivers for all current categories and that the proposed fee waiver changes would make essential benefits such as citizenship, green card renewal, and employment authorization inaccessible for low-income immigrants.

Response: DHS has always implemented USCIS fee waivers based on need and since 2007, has precluded fee waivers for individuals that have financial means as a requirement for the status or benefit sought. *See Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule; Proposed Rule, 72 FR 4887 – 4915, 4912 (Feb 1, 2007).* As discussed in the NPRM, under the ability-to-pay principle, those who are more capable of bearing the burden of fees should pay more for the service than those with less ability to pay. *See 84 FR 62298.* IEFA fee exemptions, fee waivers, and reduced fees for low income households adhere to this principle. Applicants, petitioners, and requestors who pay a fee cover the cost of processing requests that are fee-exempt, fee-waived, or fee-reduced. For example, if only 50 percent of a benefit request workload is fee-paying, then those who pay the fee will pay approximately twice as much as they would if everyone paid the fee. By paying twice as much, they pay for their benefit request and the cost of the same benefit request for which someone else did not pay.

In prior years, USCIS fees have given significant weight to the ability-to-pay principle by providing relatively liberal fee waivers and exemptions and placing the costs of those services on those who pay. In the FY 2016/2017 fee rule, DHS noted that the estimated annual dollar value of waived fees 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. *See* 81 FR 26922 and 73307. DHS set the fees in the FY 2016/2017 fee rule based on those estimates of the level of fee waivers and exemptions by increasing other fees accordingly. To the extent that waivers and exemptions exceed the estimates used to calculate fees, USCIS forgoes the revenue. While DHS acknowledges that the fee adjustments established in this final rule are not insubstantial to an applicant of limited means, DHS does not believe that they make immigration benefits inaccessible to low income applicants. Thus, DHS will not shift the costs from all low-income applicants to other fee-paying applicants and petitioners in this final rule.

DHS declines to make changes in this final rule in response to these comments.

a. Categories or Group of Aliens

Comment: A commenter stated that while USCIS may claim it is not required to waive any fees for vulnerable applicants such as the disabled and elderly, federal laws, such as the Americans with Disabilities Act (ADA) and Rehabilitation Act, do require that fees and benefits are kept within reach of protected and vulnerable populations.

Response: DHS disagrees with the commenter's assertion. Section 504 of the Rehabilitation Act, applicable to USCIS, provides that qualified individuals with a disability shall not be excluded from the participation in, denied the benefits of, or be subjected to discrimination under any program or activity conducted by a federal executive agency. USCIS immigration benefit request fees are generally applicable and do not violate that provision. Congress did not specifically provide for an immigration benefit request fee exemption or waiver for individuals with disabilities. DHS generally does not assess fees to applicants for any accommodations requested by the applicants for

physical access to USCIS facilities when required for interviews, biometrics submission, or other purposes. Therefore, the USCIS fee schedule established in this final rule does not violate the Rehabilitation Act. The ADA does not generally apply to USCIS programs, but to the extent that it provides guidance on the expectations for a Federal agency's accommodations for a qualified individual with a disability, the fees that DHS is establishing in this final rule also fully comply with the ADA.

DHS declines to make changes in this final rule in response to these comments.

Comment: Commenters stated that the proposed limits on fee waivers would threaten disabled immigrants and deny them access to citizenship. The commenter wrote that disabled lawful permanent residents rely on Supplemental Security Income (SSI), but that LPRs must naturalize within 7 years to sustain this benefit. The commenter stated that removing the naturalization fee waiver would drive these disabled LPRs to homelessness and desperation, with negative societal consequences and no benefit. A commenter added that LPRs with disabilities lose SSI benefits 7 years after their entry, and, thus, that the proposed rule could deny members of this population access to basic necessities. A commenter wrote that citizens are eligible for SSI, but such benefits are only available to some non-citizens for up to seven years. The commenter wrote that the increase in naturalization fees would "create an insurmountable barrier" for disabled non-citizens to naturalize, and thus creates a "finite timeline" during which a non-citizen can receive important needed benefits like SSI.

Response: DHS disagrees that removing the application for naturalization fee waiver would drive disabled applicants into homelessness, despair, or deny them access to citizenship. Normally, if an applicant entered the United States on or after August 22,

1996, he or she is not eligible for SSI for the first 5 years as a lawfully admitted permanent resident, unless he or she is a qualified alien, as provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).²⁸ Some categories of aliens who are eligible, including asylees and refugee, may be limited to a maximum of 7 years of SSI. Generally, an alien may apply for naturalization after 5 years as an LPR. This final rule does not prohibit eligible aliens from obtaining SSI benefits or naturalizing. DHS declines to make changes in this final rule in response to these comments.

Comment: Commenters stated that fee waivers should be available for both affirmative and defensive asylum seekers. One commenter stated that DHS failed to justify its decision to forgo fee waivers for asylum applications, since the agency did not analyze data from other fee waiver processes to determine whether the fee waivers would offset the cost recovery of the asylum fee. Another commenter said that if fee waivers will offset the revenue from the asylum fee, then the entire fee should be abandoned.

One commenter said that the asylum fee should be established at \$366 while allowing Form I-589 applications to be submitted with a fee waiver application, stating that many asylees are able to pay the full fee. The fee waiver application process would better allow USCIS to detect fraud while serving as a sworn statement of financial status, circumventing the need for universal verification which consumes agency resources.

²⁸ See Title IV of Pub. L. 104-193, 110 Stat. 2105, 2260-77 (Aug 22, 1996). For information on who is a qualified alien see eligible for SSI, see Under What Circumstances May A Non-Citizen Be Eligible For SSI? available at <https://www.ssa.gov/ssi/spotlights/spot-non-citizens.htm> (last visited June 5, 2020).

The fee waiver for asylum applications would, according to this commenter, enable indigent applicants to be granted asylum, upholding the U.S.'s non-refoulement obligations. The commenter also stated that defensive applications should be subject to the same fees as affirmative applications, so long as a fee waiver remains available.

One commenter wrote that the elimination of fee waivers would require immigrants with few economic resources to finance the cost of their own oppression referencing that applicants who have a legal basis for asylum claims will be forced to pay the fees associated with that claim with no discretion or real procedural mechanism for accessing a fee waiver. The commenter indicated that immigrants living in this country often arrived as economic refugees and do not have economic resources, especially given the difficulties in obtaining employment without status. The commenter stated that forcing some of the most marginalized communities to pay, for instance, a \$1,170 filing fee (more than 3 weeks wages for a low-income earner) makes a mockery of the country's values.

Response: DHS acknowledges the commenters' concerns related to fees and fee waivers for asylum seekers and asylees. As stated in the NPRM and in this final rule, DHS is not providing fee waivers for the \$50 asylum application fee. DHS's decision to establish a mandatory \$50 fee is justified. The \$50 fee would generate an estimated \$8.15 million of annual revenue. If DHS permits fee waiver requests, it legitimately assumes that the cost of administering the fee waiver request review process may exceed the revenue, thereby negating any cost recovery achieved from establishment of the fee. *See* 84 FR 62319. Although the INA authorizes DHS to set fees "at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided

without charge to asylum applicants or other immigrants,” INA section 286(m), 8 U.S.C. 1356(m), DHS establishes a \$50 fee for Form I-589, which is well below the estimated full cost of adjudicating the application.

The statutory authorization for fees allows, but does not require, imposition of a fee equal to the full cost of the services provided. The INA provides that DHS may impose fees for the consideration of asylum and employment authorization applications that are not to exceed the estimated costs of adjudicating the applications. *See* INA section 208(d)(3), 8 U.S.C. 1158(d)(3).²⁹ INA section 208(d)(3) also states, “[n]othing in this paragraph shall be construed to require [DHS] to charge fees for adjudication services provided to asylum applicants, or to limit the authority of [DHS] to set adjudication and naturalization fees in accordance with section 286(m).” Thus, DHS is permitted to charge asylum applicants the same fee for employment authorization that it charges all others for employment authorization. The fee for Form I-765 is calculated in accordance with INA section 286(m), 8 U.S.C. 1356(m). DHS considered the effect of a non-waivable fee for the Form I-589 on affirmative asylum seekers and believes that the fee does not create a barrier to asylum for indigent applicants. The imposition of any fees for defensive asylum applications filed with EOIR is a matter that falls within the jurisdiction of the Department of Justice, rather than DHS, subject to the laws and regulations governing fees charged in immigration court proceedings before EOIR. Under those regulations, EOIR charges the fee established by DHS for a DHS form and

²⁹ This section states, “The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 209(b). Such fees shall not exceed the Attorney General’s costs in adjudicating the applications. The Attorney General may provide for the assessment and payment of such fees over a period of time or by installments.”

determines the availability of a fee waiver for a DHS form based on whether DHS allows such a waiver. *See* 8 CFR 1103.7(b)(4)(ii), (c).

Further, the fees align with U.S. international treaty obligations and domestic implementing law. As indicated in the NPRM, DHS believes that the asylum fee may arguably be constrained in amount, but is not prohibited, by the 1951 U.N. Convention Relating to the Status of Refugees (“1951 Refugee Convention”) and the 1967 U.N. Protocol Relating to the Status of Refugees (“1967 Refugee Protocol”).³⁰ *See* 84 FR 62318-19; 1951 Refugee Convention, 19 U.S.T. 6259, 189 U.N.T.S. 137; 1967 Refugee Protocol, 19 U.S.T. 6223, 606 U.N.T.S. 267. The 1951 Refugee Convention and the 1967 Refugee Protocol, as incorporated by reference, address the imposition of fees on individuals seeking protection, and limit “fiscal charges” to not higher than those charged to their nationals in similar situations. *See* Article 29(1) of the 1951 Refugee Convention, and 1967 Refugee Protocol, as incorporated by reference. Domestic implementing law, which is consistent with international treaty obligations, authorizes the Attorney General to “impose fees for the consideration of an application for asylum, for employment authorization under this section [208], and for adjustment of status under section 209(b).” INA section 208(a)(3), 8 U.S.C. 1158(a)(3). Thus, as provided in the NPRM and in this final rule, no fee waivers are available to asylum seekers in connection with filing Form I-589 or for Form I-765 with USCIS. Notably, unaccompanied alien children in removal

³⁰ 1951 Convention relating to the Status of Refugees, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137; 1967 Protocol relating to the Status of Refugees, *open for signature* Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. Although the United States is not a signatory to the 1951 Refugee Convention, it adheres to Articles 2 through 34 by operation of the 1967 Refugee Protocol, to which the United States acceded on Nov. 1, 1968.

proceedings who file an application for asylum with USCIS are exempt from the Form I-589 fee. New 8 CFR 106.2(a)(20).

As proposed in the NPRM and stated in this final rule, DHS exempts applicants filing as refugees under INA section 209(a), 8 U.S.C. 1159(a), from the filing fee for adjustment of status applications (Form I-485). *See* 8 CFR 106.2(a)(17)(iii). Asylees are not exempt from the Form I-485 filing fee, and neither asylees nor refugees are exempt from naturalization fees (Form N-400). The fee waiver regulations are consistent with the INA and international treaty obligations, which allow for the imposition of fees, and do not require that DHS offer these applicants fee waivers. *See* INA section 208(a)(3), 8 U.S.C. 1158(a)(3).

DHS considered extending the fee waiver rules that apply to SIJ, SIVs, T, U and VAWA applicants to asylum seekers, asylees, and refugees. However, in reviewing the data on the number of applicants for various forms, DHS concluded that the populations of asylum applicants, refugees, and asylees are substantial enough that a fee waiver would have caused a greater increase to the I-765 and N-400 fees, for example, thereby increasing the burden upon other applicants. As explained in the NPRM, initial applicants with pending asylum applications, aliens who have not yet established eligibility for asylum, account for approximately 13 percent of the total Form I-765 workload volume forecast. *See* 84 FR 62320. Continuing to exempt this population of aliens which is only eligible to obtain an EAD due to an asylum application pending for a certain amount of time from the Form I-765 fee or permitting fee waivers would have further increased the proposed fee, meaning that fee-paying EAD applicants would pay a higher amount to fund the cost of EADs for asylum applicants. Therefore, DHS limited

fee waiver availability to only those categories of humanitarian programs that had limited populations to avoid increasing other fees. The limitation of fee waiver availability conforms with the beneficiary pays principle, and unlike the asylum seeker, asylee, and refugee population, such limited fee waiver availability does not pass on a significant burden to other applicants.

Notwithstanding these considerations and changes, DHS retains the authority in the final rule for the Director of USCIS to waive any fee if he or she determines that such action is an emergent circumstance, or if a major natural disaster has been declared in accordance with 44 CFR part 206, subpart B. *See* 8 CFR 106.3(b). As provided in the NPRM, USCIS will continue to notify the general public of eligibility for fee waivers for specific forms under this provision through policy or website updates. *See* 84 FR 62300. Individuals who may qualify for such a fee waiver will still need to meet the requirements to request a fee waiver as provided in 8 CFR 106.3(b).

In this final rule, DHS consolidates the provisions regarding the USCIS Director's discretion to provide fee waivers in the proposed 8 CFR 106.3(b) and 8 CFR 106.3(c), as proposed 8 CFR 106.3(b) was redundant.

Comment: Multiple commenters wrote that the proposal eliminating the fee waivers would severely affect vulnerable immigrants and survivor-based immigration. Several commenters stated that the elimination of fee waivers will harm the most vulnerable populations, such as domestic violence or human trafficking survivors, and those in times of crisis. One commenter stated fee waivers should be available to individuals seeking humanitarian relief and lacking the ability to pay. Several commenters stated that the elimination of most fee waivers discriminates against immigrants who are low income,

elderly, and have disabilities and undermines humanitarian protection for victims of gender-based violence and other crimes. Multiple commenters wrote that eliminating the availability of fee waivers would only create an insurmountable economic barrier to low-income, vulnerable immigrants and lawful permanent residents, such as survivors of domestic violence, sexual assault, human trafficking, gender-based abuses, and other crimes, as well as their children. A few commenters wrote that access to fee waivers helps survivors and their children rebuild their lives; break free from the cycle of abuse; heal; and protect themselves, their children, and the community. Commenters stated that USCIS should instead focus on ensuring that low-income and other vulnerable immigrants have access to immigration relief for which they are eligible.

One commenter said that access to fee waivers is essential for survivors because it allows them to replace confiscated immigration documents such as permanent resident cards or employment authorization cards. The commenter stated that without fee waivers, survivors would be unable to pay these filing fees and would have to choose between going without these documents or putting their lives in danger to retrieve documents from potentially dangerous situations.

Multiple commenters wrote that while fee waivers for certain survivor-related applications will remain, the proposed rule ignores the fact that survivors may pursue other routes to secure immigration status other than those specifically designed for crime survivors. The commenters stated that, by removing waivers for these other routes, the proposed rule would harm survivors. One commenter indicated for a survivor of family violence, the ability to apply for a fee waiver was crucial to be able to obtain an EAD and gain some financial stability and independence from her abusive spouse. The commenter

indicated that, as an example, a fee waiver allows a client to be able to maintain employment eligibility at her minimum wage job. Without the ability to apply for a fee waiver for all related applications the client would have faced additional barriers that would have prohibited her from obtaining financial independence from the abuser and lawful status. One commenter stated that the proposal ignores the fact that survivors of human trafficking may pursue other routes to secure immigration status and in these instances, survivors will no longer have access to fee waivers. Some commenters drew upon their experiences counseling those seeking immigration benefits to underscore their opposition to further restricting access to legal immigration via unaffordable filing fees or the elimination of fee waivers. A commenter said the elimination of fee waivers would place “the majority” of its clients in a precarious position because they do not have funds to pay fees out of pocket and will have to choose between borrowing money and pursuing immigration benefits that would improve their lives. The commenter wrote that many of its clients were “cut off” from financial institutions and described the dangers of borrowing from “predatory lending mechanisms” or from family members who may use the debt owed as “currency for their abusive behavior” in some circumstances. The commenter also said the increased fees for work authorization would leave many immigrants vulnerable to victimization, citing a report from Public Radio International.

Many commenters also wrote that the proposed changes for necessary ancillary forms, including I-765, I-601, I-192, and I-929, would impose significant fee increases that survivors often cannot afford. Another commenter stated that the elimination of fee waivers, combined with the increased fees for N-400, would put those escaping violence

in the position of having to choose between expending resources to become a U.S. citizen or covering basic necessities for their families.

A commenter said individuals with U nonimmigrant status or other humanitarian-based immigration benefits should not be “priced out” of remaining with their families. Another commenter said more than 94 percent of domestic violence survivors suffer financial abuse, and many receive some form of means-tested benefits that may preclude them from applying for fee waivers in the naturalization process. The commenter said fee waivers were critical for ensuring such vulnerable individuals have the opportunity to pursue citizenship.

Response: DHS is not intending to further harm survivors of domestic violence, human trafficking, or other crimes. In fact, DHS continues to exempt VAWA self-petitioners, 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 or qualify for an exception (who may qualify for T nonimmigrant status), and individuals who are victims of certain crimes and have been, are being, or are likely to be helpful to the investigation or prosecution of those crimes (who may qualify for U nonimmigrant status) from paying a fee for the main benefit forms: Form I-360 for VAWA, and Forms I-914 and I-918 for T and U nonimmigrants including family members, respectively. *See* 8 CFR 106.2(a)(16)(ii), (a)(45) and (a)(46). DHS believes that maintaining access to fee waivers for these vulnerable populations mitigates any concerns that the increase in certain fees would limit access for protected categories of individuals. In addition, in response to commenters’ concerns regarding the ability for the VAWA, T nonimmigrant, U nonimmigrant and Special Immigrant (Afghan and Iraqi translators) populations to pay

for the cost of naturalization applications, DHS decided to expand the ability of these populations to apply for a fee waiver for Form N-400, Application for Naturalization, Form N-600, Application for Certificate of Citizenship, and Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322. *See* 8 CFR 106.3(a)(3).

Comment: One commenter referred to a study from the National Resource Center on Domestic Violence that found means-tested benefits support financial security and independence and are “critically important” for survivors of domestic violence, sexual assault, and human trafficking. The commenter said recipients of means-tested benefits are, by definition, of limited financial means and need these benefits to meet their basic needs. The commenter said restricting the availability of fee waivers would harm survivors of domestic violence and other forms of gender-based violence, and cited research demonstrating the widespread incidence and devastating economic impacts of such violence.

Response: DHS does not intend to further harm domestic violence or human trafficking survivors. In fact, the rule continues to exempt those applying for VAWA, T, and U benefits from certain fees and allows them to request fee waivers for other forms as provided by statute. DHS believes that maintaining access to fee waivers for these populations mitigates any concerns that the increase in certain fees would limit access for protected categories of individuals. *See* 8 CFR 106.3(a).

Comment: A commenter stated that Congress mandated that DHS permit applicants to apply for a waiver of any fees associated with VAWA benefits, T nonimmigrant filings, U nonimmigrant filings, or an application for VAWA cancellation of removal or suspension of deportation. In doing so, Congress recognized that ensuring equal access

to immigration protections was crucial for crime survivors to achieve safety and security. Many commenters also wrote that the proposed rule undermines Congressional intent to make humanitarian relief accessible to victims. Another commenter stated that the proposed rule clearly violates Congressional intent, as reiterated in a December 2019 House Appropriations Committee report, by imposing fees on individuals who have received humanitarian protection and subsequently seek adjustment of status and other immigration benefits which they cannot afford. The commenters said low-income survivors will not apply for benefits due to the barriers they will encounter in demonstrating their eligibility for fee waivers and that the proposed rule “undermines” bipartisan Congressional intent with respect to VAWA-based relief. Commenters stated that the language runs counter to existing law as Congress did not place any conditions on the availability of fee waivers for survivors when it codified the use of fee waivers for filing a VAWA self-petition, a T nonimmigrant status application or U nonimmigrant status petition, or an application for VAWA cancellation or suspension of deportation. Other commenters wrote that USCIS should automatically waive fees for all forms associated with applications for T nonimmigrant status, U nonimmigrant status, and VAWA self-petitioners to make humanitarian immigration relief accessible to victims.

Response: DHS exempts VAWA self-petitioners, applicants for T nonimmigrant status, and petitioners for U nonimmigrant status from paying a fee for the main benefit forms: Form I-360 for VAWA, and Forms I-914 and I-918 for T and U nonimmigrants including family members, respectively. Thus, DHS is making relief accessible to the populations noted by the commenters.

Further, this final rule complies with the law's requirements³¹ to permit these applicants to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status. *See* new 8 CFR 106.3(a)(1). DHS agrees that Congress did not place any conditions on the availability of fee waivers for a VAWA self-petition, a T nonimmigrant status application, or U nonimmigrant status petition, or an application for VAWA cancellation or suspension of deportation, but DHS disagrees that any legislation requires or implies or that Congress intended that USCIS provide free adjudications for all of their associated benefit requests. Congress has codified several fee exemptions or fee limits. *See, e.g.*, INA section 328(b)(4), 8 U.S.C. 1439(b)(4) (fee exemption for Military Naturalization Based on Peacetime Service); INA section 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B) (the registration fee for TPS is limited to \$50, although additional fees may be collected for biometrics and associated services, *See* 8 U.S.C. 1254b. Congress has also appropriated funds for adjudication and certain naturalization services. *See, e.g.*, Consolidated Appropriations Act, 2019, Pub. L. 116-6, div. A, tit. IV (Feb. 15, 2019) and Consolidated Appropriations Act, 2020, Pub. L. 116-93, div. D, tit. IV (Dec. 20, 2020). Congress has not provided for a fee exemption, fee cap, or appropriated funds for VAWA self-petitioners, T nonimmigrant status applicants, and U nonimmigrant status petitioners. To the contrary, the statute directs DHS to allow applications for fee waivers, rather than to waive all such fees, evidencing Congress's intent for DHS to evaluate the individual merits of such requests. DHS appreciates the concerns about affordability, but, while many victim requesters are in poor financial

³¹ *See* INA section 245(l)(7), 8 U.S.C. 1255(l)(7).

condition, being a victim does not equate to being poor, and DHS may require that the victim requester document eligibility for a fee waiver. Therefore, DHS makes no changes in the final rule as a result of these comments.

Comment: Commenters stated that while applications and petitions for survivor-based relief do not have fees, applicants must frequently file ancillary forms whose fees are increasing under the proposed rule or may seek status through other immigration categories. The commenter stated that by eradicating fee waivers for other types of applications and petitions, the proposed rule ignores the facts that survivors of domestic violence, sexual assault, human trafficking, and other gender-based abuses may pursue other routes to secure immigration status which lack such explicit protections. They also noted that fee waivers will no longer be available for any naturalization applications and many other forms in non-survivor based cases, like legal permanent residence applications; work permit applications; and Form I-751, Petition to Remove Conditions on Residence; among others. Another commenter said the final rule would need to more explicitly address the protections and exemptions for humanitarian visa categories because the proposed rule contained contradictory and confusing language and many potential applicants would not necessarily be aware of special protections to which they are entitled.

Other commenters requested that USCIS withdraw the proposed rule, because it would create barriers to accessing immigration benefits for victims, and immigration benefits are essential for survivors to escape abuse and become self-sufficient after they have been victimized. Commenters stated that the rule ignores survivors of domestic violence, who have a spotty employment history or lack of savings, or both, and

survivors of human trafficking, who may spend many months waiting for compensation from litigation or before they are able to recuperate their lost wages.

Other commenters detailed how economic abuse affects survivors' finances, including precluding victims from working, destroying their work uniforms and equipment, preventing them from getting to work or an interview, and other tactics that impact a victim's financial independence and impede their ability to pay filing fees. One commenter specifically noted that VAWA self-petitioners often have limited financial means, are often homeless after escaping their abusers, and suffer from physical and mental health issues. The commenter stated that the little money they do have is needed to help them maintain independence from their abusers and provide for their families. One commenter wrote that USCIS should focus on ensuring vulnerable immigrants have access to immigration relief for which they are eligible. The commenters stated that fee waivers for survivor-based immigration protections have helped survivors improve their lives by allowing them to obtain employment authorization and legal status without having to request funds from their abusers or forgo food or housing in order to pay fees. In the context of VAWA, T, and U applicants, another commenter stated that the fee increases did not take into account areas of the country, such as the San Francisco Bay Area, where living expenses and housing costs are high. They said such a fee increase also does not consider the mandatory expense of the obligatory medical exam (Form I-693, Report of Medical Examination and Vaccination Record) that in their experience ranges anywhere from \$300 to \$700 and for which there is no fee waiver.

Response: DHS acknowledges the concerns commenters have raised and does not intend to unduly burden any alien, particularly those who have been victimized. To avoid

confusion and clarify the applicability of the rule, DHS reiterates that the rule continues to exempt the VAWA, T, and U populations from fees for the main benefit forms and allows them to submit fee waiver requests for any associated forms up to and including the application for adjustment of status, as provided by statute. For example, there are no fees for the following forms: VAWA-based Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant; Form I-914, Application for T Nonimmigrant Status; and Form I-918, Petition for U Nonimmigrant Status. In addition, VAWA, T, and U filers may submit a request for a fee waiver for associated forms, including Forms I-765, I-131, I-212, and I-601, among other forms.

Additionally, in response to commenters' concerns regarding the ability for the victim population to pay for the cost of naturalization applications, DHS will permit this population to request a fee waiver for Form N-400, Application for Naturalization; Form N-600, Application for Certificate of Citizenship; and Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322. The table below provides the full list of forms these applicants and petitioners may apply for that are either exempt from fees or eligible for fee waivers. DHS repeats these applicants, generally, do not have to pay the fees for the initial main benefit forms that provide the immigration status or benefit.

Table 3: Categories and Forms Without Fees or Eligible for Fee Waivers

Category	Main Immigration Benefit Requests ³²	Associated Forms
Violence Against Women Act (VAWA) self-petitioners and	Form I-360, Petition for Amerasian, Widow(er), or	Form I-131, Application for Travel Document ³⁴

³² Some immigration benefit requests may not have a fee for the specific category.

³⁴ Currently, fees for Form I-131 are exempt if filed in conjunction with a pending or concurrently filed Form I-485 with fee that was filed on or after July 30, 2007. *See* 8 CFR 103.7(b)(1)(i)(M)(4). However,

Category	Main Immigration Benefit Requests ³²	Associated Forms
derivatives as defined in INA section 101(a)(51) or individuals otherwise self-petitioning for immigrant classification or seeking adjustment of status due to abuse by a qualifying relative ³³	Special Immigrant (no fee for VAWA-based filings) Form I-485, Application to Register Permanent Residence or Adjust Status Form I-751, Petition to Remove Conditions on Residence Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA))	Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal Form I-290B, Notice of Appeal or Motion Form I-601, Application for Waiver of Grounds of Inadmissibility Form I-765, Application for Employment Authorization (no initial fee for principals) ³⁵ Form N-400, Application for Naturalization Form N-600, Application for Certificate of Citizenship Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322
Victims of Severe Form of Trafficking (T nonimmigrant) ³⁶	Form I-914, Application for T Nonimmigrant Status (no fee) Form I-914 Supplement A, Application for Family Member of T-1, Recipient (no fee) Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (no fee) Form I-485, Application to Register Permanent Residence or Adjust Status	Form I-131, Application for Travel Document Form I-192, Application for Advance Permission to Enter as a Nonimmigrant Form I-193, Application for Waiver of Passport and/or Visa Form I-290B, Notice of Appeal or Motion Form I-539, Application to Extend/Change Nonimmigrant Status

³³ See INA sections 101(a)(51) and 204(a), 8 U.S.C. 1101(a)(51) and 1154(a); INA section 245(l)(7), 8 U.S.C. 1255(l)(7); Public Law 110-457, 122 Stat. 5044 (Dec. 23, 2008); 22 U.S.C. 7101 et seq. This category includes applicants for waivers of the joint filing requirement for Form I-751 based on battery and extreme cruelty; victims of battery or extreme cruelty as a spouse or child under the Cuban Adjustment Act Pub. L. 99-603, 100 Stat. 3359 (November 6, 1986) (as amended), 8 U.S.C. 1255a; applicants adjusting based on dependent status under the Haitian Refugee Immigrant Fairness Act, Pub. L. 105-277, 112 Stat. 2681 (October 21, 1998), 8 U.S.C. 1255, for battered spouses and children; and applicants for Suspension of Deportation or Special Rule Cancellation of Removal (Form I-881) under the Nicaraguan Adjustment and Central American Relief Act, Public Law 105-100, 111 Stat. 2163 (Nov. 19, 1997), for battered spouses and children.

DHS implements changes to this policy in this final rule as explained in this preamble. New 8 CFR 106.2(a)(7)(iv).

³⁵ Form I-360 allows a principal self-petitioner to request an EAD incident to case approval without submitting a separate Form I-765. Form I-765 is required for employment authorization requests by derivative beneficiaries.

³⁶ See INA section 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T) (T nonimmigrant status for victims of a severe form of trafficking in persons).

Category	Main Immigration Benefit Requests ³²	Associated Forms
		Form I-601, Application for Waiver of Grounds of Inadmissibility Form I-765, Application for Employment Authorization (no initial fee for principals) Form N-400, Application for Naturalization Form N-600, Application for Certificate of Citizenship Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322
Victims of Criminal Activity (U nonimmigrant) ³⁷	Form I-918, Petition for U Nonimmigrant Status (no fee) Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Recipient (no fee) Form I-918 Supplement B, U Nonimmigrant Status Certification (no fee) Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant Form I-485, Application to Register Permanent Residence or Adjust Status	Form I-131, Application for Travel Document Form I-192, Application for Advance Permission to Enter as a Nonimmigrant Form I-193, Application for Waiver of Passport and/or Visa Form I-290B, Notice of Appeal or Motion Form I-539, Application to Extend/Change Nonimmigrant Status Form I-765, Application for Employment Authorization (no initial fee for principals) Form N-400, Application for Naturalization Form N-600, Application for Certificate of Citizenship Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322
Employment authorization for battered spouses of A, G, E-3, or H nonimmigrants ³⁸	Form I-765V, Application for Employment Authorization for Abused Nonimmigrant Spouse (no initial fee)	None
Battered spouses or children of a lawful permanent resident or U.S. citizen and derivatives under INA section 240A(b)(2) ³⁹	None with USCIS	Form I-601, Waiver of Grounds of Inadmissibility Form N-400, Application for Naturalization

³⁷ See INA section 101(a)(15)(U), 8 U.S.C. 1101(a)(15)(U) (U nonimmigrant status for victims of certain criminal activity).

³⁸ See INA section 106, 8 U.S.C. 1105a.

³⁹ See INA section 240A(b)(2), 8 U.S.C. 1229b(b)(2), and INA section 245(l)(7), 8 U.S.C. 1255(l)(7).

Category	Main Immigration Benefit Requests ³²	Associated Forms
		Form N-600, Application for Certificate of Citizenship Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322
Temporary Protected Status ⁴⁰	Form I-821, Application for Temporary Protected Status Biometric Services Fee	Form I-131, Application for Travel Document Form I-601, Application for Waiver of Grounds of Inadmissibility Form I-765, Application for Employment Authorization
Special Immigrant Juveniles (SIJ) who have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency at the time of filing	Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (no fee) Form I-485, Application to Register Permanent Residence or Adjust Status	Form I-131, Application for Travel Document ⁴¹ Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal Form I-290B, Notice of Appeal or Motion Form I-601, Application for Waiver of Grounds of Inadmissibility Form I-765, Application for Employment Authorization Form N-400, Application for Naturalization Form N-600, Application for Certificate of Citizenship Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322
Special Immigrant as an Afghan or Iraqi Translator or Interpreter, Iraqi National employed by or on behalf of the U.S. Government, or Afghan National employed by or on behalf of the U.S. government or employed by the International Security Assistance Forces.	Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (no fee) Form I-485, Application to Register Permanent Residence or Adjust Status (no fee)	Form I-131, Application for Travel Document (no fee) Form I-290B, Notice of Appeal or Motion (no fee) Form I-765, Application for Employment Authorization (no fee) Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

⁴⁰ See INA section 244, 8 U.S.C. 1254a.

⁴¹ Currently, fees for Form I-131 are exempt if filed in conjunction with a pending or concurrently filed Form I-485 with fee that was filed on or after July 30, 2007. See 8 CFR 103.7(b)(1)(i)(M)(4). However, DHS proposes changes to the policy in this final rule as explained later in this preamble. New 8 CFR 106.2(a)(7)(iv).

Category	Main Immigration Benefit Requests ³²	Associated Forms
		Form I-601, Application for Waiver of Grounds of Inadmissibility Form N-400, Application for Naturalization Form N-600, Application for Certificate of Citizenship Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322

Although DHS is increasing fees for various forms to account for the cost of adjudication, the victim populations identified here will be eligible to apply for a fee waiver for most forms if their income is at or below 125 percent of the FPG. As stated previously, the law does not require, and DHS declines to adopt, the recommendation to automatically waive fees for all forms associated with VAWA, T, and U filings or to withdraw the rule in its entirety. USCIS is funded through fees, and taxpayer dollars are not used to fund USCIS adjudication and naturalization services. The cost associated with applications and petitions that have been fee waived is paid from fees collected from other benefit requests. DHS believes that maintaining access to fee waivers for these vulnerable populations mitigates any concerns that the increase in the fees will limit access for protected categories of individuals.

As the commenters point out, the law provides specific immigration benefits for those who have been victimized and provides protections and flexibilities for these populations to address their particular concerns. This final rule complies with those provisions.

Comment: Another commenter provided statistics describing the economic condition of the population served by non-profit legal service providers in its State and wrote that the

proposal would increase the strain on these important organizations. The commenter noted that nearly 90 percent of the 25 legal service providers surveyed in its state represented applicants for humanitarian immigration benefits, such as VAWA petitions, trafficking victims on T nonimmigrant applications, or asylum applicants. The commenter stated the proposal would create a chilling effect on all clients served by these organizations, regardless of the benefits for which they qualify, and could ultimately jeopardize these organizations' budgets due to a reduction in the number of cases served.

Response: As stated previously, DHS appreciates the services that charitable, community based, non-governmental, and non-profit organizations provide to the immigrant community. DHS declines, however, to exempt from fees all forms associated with VAWA, T, and U filings. Organizations providing services to the VAWA, T, and U population will continue to be able to request fee waivers for forms associated with these filings in addition to a fee exemption for the main benefit request (i.e., Form I-360, Form I-914, and Form I-918 have no fee for these populations).

Comment: One commenter stated that the proposed Form I-912 instructions "create additional burdens that are ultra vires to the statute permitting fee waivers for survivor-based cases, notably with the phrase 'due to your victimization.'" The commenter stated that survivors should not have to demonstrate a nexus between their victimization and their lack of income or proof of income. The commenter also stated that this non-statutory requirement is burdensome on survivors, as they may face obstacles obtaining or providing proof of income for reasons that may or may not be related to their victimization and will prevent many survivors from accessing critical benefits. Several commenters said low-income survivors will not apply for benefits due to the barriers they

will encounter in demonstrating their eligibility for fee waivers and that the proposed rule undermines bi-partisan Congressional intent with respect to VAWA-based relief. Many commenters stated that the additional limits on fee waiver eligibility criteria combined with the stringent documentation requirements for fee waivers (e.g., Form I-912 instructions that survivors need to “demonstrate a nexus between their victimization and lack of income or proof of income) will prevent many survivors from qualifying or applying for fee waivers. A commenter stated that, whether intentional or not, the proposed rule will act as a barrier to status for the crime survivors we serve and, coupled with the stringent documentation requirements for fee waivers, will prevent many survivors from qualifying for fee waivers.” A commenter said the proposed Form I-912 instructions create additional burdens for crime survivors from qualifying for fee waivers, and USCIS should continue to accept applicant-generated fee waiver requests. One commenter said USCIS had received many comments on a previous attempt to modify the fee waiver form from stakeholders concerned about the negative impact those changes would have on immigrant survivors of violence and wrote that the current proposal would make these problems worse. The commenter said survivors of violence would be adversely impacted by the heightened documentation requirements, specifically the provision that survivors would have to demonstrate that their inability to comply with documentation requirements was due to their victimization. The commenter said the proposal failed to reference any exceptions to the vague “victimization” standard despite USCIS’ prior recognition that the requirement to provide documentation from the Internal Revenue Service (IRS) would disadvantage immigrant survivors.

Response: To obtain a fee waiver, an applicant must demonstrate that he or she is at or below 125 percent of the FPG, meet the other criteria as provided in the rule, and provide the information and evidence available in order to establish eligibility. The applicant need only provide sufficient information to establish why the documentation is not available and not that it is unavailable directly or indirectly as a result of the victimization. The form provides space for explanations and attachments are accepted, but a separate declaration is unnecessary. Although not required by statute, USCIS has provided flexibilities in the instructions for the VAWA, T, and U populations permitting them to submit information regarding their inability to obtain documentation on their income with their fee waiver request. DHS will presume that the inability of this group of applicants to submit certain evidence is the result of the victimization and abuse and not require proof of a nexus between victimization and the inability to pay, but the request must demonstrate inability to pay to the extent necessary for USCIS to grant a discretionary fee waiver. All applicants for a fee waiver are subject to the evidence requirements as provided in the revised form instructions, which include more flexible rules with respect to the groups these comments mention. If individuals are unable to obtain documents without contacting the abuser, they can explain why they are unable to obtain such documentation and submit other evidence to demonstrate their eligibility. Obtaining information from the IRS in transcripts, a W-2, or proof of non-filing, if applicable, is sufficient documentation to establish the necessary income or lack of income.

Comment: A few commenters discussed the processing times for survivor-based forms of immigration protections, citing increased adjudication time for filings such as petitions

for U nonimmigrant status and Violence Against Women Act (VAWA) self-petitions. Commenters said slow processing times can lead to increased homelessness, violence, or a return to abusive relationships for victims and that USCIS has failed to address how these fees will improve processing times. One commenter cited several sources and wrote that new fees would not result in improved processing but instead would contribute to, and escalate, violence.

Response: DHS understands the commenter's concerns regarding processing times. Processing times are impacted by several factors, and any changes based on the rule would limitedly impact these populations. The rule continues to exempt the VAWA, T, and U populations from certain fees and allows them to submit fee waiver requests for any forms up to adjustment of status. *See* new 8 CFR 106.2(a)(16), (a)(32)(ii), (a)(45) and (a)(46); 8 CFR 106.3(a)(3). In the final rule DHS is permitting a request for a fee waiver on the application for naturalization or certificate of citizenship for these categories. *See* new 8 CFR 106.3(a)(3). DHS disagrees that this final rule would result in increased processing times or contribute to escalating violence on these populations, particularly as the additional resources made available from increased fees may enable USCIS to limit growth in pending caseloads. As DHS states elsewhere in this rule, DHS is adjusting fees in this final rule because they are insufficient to generate the revenue necessary to fund USCIS at levels adequate to meet its processing time goals. The new fees will allow USCIS to hire more people to adjudicate cases and possibly prevent the growth of backlogs.

Comment: A commenter stated that the proposed rule is not detailed enough about whether refugees are exempt from fees including the Form I-765 fees and whether

asylees and SIJ petitioners and recipients will be eligible for fee waivers. The commenter also stated that DHS fails to understand that individuals are forced to file fee waivers when DHS places fees for benefits out of the reach of most low to moderate income applicants and that the inability to access identity documents exacerbates homelessness and unemployment, concluding that elimination of fee waivers is arbitrary and capricious.

Response: DHS acknowledges the concerns of the commenter related to the availability of fee waivers for refugees and asylees, and other vulnerable applicants and petitioners. DHS will continue to provide a fee exemption for the initial Form I-765 for individuals who were granted asylum (asylees) or who were admitted as refugees. *See* 84 FR 62301. DHS is also continuing to provide a fee exemption to refugees for Form I-485. *See* 84 FR 62360; new 8 CFR 106.2(a)(17)(iii). In addition, the fee that DHS charges for refugee travel documents will continue as a lesser fee, linked to the fee for a U.S. passport book, rather than the estimated full cost of adjudication. *See* 84 FR 62306.

At the USCIS Director's discretion, USCIS may waive or exempt the fee for any form, including those filed by asylees and refugees. *See* 8 CFR 106.3(b), (e). That provision is similar to, but somewhat more limited than, the authority that was in 8 CFR 103.7(d) for the Director of USCIS to provide for the waiver or exemption of any fee if doing so was in the public interest. The new provision provides that the Director determines that such action is an emergent circumstance or if a major natural disaster has been declared in accordance with 44 CFR part 206, subpart B. *See* 8 CFR 106.3(b), (e). As was stated in the NPRM, USCIS will notify the public of the availability of fee waivers for specific forms under this provision through external policy guidance, website

updates, and communication materials. *See* 84 FR 62300. Individuals who qualify for such a fee waiver would still need to meet the requirements to request a fee waiver as provided in the new 8 CFR 106.3(b) and (d). In this final rule, DHS consolidated the provisions regarding the USCIS Director's discretion in 8 CFR 106.3(b) and 8 CFR 106.3(c), as the proposed provision in the NPRM, 8 CFR 106.3(b), was redundant.

In response to commenters' concerns, DHS will also allow petitioners for and recipients of SIJ classification who, at the time of filing, have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency, to submit requests for fee waivers for Form I-485 and associated forms, as well as Forms N-400, N-600, and N-600K. *See* 8 CFR 106.3(a)(2)(i). DHS does not believe that the final rule eliminates fee waivers for these applicants or blocks access to identity documents.

Comment: Several commenters stated that the elimination of fee waivers will harm the most vulnerable populations, such as domestic violence or human trafficking survivors, and those in times of crisis. One commenter stated fee waivers should be available to individuals seeking humanitarian relief and lacking the ability to pay. One commenter suggested that it would make better fiscal sense and would result in better outcomes for USCIS if the agency automatically waives fees for all forms associated with applicants for T nonimmigrant status, petitioners for U nonimmigrant status, and VAWA self-petitioners because fee waivers would facilitate non-profits' efforts to help these applicants file these forms quickly. A commenter wrote that delays in application submission due to limitations on fee waivers would result in delayed justice for individuals because immigration practitioners will be forced to spend more time on each case.

Response: DHS acknowledges the commenters' concerns and clarifies that this final rule continues to exempt the VAWA, T and U populations from certain fees and allows them to request fee waivers on other forms as previously discussed. *See* 8 CFR 106.2(a)(16)(ii), (a)(45) and (a)(46), 8 CFR 106.3. Furthermore, in response to concerns expressed by the public, DHS provides in this final rule that those populations may also request a fee waiver for Forms N-400, N-600, and N-600K. *See* 8 CFR 106.3(a)(3). DHS believes that by continuing to provide the opportunity to request fee waivers, the final rule will not unduly burden these populations or delay the submission of their applications and petitions.

Comment: A commenter opposed the new form's request for applicants to self-identify as survivors. The commenter stated that most types of humanitarian relief covered by Form I-912 "are subject to certain protections and sanctions" relating to privacy and confidentiality and requested that USCIS clarify that the disclosure of personal information in these sections complies with protections codified at 8 U.S.C. 1367.

Response: DHS takes seriously its responsibility to properly protect sensitive information in its possession.⁴² DHS follows the Privacy Act requirements, which apply to information that is maintained in a "system of records" from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifier particular assigned to the individual. Information from forms is collected and

⁴² *See* generally Notice of Modified Privacy Act System of Records, 82 FR 43556, 43564 (Sept. 18, 2017) ("DHS/USCIS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. USCIS has imposed strict controls to minimize the risk of compromising the information that is being stored.")

maintained consistent with the Privacy Act of 1974⁴³ (Privacy Act) and the System of Records Notice (SORN), which identifies the purpose for which Personally Identifiable Information (PII) is collected, from whom and what type of PII is collected, how the PII is shared externally (routine uses), and how to access and correct any PII maintained by DHS.⁴⁴ With regard to 8 U.S.C. 1367 protections, DHS remains committed to our obligations under the statute and applies the required protections to all information pertaining to individuals with a pending or approved VAWA, T, or U petition or application, which includes information provided on Form I-912.

Comment: Several commenters stated that SIJ petitioners and recipients, a vulnerable group, are missing from USCIS' list of groups retaining access to fee waivers. A commenter stated that this proposal will hinder the ability of juveniles who receive SIJ classification to fully integrate into the United States, due to excessive costs, and that it will result in other unintended consequences, particularly for unaccompanied minors. Such consequences include difficulty finding sponsors and a lower level of legal representation. Commenters further noted that the proposed fee increases would burden SIJ petitioners and recipients who have no means to pay for the fees when applying for adjustment of status. The commenter stated that SIJ petitioners and recipients are children who have suffered abuse, neglect, or abandonment by at least one of their parents. The commenter stated that SIJs benefit immensely from obtaining work

⁴³ See 5 U.S.C. 552.

⁴⁴ See generally Notice of Modified Privacy Act System of Records, 82 FR 43556, 43564 (Sept. 18, 2017) (“DHS/USCIS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. USCIS has imposed strict controls to minimize the risk of compromising the information that is being stored.”)

authorization, as working lets the SIJs take control over their lives, provide for themselves, and begin to build a brighter future. The commenter stated that adjustment offers them the chance to permanently put down roots in the United States, putting the trauma in their pasts behind them. One commenter stated that in passing the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA),⁴⁵ Congress made amendments to the SIJ statute to provide “permanent protection for certain at-risk children.” The commenter further stated that not providing fee waivers to SIJs would preclude at-risk children from accessing fee waivers and thus clearly violate Congressional intent to permanently protect these at-risk children. Another commenter said that the hardship would be particularly acute for those SIJ petitioners in foster care, who have limited or no access to the funds necessary to seek adjustment of status with USCIS.

Response: The TVPRA⁴⁶ requires DHS to permit certain applicants to apply for fee waivers for “any fees associated with filing an application for relief through final adjudication of the adjustment of status.” INA section 245(l)(7), 8 U.S.C. 1255(l)(7), provides that “The Secretary of Homeland Security shall permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 1101(a)(15)(T), 1101(a)(15)(U), 1105a, 1229b(b)(2), and 1254a(a)(3) of this title (as in effect on March 31, 1997).” These provisions do not include SIJ petitioners or recipients. Therefore, DHS is not mandated to allow SIJs to apply for fee waivers.

⁴⁵ See The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. 110-457, 112 Stat. 5044 (Dec. 23, 2008).

⁴⁶ See title II, subtitle A, sec. 201(d)(3), Pub. L. 110-457, 122 Stat. 5044 (2008); INA section 245(l)(7), 8 U.S.C. 1255(l)(7).

Nevertheless, after considering the commenters' concerns, DHS agrees that SIJ petitioners who are wards of the state are particularly vulnerable. Therefore, DHS will allow petitioners for and recipients of SIJ classification who, at the time of filing, have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency, to request that the fees for Form I-485 and associated forms be waived. *See* 8 CFR 106.3(a)(2)(i).

In addition, DHS is including Forms N-400, N-600, and N-600K as forms eligible for a fee waiver for multiple categories of applicants. *See* 8 CFR 106.3(a)(3). Table 3 above provides a list of forms eligible for fee waivers based on SIJ classification.

Comment: A commenter stated that limits on categories eligible for fee waivers and elimination of a need-based benefit as a way to qualify for a fee waiver will have an especially heavy impact on the homeless, who often have difficulty providing required documents and must file applications for replacement of lost or stolen immigration documents.

Response: This final rule does not prohibit aliens who are homeless from applying for or receiving a fee waiver if he or she is a member of one of the designated categories.

Comment: Multiple commenters opposed lowering the income limit for fee waivers to 125 percent of the FPG as it would disqualify many immigrants, including survivors of crime who are statutorily protected, from receiving fee waivers for immigration benefits. Many commenters stated that the proposed rule fails to acknowledge that immigrants, especially survivors of crimes, often do not have access to financial documents or proof of their income for various reasons, including informal jobs (e.g., babysitting or yard work) that pay cash; the fact that limited earnings do not require taxes to be filed; and

that abusers often have control of all financial documents, destroy records, or prevent victims from attaining financial independence. One commenter wrote that since many individuals would not fall within the proposed, narrower financial eligibility criteria, victims of labor trafficking may turn to jobs with exploitative employers or back to traffickers in order to pay the fees for adjustment of status or other ancillary forms.

Response: DHS acknowledges that some applicants may no longer qualify for fee waivers if their income was higher than 125 percent of the FPG but lower than 150 percent of the FPG. However, many applicants may otherwise have income below 125 percent and, therefore, still qualify. Consistent with the statute, this final rule specifically permits aliens described in the TVPRA, including those seeking benefits under VAWA, as well as T and U nonimmigrants,⁴⁷ to request fee waivers for “any fees associated with filing an application for relief through final adjudication of the adjustment of status.”⁴⁸ The TVPRA provision requires DHS to allow these applicants to request fee waivers; however, the TVPRA does not require fee exemptions or set the FPG level for waivers. DHS declines to make changes in this final rule in response to this comment.

b. Fee Waivers for Specific Forms

Comment: Commenters opposed eliminating the fee waiver for naturalization, as well as lawful permanent residence, employment authorization, and other applications.

Numerous commenters opposed the proposed elimination of fee waivers for Form I-90,

⁴⁷ See title II, subtitle A, sec. 201(d)(3), Pub. L. 110-457, 122 Stat. 5044 (2008); INA section 245(l)(7), 8 U.S.C. 1255(l)(7).

⁴⁸ See *id.*

Form I-765, Form I-485, forms for applicants exempt from the public charge inadmissibility ground, Form I-751, and naturalization and citizenship-related forms.

Response: DHS is not eliminating all fee waivers for Forms I-485 and I-765 and is allowing fee waiver requests for certain humanitarian programs for naturalization and citizenship related forms as applicable. *See* 8 CFR 106.3(a). *See* Table 3: Categories and Forms Without Fees or Eligible for Fee Waivers. DHS will continue to accept fee waiver requests from applicants who meet the requirements of INA section 245(l)(7), 8 U.S.C. 1255(l)(7). *Id.* As explained in the NPRM, the INA requires DHS to permit fee waiver requests from certain immigrant categories and for certain forms; limiting fee waiver requests reduces the fee increases for all immigration benefits and places the fee costs on the benefit recipient instead of an unrelated party.

DHS notes, however, that the law requires DHS to “permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 101(a)(15)(T), 101(a)(15)(U), 106, 240A(b)(2), and 244(a)(3) (as in effect on March 31, 1997).” DHS appreciates that aliens will often file multiple requests simultaneously or shortly after each other, including requests for asylum, SIJ classification, T nonimmigrant status, U nonimmigrant status, humanitarian parole, or deferred action. However, that a request may be filed simultaneously with a status included in section 245(l)(7), 1255(l)(7), or while it is pending, does not make such a request an “application for relief” “associated with filing” for the purposes of fee waiver eligibility under that provision of law. USCIS will generally reject a fee waiver request and the associated benefit request that asserts that it is “associated” and eligible for a fee

waiver simply because it is simultaneous or filed while another benefit request is pending.

DHS will not make changes to its fee waiver regulations in this final rule in response to these comments.

Comment: A few commenters said the Form I-90 should remain fee waivable, as the form is necessary to renew permanent resident cards. The commenters stated that without the fee waiver, applicants would be unable to renew their status and escape poverty. A commenter wrote that eliminating a fee waiver option for an I-90 would be “egregious.” The commenter stated that immigrants with expired legal status or employment authorization often get caught in a vicious cycle of being unable to prove they have permission to work, preventing them from earning funds to cover filing fees and thus perpetuating their inability to procure work authorization.

Several commenters stated that removing fee waivers for forms such as the I-90 and the N-565 would prevent or significantly delay applicants from being able to apply for and maintain employment. The commenters stated that the change could likewise prevent applicants from having proof of their eligibility for certain public benefits, as many applicants, especially survivors of crime and homeless immigrants, have primary documents that have been stolen, lost, or destroyed, often by abusers.

Response: DHS disagrees that eliminating the fee waivers for the I-90 would be “egregious,” or that it will prevent or significantly delay applicants from being able to apply for and maintain employment. Applicants would still be eligible to obtain proof of status, and public benefit granting agencies have access to the Systematic Alien

Verification for Entitlements (SAVE) program which validates an alien's immigration status. DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter wrote that children should not be subject to fees for Form I-485 or for EAD applications while their asylum or adjustment of status application is pending because doing so would impose multiple hardships. The commenter stated that EADs serve as a de facto identification document and are frequently a precursor to obtaining access to state and federal services, as well as access to a social security number, which is a common prerequisite for enrolling in school, obtaining health insurance, or receiving preventative care.

A commenter wrote that senior citizens have extremely limited financial situations but are often able to renew their Permanent Resident cards or apply for citizenship with a fee waiver. The commenter stated that eliminating this fee waiver, while also raising the form fees, would put these applications out of reach.

Response: DHS disagrees that this final rule prevents asylees, children, or seniors from obtaining documentation of status. Immigrants are provided a stamp in their passports that they can use as documentation of lawful permanent resident status upon adjustment of status or their entry into the United States as a lawful permanent resident. Further, an alien's LPR card, which provides documentation of LPR status, and therefore employment eligibility, is generally valid for 10 years. For those without approved status, applicants may use their receipt notices to identify they have applied for the applicable immigration status. Schools, insurance companies, and doctors' offices should not require a permanent resident card or an employment authorization document from a child and DHS cannot adjust the fees for obtaining such documents based on such

unofficial uses and unnecessary requirements. Further, DHS disagrees that this final rule imposes greater burdens on these aliens accessing public benefits or services. Public benefit granting agencies verify the immigration status of aliens through the SAVE program. DHS declines to make changes in this final rule on the basis of these comments.

Comment: A commenter wrote that it is unjust to allow fee waivers for Form I-751 for VAWA self-petitioners but not for individuals who are submitting a waiver for joint spousal filing of Form I-751 due to battery or cruelty by the U.S. citizen spouse. A commenter said the petition to remove conditions on residence should remain accessible, especially for survivors of domestic violence. Similarly, a few commenters stated that, if USCIS were to eliminate fee waivers for Form I-751, some victims of violence could be subject to deportation or to the threats of their abusers.

Response: DHS recognizes the concerns of commenters and clarifies that this final rule continues to allow an individual to request a fee waiver when he or she is filing a waiver of the Form I-751 joint filing requirement because they were subject to battery or extreme cruelty. *See* 8 CFR 106.3(a). The term “VAWA self-petitioner” as defined in INA section 101(a)(51)(C), 8 U.S.C. 1101(a)(51)(C), includes individuals filing a waiver of the joint filing requirement based on battery or extreme cruelty. Thus, USCIS will continue to accept requests for fee waivers for Form I-751 when filed with a waiver of the joint filing requirement based on battery or extreme cruelty, as provided by statute.

Comment: A few commenters stated that eliminating fee waivers for work authorization applications would cause further harm to asylum seekers. At least one commenter stated that elimination of fee waivers for asylum seekers would have a disproportionately

negative impact on the people who most need asylum. Another commenter wrote that individuals with pending asylum cases before USCIS are required to renew their employment authorization every year, and without fee waivers, employment authorization filing fees would cut significantly into their paychecks and make it more difficult for them to provide for their families. Another commenter said USCIS should neither eliminate the waiver of the initial filing fee for Form I-765, Application for Employment Authorization, nor increase the filing fee. The commenter further stated this would make it harder for asylum seekers to apply for an EAD.

Response: DHS acknowledges the concerns of the commenters related to asylum seekers applying for EADs. Charging a fee for adjudication services is in line with INA section 208(d)(3), which provides that “[n]othing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.” Noncitizens are generally required to pay adjudication fees, and asylum seekers, in particular, are subject to several statutory and regulatory requirements that carefully regulate the circumstances under which they may qualify for employment authorization, including a mandatory waiting period before they may even apply for employment authorization. USCIS is continuing to provide a fee exemption for the initial Form I-765 filing for individuals who were granted asylum (asylees) or who were admitted as refugees. Therefore, there is no fee waiver request necessary for asylees filing an initial Form I-765. Asylees and refugees will generally continue to be required to pay the fee for renewal EADs. Finally, as a point of clarification, DHS notes that, at the time of publication of this rule, the

validity period for an EAD for asylum seekers is two years (not one year, as asserted by the commenter) which should be sufficient time for asylum seekers to factor the required renewal EAD fee into their budget. Therefore, for the reasons above, DHS declines to make changes in this final rule in response to these comments.

Comment: A few commenters opposed the elimination of fee waivers, including for Form I-765, which would unfairly limit the access to immigration benefits for students who cannot afford their request for employment authorization.

Response: USCIS must incur the costs of adjudicating a Form I-765 submitted by a student, and DHS does not believe it should shift that cost to other fee payers. Moreover, certain nonimmigrant students are required to establish the financial means to support themselves for the duration of their stay. *See* 8 CFR 214.2(f)(1)(i)(B); *see also* 8 CFR 214.2(m)(1)(i)(B). That requirement also applies to students who are eligible to request employment authorization for pre- and post-completion training programs. Therefore, DHS believes that this final rule would not cause undue burdens to student visa holders. DHS declines to make changes in this final rule in response to these comments.

c. Form N-400 Fee Waivers

Comment: Numerous commenters said that USCIS should maintain existing fee waivers for naturalization applications, especially given the proposed increase of naturalization fees. Citing a 2017 Report to Congress, several commenters stated that naturalization is one of the most frequently requested application types for fee waivers and that over 500 of their clients a year would probably forgo the opportunity to become citizens of the United States if the proposed rule were adopted. Commenters wrote that removal of fee waivers will price many individuals out of naturalization and would discourage

individuals from applying for fee waivers and citizenship. Citing various studies, a few commenters detailed how fee waivers increased naturalization rates. Citing to the USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress, USCIS (Sept. 17, 2017), a commenter stated because of the benefits of naturalization, the naturalization application is one of the form types most frequently associated with fee waiver requests. Several commenters emphasized the importance of fee waivers to naturalization, citing the number of applicants who qualify for fee waivers through City University of New York's CUNY Citizenship Now! program. One commenter stated that CUNY Citizenship Now!, which runs one of the most prominent citizenship and naturalization clinics in New York, reports that 54.8 percent of naturalization applicants they assist qualify for fee waivers, while the same is true for 75.6 percent of Form N-600 applicants and 65.8 percent for Form I-90 applicants.

An individual commented that the proposed naturalization fee increase would prevent residents from seeking citizenship, citing data on financial and administrative barriers as bars to naturalization. Commenters also cited a 2018 Stanford Immigration Policy Lab study from Hainmueller et al. in stating that the application fees discourage naturalization. Other commenters cited the same study and stated that offering "fee vouchers" increased naturalization application rates by about 41 percent or from 37 percent to 78 percent. Several commenters wrote that immigrants want to naturalize, citing the Migration Policy Institute figures on rising annual rates of naturalization. Commenters also cited a Yasenov et al. study demonstrating that the introduction of Form I-912 waivers had the greatest impact on naturalization applicants with low levels

of income and education. A commenter cited a surge of naturalization applications before a fee increase in 2008 as evidence of the role of fees in naturalization decisions.

A few commenters stated that, since naturalization is one of the form types for which fee waivers are most frequently submitted, the change would have a profound negative impact on vulnerable immigrants, including asylum seekers, who must naturalize to obtain legal rights. A commenter stated that 2.1 million immigrants are eligible for naturalization in the State of California, of whom 1 million individuals would be severely impacted by a rise in the cost of an application fee and 768,024 live in Los Angeles County. Other commenters also provided figures on the numbers of immigrants eligible for naturalization in Minnesota, and Washington. Other commenters provided similar figures for programs in California, Michigan, Boston, Houston, and New York. A commenter cited a *Fortune* article stating that, in 2017, almost 40 percent of naturalization applications received a fee waiver.

Commenters wrote that 9 million permanent residents are eligible for citizenship across the United States, citing an Office of Immigration Statistics publication, a study by Warren and Kerwin, and a Pew Research paper. A few commenters wrote that, of these, 3 million are under 150 percent of the FPG, 1 million are between 150 and 200 percent of FPG, and 1.7 million are between 200 and 300 percent FPG. Another commenter cited a 2014 University of Southern California study in concluding that over half of naturalization applicants would lose access to waivers as a result of the proposed rule.

Some commenters wrote that without fee waivers, applicants for naturalization would take longer to apply or not apply and this would also hinder state and local governments' efforts to facilitate naturalization. Some commenters stated that fee

waivers have been essential to increasing naturalization and that they pay for themselves many times over. A commenter requested that DHS more thoroughly analyze the costs of impeding access to naturalization, which include long-term reduced economic and social mobility for impacted populations.

Response: DHS agrees that the naturalization application is one of the forms affected by the limitation of the fee waivers. Fees for other applicants and petitioners must increase to recover the cost of adjudicating fee-waived applications and petitions. In this final rule, DHS limits the availability of fee waivers for Form N-400 to mitigate the additional cost burden that other fee-paying applicants must bear. This is consistent with the beneficiary-pays principle emphasized throughout the NPRM and this final rule. If USCIS continued to accept fee waiver requests for Form N-400 under the previous eligibility criteria, the fee would be higher than established in this final rule. The reduction in the availability of fee waivers for Form N-400 is not intended to discourage, deter, or otherwise limit access to naturalization for any group, category, or class of individual. In response to public comments received on the NPRM, DHS is expanding the immigration benefit requests for which it will accept fee waiver requests from statutorily protected populations to include Forms N-400, N-600, and N-600K, and to certain SIJs and Afghan and Iraqi interpreters as described elsewhere in this final rule. DHS believes that expanding fee waiver eligibility mitigates concerns that the fee increase for Form N-400 unduly burdens or otherwise prevents naturalization for these populations.

DHS acknowledges that the fee for Form N-400 increases in this final rule by more than most other forms. The large fee increase for Form N-400 is because DHS

previously held the fee for Form N-400 below the full estimated cost of adjudication. In this final rule, DHS emphasizes the beneficiary-pays principle and declines to hold the fee for Form N-400 artificially low. DHS believes that increasing the Form N-400 fee to the estimated full cost of its adjudication will alleviate the increased burden of higher fees placed upon other immigration benefits.

Comment: Some commenters stated that eliminating fee waivers for naturalization and other form types most frequently associated with fee waiver requests undermines Congressional intent. Commenters stated that Congress has called on USCIS to keep the pathway to citizenship affordable and accessible, and opposed the proposed elimination of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee.

Response: USCIS appreciates the concerns of this recommendation and fully considered it before publication. Nevertheless, DHS determined that the current trends and level of fee waivers are not sustainable. Work that USCIS provides for free or below cost affects other fee-paying applicants by making their fees higher, so DHS can recover USCIS' full cost. DHS is trying to make the USCIS fee schedule more consistent with the beneficiary-pays principle. As shown in the supporting documentation that accompanies this final rule, the number and dollar value of approved fee waiver requests has remained high during periods of economic improvement. That indicates that, as the economy declines the number of fee waiver requests could increase to a level that could threaten the ability of USCIS to deliver programs without disruption. DHS declines to make changes in this final rule in response to these comments.

Comment: A few commenters stated that the NPRM violates Congressional intent since USCIS has not supplied any data, research, or other actual factual evidence to show whether the current naturalization fees would be “a barrier to naturalization for those earning between 150 percent and 200 percent FPG,” let alone the effect of the proposal to significantly increase the naturalization fees and eliminate fee waivers.

Response: DHS is unaware of any statute that requires DHS to document that the fees it establishes to recover USCIS’ costs will not be a barrier to naturalization. DHS has complied with the economic analysis requirements of Executive Orders. There is no legal requirement to comply with language in a Congressional briefing that does not become law, aside from cooperation with the Congressional oversight function. DHS has carefully considered Congress’ view of these issues, as well as the statutory and fiscal limitations under which USCIS operates and declines to make changes in this final rule in response to these comments.

Comment: Several commenters noted that without fee waivers many naturalized citizens who required waivers to become citizens would not have been able to afford to apply for naturalization and that a high percentage of applicants currently use or apply for waivers.

Response: DHS recognizes the commenters’ concerns. However, as stated elsewhere throughout this final rule, USCIS must recover its costs through user fees. DHS does not believe that current high levels of fee waiver usage are sustainable. Further, DHS believes that it would be equitable for fee-paying applicants to continue to bear the high costs of fee waiver usage through the fees that they pay. DHS declines to make changes in this final rule in response to these comments.

2. Fee Waiver Income Requirements

Comment: Many commenters opposed restricting the income requirements from 150 percent of FPG to 125 percent because such a restriction would be unjustified, especially since no estimates were provided as to how many people it would impact. Many commenters stated that lowering the standard to 125 percent will negatively affect many in cities and states across the country who are unable to pay fees and still have a very low income. Household income does not take into account the dramatically different costs of living throughout the country, complex living arrangements (such as mixed-status households or households supporting family members in another country), or the variety of circumstances that may render individuals unable to pay fees. One commenter stated that the income requirement would negatively impact many individuals because even those above the 125 percent FPG are unable to provide for their daily essentials due to the high cost of living in Los Angeles County. A commenter went on to state that the income standard should be tied to an inability to pay particular fees at the time of application since fee waiver consideration is focused on an individual's financial circumstances at that particular point.

Response: As provided in the NPRM, because of the costs of fee waivers, and because the current fee waiver regulations are inconsistent with the beneficiary-pays principle, DHS proposed to limit fee waivers to immigration benefit requests for which USCIS is required by law to consider a fee waiver or where the USCIS Director decides a fee waiver should be available. *See* 8 CFR 106.3.

As the commenters point out, and as explained in the NPRM, USCIS issued policy guidance in 2011 to streamline fee waiver adjudications and make them more

consistent across offices and form types nationwide. *See* Policy Memorandum, PM-602-0011.1, *Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule*; Revisions to Adjudicator’s Field Manual (AFM) Chapter 10.9, AFM Update AD11-26 (Mar. 13, 2011) (“2011 Fee Waiver Policy”). The 2011 Fee Waiver Policy provided that USCIS would generally waive fees for applicants who are receiving a means-tested benefit, have a household income at or below 150 percent of the FPG, or were experiencing financial hardship. The 2011 Fee Waiver Policy interpreted 8 CFR 103.7(c) regarding what would be considered inability to pay and the evidence required. The 2011 Fee Waiver Policy established the 150 percent of the FPG income level that the commenters recommended retaining, but that policy was not binding on USCIS officers and the three criteria were not codified as a regulation. DHS proposed in the NPRM to codify an income level based on the FPG that would be a binding requirement for future fee waivers.

DHS recognizes that the FPG are not responsive to differences in the cost of living around the nation. However, DHS establishes the fee waiver eligibility criterion of household income of less than 125 percent of FPG in this final rule because it is consistent with the income necessary to provide an affidavit of support necessary to sponsor an immigrant. *See* 8 CFR 106.3(c). Furthermore, DHS does not generally provide special consideration for residents of a particular geographic area.

DHS believes that these changes will make the fee increase more equitable for all immigration benefit requests by requiring fees for services to be paid by those who benefit. In addition, DHS believes that making these changes to the fee waiver policy will ensure that fee-paying applicants do not bear the increasing costs of application fees

being waived. In response to public comments received on the NPRM, DHS is expanding the immigration benefit requests for which it will accept fee waiver requests from statutorily protected populations to include Forms N-400, N-600, and N-600K. Although DHS acknowledges that the rule reduces the number of applicants eligible for fee waivers, DHS does not agree that aliens will be prevented from filing application or receiving immigrant benefits.

Comment: A few commenters wrote that “equity is not a federal policy goal” and USCIS fails to recognize that encouraging exemptions and waivers for individuals in vulnerable circumstances or who are unable to pay fees would actually advance equity. The commenter stated that 125 percent of the FPG is not an appropriate marker to whether an individual can afford to pay a large fee on top of normal living expenses and so the fee waiver qualification threshold should remain at 150 percent of poverty level, “to serve as an apt indicator of whether a potential applicant for naturalization or other benefits can afford to support him- or herself and, in addition, to pay significant application fees of hundreds or thousands of dollars.” Another commenter stated that DHS rationalized that 125 percent is an appropriate marker for FPG because it is the minimum required to qualify as a sponsor for an intending immigrant. The commenter stated that these situations are not comparable because sponsoring an immigrant may not cost very much, and sponsored immigrants are generally authorized to work and do not actually rely upon sponsors for subsistence. The commenter stated that in contrast, when determining eligibility for a fee waiver, USCIS must consider whether an individual can afford to pay a large fee on top of their normal living expenses, and it is therefore appropriate that FPG remain at 150 percent.

Several commenters provided figures of the numbers of clients they serve who are below the 150 percent FPG line and qualify for waivers. A commenter specifically calculated the costs that a family at the 150 percent FPG limit would face living in Boston, writing that fee waivers are vital to such families maintaining their immigration status or naturalizing.

One commenter cited a study of 21 cities which showed that 33 percent of those eligible to naturalize had incomes up to 150 percent of FPG. The study also found that 16 percent of LPRs eligible to naturalize of Mexican origin have incomes between 150 and 200 percent FPG, compared to 8 percent of European-origin immigrants eligible to naturalize. The commenter used this data to support their comment that the income requirements would reduce or eliminate access to citizenship for all but the wealthy and privileged.

Response: The 150 percent of the FPG threshold currently used for fee waiver eligibility is higher than the threshold used in the public charge inadmissibility and affidavit of support contexts. DHS has decided that limiting fee waivers to households with incomes at or below 125 percent of the FPG is appropriate because it would be consistent with other determinants of low income or financial wherewithal used in USCIS adjudications, such as the affidavit of support requirements under INA sections 212(a)(4) and 213A, 8 U.S.C. 1182(a)(4) and 1183a. *See* 8 CFR 106.3(c). DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter stated that USCIS should respect the rights of veterans to petition for a fee waiver for spouses and children regardless of income.

Response: DHS appreciates the sacrifices of members of the Armed Forces and veterans. USCIS charges no Form N-400 fee to an applicant who meets the requirements of INA sections 328 or 329 with respect to military service as provided by the law. *See* 8 CFR 106.2(b)(3)(c). In addition, there is no Form N-600 fee for any application filed by a member or veteran of any branch of the U.S. Armed Forces. *See* 8 CFR 106.2(b)(6)(c). DHS proposed adjustments to USCIS' fee schedule to ensure full cost recovery. DHS did not target any particular group, or class of individuals or propose changes with the intent to deter requests from any immigrants based on their financial or family situation or to block individuals from access immigrant benefits. With limited exceptions as noted in the NPRM and this final rule, DHS establishes its fees at the level estimated to represent the full cost of providing adjudication and naturalization services, including the cost of relevant overhead and similar services provided at no or reduced charge to asylum applicants or other immigrants. This rule is consistent with DHS's legal authorities. *See* INA section 286(m), 8 U.S.C. 1356(m). DHS proposed changes in fee waiver policies to ensure that those who benefit from immigration benefits pay their fair share of costs, consistent with the beneficiary-pays principle as described in the Government Accountability Office report number GAO-08-386SP. In addition, there is no law that requires a fee waiver or exemption for spouses or children of members of the Armed Forces or veterans. DHS declines to make changes in this final rule in response to these comments.

3. Means-Tested Benefits

Comment: A commenter recommended that USCIS use proof of receipt of a means-tested public benefit as evidence to demonstrate inability to pay the prescribed fee under the new rule.

Response: The commenter is requesting that USCIS continue to follow guidance that USCIS issued under its previous fee waiver regulations. Before 2010, USCIS allowed fee waiver applicants to submit requests in a variety of ways and undertook a holistic analysis of the applicant's finances to determine inability to pay. 75 FR 58974. In 2010, DHS decided that the USCIS fee waiver process would benefit from standardization. *Id.* By the 2010 rule DHS amended 8 CFR 103.7(c) to provide, on a discretionary basis, fee waivers for certain services, subject to two conditions: (1) the applicant is "unable to pay" the fee; and (2) a "waiver based on inability to pay is consistent with the status or benefit" 8 CFR 103.7(c)(1). DHS also required that waiver requests be in writing and state the reasons for and provide evidence in support of the claim of inability to pay. *Id.* at 103.7(c)(2). After the 2010 rule, DHS developed a new form to facilitate the fee waiver process: Request for Fee Waiver, Form I-912.⁴⁹ *See* Agency Information Collection Activities: Form I-912; New Information Collection; Comment Request, 75 FR 40846 (July 14, 2010). USCIS also published the 2011 Fee Waiver Policy providing further guidance as to adjudication of fee waiver requests. The 2011 guidance provided that as proof of inability to pay under 8 CFR 103.7(c), USCIS would accept: (1) evidence

⁴⁹ The form is now called Form I-912, Request for Fee Waiver.

of receipt of a means-tested benefit; (2) evidence of household income at or below 150 percent of the FPG; or (3) evidence of financial hardship.

In the NPRM, DHS proposed multiple changes to the then-existing fee waiver regulations, explained our need to and reasoning for doing so, and in accordance with the Paperwork Reduction Act, posted the proposed revised Form I-912, Request for Fee Waiver, and its instructions in this final rule's docket for the public to review and comment on its information collection requirements. *See* 84 FR 62296-62301, and 62356. The proposed regulations for fee waivers provided that DHS would provide, on a discretionary basis, fee waivers for certain services, subject to the following conditions: (1) a waiver of fees would be limited to aliens with annual household incomes at or below 125 percent of the FPG; (2) a waiver of fees would not be provided to a requestor who is seeking an immigration benefit for which he or she: is subject to the affidavit of support requirements under INA section 213A, 8 U.S.C. 1183a, and is already a sponsored immigrant as defined in 8 CFR 213a.1, or is subject to the public charge inadmissibility ground under INA section 212(a)(4), 8 U.S.C. 1182(a)(4); and (3) a request for a fee waiver must be submitted on the form prescribed by USCIS in accordance with the form instructions. Proposed 8 CFR 106.3(d); 84 FR 62363.

DHS is adopting the general fee waiver eligibility guidelines as proposed with a clarification. New 8 CFR 106.3. Proposed 8 CFR 106.3(d)(1) and (d)(2) (not permitting a fee waiver for a requestor who is subject to the affidavit of support, already a sponsored immigrant, or subject to the public charge inadmissibility ground) are not applicable to applicants who are statutorily eligible for fee waivers or those additional immigration benefit requests (SIV and certain SIJ applicants) that we are making eligible for a fee

waiver in this final rule. Therefore, DHS removed those limitations from the general fee waiver provision and included it in 8 CFR 106.3(b) governing waivers provided by the USCIS Director. New 8 CFR 106.3.

By removing the more ambiguous term “inability to pay” in favor of more clearly defined, straightforward requirements, DHS is imposing on the fee waiver request process greater consistency and equity. Receipt of any means-tested benefit would no longer automatically satisfy the new regulation’s requirements for demonstrating inability to pay. USCIS has also considered if means-tested benefits that are awarded using 125 percent of the FPG would be acceptable evidence of the 125 percent of the FPG household income requirement in addition to the other criteria in new 8 CFR 106.3(d). However, implementing that criterion would require USCIS to determine the income requirements that all jurisdictions across the United States use to determine eligibility for each means-tested benefit. In addition, USCIS would be required to continually monitor those requirements for any changes by individual jurisdictions and programs. Therefore, DHS has determined that such a policy would be unnecessarily burdensome for USCIS to administer and decided not to revise the Form I-912 instructions to permit any usage of a means-tested benefit as evidence for a fee waiver.

Comment: One commenter noted that using the Paperwork Reduction Act to introduce a revised fee waiver form, with new requirements, in October 2019 in lieu of using a NPRM and then eliminating fee waivers in this rule, was a waste of the public’s time to review both documents. A few commenters stated that eligibility based on receipt of a means-tested benefit was due to be eliminated by the revised fee waiver form challenged in *City of Seattle v. DHS*, 3:19-cv-7151-MMC (N.D. Cal., filed Oct. 31, 2019) but the

court in that case preliminarily enjoined the revised fee waiver form on a nationwide basis, thereby affecting USCIS' plans to constrict eligibility standards for fee waivers. Other commenters stated that USCIS has already eliminated the means-tested benefit criterion for fee waivers, which drastically limited access to immigration benefits, and that the proposed rule narrows the criteria for fee waivers even further and eliminates the financial hardship criterion entirely which means 400,666 individuals annually would be detrimentally affected. Another commenter stated that changes in Form I-912 and fee waiver requirements in the NPRM are an attempt to get around the injunction of the 2019 fee waiver rules because it eliminates fee waivers for most applicants. The commenter stated that the proposal seeks to restrict legal immigration and naturalization for poor and non-white people. Another commenter recommended that while the Form I-912 revision is enjoined by the U.S. District Court for the Northern District of California, USCIS should request public comment on a new proposed Form I-912 that maintains options to demonstrate qualification through receipt of means-tested benefits, financial hardship, or income of up to 150 percent of the FPG. The commenter wrote that USCIS is required by the injunction to restart the information collection request clearance process anew for a revised Form I-912 that conforms to the Court's decision. The commenter wrote that the Form I-912 proposed with the USCIS's November 14, 2019 NPRM does not meet the Court's specifications, and USCIS may not move forward with implementation of this revised Form I-912 based on the present notice-and-comment process.”

Response: These comments refer to the effort by USCIS to revise the USCIS policy guidance on fee waivers. On September 28, 2018, USCIS published a 60-day notice in the *Federal Register* requesting comments on the then-proposed revised Form I-912 and

instructions and posted the documents for review in docket USCIS–2010–0008 at www.regulations.gov. *See* 83 FR 49120 (Sept. 28, 2018). The revisions to Form I-912, Request for Fee Waiver, revised the evidence USCIS would consider in evaluating inability to pay, required federal income tax transcripts to demonstrate income, and required use of the Form I-912 for fee waiver requests. USCIS complied with the Paperwork Reduction Act and the Office of Information and Regulatory Affairs, OMB (OIRA) approved the form changes on October 24, 2019.⁵⁰ On October 25, 2019, USCIS published the revised Form I-912 and instructions, along with corresponding revisions to the USCIS Policy Manual and a Policy Alert. The revised Form and Manual took effect on December 2, 2019.

DHS did not consider this rulemaking’s impact when undertaking the Form I-912 revisions that took effect on December 2, 2019, because DHS was proposing comprehensive reforms to fee waivers which were not certain to occur and the rulemaking was separate and independent of the form and policy change that took effect on December 2, 2019. USCIS was forgoing hundreds of millions of dollars each year to fee waivers, and it decided not to wait for the comprehensive DHS fee rulemaking while it continued to forgo increasing amounts of revenue as more fees were waived. 84 FR 26138 (June 5, 2019). Nonetheless, on December 11, 2019, the U.S. District Court for the Northern District of California held that the Form I-912 revisions that took effect on December 2, 2019 required notice and comment rulemaking to effectuate, and the revised

⁵⁰ The approved package is available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201910-1615-006# (last visited Feb. 17, 2020).

Form I-912, the Policy Manual revisions, and an October 25, 2019 Policy Alert announcing the revisions were preliminarily enjoined nationwide. *See Order Granting Pls.’ Mot. for Nationwide Prelim. Inj., City of Seattle v. DHS*, 3:19-cv-7151-MMC (N.D. Cal., Dec. 11, 2019). By stipulation of the parties and as agreed to by the court, that injunction will remain in place pending publication of this final rule. The injunction in *City of Seattle* does not impose any requirements on subsequent revisions of the Form I-912 nor otherwise affect USCIS’s ability to move forward with implementation of the Form I-912 revised in accordance with the notice-and-comment process completed by this rulemaking. In fact, the injunction in *City of Seattle* contemplates that the 2019 fee waiver policy changes were lawful but for compliance with the procedures required by the Administrative Procedure Act that are met by publication of this final rule.

Comment: Commenters stated that proving household income through USCIS’ process is needlessly burdensome, intended to discourage applications, and that the fee waiver application process and 125 percent FPG limit is duplicative with means-testing requirements for other government programs where individuals have already passed a thorough income eligibility screening by government agencies. Several commenters specifically requested maintaining the means-tested benefits criterion as it is the least burdensome and most accessible application criterion for vulnerable immigrant populations.

Response: DHS understands that removing the means-tested benefit criterion will require people to obtain different documentation than they previously would have to establish eligibility for a fee waiver. DHS agrees that the burden will increase but has determined that the documentation required to establish income is the best approach to establish

eligibility. DHS does not believe that the burden that will be imposed by the new requirements is excessive for a requestor to receive the free adjudication of his or her immigration benefit request. USCIS is 96 percent funded by fees and must charge fees to cover its costs. Although the means-tested benefits criterion will no longer be an option under the revised fee waiver regulations, eligible applicants may request fee waivers under the criterion of having income at or below 125 percent of the FPG. Thus, staff and volunteers at nonprofit community organizations should already be familiar with the remaining criterion for fee waiver eligibility. DHS has considered the burden on applicants and those that provide them aid and determined that the benefits of the policy change exceed the potential additional burden. DHS disagrees that its fee waiver income requirements are duplicative with state means-tested benefit requirements because, as stated earlier, many public benefits have different income thresholds for eligibility in different states. Therefore, DHS has determined that relying on a consistent income threshold and not using a means-tested benefits for eligibility will best provide consistency in applying the requirements.

4. Public Charge Rule

Comment: Comments stated that DHS claims that USCIS uses 125 percent of the FPG as the standard for public charge and affidavit of support purposes and cites 8 CFR 212.22(b)(4)(i)(A), but DHS's proposed public charge rule is currently enjoined. The commenters state that because of court orders, USCIS has not been using 125 percent of the federal poverty guidelines as the standard for public charge purposes to date, and this rule is an improper attempt to codify the enjoined public charge rule.

Response: On February 24, 2020, DHS implemented the Inadmissibility on Public Charge Grounds Final Rule nationwide after the Supreme Court of the United States stayed the last remaining injunction.⁵¹ In addition, the 125 percent of the FPG threshold is not only used in public charge inadmissibility determinations, but also is the standard by which the sufficiency of an affidavit of support is based, as established by Congress under INA section 213A, 8 U.S.C. 1183a. As provided in the NPRM, USCIS generally uses 125 percent of the FPG as the minimum income threshold to be considered a positive factor in the totality of the circumstances in public charge inadmissibility determinations as the threshold. Congress also identified 125 percent of FPG as a threshold for establishing the sufficiency of the affidavit of support under INA section 213A, 8 U.S.C. 1183a. The threshold for fee waiver eligibility under previous regulations of 150 percent of the FPG was higher than the threshold used in the public charge inadmissibility and affidavit of support context. DHS believes limiting fee waivers to households with incomes at or below 125 percent of the FPG, as set forth in this final rule, and aligning the fee waiver rule with the public charge inadmissibility rule and the affidavit of support requirements set forth in INA sections 212(a)(4) and 213A, 8 U.S.C. 1182(a)(4) and 1183a, will best provide consistency in applying the income requirements in immigration benefit administration.

5. Financial Hardship

Comment: One commenter wrote that the proposed elimination of fee waiver eligibility based on extraordinary hardship (sic financial hardship) was not explained and is

⁵¹ See *Wolf v. Cook County*, 140 S.Ct. 681 (2020).

alarming and unjustified. USCIS does not acknowledge or explain its apparent decision to cease accepting evidence or granting fee waivers related to temporary illness and injury, recessions, bankruptcy, or any other of the myriad situations that may render qualified people unable to pay fees but that cannot be characterized as natural disasters. The commenter wrote that this change would prevent deserving individuals from accessing immigration and naturalization benefits and violate the principles of due process that govern rulemaking and other federal administrative action.

Response: DHS believes that a provision for financial hardship is unnecessary as past fee waivers requested using the financial hardship criterion were minimal, accounting for only 1.2 percent of all requests. A detailed distribution of the approved Fee Waiver Requests can be found in the RIA. *See* Section D, Tables 5 – 8. While DHS acknowledges that the fee adjustments established in this final rule are not insubstantial to an applicant of limited means, DHS does not believe that they make immigration benefits inaccessible to low income applicants who have financial hardships. DHS is therefore not making changes based on this comment.

6. Public Charge Ground of Inadmissibility and Affidavit of Support Requirements

Comment: Several commenters disagreed with USCIS' claim that it would be appropriate to restrict household income criteria to 125 percent FPG to be consistent with the public charge inadmissibility final rule and the statutory and regulatory requirement applicable to affidavit of support, writing that they are separate and unrelated legal concepts. Multiple commenters opposed the proposal to make fee waivers unavailable to applicants who are subject to the public charge ground of inadmissibility, those who are

subject to the affidavit of support requirement under INA section 213A, 8 U.S.C. 1183a, and those who are already sponsored immigrants. The commenters stated that the proposal would disproportionately harm low- and moderate-income families, including many immigrant survivors and their children. Many commenters stated that most family-sponsored immigrants must supply an affidavit of support regardless of income. They stated that, because the affidavit of support contract terminates only after specific criteria are met (e.g., sponsored immigrant becomes a U.S. citizen, dies, or departs the United States), barring these immigrants from receiving fee waivers would result in an additional barrier for low-income immigrants regardless of their actual need and would have a disproportionate effect on low-income Asian immigrants and U.S. citizens of Asian descent, especially as most Asian immigrants become permanent residents through family sponsorship and require affidavits of support. A commenter wrote that the proposal will further punish people who have the misfortune of poor health, are struggling to survive, and have chronic, severe pain. The commenter wrote that such individuals are too sick to work full-time and require an affidavit of support from family members or friends. A few commenters expressed worry that barring fee waivers for individuals subject to the public charge ground of inadmissibility would add more strain on an already overburdened legal service providers to low-income immigrants, resulting in a general decrease in capacity of pro bono services. A few commenters stated that there is no burden on USCIS to continue processing fee waiver applications for immigrants subject to affidavit of support nor any basis to disqualify those subject to affidavits of support from receiving fee waivers.

Response: DHS agrees that, in general, family sponsored immigrants are subject to the public charge ground of inadmissibility and are required to submit a sufficient affidavit of support under INA section 213A, 8 U.S.C. 1883a, and therefore may not be eligible to request a fee waiver under this final rule. The NPRM generally limited fee waiver eligibility to those statutorily eligible for fee waivers, which are limited to VAWA, T, U and TPS applicants. Family and employment related benefit requests were not generally included as being eligible for fee waivers in the NPRM. As discussed in the NPRM, under IIRIRA, certain immigrant categories are required to submit an enforceable affidavit of support executed by a sponsor.⁵² Although sponsors are not required to assist an alien with fees associated with immigration benefits, sponsors generally must demonstrate that they are able to maintain the sponsored alien at an annual income of not less than 125 percent of the FPG.⁵³ INA section 213A, 8 U.S.C. 1183a, formalized requirements of a legally enforceable affidavit of support, specified who is eligible to be a sponsor, which aliens require an Affidavit of Support Under Section 213A of the INA, the scope of a sponsor's obligations, and how the affidavit may be enforced.⁵⁴ These provisions were intended to "encourage immigrants to be self-reliant in accordance with national immigration policy."⁵⁵ DHS believes it is inconsistent with the affidavit of support requirements to allow this population to request fee waivers.⁵⁶

⁵² See INA sections 212(a)(4) and INA 213A, 8 U.S.C. 1182(a)(4), and 1183a. See also Div. C, Title V of Pub. L. 104-208, 110 Stat. 3009, 3009-670 (September 30, 1996).

⁵³ See INA section 213A. A sponsor who is on active duty (other than active duty for training) in the U.S. armed forces and who is petitioning for a spouse or child only has to demonstrate the means to maintain an annual income equal to at least 100 percent of the FPG.

⁵⁴ See INA section 213A, 8 U.S.C. 1183a. See Section 551 of the IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (1996).

⁵⁵ See H.R. Rep. 104-828, at 241 (Sept. 24, 1996) (Conf. Rep.).

⁵⁶ See Div. C, Title V of Pub. L. 104-208, 110 Stat. 3009, 3009-670 (September 30, 1996).

Further, the current fee waiver regulation allows people who are applying for immigration benefits for which a public charge inadmissibility determination is not made – advance permission to enter as a nonimmigrant, a waiver for passport and/or visa, adjustment of status, or a waiver of the grounds of inadmissibility – to file a fee waiver request. *See* 8 CFR 103.7(c)(4) (stating that certain fees may be waived “only for an alien for which a determination of their likelihood of becoming a public charge under section 212(a)(4) of the Act is not required at the time of an application for admission or adjustment of status”).

The rule provides that an alien who is subject to the affidavit of support requirements under INA section 213A, 8 U.S.C. 1183a, or is already a sponsored immigrant as defined in 8 CFR 213a.1 unless the applicant is seeking a waiver of the joint filing requirement to remove conditions on his or her residence based on abuse; or subject to the public charge inadmissibility ground under INA section 212(a)(4), 8 U.S.C. 1182(a)(4) is not eligible for a fee waiver. *See* New 8 CFR 106.3(b). DHS declines to make any changes in this final rule in response to these comments.

Comment: One commenter stated that the proposal would place an unnecessarily cumbersome requirement on those who are already receiving some form of assistance and require additional assistance in order to improve their immigration status. Another commenter stated that many survivors of crime and domestic violence would be negatively impacted because many survivors receive CalWORKS, a California public benefits program.

A commenter stated that the proposal is unfair and discriminatory because it could severely affect the naturalization process based on receiving public benefits, even if this

occurred years before an application for citizenship. The commenter also stated that temporary assistance in a time of hardship should not be an opportunity for any country to deny its people the path to citizenship.

Response: This final rule does not prevent individuals from requesting or receiving any public benefits, as defined in, PRWORA, 8 CFR 212.21(b), or other provision, for which they are eligible. Further, this final rule does not consider the receipt of public benefits as part of the eligibility requirements. Instead, DHS would look to the immigrant or nonimmigrant category the alien holds or is seeking and their income in order to determine whether he or she qualifies to submit a fee waiver request.

DHS notes that VAWA self-petitioners as defined under INA section 101(a)(51) and anyone otherwise self-petitioning due to battery or extreme cruelty pursuant to the procedures in section 204(a), 8 U.S.C. 1101(a)(51) and 1154(a), T nonimmigrants, U nonimmigrants, battered spouses of A, G, E-3, or H nonimmigrants, battered spouses or children of a lawful permanent resident or U.S. citizen as provided under INA section 240A(b)(2), and TPS applicants are generally not subject to the public charge inadmissibility provision or the affidavit of support requirements. Therefore, under this final rule, these applicants are not precluded from requesting a fee waiver. *See* 8 CFR 106.3. Furthermore, certain Special Immigrant Juveniles and Afghan and Iraqi translators are also not precluded from requesting a fee waiver under this final rule, as they are not subject to the public charge inadmissibility determination or the affidavit of

support requirement.⁵⁷ *Id.* DHS has updated the provision to clarify these aliens are not subject to these eligibility requirements. See new 8 CFR 106.3(c).

Comment: Multiple commenters said that, because abusive spouses may be the sponsor holding the affidavits of support, it was critical to keep fee waivers available to those subject to the affidavit of support under INA section 213A, 8 U.S.C. 1183a. The commenter wrote that doing so would help ensure that immigrant survivors are not compelled to return to their abusers to seek immigration benefits.

Response: An applicant under the VAWA provisions is generally not subject to the affidavit of support requirements.⁵⁸ In addition, fee waiver requests do not require information regarding the income of an abusive spouse. DHS believes that its continued provision of fee waivers for VAWA, T, and U categories mitigates any concerns that changes to fee waiver eligibility will unduly burden or otherwise harm the victims of abusive spouses. See Table 3: Categories and Forms Without Fees or Eligible for Fee Waivers. DHS declines to make changes in this final rule in response to these comments.

7. Discretionary Fee Waivers

Comment: Several commenters opposed narrowing discretionary authority that would prevent many family-based immigrants from receiving fee waivers and would disadvantage recipients of certain humanitarian benefits, such as Special Immigrant Juveniles (SIJs) and Cuban Adjustment Act applicants.

⁵⁷ See INA sections 212(a)(4) and 213A, 8 U.S.C. 1182(a)(4) and 1183a. See also 8 CFR 212.23(a)(4) and (10).

⁵⁸ See INA section 212(a)(4)(E)(i), 8 U.S.C. 1182(a)(4)(E)(i). See also 8 CFR 212.23(a)(20).

Some commenters said the proposed limitations on the Director's discretion to grant fee waivers are arbitrary and unsupported by any evidence. The commenters stated that no explanation, data, or examples were provided indicating why the concern over the Director having too much discretion requires changing well-established precedent.

Another commenter stated that the rule does not provide a basis for the guidelines of how the Attorney General shall determine which designated group of victims of calamities will be granted access to fee waivers.

Response: In this final rule, DHS retains the authority in the regulations for the Director of USCIS to waive any fee if the Director determines that such action is an emergent circumstance, or if a major natural disaster has been declared in accordance with 44 CFR part 206, subpart B. DHS notes that the Director's discretionary provision has never been and is not intended for whole categories of aliens to request fee waivers directly to the Director. *See* 75 FR 58974 (encouraging those who believe that they have a sufficiently sympathetic case or group of cases in any type of benefit request to submit a request to their USCIS local office for a waiver under 8 CFR 103.7(d)). The discretionary provision is meant to provide for discrete and limited fee waivers when there are emergent circumstances. *See* 75 FR 33464. DHS has further consolidated the Director's discretionary provisions as it is not limited by category but is also not intended to allow for individual applications from broad categories of individuals. In addition the provisions regarding eligibility were consolidated to clarify who may not qualify based on the alien being subject to the affidavit of support requirements under section 213A of the Act or already a sponsored immigrant as defined in 8 CFR 213a.1 (unless the applicant is seeking a waiver of the joint filing requirement to remove conditions on his

or her residence based on abuse), or being subject to the public charge inadmissibility ground under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4).

Further, DHS does not believe that the rule disadvantages recipients of humanitarian benefits. For example, DHS believes that the imposition of a fee or a lack of a fee waiver does not infringe upon the ongoing protections offered by the Cuban Adjustment Act of 1966 (CAA). The CAA allows Cuban natives or citizens living in the United States who meet certain eligibility requirements to apply to become lawful permanent residents.⁵⁹ Applicants under the CAA have previously paid fees. Under the CAA, a native or citizen of Cuba who has been inspected and admitted or paroled into the United States and who has been physically present in the United States for at least one year may apply for permanent residency in the United States. An alien under the CAA submits Form I-485, Application to Register Permanent Residence or Adjust Status, and does not need to file a visa petition or have an immigrant visa immediately available to him or her.⁶⁰ Generally, when an alien has a pending Form I-485, he or she may apply for employment authorization by filing a Form I-765, Application for Employment Authorization.⁶¹ For this reason, DHS believes that aliens who benefit from the CAA have unique advantages compared to other humanitarian populations, such as asylum seekers, who may have to wait months or years before being eligible to apply to become a lawful permanent resident. The CAA does not prohibit the charging of fees for

⁵⁹ See <https://www.uscis.gov/greencard/caa> (last accessed 03/10/2020).

⁶⁰ See Pub. L. 89-732 (1966).

⁶¹ See <https://www.uscis.gov/greencard/caa> (last accessed 03/10/2020).

applicants, and DHS believes that the imposition of a fee or a lack of a fee waiver does not infringe upon the ongoing protections that the CAA affords to qualified individuals.

As provided in the NPRM, USCIS will continue to notify the general public of eligibility for fee waivers for specific forms under 8 CFR 106.3 through policy or website updates. Individuals who may qualify for such a fee waiver will still need to meet the requirements to request a fee waiver as provided in 8 CFR 106.3(b) and (d).

As discussed above, in response to commenters' concerns, DHS will allow petitioners for and recipients of SIJ classification who, at the time of filing, have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency, to submit requests for fee waivers for Form I-485 and associated forms, as well as Forms N-400, N-600, and N-600K. *See* Table 3: Categories and Forms Without Fees or Eligible for Fee Waivers.

Comment: A few commenters wrote that, at a minimum, USCIS should allow a proactive application process for discretionary fee waivers. These would allow individuals to alert USCIS to their need for a waiver of an application fee rather than having to wait to receive an invitation from USCIS first.

Response: DHS has clarified the USCIS Director's fee waiver provision at 8 CFR 106.3(b) and 106.3(c) in this final rule because it was not necessary to have a separate section authorizing the Director to waive fees for groups or individuals. See new 8 CFR 106.3(b). Proposed 8 CFR 106.3(c) could be used to grant group or individual fee waivers, thus proposed 8 CFR 106.3(b) was redundant. As provided in new 8 CFR 106.3(b), the Director of USCIS may authorize the waiver, in whole or in part, of a form fee required by 8 CFR 106.2 that is not otherwise waivable under this section, if the

Director determines that such action is an emergent circumstance, or if a major natural disaster has been declared in accordance with 44 CFR part 206, subpart B. New 8 CFR 106.3(b) authorizes the Director to designate a group eligible for fee waivers as appropriate. As previously indicated, DHS notes that the Director's discretionary provision has never been and is not intended for whole categories of aliens to request fee waivers directly to the Director. *See* 75 FR 58974. Although many applicants may believe they personally need a waiver of an application fee, the discretionary provision is meant to provide for discrete and limited fee waivers when there are emergent circumstances and the other eligibility requirements are met. Therefore, DHS is maintaining the provision that individuals may not directly submit requests for fee waivers to the USCIS Director.

Comment: The commenter stated that the proposal to make Form I-765 fee waivers discretionary for affirmative asylum seekers may cause additional burdens for low-income households.

Response: DHS acknowledges the commenter's concern; however, as stated in the NPRM and in this final rule, fee waivers for the Form I-765 will not be available to asylum seekers. *See* 84 FR 62296-62301. USCIS is continuing to provide a fee exemption for the initial Form I-765 filing for individuals who were granted asylum (asylees) or who were admitted as refugees. Therefore, there is no fee waiver request necessary for asylees filing an initial Form I-765. Asylees and refugees will generally continue to be required to pay the relevant fee for renewal EADs. As indicated previously, DHS has clarified the provisions regarding the USCIS Director's discretion as

it relates to fee waivers in 8 CFR 106.3(b), as the individual provision in the proposed 8 CFR 106.3(b) was redundant.

8. Fee Waiver Documentation

Comment: A commenter recommended that USCIS expand the types of documentary evidence accepted in support of fee waiver applications. Several commenters stated that applicants should not be required to procure additional new documents, such as federal tax transcript, to demonstrate household income. The commenters stated that, obtaining a transcript would substantially complicate the process of applying for a fee waiver because individuals may not have access to a computer and several days to six weeks or more may be required to wait on delivery via the mail. Some commenters indicated that the proposal creates a burdensome new requirement that many applicants will be unable to meet, either because it's too difficult to obtain the documentation or because they were too poor to file taxes with a foreign government.

Response: USCIS currently requests copies of income tax returns from applicants requesting fee waivers. Tax transcripts are easily requested through the Internal Revenue Service (IRS) website or paper filing and are free to taxpayers. USCIS cannot accept incomplete copies of tax returns or copies that are not signed or submitted to the IRS to support fee waiver requests, because they may not validly reflect the applicant's household income. USCIS believes that the proposed change will reduce its administrative burden for fee waiver processing and reduce the number of fee waiver requests that are rejected because of improper documentation, inadequate information, and no signatures for household members. In terms of the non-filing letter from the IRS, USCIS is concerned about not receiving documentation of no-income. Therefore,

obtaining information from the IRS in transcripts, a W-2, or proof of non-filing, if applicable, is sufficient documentation to establish the necessary income or no income. DHS believes that, while this might place a small additional burden on applicants, the change will ultimately benefit applicants by mitigating future rejections and ensuring that fees are waived for deserving applicants.

Comment: A commenter stated the proposed changes would increase the inefficiencies in processing fee waiver requests, place an unnecessary burden on the Internal Revenue Service (IRS) for requests for documentation from immigrants, and add burden on USCIS increasing the complexity of adjudicating fee waiver requests. Plus, USCIS would need to continuously track the IRS transcript request processes.

Response: As part of its regular operations, the Internal Revenue Service (IRS) provides customer service including providing tax transcripts. Tax transcripts can be obtained by calling the IRS or submitting a request online, through the mail or by fax. As the IRS, and other federal, state, and local agencies regularly provide information and services to their customers as part of their daily operations, the proposed form changes should have a minimal impact on them. The Department of the Treasury was provided with the proposed and final rule to review, and they did not object to the requirement for the tax transcript.

Comment: A commenter stated that requiring separate fee waiver submissions for derivative family members was overly burdensome and provided USCIS data to demonstrate that survivors applying for humanitarian protections frequently included derivative family members in their applications. Many commenters stated that requiring each applicant to submit their own form when applying for fee waivers imposes a large,

duplicative burden on applicants. Commenters recommended that family members should be allowed to continue submitting a single fee waiver application with all relevant information collected in one location. Another commenter said survivors applying for humanitarian protections frequently included derivative family members in their applications and provided USCIS data to demonstrate this fact.

Response: Over 90 percent of the fee waiver requests filed were for individual applicants⁶² and many other forms are already required to be submitted individually. Therefore, DHS does not believe that requiring Form I-912 for each applicant or petitioner in a household will unduly burden applicants. The change will reduce the number of fee waiver requests that are rejected for failure to obtain all signatures of included family members. DHS has determined that the benefit of fewer rejections exceeds the small increase in burden that this change may add for a small percentage of fee waiver requests.

Comment: A commenter recommended that USCIS continue to allow use of applicant generated, non-form fee waiver requests and objected to option of a written statement being eliminated for Form I-918, Petition for U Nonimmigrant Status.

Response: Adjudicating ad hoc fee waiver requests has proven to be difficult for USCIS due to the varied quality and information provided in ad hoc letter requests. Form I-912 is easy to complete, and it provides standardization that will assist USCIS in our review of requests. In addition, there is no filing fee for Form I-918. Therefore, DHS declines

⁶² See Tables 10-11. Distribution of Total Approved Applicants per Fee Waiver Request (Form I-912) in the RIA.

to make changes in this final rule in response to this comment and will require submission of Form I-912 to request a fee waiver.

9. Cost of Fee Waivers

Comment: Many commenters stated that DHS' application of the beneficiary-pays principle is arbitrary, capricious, unsupported, and unjustified. Commenters indicated that restricting the income requirements from 150 percent of FPG to 125 percent is unjustified, especially because DHS did not estimate how many people the change would affect. Multiple commenters opposed the beneficiary-pay model as it would not be a fair or just system, writing that it ignores the inequities that exist across incomes and that the ability-to-pay model has been working for years. A commenter wrote that DHS' justification that the use of fee waivers has increased in a good economy was faulty, writing that DHS cited statistics for USCIS fee waivers from FY 2008 to 2011 – a period of economic recession. Another commenter said that DHS' argument that fee waivers have become too costly to sustain fails to account for recent fee increases or indicate whether fee waiver volume has changed. The commenter wrote that fee waivers between 2016 and 2017 did not increase and the NPRM does not acknowledge the recent decline in fee waivers in FY 2018.

Response: DHS explained in the NPRM that fee waivers had increased to unmanageable levels and that DHS had to do something to curtail the amount of free services being provided by USCIS. In prior years, USCIS' fees have given significant weight to the ability-to-pay principle and shifted the costs of certain benefit requests to other fee payers. In the FY 2016/2017 fee rule, DHS noted that the estimated annual forgone 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.⁶³ *See* 81 FR 26922 and 73307. In the FY 2016/2017 NPRM, DHS estimated that the increase in fee waivers accounted for 9 percent of the 21 percent weighted average fee increase. *See* 81 FR 26910. In the same NPRM, DHS provided notice that in the future it may revisit the USCIS fee waiver guidance with respect to what constitutes inability to pay under 8 CFR 103.7(c). *See* 81 FR 26922.

In this final rule, DHS is aligning USCIS' fees more closely to the beneficiary-pays principle. Without the changes to fee waiver policy implemented in this final rule, fees would increase by a weighted average of 30 percent, which is 10 percent more than in the fee schedule implemented in this final rule. In an effort to mitigate the total weighted average fee increase and preserve equitable distribution of costs for adjudication and naturalization services, DHS declines to make changes in this final rule in response to the comment.

Comment: Some commenters stated that USCIS' justification to make the fee schedule more equitable with the beneficiary-pays approach fails to consider the effect on applicants or benefits resulting from fee waivers. A few commenters stated that setting fees at full cost recovery would be inadequate as it does not take into account the benefits side of the equation, such as the added earnings of citizenship relative to prior earnings as

⁶³ Since USCIS includes a projection for fee waivers/fee exemptions when setting its fees to recover full cost, it does not forgo revenue unless the total dollar amount of actual fee waivers/fee exemptions exceeds the projected amount that was included in the fee setting process. The dollar amount of actual fee waivers/fee exemptions in excess of the projected amount included in the fee setting process is considered foregone revenue.

a legal immigrant. The commenters stated that including benefits would show that all costs are indeed paid and covered.

A few commenters wrote that USCIS has taken actions that increase operating costs (e.g., extreme vetting, re-interviewing individuals, enhanced background checks, decrease in staffing) which the department now seeks to pass onto the public via the beneficiary-pays principle and by eliminating fee waivers.

Response: Consistent with historical practice, this final rule sets fees at a level to recover the estimated full operating costs of USCIS, the entity within DHS that provides almost all immigration adjudication and naturalization services. *See* Homeland Security Act of 2002, Pub. L. 107-296, sec. 451, 116 Stat. 2142 (Nov. 26, 2002) (6 U.S.C. 271). The statute authorizes recovery of the full costs of providing immigration adjudication and naturalization services. As provided in the NPRM and RIA, the fees account for all anticipated operational costs and adjudicative actions based on the best information available at the time USCIS conducted the FY 2019/2020 fee review.

DHS considered the effects of the revised fee schedule on applicants and petitioners, as documented in the RIA, Final Regulatory Flexibility Analysis (FRFA), SEA and relevant sections of this final rule. As noted elsewhere in this preamble, DHS is not required to conduct a cost-benefit analysis of the impacts on all applicants of each change in a fee or change in USCIS fees or fee -related regulations. As stated elsewhere in this preamble,⁶⁴ DHS is required by OMB Circular A-4 to include all total projected

⁶⁴ Section IV A, Statutory and Regulatory Requirements, Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs).

costs, benefits, and transfers annualized and monetized over a specified implementation period, which for this final rule is 10 years. The final rule intends to merely recover the estimated full cost to USCIS of providing immigration adjudication and naturalization services, including services provided without charge to asylum applicants and other immigrants.

However, this rule sets fees to offset USCIS costs to provide immigration adjudication and naturalization services at an adequate level. DHS anticipates that applicants and petitioner will consider the potential benefits, including the potential for increased earnings as noted by the commenter, weigh those benefits against the cost of applying, including the fee, and decide if the benefits outweigh the costs. DHS believes that many LPRs will determine that the benefits of naturalization, including the prospect of additional earnings, exceed the cost of the fee for Form N-400.

Comment: Another commenter wrote that there are errors and a lack of supporting documentation in the NPRM. They stated that this lack of information made it impossible to verify or understand calculations that USCIS relies on to justify the proposed changes to the fee waivers. The commenter provided the following examples and criticisms:

- “In the FY 2019/2020 fee review, USCIS determined that without changes to fee waiver policy, it would forgo revenue of approximately \$1,494 million.” – supporting document states foregone revenue for 2017 was \$367,243,540.
- “The proposed fee schedule estimates \$962 million forgone revenue from fee waivers and fee exemptions.” – no supporting documents.
- “The difference in forgone revenue is \$532 million.” – no supporting documents.

- “Without changes to fee waiver policy, fees would increase by a weighted average of 31 percent, which is 10 percent more than in the proposed fee schedule.” – no supporting documents.
- “As shown in the supporting documentation for this rule, the number and dollar volume of fee waiver requests and foregone revenue has trended upward during periods of economic improvement. That indicates that, should the economy worsen, the number of fee waiver requests will increase to a level that could threaten the ability of USCIS to deliver programs without disruption.” – While there is supporting documentation for this statement, its meaning is unclear as no analysis is given comparing the fee waiver usage to economic performance.
- “In the FY 2016/2017 fee rule, DHS noted that the estimated annual forgone 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.”
- USCIS miscalculated the surcharge needed to add onto other fees to make up for lost revenue.

Response: All examples cited by the commenter do not directly impact fee calculations. Rather, they are byproduct estimates of multiple operational data elements including fees, workload receipts, and fee-paying receipts. Additional information on the historical dollar value of approved fee waiver requests is located in the supporting documentation that accompanies this final rule. Additionally, DHS used the best available information at the time it conducted the FY 2019/2020 fee review to calculate fees and does not calculate a surcharge to add onto other fees. Instead, it estimates the total cost of

performing USCIS' anticipated workload by form and divides those costs by the estimated fee-paying volume for each form.

Regarding the commenter's question about the volume of fee waiver requests increasing during periods of a good economy, as indicated in the NPRM, DHS determined that the current trends and level of fee waivers are not sustainable. As shown in the supporting documentation that accompanies this final rule, the number and dollar value of approved fee waiver requests has remained high during periods when the U.S. economy was improving. As the economy worsens, the number of fee waiver requests could increase to a level that could threaten the ability of USCIS to deliver programs without disruption. DHS declines to make changes in this final rule in response to these comments

Comment: One commenter wrote that USCIS data is incomplete as it only shows fee waiver trends through FY 2017 and requested the data on fee waiver approval rates for the past two fiscal years be released.

Response: The NPRM contained information USCIS had available at the time it conducted the FY 2019/2020 fee review. It provides more than adequate data upon which to base the fee waiver regulatory changes made in this final rule. However, in response to the commenter and to demonstrate that fee waiver levels remain high, DHS has included FY 2018 and FY 2019 fee waiver data in the supporting documentation that accompanies this final rule for informational purposes. DHS has also included the actual dollar value of approved fee waiver requests for FY 2013 – FY 2019.

10. Changes to Form I-912, Request for Fee Waiver

Comment: One commenter recommended that USCIS revert to and retain the previous version of Form I-912 (03/13/2018 edition).

Response: DHS declines to revert to the previous version of the form as this final rule establishes revised criteria for eligibility. The Form I-912 version submitted with this final rule incorporates the relevant provisions.

Comment: One commenter recommended that USCIS restore helpful language in instructions and forms that clarifies that applicants need only meet one of multiple possible grounds of qualification for a fee waiver and clarify that applicants only need to provide documentation for one basis. A commenter also noted that the proposed Form I-912 contains provisions that are difficult to understand, citing the request for applicants to include “a receipt number” (Part 1, Question A) as an example. One commenter recommended that Part 1, Question 1.A’s instruction should be changed to, “[i]f available, provide the receipt number” as the applicant may not yet have a receipt number.

Response: DHS clarified the provision regarding the basis of eligibility for a fee waiver by indicating that the applicants should select the basis for qualification. DHS added a clarification to the form to indicate that the receipt number is only required if the applicant has already been provided with a receipt number.

Comment: One commenter stated that Part 1, “Question 1.B's new guidelines allowing fee waivers for those impacted by a disaster are unclear. The form states in Part 1 that in order to be eligible, these applicants must have an annual household income at or below 125 percent of the FPG. They must then provide information about their income in Part

3, discussed in more detail below. However, in Part 3, number 11 they are asked to provide information about their expenses, debt, or losses incurred in the disaster. It is unclear why this additional information is needed, if the applicant has already been required to document their income at or below 125 percent of the FPG. This information request does not fit into the eligibility guidelines based on income and is not relevant to USCIS' adjudication. We recommend either deleting item 11 in Part 3, or expanding the eligibility guidelines to include financial hardship for those impacted by a disaster who are unable to document low income. The same commenter later noted that "Question #11 is redundant, as stated above, and we recommend that it be deleted."

Response: DHS agrees that an applicant or petitioner impacted by a disaster who is otherwise eligible for a fee waiver would only need to provide documentation of income at or below 125 percent of the FPG and would not need to provide evidence of expenses, debt, or losses incurred in the disaster. DHS has removed the additional question from the form.

Comment: One commenter stated that Part 3 asks for gross income, but neither the form nor the instructions define the term. 'Gross income' needs to be explained, especially for those who are not able to simply refer to the "gross income" line on their tax return. We recommend that USCIS define 'gross income' on the form just below the heading for Part 3 and in the corresponding instructions. The commenter also recommends that Part 3., Question 6 explicitly instruct applicants where to find their gross income.

Response: Gross income includes wages, dividends, capital gains, business income, retirement distributions as well as other income without any adjustments.⁶⁵ This clarification has been added to Form I-912 instructions.

Comment: One commenter recommended increasing the chart in Part 3., Question 4 from four (4) spaces total for listing household members to six (6) spaces, along with instructions above the chart for what to do if the applicant needs more spaces.

Alternatively, they also recommend providing the chart again in Part 7. for those who need more space to list household members.

Response: Requestors should use the Additional Information section if more space is required. DHS is not modifying the form in response to this comment. Adding additional charts or rows will unnecessarily increase the form length.

Comment: Commenters recommended explicitly instructing applicants that they need to attach a copy of their federal income tax transcripts.

Response: DHS has added an additional form instruction to indicate that requestors should provide income tax return transcripts.

Comment: One commenter stated that Part 3., Question 10 “is a catch-all for describing special circumstances. Applicants could easily miss it. We recommend adding a new item number after 10 for those who have no income or are homeless to describe their circumstances, e.g., “[i]f you have no income and/or are homeless, you may use this space to provide additional information.””

⁶⁵ See IRS, Definition of Adjusted Gross Income, available at <https://www.irs.gov/e-file-providers/definition-of-adjusted-gross-income> (last visited March 7, 2020).

Response: To limit the burden on applicants, DHS will not be adding a question. However, question 10 has been updated to clarify that the space may be used for additional information which may include a statement about lack of income. Although a homeless person without income would generally qualify for a fee waiver based on income at or below 125 percent of the FPG, being homeless does not make an applicant eligible for a fee waiver.

11. Suggestions

Comment: A few commenters suggested alternatives to narrowing the requirements for fee waivers and changing their standards of evidence including limiting fee waivers allowed for specific applications (for example the first 25,000 fee waivers for Form I-90), have a lottery for fee waivers (for example: For those paying with credit card they can be entered in a lottery and if chosen the application is free, if not, then the card will be charged); offer fee reductions; and lower the threshold to 150 percent or 175 percent instead. A few commenters stated that partial fee waivers, with mechanisms such as reduced fees, sliding scale fee schedules, and family caps, should be used to facilitate applications from low- and middle-income immigrants. Several commenters wrote that USCIS should retain the previous fee waiver eligibility criteria.

Response: DHS recognizes that filing fees are a burden for some people of limited financial means. However, as previously stated, the cost of fee waivers and reduced fees are borne by all other fee payers, because they must be transferred to those who pay a full fee to ensure full cost recovery. DHS believes that it is more equitable to base fees on the beneficiary-pays principle. Thus, USCIS takes a relatively careful position with respect to transferring costs from one applicant to another through the expansion of fee waiver

eligibility and discounting fees. To set fees at various levels based on income, as suggested by the commenter, would require deviation from the underlying fee-setting methodology and require some of the costs for those applications to be reassigned to other benefit requests. Therefore, DHS did not incorporate a reduced fee, sliding scale, or family cap in this final rule or the other suggestions provided by commenters.

Comment: Others suggested USCIS set a higher limit of at least 200 percent instead of 125 percent FPG.

Response: DHS will not adopt the suggestion to increase the income requirement to 200 percent of the poverty line. As previously discussed, DHS selected the 125 percent of the FPG threshold as it is consistent with the income threshold in other areas related to immigration benefit adjudication, the public charge inadmissibility rule, and affidavit of support requirements under INA section 213A, 8 U.S.C.1183a, and 8 CFR 212.22(b)(4).

F. Comments on Fee Exemptions

Comment: One commenter opposed USCIS' proposal to remove most fee exemptions and to formalize limits to its discretion to provide fee exemptions. The commenter stated that USCIS failed to provide any rationale to justify this regulatory constraint. The commenter said narrowing the regulatory authority of the Director of USCIS to receive requests and waive fees for a case or specific class of cases would unnecessarily tie the hands of future policymakers. The commenter also stated that it is unclear how this authority would be exercised and how USCIS would adequately publicize any such exercise of discretion.

Response: DHS authorized the USCIS Director to approve and revoke exemptions from fees or provide that the fee may be waived for a case or class of cases that is not

otherwise provided in 8 CFR 103.7(c) in 2010. *See* old 8 CFR 103.7(d); 75 FR 58, 961, 58990. Since then, that provision has been implemented effectively without providing publicly available guidance for how a person may request that the Director exercise that authority for an individual who feels like he or she is worthy of special consideration by the Director. USCIS receives several million fee-paying requests per year and to permit an individual to request a fee waiver from the Director using authority that may only be delegated to one other person could result in an unmanageable level of requests. USCIS has approved waiver eligibility and group exemptions in the case of natural disasters or significant USCIS errors. DHS explained in the proposed rule that it was concerned that the current authority provides too much discretion to a future Director to expand fee exemptions and waivers beyond what may be fiscally sound and shifting burden to just a few fee payers. In the 2010 fee rule, DHS stated that it thought the limits that it was imposing in that rule on fee waivers would ensure that fee waivers are applied in a fair and consistent manner, that aliens who are admitted into the United States will not become public charges, and that USCIS will not shift an unreasonable amount of costs to other fee-paying benefit requests.⁶⁶ Unfortunately, that goal was not achieved, and as stated in the NPRM, the current level of fee waivers is not sustainable. *See* 84 FR 62300. Thus, prescribing a limit in the regulations on the ability of future Directors to waive or exempt fees on a discretionary basis was determined to be necessary. Nevertheless, based on the use of 8 CFR 103.7(d) by Directors since 2010, the restrictions are

⁶⁶ 75 FR 58973.

consistent with the relief that has been provided; thus new 8 CFR 106.3(b) and (c) is not a major departure from how that provision has been applied.

Table 4 below provides a list of filing fee exemptions as provided in the rule. See new 8 CFR 106.2.

Table 4: Filing Fee Exemptions⁶⁷

Form⁶⁸	Eligibility Category	Reason for Filing (if applicable)	Final Rule Regulation section	Statutory or Regulatory Authority if applicable
I-90, Application to Replace Permanent Resident Card	Applicant who has reached his or her 14th birthday and the existing card expires after his or her 16th birthday	N/A	8 CFR 106.2(a)(1)	8 CFR 264.5(a)
I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	For nonimmigrant member of the U.S. armed forces	Initial Filing	8 CFR 106.2(a)(2)(i)	8 CFR 106.3(e)(5) - Agreement between U.S. government and other nations
	For a nonimmigrant member of the North Atlantic Treaty Organization (NATO) armed forces or civil component	Initial Filing	8 CFR 106.2(a)(ii)	8 CFR 106.3(e)(5) - Agreement between U.S. government and other nations
	For nonimmigrant member of the Partnership for Peace military program under the Status of	Initial Filing	8 CFR 106.2(a)(ii)	8 CFR 106.3(e)(5) - Agreement between U.S. government and other nations

⁶⁷ In general, USCIS exempts a fee for an application or request to replace a document based on USCIS error.

⁶⁸ Some supplemental forms may not have fees as the fees are part of the main form, including Form I-130A, Supplemental Information for Spouse Beneficiary, Form I-485 Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j), Form I-539A Supplemental Information for Application to Extend/Change Nonimmigrant Status.

Form⁶⁸	Eligibility Category	Reason for Filing (if applicable)	Final Rule Regulation section	Statutory or Regulatory Authority if applicable
	Forces Agreement			
I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker	For filing Form I-129CWR, Semiannual Report for CW-1 Employers	N/A	8 CFR 106.2(a)(4)(B)(iii)	8 CFR 106.3(e)(5) - Agreement between U.S. government and other nations
I-129F, Petition for Alien Fiancé(e)	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 U.S. citizen on a Petition for Alien Relative, Form I-130	N/A	8 CFR 106.2(a)(5)(ii)	Previous regulations at 8 CFR 103.7(b)(1)(i)(K).
I-131, Application for Travel Document	Applicants who filed USCIS Form I-485 on or after July 30, 2007, and before [INSERT EFFECTIVE DATE OF THE FINAL RULE] and paid the Form I-485 fee	Any application	8 CFR 106.2(a)(7)(iv)	Required by regulations in effect at the time the request was filed.
	Applicants for Special Immigrant Status based on an approved Form I-360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (“ISAF”)	Any application	8 CFR 106.2(a)(7)(iv)	National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181 (Jan 28, 2008) and Omnibus Appropriations Act, 2009 Pub. L. 111–8 (Mar. 11, 2009)

Form⁶⁸	Eligibility Category	Reason for Filing (if applicable)	Final Rule Regulation section	Statutory or Regulatory Authority if applicable
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	<ul style="list-style-type: none"> • A petition seeking classification as an Amerasian; • A self-petition for immigrant classification as an abused spouse or child of a U.S. citizen or lawful permanent resident or an abused parent of a U.S. citizen son or daughter; or • A petition for special immigrant juvenile classification; or <p>A petition seeking special immigrant visa or status as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (“ISAF”).</p>	Any application	8 CFR 106.2(a)(16)	Policy based on INA section 245(l)(7)
Form I-485, Application to Register	Applicants for Special	Any application	8 CFR 106.2(a)(17)(iii)	National

Form⁶⁸	Eligibility Category	Reason for Filing (if applicable)	Final Rule Regulation section	Statutory or Regulatory Authority if applicable
Permanent Residence or Adjust Status	Immigrant Status based on an approved Form I-360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (“ISAF”).			Defense Authorization Act for Fiscal Year 2008, Public Law 110–181 (Jan 28, 2008) and Omnibus Appropriations Act, 2009 Pub. L. 111–8 (Mar. 11, 2009)
	Applicants filing as refugees under INA section 209(a).	Any application		<u>Previous 8 CFR 103.7(b)(1)(i)(U)(3)</u>
I-485 Supplement A, Adjustment of Status under Section 245(i)	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 a legalized alien and who is qualified for and has properly filed an application for voluntary departure under the family unity program	N/A	8 CFR 106.2(a)(17)(iv)	INA section 245(i)
I-290B, Notice of Appeal or Motion	For an appeal or motion for denial of a petition for a special immigrant visa	Any application	8 CFR 106.2(a)(14)(ii)	National Defense Authorization Act for Fiscal Year 2008, Public Law

Form⁶⁸	Eligibility Category	Reason for Filing (if applicable)	Final Rule Regulation section	Statutory or Regulatory Authority if applicable
	from an individual for a special immigrant status as an Afghan or Iraqi Interpreter, or Iraqi or Afghan National employed by the U.S. Government or the International Security Assistance Forces (“ISAF”).			110–181 (Jan 28, 2008) and Omnibus Appropriations Act, 2009 Pub. L. 111–8 (Mar. 11, 2009)
I-539, Application to Extend/Change Nonimmigrant Status	Nonimmigrant A, G, and NATO		8 CFR 106.2(a)(19)	8 CFR 106.3(e)(5) - Agreement between the U.S. government and other nations
I-589, Application for Asylum and for Withholding of Removal	Applications filed by unaccompanied alien children who are in removal proceedings.		8 CFR 106.2(a)(20)	Public Law 110–457, 122 Stat. 5044 (2008).
I-600, Petition to Classify Orphan as an Immediate Relative ⁶⁹	First Form I-600 filed for a child on the basis of an approved Application for Advance Processing of an Orphan Petition, Form I-600A, during the Form I-600A approval or extended approval period		8 CFR 106.2(a)(21)(i)	Previous 8 CFR 103.7(b)(1)(i)(Y), (Z).
I-600A/I-600 Supplement 3, Request for Action on Approved Form I-600A/I-600	Filed in order to obtain a first extension of the approval of the Form I-600A or to obtain a first time change of		8 CFR 106.2(a)(23)(i)(A)	Previous 8 CFR 103.7(b)(1)(i)(Y), (Z).

⁶⁹ If more than one Form I-600 is filed during the Form I-600A approval period on behalf of beneficiary birth siblings, no additional fee is required.

Form⁶⁸	Eligibility Category	Reason for Filing (if applicable)	Final Rule Regulation section	Statutory or Regulatory Authority if applicable
	non-Hague Adoption Convention country during the Form I-600A approval period			
I-765, Application for Employment Authorization	Refugee	Initial EAD	8 CFR 106.2(a)(32)(ii)(B)	Policy
	Paroled as refugee	Initial EAD	8 CFR 106.2(a)(32)(ii)(B)	Policy
	Asylee	Initial EAD	8 CFR 106.2(a)(32)(ii)(C)	Policy
	N-8 or N-9 nonimmigrant	Initial EAD	8 CFR 106.2(a)(32)(ii)(G)	8 CFR 106.3(e)(5) - Agreement between the U.S. government and another nation or nations
	Victim of severe form of trafficking (T-1 nonimmigrant)	Initial EAD	8 CFR 106.2(a)(32)(ii)(D)	Policy based on INA section 245(l)(7)
	Victim of qualifying criminal activity (U-1 nonimmigrant)	Initial EAD	8 CFR 106.2(a)(32)(ii)(E)	Policy based on INA section 245(l)(7)
	Dependent of certain government and international organizations, or NATO personnel	Initial EAD	8 CFR 106.2(a)(32)(ii)(F)	Based on 106.3(e)(5) - An agreement between the U.S. government and another nation or nations
		Renewal EAD Replacement EAD	8 CFR 106.2(a)(32)(iv)(C)	
	Taiwanese dependent of Taipei Economic and Cultural Representative Office TECRO E-1 employees	Initial EAD Renewal EAD Replacement EAD	N/A	8 CFR 106.3(e)(5) - An agreement between the U.S. government and another nation or nations
VAWA Self-Petitioners as defined in section	Initial EAD	8 CFR 106.2(a)(32)(ii)(I)	Policy based on INA section 245(l)(7)	

Form⁶⁸	Eligibility Category	Reason for Filing (if applicable)	Final Rule Regulation section	Statutory or Regulatory Authority if applicable
	101(a)(51)(D) of the Act (Applicant adjusting under the Cuban Adjustment Act for battered spouses and children (principal) who has a pending adjustment of status application (Form I-485))			
	VAWA Self-Petitioners as defined in section 101(a)(51)(E) of the Act (Applicant adjusting based on dependent status under the Haitian Refugee Immigrant Fairness Act for battered spouses and children (principal) who has a pending adjustment of status application (Form I-485))	Initial EAD	8 CFR 106.2(a)(32)(ii)(I)	Policy based on through INA 245(l)(7)
	VAWA Self-Petitioners as defined in section 101(a)(51)(F) of the Act (Applicant adjusting under the Nicaraguan Adjustment and Central American Relief Act for battered spouses and children (principal) who has a pending	Initial EAD	8 CFR 106.2(a)(32)(ii)(I)	Policy based on INA section 245(l)(7)

Form⁶⁸	Eligibility Category	Reason for Filing (if applicable)	Final Rule Regulation section	Statutory or Regulatory Authority if applicable
	adjustment of status application (Form I-485))			
	Applicant for Special Immigrant Status based on an approved Form I-360 as an Afghan or Iraqi Translator or Interpreter, Iraqi National employed by or on behalf of the U.S. Government, or Afghan National employed by or on behalf of the U.S. government or employed by the International Security Assistance Forces (“ISAF”)	Initial EAD Renewal EAD Replacement EAD	8 CFR 106.2(a)(32)(ii)(J)	Public Law 110–181 (Jan 28, 2008) and Pub. L. 111–8 (Mar. 11, 2009)
	An applicant who filed USCIS Form I-485 on or after July 30, 2007 and before [INSERT EFFECTIVE DATE OF 2018/2019 FEE RULE] and paid the Form I-485 filing fee.	Initial EAD Renewal EAD Replacement EAD	8 CFR 106.2(a)(32)(ii)(A)	Required by regulations in effect when form was filed
	Principal VAWA Self-Petitioners who have approved petitions pursuant to section 204(a) of the Act	Initial EAD	8 CFR 106.2(a)(32)(ii)(H)	Policy based on INA section 245(l)(7)
	Any current Adjustment of Status or Registry applicant filed for adjustment of	Initial EAD Renewal EAD	8 CFR 106.2(a)(32)(iv)(A)	Required by regulations in effect when form was filed

Form⁶⁸	Eligibility Category	Reason for Filing (if applicable)	Final Rule Regulation section	Statutory or Regulatory Authority if applicable
	status on or after July 30, 2007, and before [INSERT EFFECTIVE DATE OF 2018/2019 FEE RULE] and paid the appropriate Form I-485 filing fee.	Replacement EAD		
	Request for replacement Employment Authorization Document based on USCIS error	Replacement EAD	8 CFR 106.2(a)(32)(iii)	8 CFR 106.3(e)(6)
I-765V, Application for Employment Authorization for Abused Nonimmigrant Spouse	Any applicant	N/A	8 CFR 106.2(a)(32)(v)	Policy based on INA section 245(l)(7)
I-800, Petition to Classify Convention Adoptee as an Immediate Relative ⁷⁰	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 Form I-800A approval period.	Initial Filing	8 CFR 106.2(a)(33)(i)	8 CFR 103.7(b)(1)(i)(JJ), (LL).
Form I-800A Supplement 3, Request for Action on Approved Form I-800A	Filed in order to obtain a first extension of the approval of the Form I-800A or to obtain a first time change of Hague Adoption Convention country during	N/A	8 CFR 106.2(a)(35)(i)(A)	8 CFR 103.7(b)(1)(i)(JJ)(1)

⁷⁰ No additional fee for a Form I-800 is required when filing for children who are birth siblings.

Form⁶⁸	Eligibility Category	Reason for Filing (if applicable)	Final Rule Regulation section	Statutory or Regulatory Authority if applicable
	the Form I-800A approval period			
I-821, Application for Temporary Protected Status ⁷¹	Any applicant	Re-registration	8 CFR 106.2(a)	INA section 245(l)(7)
I-821D, Consideration of Deferred Action for Childhood Arrivals	Any requestor		8 CFR 106.2(a)(38)	Policy decision based on <i>DHS et al v. Regents of the Univ. of Cal. et al</i> , No. 18-587 (S.Ct. June 18, 2010).
I-914, Application for T Nonimmigrant Status	Any applicant	N/A	8 CFR 106.2(a)(45)	Policy but based on INA section 245(l)(7)
I-918, Petition for U Nonimmigrant Status	Any applicant	N/A	8 CFR 106.2(a)(46)	Policy but based on INA section 245(l)(7)
N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)	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	N/A	8 CFR 106.2(b)(2)	See INA secs. 328(b)(4), 329(b)(4).
N-400, Application for Naturalization	An applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service	N/A	8 CFR 106.2(b)(3)	See INA secs. 328(b)(4), 329(b)(4).
N-565, Application for Replacement Naturalization/Citizenship Document	Application is submitted under 8 CFR 338.5(a) or 343a.1 to request correction of a certificate that contains an error.	N/A	8 CFR 106.2(b)(5)(ii)	Policy based on 8 CFR 106.3(e)(6)
Form N-600, Application for	Member or veteran of any branch of the	N/A	8 CFR 106.2(b)(6)	Based on National

⁷¹ Re-registration applicants must still pay the biometric services fee.

Form⁶⁸	Eligibility Category	Reason for Filing (if applicable)	Final Rule Regulation section	Statutory or Regulatory Authority if applicable
Certificate of Citizenship	U.S. Armed Forces			Defense Authorization provisions
Other - Claimant under section 289 of the Act	claimant	N/A	8 CFR 106.2(c)(9)	INA 289

1. EAD (Form I-765) Exemption

Comment: A commenter stated that DHS should not charge a fee for applications for employment authorization for individuals granted withholding of removal, indicating that it violates United States treaty obligations under Article 17 of the Refugee Convention. Individuals who have been granted withholding of removal have been found by an immigration judge to meet the legal definition of a refugee, and are authorized to remain lawfully in the United States for as long as that status continues, citing to INA section 241(b)(3), 8 U.S.C. 1231(b)(3); 8 C.F.R. 1208.16, 1208.24. The commenter indicated that the U.S. Supreme Court has recognized that withholding of removal is the mechanism by which the United States implements its obligation under Article 33 of the Refugee Convention to ensure that refugees are not returned to a place where they will face persecution, citing to *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440-41 (1987). The commenter wrote that just as much as asylees, individuals granted withholding of removal have a right, under Article 17(1) of the Refugee Convention, to obtain authorization to work on the most favorable terms that the United States allows to nationals of a foreign country. The commenter also indicated that Australia only charges the equivalent of 25 U.S. dollars – half of what DHS proposes to charge for asylum applications.

Another commenter said the imposition of a fee for work authorization for those individuals who have been granted withholding of removal is in conflict with the U.S. legal obligations. The commenter said such individuals have an urgent, recognized humanitarian need to live and work in the United States, and therefore, USCIS should continue its historic practice of exempting these individuals from work authorization fees.

Response: DHS is continuing to provide a fee exemption for the initial Form I-765, Application for Employment Authorization, for individuals who were granted asylum (asylees) or who were admitted as refugees, consistent with Article 17(1) of the 1951 Convention relating to the Status of Refugees (as incorporated in the 1967 Protocol relating to the Status of Refugees). *See* 84 FR 62302; 8 CFR 106.2(a)(32)(ii)(B). Consistent with past practice, asylees and refugees submitting a Form I-765 for EAD renewals will generally be required to pay the relevant fee. *See* 8 CFR 106.2(a)(32).

However, DHS is not providing a fee exemption for initial requests for an EAD for individuals granted withholding of removal. *See* 84 FR 62301. Fees associated with access to protection and work authorization do not jeopardize United States compliance with its non-refoulement obligations under Article 33 of the 1951 Refugee Convention. The United States ensures compliance with non-refoulement obligations not through the asylum process, but through the withholding of removal provisions, currently codified at section 241(b)(3) of the INA. *See INS v. Stevic*, 467 U.S. 407 (1984). USCIS uses the Form I-589 solely to adjudicate affirmative applications for asylum. It is immigration judges, within the Department of Justice, who evaluate withholding of removal claims in the context of removal proceedings before them. The asylum process “does not correspond to Article 33 of the 1951 Convention, but instead corresponds to

Article 34” of the 1951 Refugee Convention, which provides that party states “shall as far as possible facilitate the assimilation and naturalization of refugees.” *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 441 (1987) (quotation marks omitted). As the Supreme Court has recognized, Article 34 is “precatory” and “does not require [an] implementing authority actually to grant asylum to all those who are eligible.” *Id.* Further, although the United States is a party to the 1967 Refugee Protocol, which incorporates both Articles 33 and 34 of the 1951 Refugee Convention, the Protocol is not self-executing. *See, e.g., Stevic*, at 428 n.22. It is the withholding statute at INA section 241(b)(3) and the asylum statute at INA section 208 that, respectively, constitute the U.S. implementation of these treaty obligations. Nothing in either of these two provisions precludes the imposition of a filing fee for asylum applications or work authorization for those granted withholding of removal. Imposition of asylum application and work authorization filing fees are fully consistent with United States domestic implementing law and Article 17 of the 1951 Refugee Convention, which relates to refugees engaging in employment. *See Weinberger v. Rossi*, 456 U.S. 25, 34 (1982) (noting the general presumption that United States law conforms to U.S. international treaty obligations). DHS has further clarified the immigrant categories eligible for fee exemptions and clarified which renewal and replacement EAD are eligible for fee exemptions. *See new 106.2(a)(32)*.

2. TPS

Comment: Another commenter stated that fee exemption limitations would be especially harmful to TPS applicants. The commenter added that USCIS is planning to charge TPS applicants a separate biometric service fee, even though the proposal bundles that cost for

every other category of benefit applicant. The commenter concluded by saying TPS applicants would be required to pay \$570 to obtain TPS protections and begin to earn an income, which is unaffordable.

Response: In this final rule, DHS removes the Form I-765 fee exemption in 8 CFR 244.6(b) for TPS if the individual is an initial TPS registrant and is under 14 years of age or over 65 years of age, and DHS establishes a biometric services fee of \$30 for TPS applicants and re-registrants. As we stated in the NPRM, DHS is removing the fee exemption because application fees from other form types have always been used to fund the costs of processing fee-exempt filings. Continuing to exempt these populations from paying associated fees would result in the costs of their requests being borne by the other proposed fees. Thus, DHS determined that initial TPS registrants under 14 years of age or over 65 years of age should pay for their own EAD.

The biometric services fee that TPS applicants and re-registrants must pay is changed from \$85 to \$30, a reduction of \$55 per filing. This \$30 fee, which will be required regardless of age, reflects the cost of providing biometric services to TPS applicants and re-registrants. *See* new 8 CFR 244.17(a). This biometric services fee will partially offset the increase in the fee or the removal of the fee exemption for Form I-765, Application for Employment authorization, so that the total cost of applying for Temporary Protected Status and requesting employment authorization for those who would not have been exempt from the Form I-765 fee is increasing from \$545⁷² to \$630 for initial TPS applicants.⁷³ The cost of re-registering for TPS and requesting

⁷² Total of \$545 equals \$50 for Form I-821 plus \$85 biometric services fee plus \$410 for Form I-765.

⁷³ Total of \$630 equals \$50 for Form I-821 plus \$30 biometric services fee plus \$550 for Form I-765.

employment authorization will increase from \$495⁷⁴ to \$580.⁷⁵ DHS notes that TPS applicants and re-registrants may request fee waivers. *See* 8 CFR 106.3.

The commenter correctly noted that DHS did not incorporate the cost of biometrics into the cost of Form I-821, Application for Temporary Protected Status. In this final rule, DHS incorporates the cost of providing biometric services into the underlying fee for most applications and petitions. However, the maximum fee for Form I-821, Application for Temporary Protected Status is set in legislation at \$50 for initial TPS applicants and \$0 for re-registrants. *See* INA section 244a(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B). Therefore, DHS is not able to increase the fee for Form I-821 and cannot incorporate the cost of biometrics into the form fee. Thus, DHS maintains a separate biometric services fee for TPS registrants and re-registrants and requires the biometric services fee for re-registrants under age 14 to recover the full cost of providing such services. New 8 CFR 106.3(a)(37)(iii) and 244.17(a).

DHS declines to make changes in this final rule based on this comment. DHS also notes that 8 CFR 244.6(b) is updated to be consistent with new 8 CFR 106.2 and 106.3 in relation to the Form I-765 fees for TPS.

G. Comments on Specific Fees

1. Fees for Online Filing

Comment: A few commenters suggested that, rather than just raising the fees, USCIS should focus on processing times and becoming more efficient, stating that the process is “severely paper intensive” and could benefit from a more streamlined electronic process.

⁷⁴ Total of \$495 equals \$85 biometric services fee plus \$410 for Form I-765.

⁷⁵ Total of \$580 equals \$30 biometric services fee plus \$550 for Form I-765.

One commenter cited a 2005 report from DHS Office of the Inspector General (OIG) which found that USCIS information technology (IT) systems were primarily paper-based and duplicative, and that USCIS' ability to process immigration benefits was inefficient. Another commenter stated that USCIS has done little to shift to digital applications despite prior fee hikes. One commenter said paper filing is extremely laborious for petitioners, and that many of the concerns that led USCIS to propose higher fees and beneficiary limits could be solved by implementing electronic filing. Another commenter outlined the benefits of moving to electronic process, including cost savings and the ability for "essential workers to arrive on time." One commenter stated that USCIS has failed to deliver promised improvements to its online filing abilities and other modernization initiatives that would result in more streamlined operations. The same commenter stated that in 2019, legal service providers still reported many challenges in utilizing USCIS online filing systems, and that modernization continues to be pushed on to USCIS customers even to the detriment of customer service. A commenter wrote that they were concerned about USCIS moving to online filing based on their experiences with the Department of State's National Visa center; they were frustrated by software glitches and processing issues (e.g., lost documents, erroneous file rejection, lack of information after lengthy waits on hold) which the commenter said should be addressed before fees are raised. One commenter stated if USCIS wants to save money, it should stop requiring an endless flow of paperwork. The commenter provided a list of forms that businesses in the CNMI must fill out when new employees are hired and stated that the redundancy wasted both their and USCIS' time and resources. The commenter referred to a bill from Congressman Sablan that would give long-term CW Visa

personnel permanent status and stated their hope that there will not be constant paperwork required for those requests.

Response: On March 13, 2017, the President signed Executive Order 13781, entitled “Comprehensive Plan for Reorganizing the Executive Branch.”⁷⁶ The order instructed the Director of OMB to propose a plan to improve the efficiency, effectiveness, and accountability of the Executive Branch. The resulting June 2018 OMB Report, “Delivering Government Solutions in the 21st Century” recognized that an overarching source of government inefficiency is the outdated reliance on paper-based processes and prioritized the transition of Federal agencies’ business processes and recordkeeping to a fully electronic environment.⁷⁷ The report noted that Federal agencies collectively spend billions of dollars on paper management, including the processing, moving, and maintaining of large volumes of paper records and highlighted the key importance of data, accountability, and transparency.⁷⁸ Even more significantly, it cites USCIS’ electronic processing efforts as an example of an agency initiative that aligns with the prioritized reforms.⁷⁹

DHS understands that, while USCIS has embraced technology in adjudication and recordkeeping, it remains bound to the significant administrative and operational burdens associated with paper submissions. The intake, storage, and handling of paper require tremendous operational resources, and the information recorded on paper cannot be as

⁷⁶ E.O. 13781, 82 FR 13959 (Mar 16, 2017).

⁷⁷ OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations* 18 (2018), available at <https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf>

⁷⁸ *Id.* at 100.

⁷⁹ *Id.* at 101-02.

effectively standardized or used for fraud and national security, information sharing, and system integration purposes. Technological advances have allowed USCIS to develop accessible, digital alternatives to traditional paper methods for handling requests. Every submission completed online rather than through paper provides direct and immediate cost savings and operational efficiencies to both USCIS and filers—benefits that will accrue throughout the immigration lifecycle of the individual and with the broader use of online filing and e-processing.

As various online functions are developed, USCIS makes them available to the public, providing the option of engaging with USCIS either online or on paper. DHS recognizes that, if presented with optional new technology, people adopt new practices at varying rates.⁸⁰ In this case, the complexity of the immigration benefit request system may exacerbate the tendency toward the status quo. Those familiar with paper-based forms and interactions may feel there is no reason to change a method that has worked for them.

DHS agrees that transitioning to e-processing for benefit requests is an important step in improving the service and stewardship of USCIS and to promote the objectives of the Government Paperwork Elimination Act, E-Government Act, and E.O.

13781.⁸¹ Therefore, and in response to the public comments, USCIS has calculated the

⁸⁰ Brian Kennedy & Cary Funk, Pew Research Group, *28 percent of Americans are 'strong' early adopters of technology* (July 12, 2016), available at <http://www.pewresearch.org/fact-tank/2016/07/12/28-of-americans-are-strong-early-adopters-of-technology/>; Charlie Wells, The Wall Street Journal, *Forget Early Adopters: These People are Happy to Be Late* (Jan. 26, 2016), available at <https://www.wsj.com/articles/forget-early-adopters-these-people-are-happy-to-be-late-1453827437>.

⁸¹ See President's Management Council, Executive Office of the President, *President's Management Agenda 7* (2018), available at <https://www.whitehouse.gov/wp-content/uploads/2018/04/ThePresidentsManagementAgenda.pdf>.

amount of upfront cost savings that it recognizes from an online versus paper filing in the current environment and determined that it saves approximately \$7 per submission. To encourage the shift of those capable of filing online into the electronic channel and increase the usage of USCIS e-processing for those forms for which online filing is currently available, DHS will set the fees for online filing at an amount \$10 lower than the fees established in this final rule for filing that form on paper. New 8 CFR 106.3(d).⁸² See Table 5: Fees for Online Filing for a comparison of paper and online filing fees.

Table 5: Fees for Online Filing

Immigration Benefit Request	Online Filing Fee	Paper Filing Fee	Difference
I-90 Application to Replace Permanent Resident Card	\$405	\$415	\$10
I-130 Petition for Alien Relative	\$550	\$560	\$10
I-539 Application to Extend/Change Nonimmigrant Status	\$390	\$400	\$10
N-336 Request for Hearing on a Decision in Naturalization Proceedings	\$1,725	\$1,735	\$10
N-400 Application for Naturalization	\$1,160	\$ 1,170	\$10
N-565 Application for Replacement Naturalization/Citizenship Document	\$535	\$ 545	\$10
N-600 Application for Certificate of Citizenship	\$990	\$1,000	\$10
N-600K Application for Citizenship and Issuance of Certificate	\$ 935	\$ 945	\$10
G-1041 Genealogy Index Search Request	\$160	\$170	\$10
G-1041A Genealogy Records Request	\$255	\$265	\$10

⁸² U.S. Customs and Border Protection accepts USCIS Forms I-192 and I-212 online. Available at <https://www.cbp.gov/travel/international-visitors/e-safe> (last viewed Mar. 27, 2020). However, USCIS has no data on the cost of online filing with CBP. Therefore, this \$10 online fee reduction applies to USCIS forms submitted to USCIS only.

DHS adjusts USCIS' fee schedule in this final rule to ensure it recovers the estimated full cost of providing immigration adjudication and naturalization services. USCIS' cost baseline reflected in this final rule accounts for the costs of intake and adjudication of applications received online and on paper. To provide for full cost recovery, DHS adjusts the fees for filing applications on paper when online filing is available to be higher than those fees would be in the absence of the lower fees for online filing. The increased revenue anticipated from the higher fees for those forms when filed on paper will offset the reductions in revenue anticipated from the lower fees for online filing. USCIS will further evaluate the effects of these changes in future biennial fee reviews.

As for the comments directed at the Department of State (DOS) online processing, USCIS has no control over the efficacy of DOS systems. DHS may learn from the DOS issues, however, and will, of course, work to minimize any glitches.

Comment: Some commenters wrote that switching to online filing would create a barrier to immigrants without access to technology, and the option should exist to choose between e-filing and paper submissions.

Response: USCIS does not require that any immigration benefit request be filed online. Filing on paper remains a valid option. However, this final rule specifies that forms currently eligible for online filing will be \$10 more if filed on paper.

Comment: A few commenters recommended USCIS maintain the current fees for processing Form I-129 petitions for H-2A beneficiaries until the online Electronic Immigration System (ELIS) can be established and USCIS can conduct a robust analysis

to more accurately determine an appropriate fee schedule consistent with Federal guidelines for user fees.

Response: USCIS must recover its full cost of providing immigration adjudication and naturalization services. DHS adjusts the fees for forms that are currently eligible for online filing to be \$10 lower if filed online than the fee for the same forms filed on paper to reflect the known cost-savings to USCIS of receiving an application electronically. DHS declines to delay adjusting the fee for Form I-129H2A because USCIS must recover its full costs.

DHS does not provide for a lower online filing fee for Form I-129H2A in this final rule. As described above, DHS is increasing the fees for filing an application on paper above the level it would otherwise establish when the application is also eligible for online filing. This will provide for full cost recovery by USCIS. However, because online filing is not yet available for Form I-129H2A, DHS cannot increase the fee for a paper filing to offset the anticipated reduction in revenue from a lower fee for online filing and still provide for full cost recovery. If DHS raised the fee for filing Form I-129H2A on paper in anticipation of future online filing and a lower fee for filing online, USCIS would recover revenue in excess of its estimated full cost of adjudication until such time as online filing and a lower online filing fee are available. Thus, DHS cannot establish lower fees for online filing for Form I-129H2A, or any other applications for which online filing is not yet available, and still provide for full cost recovery. DHS may consider a lower fee for Form I-129H2A if filed online in future rulemakings if Form I-129H2A is available for online filing.

2. Biometric Services Fee

Comment: One commenter questioned why USCIS would forego approximately \$220,884,315 in biometric services fee revenue. The commenter added that the NPRM allows for biometric services fees for TPS applicants and those filing EOIR forms; therefore, there should continue to be a fee for this service. The commenter concluded that if DHS implements this proposal, it will be confusing for applicants, attorneys, and government staff to implement and it will lead to delays in proper filing of applications and petitions. The same commenter recommended that USCIS use the biometric services fee to supplement fraud investigations or consider raising this fee in order to provide additional revenue.

Response: The commenter misunderstands DHS's approach to recovering the estimated full cost of providing biometric services. Although DHS eliminates the separate biometrics service fee of \$85 for many application types in this final rule, it establishes fees for most forms to reflect the estimated full cost of adjudication, including the cost of biometric services that are typically associated with that form. Thus, DHS will continue to recover the cost of providing biometric services, but it will do so by adjusting form fees to reflect the total cost of an adjudication, including providing biometric services. DHS will not forego any revenue associated with the biometric services fee because of this change.

DHS believes that this change in its method of recovering the cost of biometric services will provide benefits to applicants and USCIS. Most applicants and petitioners will no longer need to determine if they must submit a separate biometric services fee in addition to the fee for their request. DHS believes that this will reduce confusion among

requestors and decrease rejections for incorrect fees. Fewer rejections for incorrect fees should increase administrative efficiency for USCIS. As provided in new 8 CFR 103.17, DHS is also establishing a separate biometric services fee for additional requests for which it could not include the costs to USCIS of administering biometric services in the ABC model used for the NPRM. First, DHS codified revised 8 CFR 208.7(a)(1)(i), which requires that biometrics be submitted for an application for employment authorization from an applicant for asylum or to renew such an EAD. See Asylum Application, Interview, and Employment Authorization for Applicants, 85 FR 38532, 38626 (June 26, 2020); new 8 CFR 208.7(a)(1)(i). That rule takes effect on August 25, 2020. Second, on February 19, 2020, USCIS implemented the Commonwealth of the Northern Mariana Islands (CNMI) long-term resident status program. It was created by the Northern Mariana Islands Long-Term Legal Residents Relief Act. 48 U.S.C. 1806(e)(6).⁸³

Applicants must file Form I-955, Application for CNMI Long-Term Resident Status, together with Form I-765, Application for Employment Authorization, by August 17, 2020. When the CNMI long-term resident status program was established, USCIS required that a biometric services fee be submitted with the Form I-765.⁸⁴ Because the CNMI long-term resident program and fee NPRM were under development simultaneously, DHS was unable to include the cost of biometric services for CNMI

⁸³ See, CNMI Long-Term Resident Status, available at <https://www.uscis.gov/working-united-states/cnmi-long-term-resident-status> (last reviewed/updated Feb. 19, 2020).

⁸⁴ See USCIS Form I-765, Application for Employment Authorization, page 23 (stating, “Special Instructions for Applicants for Commonwealth of the Northern Mariana Islands (CNMI) Long-Term Resident Status--(c)(37). All applicants under this category must pay the biometric services fee of \$85. The biometric services fee and the filing fee for the I-765 application cannot be waived.”). Available at <https://www.uscis.gov/i-765>.

long-term resident program in the ABC model for the NPRM. Therefore, the fee for Form I-765 does not include the costs for that service. DHS proposed new 8 CFR 103.17 in contemplation of the need for a separate fee in the future if biometric services was required by regulations or policy, but where the costs had not been considered in setting the benefit request fee. As a result, and consistent with the actions taken for TPS, EOIR forms, and in accordance with new 8 CFR 103.17, DHS requires that CNMI long-term resident applicants and applicants for asylum who are applying for employment authorization submit a \$30 biometric services fee with their Form I-765. 8 CFR 106.2(a)(32)(i)(A), (B).

Comment: One commenter opposed a separate biometric services fee for TPS applicants, stating that USCIS is breaching Congress's \$50 cap on TPS filing by imposing a separate biometric fee.

Response: The commenter is correct in stating that the fee for Form I-821, Application for Temporary Protected Status, is statutorily limited to \$50 for initial TPS applicants and \$0 for re-registrants. *See* INA section 244a(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B). However, the commenter is incorrect in stating that charging TPS applicants and re-registrants a separate biometric services fee constitutes a breach of any statute. DHS has specific statutory authority to collect "fees for fingerprinting services, biometric services, and other necessary services" when administering the TPS program. *See* 8 U.S.C. 1254b.

Before this final rule, all TPS applicants and re-registrants aged 14 years and older were subject to the \$85 biometric services fee, in addition to any applicable fees for Forms I-821 and I-765. Therefore, adjusting the biometric services fee for TPS applicants and re-registrants to \$30 represents a \$55 reduction in the biometric services

fee that these individuals may pay. DHS also notes that TPS applicants and re-registrants may apply for fee waivers based on eligibility criteria established by USCIS.

In this final rule, DHS removes the Form I-765 fee exemption in 8 CFR 244.6(b) for TPS if the individual is an initial TPS registrant and is under 14 years of age or over 65 years of age, and DHS establishes a biometric services fee of \$30 for TPS applicants and re-registrants. As we stated in the NPRM, DHS is removing the fee exemption because fees from other form types have always been used to fund the costs of processing fee-exempt filings. Continuing to exempt these populations from paying associated fees would result in the costs of their requests being borne by the other proposed fees. Thus, DHS determined that initial TPS registrants under 14 years of age or over 65 years of age should pay their own Form I-765 fee and biometric services fee. The biometric services fee that TPS applicants and re-registrants must pay is changed from \$85 to \$30, a reduction of \$55 per filing. This \$30 fee, which will be required regardless of age, reflects the cost of providing biometric services to TPS applicants and re-registrants. *See* new 8 CFR 244.17(a).

DHS declines to make changes in this final rule in response to the comment.

Comment: A few commenters stated that including a biometrics screening and fee for children under 14 is unnecessary and that it is inappropriate to charge a single fee for Form I-485 that includes the cost of biometrics to both adults and children under 14 years of age who do not submit biometric information. A few commenters stated that imposing a biometric services fee where USCIS does not capture biometric data would deter families from entering the United States as a unit.

Response: As explained previously, DHS will expand the collection of biometric information for TPS re-registrants under the age of 14, remove the biometrics fee exemption from 8 CFR 244.17(a), and revise the form instructions for Form I-821 to require a \$30 biometrics service fee from every TPS registrant regardless of age. *See* 84 FR 62303 and 62368. This change assigns the costs of TPS applications and re-registrations to those who benefit from them. DHS uses biometrics beyond criminal history background checks to include identity management and verification in the immigration lifecycle. Therefore, biometrics will be collected without age limitation, although it may be waived at DHS's discretion.

DHS also acknowledges that this final rule increases the fees for children under 14 years old who file an I-485 concurrently with a parent filing an I-485 by eliminating the reduced I-485 child fee. This final rule establishes the fee for Form I-485, Application to Register Permanent Residence or Adjust Status, at \$1,130 for all applicants.

The commenters correctly wrote that the Form I-485 fee established in this final rule includes the average cost of biometric services associated with processing those applications. The inclusion of biometric services reduces the average cost of Form I-485 and the final fee established in this final rule. Processing a given application may be more or less costly than processing another application of the same type because of the evidence and other factors that adjudicators may consider. Therefore, DHS establishes its fees, unless otherwise noted, at a level sufficient to recover the estimated full cost of adjudication. DHS calculated the Form I-485 fee to reflect the full cost of adjudication, including the average cost of biometric services associated with those applications.

DHS declines to make changes in this final rule in response to these comments.

3. Genealogy Fees, Forms G-1041, Genealogy Index Search Request, and G-1041A, Genealogy Records Request

Comment: Numerous commenters generally opposed increasing fees for genealogy search and records requests. Other commenters, many identifying themselves as professional genealogists and/or individual family genealogists, opposed the proposed increased fees, stating that they oppose the fee increase for the following reasons:

- No other government record or research request fees are close to the proposed increased costs.
- The 500 percent fee hike is unjustified, especially after fees tripled 3 years ago.
- The NPRM did not present data or specifics to substantiate the costs. DHS cannot claim such fees are necessary to cover costs when USCIS did not provide cost analysis to support the claim. The proposed fees for G-1041 and G-1041A are arbitrary and capricious.
- The nature of genealogical research often requires broad investigation, requiring several search and record requests.

Some commenters stated that the reasoning presented in the NPRM does not make sense, and expressed doubt that the cost of providing these services could possibly have risen enough in 3 short years to justify an increase of this magnitude, including:

- Workload volume submitted in Tables 1 and 5 are the same and do not indicate any increase in workload after the increase in fee schedules;
- Table 4 shows a combined total increase of only 7,200 requests in the last three years;

- Table 24 shows how costs will be *reduced* to the agency by decreasing the administrative burden through electronic versions of records;
- The proposal provides no real basis of comparison of real costs;
- DHS does not currently have enough data to estimate the effects for small entities; and
- The expected use in the next fiscal year shows almost no impact to USCIS.

Response: DHS recognizes commenters' concerns regarding the scope of the fee increases for Forms G-1041 and G-1041A in the NPRM. The proposed increase reflected changes in USCIS' methodology for estimating the costs of the genealogy program to improve the accuracy of its estimates. In response to public comments on the proposed genealogy fee increases, USCIS further refined the methodology used to estimate genealogy program costs. Based on the refined methodology, this final rule establishes a fee for Form G-1041, Genealogy Index Search Request, when filed online as \$160 and \$170 when filed on paper. Using the same methodology refinement, DHS establishes a fee for Form G-1041A, Genealogy Records Request, when filed online as \$255 and \$265 when filed by paper.

INA section 1356(t)(1) authorizes DHS to set the genealogy fee for providing genealogy research and information services at a level that will ensure the recovery of the costs of providing genealogy services separate from other adjudication and naturalization service's fees. USCIS must estimate the costs of the genealogy program because it does not have a discrete genealogy program operating budget. Nor does USCIS discretely identify and track genealogy program expenditures. The same office that researches genealogy requests, the National Records Center, also performs other functions, such as

FOIA operations, retrieving, storing, and moving files. In the FY 2016/2017 fee rule, DHS estimated the costs of the genealogy program indirectly using projected volumes and other information. The projected costs included a portion of Lockbox costs, genealogy contracts, and other costs related to the division that handles genealogy, FOIA, and similar USCIS workloads. *See* 81 FR 26919. This estimation methodology underestimated the total cost to USCIS of processing genealogy requests by not fully recognizing costs associated with the staff required to process genealogical requests. Therefore, other fees have been funding a portion of the costs of the genealogy program, and DHS is correcting that in this rule.

In FY 2018, USCIS incorporated the genealogy program into the National Records Center (NRC). This change enabled USCIS to revise its cost estimation methodology to incorporate a proportional share of the NRC's operating costs based on the staffing devoted to the genealogy program. DHS estimated the costs of the genealogy program using this methodology for the first time in its FY 2019/2020 fee review and subsequently proposed to base the fees for Forms G-1041 and G-1041A on these revised cost estimates. DHS did not apply cost reallocation to the fees for Forms G-1041 and G-1041A. DHS believes that these revised cost estimates and fees reflect more accurately the true costs to USCIS of operating the genealogy program than the previous indirect estimation methodology.

As requested by public comments received on the NPRM, USCIS examined the proposed genealogy fees, and decided to further refine its cost estimation for the genealogy program. For this final rule, USCIS reviewed the costs attributable to the NRC to identify those that directly support the genealogy program. USCIS determined

that some NRC costs do not directly support the genealogy program and are not attributable to Forms G-1041 and G-1041A. USCIS removed the non-attributable costs to the genealogy program from its cost estimates for Forms G-1041 and G-1041A. USCIS maintained in its genealogy program cost estimates a proportional share of NRC overhead costs based on the number of staff at the NRC supporting the genealogy program. Thus, USCIS reduced its estimate of the genealogy program's total cost by \$0.9 million. In this final rule, DHS establishes the fee for Form G-1041, Genealogy Index Search Request, when filed online as \$160, the fee for a paper filed G-1041 as \$170, the fee for Form G-1041A, Genealogy Records Request, when filed online as \$255, and the fee for a paper filed G-1041A as \$265 to reflect its revised, lower cost estimates directly attributable to the USCIS genealogy program. To the extent that DHS will no longer recover a full proportionate share of the NRC's costs via fees for Forms G-1041 and G-1041A, USCIS will recover those costs through the fees assessed for other immigration benefit requests.

DHS appreciates the public's feedback on the USCIS genealogy program and has implemented changes in this final rule in response to these comments.

Comment: Some commenters claimed that taxpayers have already paid to acquire, manage, and store these records. Taxpayers already support the government substantially and should not be charged for access to records.

Response: DHS understands the commenters' concerns regarding the potential for duplicative payment. However, USCIS does not receive taxpayer funds for the genealogy program, nor do taxes pay for the acquisition, management, or storage of

records in USCIS' custody. Therefore, DHS must recover the estimated full cost of the genealogy program, including managing and storing records, via USCIS' fee schedule.

When DHS receives a request for genealogical records, it must identify whether USCIS possesses relevant records, retrieve, and review them for release where appropriate. These activities incur costs beyond the general costs of record management and storage that DHS incorporates into other immigration benefit request fees via the Records Management activity. USCIS estimates the costs of the genealogy program via the Research Genealogy activity, as shown in the Cost Objects section of the supporting documentation that accompanies this final rule. Therefore, DHS establishes fees for Forms G-1041 and G-1041A to recover these additional costs. DHS has explicit authority to recover the costs of providing genealogical services via genealogy fees. *See* 8 U.S.C. 1356(t).

DHS declines to make changes in this final rule in response to these comments.

Comment: Some commenters opposing the fee increase focused on income and ability-to-pay, such as the following:

- The increased fees would be far beyond the financial means of most average Americans and make it impossible for genealogists and families to make and pay for requests. Only the rich and wealthiest would be able to access these records.
- Many individuals doing genealogy research tend to be older and on limited income.
- A few commenters said that 2018 data from the Federal Reserve Board indicated that the proposed increased fees would place access to Federal public records beyond the financial capabilities of an estimated 40 percent of Americans. Many

commenters stated that records should be easily obtainable to all and not used to generate revenue for the government.

Response: DHS recognizes the concerns of commenters and acknowledges the substantial increase in the fees for Forms G-1041 and G-1041A. In response, USCIS refined its cost estimation methodology for the genealogy program as described above. In this final rule, DHS establishes the fee for Form G-1041, Genealogy Index Search Request, when filed online as \$160, the fee for a paper filed G-1041 as \$170, the fee for Form G-1041A, Genealogy Records Request, when filed online as \$255, and the fee for a paper filed Form G-1041A as \$265 to reflect its revised, lower cost estimates for operating the USCIS genealogy program.

In this final fee rule, DHS emphasizes the beneficiary-pays principle. Consistent with its approach to most other fees addressed in this final rule, DHS establishes the fees for Forms G-1041 and G-1041A at a level that reflects the estimated full cost of providing those services. DHS does not establish these fees to limit access to genealogical records, and they do not augment government tax revenue. DHS declines to require other individuals filing immigration benefit requests to subsidize users of the genealogy program.

Comment: Multiple commenters stated that the proposed fee increases for record requests seems to be a punishment for citizens who want access to ancestors' records. Multiple individuals stated that USCIS would be "holding them hostage" by demanding exorbitant and unjustified fees to access documents on immigration ancestors. The commenters wrote that these records should already be publicly accessible under the law.

Response: DHS rejects the characterization of the proposed fees as a way to punish or hold hostage individuals who seek records related to their ancestors via the USCIS genealogy program. In this final rule, DHS establishes the fees for Forms G-1041 and G-1041A at a level sufficient to recover the estimated full cost of providing access to genealogical records, as provided for by law. *See* INA section 286(t), 8 U.S.C. 1356(t). DHS is not motivated by any other consideration and declines to make changes in this final rule in response to these comments.

Comment: One commenter stated that USCIS most likely has indices of all files in digital form, therefore the time required to type a name into a computer, read the result, and e-mail it to the requester is a matter of minutes and the salary and benefits of the employees do not justify a fee of \$240. A few commenters stated that USCIS should publish the figures for the “actual out-of-pocket costs” of searching indices and providing copies of records found and the estimate of the number of requests likely to be processed so that the public can judge whether the fees are appropriate to the cost of providing the service.

Response: DHS acknowledges that USCIS possesses indices of many different types and series of records. These indices aid USCIS in efficiently identifying records that may be related to a given genealogical request. However, to fulfill genealogical records requests, USCIS incurs costs beyond identifying records that may be relevant to a particular inquiry. In addition to identifying relevant records, USCIS must retrieve the relevant records and manually review them before release to ensure compliance with federal privacy statutes. In addition to these direct costs, USCIS also incurs overhead costs associated with storing and managing the records, including relevant facilities costs. In

this final rule, DHS estimates the total cost, including applicable indirect costs, of completing Form G-1041, Genealogy Index Search Request, to be \$160 when filed online and the total cost of completing a paper Form G-1041, Genealogy Index Search Request, to be \$170. Therefore, DHS establishes the fee for Form G-1041 as \$160 when filed online and a paper filed Form G-1041 as \$170. In this final rule, DHS estimates the total cost, including applicable indirect costs, of completing Form G-1041A, Genealogy Records Request, to be \$255 when filed online and the total cost of completing a paper Form G-1041A, Genealogy Records Request, to be \$265. Therefore, DHS establishes the fee for Form G-1041A as \$255 when filed online and the fee for a paper filed Form G-1041A as \$265.

Comment: Many commenters stated that it was vital to be able to obtain records and family artifacts held in files about their ancestors' immigration to the United States and path to becoming Americans. A commenter stated that the records provide information that genealogists often cannot find in any other extant record. Some commenters said public access and researching genealogy helps educate themselves, their children, and other generations on important parts of immigration history, such as the Chinese Exclusion Act and the Holocaust. Multiple commenters wrote "an informed and educated citizenry is essential for our democracy to continue to prosper." A few commenters said studies show that children perform better in school if they know about their ancestors. A few commenters wrote that genealogy research is an integral part of the Church of Jesus Christ of Latter-day Saints and the proposed increase in fees would be a burden to those of that faith. Some commenters said that Daughters of the American Revolution and Native Americans search records to confirm applications for

memberships. Ancestral history projects research American slaves brought to South Carolina and Virginia. A fee increase would negatively affect legitimate organizations that keep detailed, complete, and accurate records of American history and would forestall efforts to complete the histories of minority citizens. A few commenters stated that USCIS genealogy records contain information no longer found in Europe, where the Nazis destroyed records during World War II.

Response: DHS recognizes the importance of genealogical records and the connections they can provide to immigrant ancestors. In this final rule, DHS establishes the fees for Forms G-1041 and G-1041A at a level sufficient to recover the estimated full cost of providing access to genealogical records, as provided for by law. *See* INA section 286(t), 8 U.S.C. 1356(t). The fees established in this final rule are intended to recover the estimated full cost of providing genealogical record services and are not motivated by any other consideration. DHS declines to make changes in in this final rule in response to these comments.

Comment: Several commenters wrote that the information provided is essential as part of an application process to those pursuing dual citizenship.

Response: DHS recognizes the value of genealogical records to individuals who are pursuing dual citizenship. However, as an agency funded primarily through user fees, USCIS must recover the full cost of the services it provides. Consistent with the beneficiary-pays principle emphasized throughout this final rule, DHS declines to require other immigration benefit requestors to subsidize individuals requesting genealogical services from USCIS. DHS declines to make changes in this final rule in response to these comments.

Comment: A few individuals stated that affordable access to genealogy is important to helping determine genetic medical problems and allowing family members to take proactive precautions that foster improved public health as well as substantial cost-savings by federal and state financial medical services.

Response: DHS recognizes that individuals may value and request genealogical records for many different reasons. However, DHS is not aware of any data demonstrating the monetary value of health information that may be derived from such records. Consistent with the beneficiary-pays principle emphasized throughout this final rule, DHS declines to require other immigration benefit requestors to subsidize individuals requesting genealogical services from USCIS. DHS declines to make changes in this final rule in response to these comments.

Comment: Several commenters stated that the proposed fees are far from advancing the goals of the USCIS Genealogy Program and instead would likely be the demise of the program. Some commenters wrote that the proposed increase in fees would price-out and prevent researchers from accessing records, significantly reducing the number of requests for documents, and essentially closing down USCIS' Genealogy Program. Many commenters stated that the proposed increase in fees appears intentionally designed to put an end to people using the Genealogy Program. Numerous commenters addressed how the hefty charges for the initial research, regardless of whether USCIS identified any records, would be by itself a substantial deterrent to genealogical research.

Response: DHS acknowledges the substantial increase in fees for Forms G-1041 and G-1041A in this final rule. In this final rule, DHS established the fees for Forms G-1041 and G-1041A to recover the estimated full cost to USCIS of providing genealogical

services. In setting these fees, DHS is not motivated by any other consideration. DHS does not intend to discourage individuals from requesting genealogical records, to deter genealogical research, or to eliminate the USCIS genealogy program. DHS declines to make changes in this final rule in response to these comments.

Comment: Many commenters wrote that the proposed change would be in violation of the Freedom of Information Act (FOIA). Some further commented that the proposed fees are inexplicable given that USCIS often directs a majority of requests to the FOIA program for processing. Several commenters questioned how there could be a charge, other than standard FOIA fees, if the information is available via FOIA. Some commenters wrote that a charge of \$240 to simply search an index is unacceptably high compared to standard DHS cost and timeframes for FOIA requests because this fee would equal 6 hours of searching the Master Index, when index searches should usually be able to be completed in an hour or less, undercutting the intent of the FOIA.

Response: There is no conflict between the Freedom of Information Act and DHS' operation of the USCIS genealogical program. Nor is USCIS constrained in establishing fees for its genealogical services to the levels established under FOIA. USCIS formerly processed requests for historical records under USCIS' Freedom of Information Act (FOIA)/Privacy Act (PA) program but the demand for historical records grew dramatically. Because the records were not subject to FOIA exemptions, that process was not the most suitable for genealogy request. *See Establishment of a Genealogy Program*; Proposed rule, 71 FR 20357 – 20368 (April 20, 2006). The genealogy program was established to relieve the FOIA/PA program from burdensome requests that require no FOIA/PA expertise, place requesters and the Genealogy staff in direct communication,

provide a dedicated queue and point of contact for genealogists and other researchers seeking access to historical records, and cover expenses through fees for the program. and, reduce the time to respond to requests. *Id* at 20364. In this final rule, DHS establishes the fees for Forms G-1041 and G-1041A at levels sufficient to recover the estimated full cost of providing access to genealogical records, as provided for by law. *See* INA section 286(t), 8 U.S.C. 1356(t). In this final rule, using the refined methodology described above, DHS estimates the total cost, including applicable indirect costs, of completing Form G-1041, Genealogy Index Search Request, to be \$160 when filed online and the total cost of completing a paper Form G-1041, Genealogy Index Search Request, to be \$170. Therefore, DHS establishes the fee for Form G-1041 as \$160 when filed online and a paper filed Form G-1041 as \$170. In this final rule, DHS estimates the total cost, including applicable indirect costs, of completing Form G-1041A, Genealogy Records Request, to be \$255 when filed online and the total cost of completing a paper Form G-1041A, Genealogy Records Request, to be \$265. Therefore, DHS establishes the fee for Form G-1041A as \$255 when filed online and the fee for a paper filed Form G-1041A as \$265.

DHS appreciates the commenters' concerns regarding differences between the FOIA process and the genealogical index search and records request processes. Before 2017, the USCIS staff who processed FOIA requests also processed some genealogical records requests, particularly records from 1951 or later. However, USCIS moved the genealogical program to the NRC in 2017. Since that time, dedicated USCIS genealogical staff process all genealogical records requests. Commenters are mistaken in stating that the genealogy program sends appropriately filed genealogy requests through

the FOIA process. DHS acknowledges that both FOIA requests and genealogical records requests are subject to review under the Privacy Act of 1974 to ensure that USCIS does not inappropriately release information to third parties. However, USCIS' genealogy program is distinct from the FOIA program and the fees DHS establishes for Forms G-1041 and G-1041A reflects the estimated full cost of only the USCIS genealogy program. DHS declines to make changes in this final rule in response to these comments.

Comment: Numerous commenters stated that USCIS needs to comply with its own retention schedules and send appropriate records to NARA, as required by law. Multiple commenters wrote that requests for documents, such as A-files, visa and registry files, and alien registration forms, should already be at NARA per law and for a minimal cost. Some commenters wrote that NARA could manage records more efficiently, accessed more freely, and reproduced more economically, as preserving and providing access to historical records of the federal government is one of NARA's core missions and areas of expertise. Many commenters requested information on USCIS' plan and timeline to move all the records to NARA for release.

Response: DHS acknowledges that many records in USCIS' possession are due to be transferred to NARA under its existing records retention schedules. USCIS strives to adhere to its records retention schedules and transfer files to NARA expeditiously when records are eligible for transfer. Unfortunately, issues such as incomplete/non-existent file indices or other operational difficulties may inhibit and delay such transfers. USCIS works with NARA to address all such issues and expects to transfer more files to NARA in the near future. DHS agrees that NARA is the appropriate repository for permanently

retained records. DHS declines to make any changes in this final rule in response to these comments.

Comment: Many commenters stated that implementation of increased fees should not occur without careful explanation and discussion of alternatives. Several commenters suggested alternatives, including rolling back or reducing fees for record requests, aligning an increase with inflation rates, charging less for family genealogy, allowing NARA to provide free or much lower cost access to the files, digitizing all documents and allowing access on-line, transferring records to an appropriate repository, and/or limiting USCIS holdings to non-historical records. A commenter suggested that all pre-1948 indices and records be copied to NARA, following a federal government census rule that information can be disclosed after 72 years. A few commenters wrote that encouraging requests via electronic submissions for index searches and documents, as stated in the proposed rule, and digitization of records is worthy, as it should result in lower fees, greater efficiency, and ease of use, not the reverse.

Response: DHS appreciates and agrees with the commenters' reasoning that filing index search requests and records request online increases efficiency and, all else equal, reduces the cost to USCIS of providing the associated services. To reflect these reduced costs, in this final rule, DHS implements a fee of \$160 for Form G-1041, Genealogy Index Search, when filed online and a fee of \$170 for a paper filed Form G-1041. Similarly, DHS implements a fee of \$255 for Form G-1041A, Genealogy Records Request, when filed online and a fee of \$265 for a paper filed Form G-1041A. The difference between the fee for a form filed online and a form filed on paper represents the estimated reduction in cost to USCIS of providing the relevant service.

DHS also appreciates commenters' suggestions to reduce the fees for record requests. As described above, in response to public comments received on its NPRM, USCIS further refined its cost estimation methodology for the genealogy program. These refinements reduced the estimated cost of the USCIS genealogy program by \$0.9 million, leading to a commensurate reduction in the fees for Forms G-1041 and G-1041A from the levels proposed in the NPRM.

DHS evaluated alternatives to increasing the genealogy fees. Unfortunately, alternative approaches such as increasing the fees for Forms G-1041 and G-1041A by the rate of inflation would not enable USCIS to recover the estimated full cost of providing genealogical services. Such an approach would require other immigration benefit requestors to subsidize the USCIS genealogy program. As stated elsewhere, consistent with the beneficiary-pays principle emphasized throughout this final rule, DHS declines to require other immigration benefit requestors to subsidize the USCIS genealogy program.

Comment: A couple of commenters suggested other changes to the proposed fees, including basing the cost on the number of pages and time for staff to prepare the records for transmission as well as using some of the new funds to fix problems that exist with managing records at USCIS (e.g., losing indexes or records, staffing issues). A few commenters wrote that if a search returns no information, then USCIS should not charge a fee or should issue a partial refund.

Response: DHS understands the commenters' suggestions. However, USCIS must recover the cost of its operations through user fees. DHS is setting the fees for Form G-1041 and G-1041A at levels that represent the estimated full cost to USCIS of providing

genealogical services. These fees represent the estimated average cost of completing an index search or a records request. USCIS does not track or differentiate the costs incurred based on the number of pages of documents involved in a request, nor does USCIS track the time each individual genealogy request requires. Charging a la carte fees as suggested would be burdensome to administer because we would need to track the time spent on every request and invoice for payment. That system would not function properly, or efficiently or provide for full cost recovery. DHS declines to adopt the commenters' suggestion to establish the fees for Forms G-1041 and G-1041A using this method.

Furthermore, DHS incurs costs associated with index searches and records requests regardless of whether DHS ultimately identifies relevant records that can be provided to the requestor. Refunding the fee for Form G-1041 and G-1041A that do not result in records or information provided to the requestor would defy the principles of full cost recovery. DHS declines to require other applicants and petitioners to subsidize the cost of processing Forms G-1041 and G-1041A when those requests do not identify information for release to the requestor.

Comment: Several commenters suggested repealing the tax cuts implemented by President Trump that resulted in a substantial budget deficit instead of implementing the proposed increase in fees.

Response: The USCIS genealogy program is funded by user fees, consistent with statutory authority. *See* INA section 286(t), 8 U.S.C. 1356(t). DHS is adjusting the fees for Forms G-1041 and G-1041A to reflect USCIS' estimated full cost of providing the relevant services.

Comment: One commenter said that although immigration fees should not increase, non-immigration related genealogical search fees should increase to recover those costs.

Response: DHS thanks the commenter for their input but declines to adopt the recommendation. DHS is adjusting the fees for Forms G-1041 and G-1041A to reflect USCIS' estimated full cost of providing the relevant services.

4. Form I-90, Application to Replace Permanent Resident Card

Comment: A commenter stated that the \$40 reduction would not lead to any real financial relief to LPRs who want to apply for naturalization when the citizenship fees will increase by 83 percent. The commenter stated that, due to long processing times, many citizenship applicants must, for all practical purposes, pay the fees for both Forms I-90 and N-400, which total \$1,585, in order to keep green cards up to date. The commenter said it failed to see how this "miniscule" reduction in Form I-90 fees helps the agency accomplish its goals.

Response: In this final rule, DHS adjusts the fee for Form I-90, Application to Replace Permanent Resident Card, to \$405 when filed online and the fee for a paper filed Form I-90 to \$415. Most applicants for Form I-90 must pay the current \$455 fee plus an \$85 biometric services fee, thus making the total current fees \$540. These amounts represent USCIS' estimated full cost adjudicating Form I-90, including the cost of providing similar services without charge to asylum applicants and other immigrants. In setting these fees, DHS intends to achieve full cost recovery for USCIS, as provided in law, while emphasizing the beneficiary-pays principle of user fees. DHS is not motivated by any other consideration in establishing these fees, thus, we did not consider any interplay between the fees for Forms I-90 and N-400 in the NPRM, nor do we in the final rule.

The new fee for Form I-90 of \$405 when filed online represents a \$50 decrease from the previous fee of \$455. The new fee for a paper filed Form I-90 of \$415 represents a \$40 decrease from the previous fee of \$455. The new fees include the cost of biometric services, thus making the total decrease \$135 when filed online or \$125 when filed on paper. These adjustments reflect efficiencies USCIS has achieved in adjudicating Form I-90, thereby reducing the estimated cost of adjudication. The lower fee for Form I-90 when filed online reflects the estimated cost savings to USCIS of receiving the application online. These fee adjustments are intended to ensure that the fees accurately reflect the estimated full cost of adjudication. DHS declines to make any adjustments in response to this comment.

Comment: Another commenter said, by not only increasing the N-400 fee but also reducing the Form I-90 fee, the proposed rule would further discourage Form N-400 applicants from naturalizing and obtaining the full benefits of citizenship for both themselves and our nation. Similarly, another commenter said decreasing the Form I-90 fee while increasing the Form N-400 fee appears to be a conscious policy decision by USCIS to keep LPRs from applying for U.S. citizenship.

Response: DHS acknowledges that this final rule establishes increased fees for Form N-400 (\$1,160 if filed online and \$1,170 if filed on paper) while reducing the fees for Form I-90 (\$405 if filed online and \$415 if filed on paper) DHS does not intend to discourage naturalization and is not motivated by any consideration other than achieving full cost recovery while emphasizing the beneficiary-pays principle in establishing these fees. DHS declines to make any changes in this final rule in response to these comments.

Comment: A commenter said that the Form I-90 fee decrease is puzzling considering the current processing and adjudication of the corresponding benefits. The commenter said a simple renewal of a permanent resident card currently takes up to 11 months, wondered why issuing a new card takes that long, and it seems unlikely that these processing times will improve with a decreased fee.

Response: DHS acknowledges that USCIS' processing times for Form I-90 have exceeded its goals. However, USCIS has achieved efficiencies in adjudicating Form I-90 that have reduced the relative cost per adjudication. Thus, in this final rule DHS implements a fee for Form I-90, Application to Replace Permanent Resident Card, of \$405 when filed online and a \$415 fee for a paper filed Form I-90. DHS appreciates the implication that it may charge more for Form I-90, but to maintain consistency with full cost recovery. DHS declines to make any adjustments in this final rule in response to this comment.

5. Form I-131, Application for Travel Document, Refugee Travel

Documents

Comment: A commenter stated that comparing Form I-131, Application for Travel Document, to a passport to set the fee for refugee travel documents is inappropriate because passports are valid for 10 or 5 years versus the 1 year for the Refugee Travel Document. The commenter recommended that refugee travel documents be valid for longer than a year for this reason and because other countries often require that travel documents be valid for 6 months beyond the expected period of stay. Furthermore, the commenter stated that adult U.S. passport renewals do not include a \$35 execution fee,

implying that DHS should not consider the execution fee in establishing the fee for a refugee travel document.

Response: DHS declines the commenter's request to extend the validity length of refugee travel documents (RTD). DHS did not propose changes to the validity length of the RTD that is codified at 8 CFR 223.3(a)(2) and, besides the commenter, we do not think the public would think that an increase to the validity length of an RTD would be a subject open for public comment in a rule dealing primarily with fees. The fee for an RTD is linked to the fee for a passport because Article 28 of the 1951 U.N. Convention Relating to the Status of Refugees ("1951 Refugee Convention"), and the 1967 U.N. Protocol Relating to the Status of Refugees ("the 1967 Refugee Protocol"), which, by reference, adopts articles 2 through 34 of the 1951 Refugee Convention, requires state parties to issue documents for international travel to refugees lawfully staying in their territory and that fees charged for such documents shall not exceed the lowest scale of charges for national passports. *See* United Nations Protocol Relating to the Status of Refugees, Jan. 13, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 1967 Refugee Protocol. Consistent with past practice, DHS is increasing the fee for Form I-131, Application for Travel Document, when requesting a refugee travel document by \$10, the amount of increase in the cost of a U.S. passport to \$145 for adults and \$115 for children. However, the term of an approved RTD is not related to that of a passport, and it will not be changed in this rule.

6. Form I-131A, Application for Travel Document (Carrier Documentation)

Comment: A few commenters opposed the fee increase for Form I-131A. One of these commenters questioned why the fee is being increased by \$435, or 76 percent, when USCIS would only have to reimburse the Department of State (DOS) with \$385 to replace lost documents. A commenter asked if DHS had considered the effect of this “massive” fee increase on a vulnerable population. Some commenters claimed DOS would not have to be reimbursed if USCIS international offices had not been closed.

Response: DHS acknowledges that the \$1,010 fee established in this final rule for Form I-131A, Application for Travel Document (Carrier Documentation), represents a substantial increase of \$435 relative to the previous fee. Consistent with full cost recovery and the beneficiary-pays principle emphasized throughout this final rule, the new fee of \$1,010 represents USCIS’ estimated full cost of adjudicating Form I-131A, including the cost of providing similar services to asylum applicants and other immigrants without charge, at the time of USCIS’ FY 2019/2020 fee review.

Before Form I-131A was published, USCIS had completion rate data specific to providing carrier boarding documents. However, DHS did not use that completion rate data to establish a separate Form I-131A fee when it published Form I-131A. Instead, DHS set the Form I-131A fee to be the same as for other travel documents. Establishing Form I-131A and requiring fee payment using Pay.gov standardized requirements that were somewhat different or informal before the creation of Form I-131A. While not discussed in the FY 2016/2017 fee rule, DHS believed that the standardized Form I-131A might reduce the completion rate, and the cost, of the workload. When USCIS conducted

its FY 2019/2020 fee review, it separated completion rate data for Forms I-131 and I-131A and proposed separate fees. At this point, Form I-131A existed for several years, so the completion rate data reflect the standardized process. Thus, we are setting a more accurate fee to reflect the full cost of adjudicating Form I-131A. The final fee for Form I-131A reflects the cost of USCIS processing, including the costs of USCIS reimbursement to DOS for action taken on behalf of USCIS. At the time of its FY 2019/2020 fee review, USCIS did not yet have sufficient information regarding office closures and the transfer of responsibilities between USCIS and the DOS to accurately reflect anticipated changes in the average cost of adjudicating Form I-131A. Thus, any potential cost savings related to the reduction in the number of offices USCIS maintains abroad are not included in this final rule. USCIS will incorporate all newly available information in its next fee review.

Commenters who claimed that USCIS would not need to reimburse the Department of State had it maintained its previous international presence are mistaken. USCIS reimburses DOS for all work performed on its behalf. This includes work performed on behalf of USCIS in locations where USCIS is not present and in locations where USCIS has an office. As USCIS has never had a presence in all countries where an individual may need to file Form I-131A, DOS has always adjudicated some Forms I-131A on behalf of USCIS. Altering USCIS's international presence did not change this operational necessity. DHS declines to make any changes in this final rule in response to these comments.

Comment: A commenter wrote that DHS failed to apprise stakeholders of its reasoning for the substantial increase to the Form I-131A fee. The commenter added that there is

no justification for charging LPRs for the privilege of returning to their homes, jobs, and families.

Response: DHS disagrees with the commenter's assertion that DHS failed to explain or justify the fee increase for Form I-131A. In the NPRM, DHS explained that in the FY 2016/2017 fee review, USCIS calculated a single fee for Forms I-131 and I-131A. *See* 84 FR 62306 (Nov. 14, 2019). DHS clarified that in the FY 2019/2020 fee review, USCIS calculated a separate fee for Form I-131A to reflect differences between Form I-131 and Form I-131A, including the fact that Form I-131A is adjudicated abroad, where costs are typically greater than the cost of adjudicating an equivalent form domestically. This differentiation between Form I-131 and Form I-131A is consistent with the beneficiary-pays principle of user emphasized throughout the NPRM and this final rule, as it ensures that the fee an applicant pays better reflects the estimated full cost to USCIS of adjudicating the application. DHS declines to make changes in this final rule in response to the comment.

Comment: One commenter claimed these new fees are an attempt prevent LPRs from becoming U.S. citizens.

Response: DHS rejects the claim that its decision to adjust the fee for Form I-131A to \$1,010 is motivated by any consideration other than USCIS achieving full cost recovery. The fee of \$1,010 represents USCIS' estimated full cost of adjudicating Form I-131A, including the cost of providing similar services to asylum applicants and other immigrants without charge, at the time of USCIS' FY 2019/2020 fee review. DHS declines to make changes in this final rule in response to this comment.

7. Form I-192, Application for Advance Permission to Enter as a Nonimmigrant

Comments: A commenter said it did not oppose a fee increase associated with Form I-192 but wrote that the fee increase is quite high for an application fee that, if approved, grants entry to the U.S. for a relatively short time. The commenter said the proposal would cost Canadian citizens \$1,400 on average and questioned whether USCIS was considering increasing the duration of authorized presence in the U.S. to a minimum of 5 years and a maximum of 10 years.

Many commenters suggested that the \$485 or 52 percent increase for fees related to visa applications for victims of crime and victims of trafficking in persons is “outrageous.” A commenter wrote that the proposal to raise the Form I-192 fee defeats the purpose of the U-visa, which protects victims of crime. The commenter wrote that raising fees to make this protection inaccessible to victims of crime runs counter to Congress’ intent to provide protection to such victims for “compelling humanitarian and public policy/safety reasons.” Another commenter stated that the \$485 increase for Form I-192 was particularly steep for U nonimmigrant status petitioners who often have medical bills related to being victims of crimes and who may not work before the submission of the application.

A few commenters said that raising the fee for Form I-192 may make it harder, if not impossible, for survivors of crime to petition for U nonimmigrant status. One commenter suggested that because survivors of domestic violence often have suffered financial abuse and survivors of human trafficking often have suffered financial exploitation, they will likely be unable to pay the fees.

A commenter indicated that the increase in the filing fee for Form I-192, combined with the elimination of a fee waiver for this form, would effectively eliminate a statutorily available waiver of inadmissibility for many applicants and prevent those inadmissible immigrants from obtaining status.

Multiple commenters stated that the NPRM ignores the fact that many applicants for survivor-based relief must also file ancillary forms that do have fees, including Form I-192.

Response: DHS acknowledges a considerable increase of the fee for Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. The new fee established in this final rule represents the estimated full cost of adjudication.⁸⁵ See INA section 286(m), 8 U.S.C. 1356(m). As with other USCIS fees, the fee amount is derived from the cost to USCIS of providing the relevant service; the fee is not related to the duration of the benefit received. Therefore, DHS did not evaluate potential changes in the duration of authorized presence as part of this final rule.

DHS recognizes the commenters' concerns regarding vulnerable populations, particularly applicants for T nonimmigrant status and petitioners for U nonimmigrant status, who use Form I-192. Consistent with its commitment to preserve access to required fee waivers for populations identified in statute, the fee for Form I-192 will remain waivable for those seeking T and U nonimmigrant status, provided that those

⁸⁵ In accordance with INA section 286(m), 8 U.S.C. 1356 (m), USCIS total costs include the cost of similar services provided without charge to asylum applicants and other immigrants, which encompass fee exemptions, waivers, and setting fees below the amount suggested by the model. Throughout the remainder of this rule, when USCIS refers to the estimated full costs of adjudication, in the interest of the economy of words and improving readability, that term includes the cost of services provided without charge to asylum applicants and other immigrants in accordance with the INA.

applicants file Form I-912, Request for Fee Waiver and demonstrate that they meet the requisite criteria for approval. *See* 8 CFR 106.3. DHS believes that maintaining access to fee waivers for these populations mitigates any concerns that the fee increase for Form I-192 would limit access to protections.

DHS declines to make changes in this final rule in response to these comments.

Comment: Another commenter stated that most of its clients who are pursuing T or U nonimmigrant status must file supplemental forms that often have very high fees, including Form I-192. The commenter indicated that most of the issues disclosed require very little, if any, further adjudication from USCIS, and, therefore, the fee is unnecessary and unfair.

Response: USCIS data also indicates that most aliens pursuing T and U nonimmigrant status must file Form I-192. Those aliens may request a fee waiver. DHS disagrees that Form I-192 requires little effort by USCIS. USCIS evaluates the evidence regarding the inadmissibility charges present (immigration violations, criminal issues, potential fraud, etc.) and the alien's responses and evidence provided to address those charges. Depending on the number of inadmissibility grounds and complexity of the individual filing, those adjudications may require considerable time and resources.

In many cases, aliens file Form I-192 with U.S. Customs and Border Protection, which adjudicates those filings. In the NPRM, DHS explained that USCIS had incorporated cost and workload volume information from CBP into its cost model to determine a single fee for Form I-192 that reflects the estimated full average cost of adjudicating Form I-192 for CBP and USCIS. *See* 84 FR 62321.

DHS declines to make changes in this final rule in response to the comment.

Comment: One commenter stated that Form I-192 was created to encourage eligible individuals to complete the immigrant visa process abroad, promote family unity, and improve administrative efficiency.

Response: Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, is not part of the immigrant visa process. It appears that the commenter may have confused Form I-192 with Form I-601A, Application for Provisional Unlawful Presence Waiver. DHS declines to make changes in this final rule in response to the comment.

8. Form I-193, Application for Waiver of Passport and/or Visa

Comment: One commenter said that the proposed 377 percent fee increase for Form I-193 is “startling.” Another commenter stated that the 377 percent increase is “outrageous” given the time and effort required to fill out and adjudicate the form with just one page of content. The commenter also stated that a small number of applicants use the form to travel, usually in extenuating circumstances beyond the control of the applicant. As such, it is unlikely that there would be a high incidence of fraud or abuse to justify such a fee increase. The commenter also said that it is unreasonable to expect applicants to pay the \$2,790 fee on the spot.

Response: DHS acknowledges a substantial increase in the fee for Form I-193. In its NPRM, DHS explained that USCIS incorporated cost and workload volume information from CBP into its ABC model to determine a single fee for Form I-193 that reflects the estimated full average cost of adjudicating Form I-193 for CBP and USCIS. *See* 84 FR 62321. CBP adjudicates most filings of Form I-193 and incurs a majority of the costs associated with adjudication. As documented in the NPRM, in FY 2017 CBP incurred an estimated \$18.0 million in costs to adjudicate filings of Form I-193. This final rule

establishes the fee for Form I-193 at a level sufficient to recover the full average estimated cost of adjudication for both USCIS and CBP.

DHS declines to make changes in this final rule in response to these comments.

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

Comment: A commenter stated that increasing the fee for Form I-290B places U-visa petitioners at risk of not being able to exercise their due process rights and threatens their ability to appeal or reopen their petition. Another commenter recommended that USCIS fully refund the filing fee for Form I-290B if the agency determines, after adjudicating, that the underlying petition denial was the result of clear USCIS error.

Response: DHS recognizes the importance of maintaining access to Form I-290B to ensure that individuals have the ability to appeal or file a motion to reopen or reconsider a decision. In recognition of this, DHS deviated from the beneficiary-pays principle to transfer some of the costs for adjudicating Form I-290B to all other fee payers. The proposed fee for Form I-290B was far below the estimated cost to USCIS of processing I-290B filings, an increase of only 5 percent. *See* 84 FR 62293. In this final rule, DHS adjusts the fee for Form I-290B from \$675 to \$700, an increase of approximately 3.7 percent. Furthermore, in the NPRM, DHS clarified that Form I-290B would remain fee-waivable for VAWA self-petitioners, applicants for T nonimmigrant status and petitioners for U nonimmigrant status. petitioners, and T nonimmigrant status applicants. *See* 84 FR 62297. DHS believes that maintaining access to fee waivers for vulnerable populations mitigates any concerns that the fee increase for Form I-290B would limit access for protected categories of individuals.

In general, USCIS does not refund a fee or application regardless of the decision on the application. There are only a few exceptions, such as when USCIS made an error which resulted in the application being filed inappropriately or when an incorrect fee was collected.

DHS declines to make changes in this final rule in response to these comments.

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

Comment: Multiple commenters opposed the proposed fee increase for Form I-360, stating that it would harm the ability of religious organizations to petition for their workers. Commenters stated that this would impact the non-profit organizations associated with these religious workers and the communities that they support.

Response: DHS recognizes the importance of maintaining access to Form I-360 for individuals and organizations. In recognition of this, DHS proposed in the NPRM to deviate from the beneficiary-pays principle, transfer some of the costs for adjudicating Form I-360 to all other fee payers, and hold the fee for Form I-360 far below the estimated full cost to USCIS of processing I-360 petitions, proposing to increase the fee by only 5 percent. *See* 84 FR 62293. The fee to recover full cost would have exceeded \$5,500.⁸⁶ Such a high fee would place an unreasonable burden on petitioners. In this final rule, DHS adjusts the fee for Form I-360 from \$435 to \$450, an increase \$15 or approximately 3.4 percent as discussed in the proposed rule. DHS declines to make changes in this final rule in response to these comments.

⁸⁶ *See* the FY 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation in the docket for more information.

11. Form I-485, Application to Register Permanent Residence or Adjust Status

a. Debundling Interim Benefits

Comment: Multiple commenters wrote that the proposed debundling of interim benefits led to excessive fees. Many commenters stated that the steep increase in fees, along with the elimination of waivers will make adjustment of status unattainable for many low-income and working-class people. A few commenters said this change would create a catch-22 where immigrants with low income can afford to apply to adjust but cannot afford to seek employment authorization. A commenter stated that the proposed change would force highly skilled workers to pay \$1,075 more for dual-intent visas than H-1B or L-1 dual-visa applicants. Other comments wrote that charging fees for concurrently filed ancillary Forms I-765 and I-131 with Adjustment of Status applications, along with renewals, would create a perverse incentive for USCIS to delay interim benefit and Form I-485 adjudications in order to receive additional funds. A few commenters wrote the proposed changes would force immigrants out of the legal immigration system. Other commenters added that this change could contribute to family separation. A commenter claimed USCIS ignores the fact that children will need to have a travel authorization, and therefore will still need to file Form I-131 for advance parole. One commenter stated this change will deny immigrants the path to citizenship. Another commenter said USCIS' purpose is an attempt to discourage families from being able to afford to apply for legal permanent residence.

Response: DHS acknowledges the total cost increase for adjustment of status applicants who request interim benefits. The fees DHS establishes in this final rule accurately

reflect the estimated full cost of adjudicating those applications, including the cost of providing similar services to asylum applicants and other immigrants without charge. USCIS did not realize the operational efficiencies envisioned when it introduced bundled filings for interim benefits and adjustment of status applications, which was implemented to address the same commenter accusation of a revenue incentive. *See* 72 FR 4894 (stating, “This creates the perception that USCIS gains by processing cases slowly.”). USCIS has no data to indicate that it takes less time to adjudicate interim benefits bundled with an I-485 than it does to adjudicate standalone I-131 and I-765 filings. Therefore, DHS declines to adopt the commenters’ recommendation to continue bundled adjustment of status filings; this final rule eliminates bundling.

Individuals applying for adjustment of status are not required to request a travel document or employment authorization. With bundled interim benefits, individuals may have requested interim benefits that they did not intend to use because it was already included in the bundled price. Debundling allows individuals to pay for only the services actually requested. Thus, many individuals may not pay the full combined price for Forms I-485, I-131, and I-765.

DHS and USCIS are not profit-seeking entities. Neither benefit from delays in Form I-485 adjudications that may result in individuals filing for additional interim benefits. USCIS would use any revenue received to fund immigration adjudication services and minimize future fee increases.

After adjusting the results of the FY 2019/2020 fee review to account for removal of the ICE transfer, exclusion of the DACA renewal fee, and other changes, DHS

establishes the fee for Form I-131, Application For Travel Document, as \$590 and the fee for Form I-765, Application for Employment Authorization as \$550.

b. Form I-485 Child Fee

Comment: Some commenters opposed this provision because of its effect on families and children. A commenter said this NPRM would burden families who would be required to pay an increased total cost for multiple concurrent adjustments and create barriers for low-income and working-class individuals. Another commenter said this change would have a negative effect of children and youth, either delaying their ability to unite with family or deterring it completely.

Response: DHS acknowledges a substantial increase in the fee for Form I-485 for child applicants who are under 14 years old and are filing with at least one parent. Consistent with the beneficiary-pays principle of user fees emphasized throughout this final rule, DHS adjusts the fee for all Forms I-485, except those filed by refugees, to \$1,130 to reflect the estimated full cost of adjudication. This fee represents an increase of \$380 relative to the previous fee of \$750. DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter cited USCIS' justification for removal of the reduced fee for children because processing them is not distinguished by age. The commenter stated that, if the completion rate is influenced by time to adjudicate (e.g. conduct background checks), this would likely be shorter for children. The commenter said USCIS has not provided data or analysis to address this concern, and that this an extreme hike for a small portion of applications.

Response: USCIS used the data available at the time when it conducted the FY 2019/2020 fee review to determine the fee for Form I-485. USCIS does not have data to support the commenter's contention that that the time required to adjudicate a Form I-485 (i.e. the completion rate) is less for a child's application than for an adult's application, because USCIS data does not separate Form I-485 adjudications by the age of the applicant. *See* 84 FR 62305 and 81 FR 73301. Therefore, USCIS calculated the estimated average cost of adjudicating all Forms I-485. In this final rule, DHS adjusts the fee for all Forms I-485, except those filed by refugees, to \$1,130 to reflect the estimated full cost of adjudication.

DHS declines to make changes in this final rule in response to the comment.

c. Form I-485 Reduced Fee for Asylees

Comment: Multiple commenters highlighted the cost to asylum applicants and asylees of filing Form I-589, Form I-765, and if granted asylum, Form I-485 to adjust status. A commenter stated, "Regarding asylee Form I-485 applications, this proposed rule would cause a significant harm to be placed on those who have come to the United States after fleeing persecution in their country of origin. After waiting years for an asylum interview and sometimes more than a year after that interview for a grant of asylum, an asylee should not have any additional obstacles placed on their path to obtaining a green card, which they will use to show their lawful presence and employment authorization. This proposed change is an unnecessary impediment to asylees' integration in our society and economy." Another commenter wrote that the elimination of fee waivers for adjustments of status, including asylees, runs counter to the intent of Congress and will create a significant barrier that will prevent many asylees from regularizing their immigration

status. Another commenter reiterated that the high fees for Form I-485 and ancillary benefits and the elimination of fee waivers will make adjustment of status unattainable for many low-income and working class people, particularly asylees. The commenter stated that increasing the overall cost of adjustment of status would undermine family unity and prevent many low-income individuals from becoming permanent residents.

Response: DHS recognizes the additional burden placed on asylum applicants with the introduction of a \$50 fee for Form I-589 in this final rule. Therefore, DHS establishes in this final rule a reduced fee of \$1,080 for Form I-485 when filed by an individual who has been granted asylum after having paid the \$50 fee for Form I-589 as a principal applicant. *See* new 8 CFR 106.2(a)(16)(ii). The reduced fee will be available to otherwise qualifying individuals regardless of whether USCIS or EOIR ultimately granted the asylum claim. DHS reiterates, as it did in the NPRM and this final rule, that DHS does not intend to deter asylum applications with the introduction of the \$50 fee for Form I-589. DHS believes that effectively refunding the Form I-589 fee for approved asylees when they adjust will ensure that individuals with legitimate asylum claims do not experience a net increase in cost through the time they adjust status to that of lawful permanent resident as a result of the new fee for Form I-589.

DHS provides in this final rule that only one Form I-485 reduced fee filing will be available per Form I-589 fee paid. This approach ensures that USCIS will only provide a single \$50 discount for each Form I-589 filing that ultimately results in a grant of asylum, meaning that the total value of fee reductions available to Form I-485 applicants will match the value of Form I-589 fees collected from those applicants. DHS makes the reduced fee available only to the principal applicant on an approved Form I-589 for

which the \$50 fee was paid. The reduced fee Form I-485 may not be transferred from the principal applicant to derivatives listed on the same Form I-589 or to other derivative beneficiaries. If DHS provided all individuals granted asylum the opportunity to file Form I-485 with a reduced fee, the ultimate value of the fee reductions could exceed the value of the revenue generated from the Form I-589 fee, resulting in a net cost to USCIS that must be passed on to other fee payers. Similarly, DHS provides that an individual qualifying for the Form I-485 reduced fee may file Form I-485 only once utilizing the reduced fee. If USCIS accepts a Form I-485 filed with the reduced fee and subsequently denies the application, that applicant may reapply as permitted but will not qualify for the reduced fee on any subsequent filing. This ensures that the value of the fee reductions will not exceed the value of the Form I-589 fees paid by the affected applicants. If USCIS rejects a Form I-485 filed by an asylee with a reduced fee, the applicant will not have used their single reduced fee filing, and the applicant may reapply and qualify for the reduced fee.

DHS did not change its cost projections, volumes forecasts, or revenue anticipated from Form I-485 in this final rule in response to the introduction of the reduced fee for Form I-485. DHS does not anticipate receiving any Form I-485 filings during the FY 2019/2020 biennial period for this fee rule that are eligible for the reduced fee. This reflects the fact that asylum applicants will begin to pay the \$50 fee for Form I-589, a pre-requisite to qualify for the reduced fee Form I-485, as of the effective date of this final rule. Those asylum applicants must have their claims adjudicated and approved before becoming eligible to adjust status one year after their asylum claim was granted. Thus, DHS does not anticipate any reduced fee Form I-485 filings until more than 1 year

after the effective date of this final rule. Furthermore, because DHS anticipates no reduced fee filings during FY 2019/2020, USCIS anticipates no costs during FY 2019/2020 associated with charging less than the estimated full cost of adjudication of Form I-485 that must be reallocated to other fee-paying applicants. Therefore, no fees increase in this final rule as a result of the introduction of the reduced fee Form I-485, and the fee for Form I-485 would remain \$1,130 even in the absence of the reduced fee. USCIS will evaluate the Form I-485 reduced fee in future fee reviews using all available data at that time, consistent with its evaluation of all other fees.

d. Other Form I-485 Comments

Comment: A commenter said USCIS' proposed changes to Supplement A to Form I-485 have no justification. The commenter said USCIS proposes removing from the Supplement A form the instruction that there is no fee for certain persons. The commenter stated that USCIS is making it even more difficult for applicants to identify the few instances where they are not obligated to pay large fees. The commenter wrote that the change would obfuscate the fact that some individuals are exempted from paying the fee by statute, leading fewer people to apply because they would erroneously believe they must pay the fee. The commenter also wrote that the provision creates a way for USCIS to re-investigate granted adjustments under INA section 245(i), 8 U.S.C. 1255(i), going back more than 20 years, resulting in potentially stripping lawful permanent residents of their status.

Response: DHS erroneously stated in the NPRM that it proposed deleting text from Form I-485, Supplement A, related to those categories of adjustment applicants who are not required to pay the \$1,000 sum. No such text appears on the form itself, but rather is

found in the instructions. DHS will retain the language concerning the exceptions from paying the INA section 245(i), 8 U.S.C. 1255(i) sum in the Instructions for Form I-485 Supplement A, and in the rule.

Comment: A commenter recommended phasing in the increased Form I-485 fee over several years. A commenter recommended that the validity period of employment authorization and advance parole for dependent children also be increased from 1 to 2 years.

Response: In this final rule, DHS adjusts the fee for all Form I-485 applications, except those filed by refugees, to \$1,130 to reflect the estimated average full cost of adjudication. DHS declines to adopt the commenter's suggestion of phasing in the increased fee over time, because USCIS would not be able to achieve full cost recovery during the phase-in period. DHS also declines to adopt the recommendation to extend the validity period of employment authorization and advance parole for dependent children.

Comment: A commenter opposed deleting language regarding 245(i) penalty fee exemptions from the regulations.

Response: In this final rule, DHS includes language in 8 CFR 106.2(a)(17) detailing the categories of applicants for adjustment of status under INA section 245(i), 8 U.S.C. 1255(i) who are not required to submit the \$1,000 sum per the statute.

Comment: One commenter said that the increased fee for the Form I-485, when considered in combination with the separate fees for the Form I-765 and Form I-131, will have negative impacts on industries that use the Employment-Based Third Preference Unskilled Workers (Other Work) category, such as meat/poultry processors, home

healthcare providers, hospitality/lodging employees.⁸⁷ The commenter assumes that the rate of pay for workers in those industries is not as high as in other fields and the fees represent a larger percentage of those worker's wages.

Response: The NPRM emphasizes the beneficiary-pays principle. DHS believes that a single fee for Form I-485 will reduce the burden of administering separate fees and better reflect the estimated full cost of adjudication. By making the filing fee equal for all applicants, whether they are family-based or employment-based, the cost of adjudication for the benefit of each individual applicant will be sustained by that applicant, and other applicants are not burdened with subsidizing the cost of adjudication. In this final rule, DHS adjusts the fee for all Form I-485 applications, except those filed by refugees and certain Special Immigrants, to \$1,130 to reflect the estimated average full cost of adjudication. *See* 8 CFR 106.2(a)(17)(iii).

Requiring fees paid for each renewal of interim benefits, such as employment or travel authorization, also aligns with the beneficiary-pays principal by preventing other applicants from being burdened with fees for benefits they do not wish to receive or subsidizing fees for benefits for which they do not apply. The fee increases associated with Form I-485 and interim benefits are not exclusive to employment-based applicants and therefore are not adjusted based on the filing category or rate of pay of workers.

DHS declines to make changes in this final rule in response to the comment.

⁸⁷ See USCIS, *Employment-Based Immigration: Third Preference EB-3*, available at <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-third-preference-eb-3> (last reviewed/updated March 27, 2020).

12. Form I-526, Immigrant Petition by Alien Investor

Comment: A commenter said the fee review for EB-5 forms, such as Form I-526, failed to meet the objectives of ensuring USCIS has adequate resources and to recover the full operating costs of administering the national immigration benefits system. The commenter said the fee increase for Form I-526 was too low to balance the workload increase reported by USCIS and would not reverse the current “critically inadequate” service associated with this form. The commenter also said the fee increase was too low given that this fee is paid by affluent immigrant investors “who value time.” The commenter cited USCIS data to demonstrate that the processing time associated with Form I-526 had increased since 2016 and wrote that time spent processing this application was likely to increase due to the EB-5 Immigrant Investor Program Modernization regulation that went into effect on November 21, 2019. *See* 84 FR 35750. The commenter wrote that the 9 percent increase in the fee for this form suggests that USCIS considers the 3-4-year processing time for this form to be acceptable. However, the commenter also wrote that USCIS’ projected workload volume for Form I-526 was “three times too high” considering data from 2018-2019. The commenter said the EB-5 Immigrant Investor Program Modernization regulation would dampen demand for use of this form and suggested that the number of form receipts for 2020 would be less than the 5,000 average annual receipts from 2018–2019. The commenter wrote that due to this overestimation of the number of Form I-526 receipts, the fee analysis “overestimates revenue and underestimates receipt fees needed to cover costs.” The commenter said that if the number of Form I-526 receipts is closer to 4,000, the \$16 million in revenue would not provide enough financial resources to cover costs and provide adequate service. The

commenter suggested that USCIS had failed to consider the future workload associated with “thousands” of Form I-526 submissions that are still pending from previous years in its fee analysis, and that the agency should account for “an environment of long backlogs and falling receipts” in revising the fee for this form. The commenter reiterated that the current processing time for this form was far too long and stated that the agency should consider targeting more reasonable processing times for this form, such as the 240-day target recently suggested in the U.S. Senate. Another commenter wrote that USCIS had overestimated the workload volume associated with Form I-526.

Response: In its fee reviews, USCIS evaluates the estimated cost of processing all incoming workloads to determine the fees necessary to recover full cost. USCIS does not consider the cost of processing existing pending workloads in setting fees, as setting fees on that basis would place the burden of funding the processing of previously received applications and petitions on future applicants. Thus, DHS declines to include the cost of all pending Form I-526 workload in this analysis and final rule.

DHS acknowledges that USCIS’ volume projections for Form I-526 in the FY 2019/2020 fee review substantially exceed the receipts in FY 2018 and FY 2019. As with other forms, USCIS created its volume projections for Form I-526 using the best information available at the time it conducted the FY 2019/2020 fee review. The commenter is correct in stating that if USCIS has overestimated the receipt volume for Form I-526, then it has also overestimated the amount of revenue that the revised Form I-526 fee will generate. Such a scenario would also imply that USCIS had overestimated the total amount of costs to be recovered, as fewer staff would be necessary to adjudicate the newly received Forms I-526. However, it is possible that, as the commenter

contends, if USCIS overestimated the anticipated volume of Form I-526 filings, it underestimated the Form I-526 fee that would be necessary to recover the full cost of adjudication. USCIS will review and reevaluate all fees during its next biennial fee review. If USCIS determines that the fee is insufficient to recover full cost, DHS may adjust the fee through a future rulemaking.

DHS acknowledges that current processing times for Form I-526 extend far beyond its processing time goals. DHS believes that adjusting USCIS fees to provide for full cost recovery constitutes the best means of addressing resource constraints that have led to growth in pending caseloads. DHS declines to make changes in this final rule in response to the comment.

Form I-539, Application To Extend/Change Nonimmigrant Status

Comment: A commenter opposed the proposed fee increase for Form I-539 because it would pose a financial burden to clients who are survivors of violence and U nonimmigrants.

Response: DHS acknowledges that this final rule increases the fee for Form I-539 to \$390 if filed online and \$400 if filed on paper. However, DHS disagrees with the commenter's assertion that the fee increase for Form I-539 would unduly burden U nonimmigrants. In its NPRM, DHS clarified that those seeking or holding T and U nonimmigrant status would remain eligible to apply for fee waivers for Form I-539 and other associated forms. *See* 84 FR 62297. DHS believes that maintaining access to fee waivers for these vulnerable populations mitigates any concerns that the increase in the fee for Form I-539 would limit access for protected categories of individuals. DHS declines to make changes in this final rule in response to the comment.

13. Form I-589, Application for Asylum and Withholding of Removal

Fee

Comment: Multiple commenters generally opposed charging asylum applicants a fee.

Commenters stated:

- DHS should not expect people fleeing harm and in need of protection to pay a fee.
- These individuals often have few economic resources, the few resources that they do have are necessary for survival.
- They should not endure the added burden of a fee to gain asylum and other immigration services.
- Asylum seekers joining family in the United States are often financially dependent on their family members, and an asylum fee would create an additional burden on their families.
- Asylum should not be based on an applicant's socio-economic status.
- Fees would be detrimental to survivors of torture, impacting their mental health and well-being by obstructing access to live and work in the United States.
- A \$50 fee would further endanger asylum seekers' health and safety.
- DHS should consider asylum seekers' humanity and suggested that the rule dehumanized the issue.
- Commenters rejected the notion that those seeking asylum represent a cost that the nation must recoup.
- If the revenue from these fees were being used to assistance to those seeking asylum, they would be less opposed to the fee increases.
- DHS did not provide adequate justification for charging an asylum fee.

Response: DHS acknowledges the humanitarian plight of legitimate asylum seekers. In recognition of the circumstances of many of these applicants, DHS establishes a \$50 fee for Form I-589 for most applicants (unaccompanied alien children in removal proceedings who file Form I-589 with USCIS are not required to pay the fee). DHS expects that charging this fee will generate some revenue to offset adjudication costs, but DHS is not aligning the fee with the beneficiary-pays principle, because the estimated cost of adjudicating Form I-589 exceeds \$50. As DHS stated in its NPRM, it does not intend to recover the full cost of adjudicating asylum applications via the Form I-589 fee. *See* 84 FR 62318. Instead, DHS establishes a \$50 application fee to generate some revenue to offset costs. DHS will recover the additional costs of asylum adjudications (via cost reallocation) by charging other fee-paying applicants and petitioners more, consistent with historical practice and statutory authority. *See* INA section 286(m), 8 U.S.C. 1356(m). DHS does not intend to discourage meritorious asylum claims or unduly burden any applicant, group of applicants, or their families.

In the NPRM, DHS provided substantial justifications for establishing an asylum application fee. DHS explained that USCIS has experienced a continuous, sizeable increase in the affirmative asylum backlog over the last several years. DHS explored ways to alleviate the pressure that the asylum workload places on the administration of other immigration benefits and determined that a minimal fee would mitigate fee increases for other immigration benefit requests. *See* 84 FR 62318. DHS estimated the cost of adjudicating Form I-589 and considered asylum fees charged by other nations. DHS also considered the authority provided in INA section 208(d)(3), various fee

amounts, whether the fee would be paid in installments over time or all at once, if the fee would be waivable, and decided to establish a minimal \$50 fee.

As stated in the NPRM, DHS believes that the fee can be paid in one payment, would generate revenue to offset costs, and not be so high as to be unaffordable to an indigent applicant. *See* 84 FR 62319. Further, DHS has provided the advance notice of and the reasons for the change in its longstanding policy as required by the APA. This change will only apply prospectively to asylum applications filed after the effective date of this final rule.

Nevertheless, as a result of the concerns raised by commenters, DHS is providing in this final rule that Form I-485 filed in the future for principal asylum applicants who pay the Form I-589 fee of \$50 and are granted asylum and apply for adjustment of status will pay a fee that is \$50 less than other Form I-485 filers. *See* new 8 CFR 106.2(a)(17)(ii). DHS will provide only one reduced fee per Form I-589 filing fee paid. If a Form I-485 filing with a \$50 reduced fee is denied, USCIS will not accept future discounted I-485 filings from the same applicant. That is because DHS anticipates a one-to-one relationship between the fees collected and discounts provided. If an approved principal asylee were to file multiple Forms I-485 with the reduced fee, it could illogically result in the \$50 fee for Form I-589 causing a net revenue loss to USCIS. DHS will not deviate from its primary objective of this final rule to set fees at a level necessary to recover estimated full cost by allowing multiple I-485 reduced fee filings. Unaccompanied alien children in removal proceedings who filed Form I-589 with USCIS, and thus did not pay the \$50 Form I-589 fee, are not eligible to file Form I-485 with the reduced fee.

Comment: Additional commenters on the asylum fee generally opposed the proposed fees for asylum indicating that the proposal runs counter to U.S. ideals, and stated:

- The United States has no precedent in international law to charge for asylum, the fee does not support the humanitarian interests of the United States, would be against the values of the United States and Congressional intent, and our moral and constitutional obligation to provide sanctuary to those who need it.
- The United States would become one of only four countries to charge such a fee if DHS implemented the proposal.
- Processing asylum requests is a fundamental right guaranteed by international agreements to which the United States adheres.
- The United States should endeavor to resolve, rather than exacerbate, humanitarian crises and the U.S. is required under domestic and international law to provide refuge to people fleeing violence and seeking protection in the United States.
- Significant changes to the conditions of asylum services should be carried out by Congress, and not through administrative processes.
- Charging a fee for asylum requests is discrimination and an attempt to block legal immigration of people of color and/or non-wealthy backgrounds.
- The right to seek and to enjoy asylum from persecution is enshrined in the United Nations Universal Declaration of Human Rights of 1948 and supported by the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

- The United States is obligated to accept asylum seekers under international and domestic law, and therefore should not refuse asylum seekers because of an inability to pay the fee. Thus, the proposed asylum fees would be a dereliction of legal duty and violate the 1951 Refugee Convention, which prevents signatory countries from taking any action that would “in any matter whatsoever” expel or return a refugee to a place where his or her life or freedom would be threatened.”
- The creation of an asylum fee suggests that the United States will shy away from international problems rather than confront them.
- One commenter said that under the Universal Declaration of Human Rights, the United States is obligated by international law to accept refugees and accord them certain rights and benefits, such as access to courts.
- A fee for asylum violates the INA and that Congress did not intend to authorize fees for asylum applicants, but instead intended that the cost services to asylum seekers should be paid by fees from the IEFA.

Response: DHS disagrees with commenters’ assertions that an asylum fee violates the INA, that there is no precedent in international law for charging a fee for asylum applications, and that charging a fee is discriminatory and against the values, morals, and Constitution of the United States. DHS also disagrees that the United States is required to provide asylum to those fleeing violence and seeking protection, as the United States’ non-refoulement obligations are met by the statutory withholding of removal provisions at INA section 241(b)(3). Asylum is a discretionary benefit available to those who meet the definition of a refugee and who are not otherwise ineligible.

Although the United States is a party to the 1967 U.N. Protocol Relating to the Status of Refugees (“1967 Refugee Protocol”), which incorporates Articles 2 through 34 of the 1951 U.N. Convention Relating to the Status of Refugees (“1951 Refugee Convention”), the Protocol is not self-executing. *See INS v. Stevic*, 467 U.S. 407, 428 n.22 (1984). The asylum statute at INA section 208 and withholding of removal statute at INA section 241(b)(3) constitute the U.S. implementation of international treaty obligations related to asylum seekers. The asylum provisions of the INA do not preclude the imposition of a filing fee for asylum applications. INA section 208(d)(3), 8 U.S.C. 1158(d)(3) specifically authorizes the Attorney General to impose a fee for the consideration of an asylum application that is less than the estimated cost of adjudicating the application.

Furthermore, DHS believes that the asylum fee may arguably be constrained in amount, but a fee is not prohibited by the 1951 Refugee Convention, 1967 Refugee Protocol, United States constitution, or domestic implementing law. Article 29(1) of the 1951 Refugee Convention and the 1967 Refugee Protocol, as incorporated by reference, refers to the imposition of fees on those seeking protection, and limits “fiscal charges” to not higher than those charged to nationals of a given country for similar services, but does not bar the imposition of such fiscal charges. The \$50 fee is reasonably aligned with the fees charged to United States nationals for other immigration benefit requests. Thus, a \$50 fee for asylum applications is in line with international and domestic law.

DHS also considered the asylum fees charged by other nations, including Australia, Fiji, and Iran. A \$50 fee is in line with the fees charged by these other nations.

DHS further believes that the \$50 fee would not require an applicant to spend an unreasonable amount of time saving to pay the fee.

DHS declines to make changes in this final rule in response to these comments.

Comment: With regard to the Form I-589 fee and the fee for an initial Form I-765 filed by an asylum applicant, commenters stated:

- Asylum seekers should not have to pay for an asylum application or an associated work permit because they are not authorized to work for months once in the United States and would have no way of earning money to pay for the fees.
- Asylum seekers in detention, who earn at most \$1 a day would have no way to pay the \$50 fee.
- Asylum seekers are not allowed to work more than 4 hours a day and are thus unable to pay increased fees.
- Asylum seekers who are poor or need to “quickly flee situations of peril or harm” would be harmed by the asylum fee proposal, and that such individuals would not be able to earn enough money to pay asylum fees once in detention.
- Asylum seekers are often minors with no means to support themselves and therefore cannot afford an asylum fee.

Response: DHS acknowledges the commenters’ concerns about asylum seekers’ ability to pay the fees for the asylum application and associated EAD. DHS considered the effect of the fees on asylum seekers and believes the fees would not impose an unreasonable burden on applicants or prevent asylum seekers from seeking protection or EAD. DHS also acknowledges that the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, provides a range of protections for unaccompanied alien children.

As such, DHS excluded unaccompanied alien children in removal proceedings, a particularly vulnerable population, from the imposition of the \$50 asylum application fee.

The services that USCIS provides at no cost or below cost impacts the final fees imposed on other fee-paying applicants. However, DHS seeks to make the USCIS fee schedule more equitable for all applicants and petitioners in this final rule. Therefore, DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter stated that asylum seekers provide services to the United States, such as investments in their education and pay taxes, that DHS should consider before increasing asylum fees. Several commenters stated that DHS should not raise asylum fees because asylum seekers are important to the U.S. economy and workforce.

Response: DHS acknowledges that asylum seekers invest in their educations and pay taxes like other immigrants do. When considering whether to increase or establish new fees, including fees for asylum seekers, USCIS examined its recent budget history, service levels, and immigration trends, and also assessed anticipated costs, revenue, and operational demands. USCIS has experienced a continuous, sizeable increase in the affirmative asylum backlog and explored ways to alleviate the pressure that the asylum workload places on USCIS. As stated in the NPRM, DHS does not intend to recover the estimated full cost of adjudicating asylum applications via the Form I-589 fee. 84 FR 62318. DHS will recover the additional costs of asylum adjudications (via cost reallocation) by charging other fee-paying applicants and petitioners more for other types of applications.

DHS declines to make changes in this final rule in response to the comment.

Comment: Many commenters addressed gender-based violence as a reason for women and girls fleeing their countries of origin to seek asylum in the United States. Another commenter stated that an asylum fee will disproportionately impact women and minorities. Several commenters discussed domestic violence survivors who rely on asylum status and work authorization for protection. Some commenters said that young people flee sexual and physical violence, and even torture. One commenter said survivors often have no support systems in the U.S. and therefore face homelessness and economic hardship, which are two of the three most urgent and prevalent systemic challenges, confronting immigrant women in the U.S. A couple of commenters said the asylum seekers who flee domestic violence are often eligible for asylum as well as other types of humanitarian immigration benefits, such as U nonimmigrant status. In certain instances, it makes sense for survivors to apply for different types of relief simultaneously as they may get access to work authorization faster under one type of relief, which, in turn, can help them avoid being financially dependent on their abuser. Therefore, the commenter said an asylum fee may force survivors to choose between different types of immigration relief to their detriment. A commenter discussed rates of gender-based violence in El Salvador, Honduras, Guatemala, Venezuela, and China and concluded that sexual violence survivors seeking asylum in the U.S. are often doing so as a last resort because there is little hope of finding protection and safety from their abusers and assailants in their home countries. Therefore, an asylum fee would make it virtually impossible for the most vulnerable immigrant survivors of horrific domestic and sexual abuse to live free from the violence of their abusers. A commenter discussed the gender-based and gang violence that causes people to flee their countries and claimed that the

\$50 asylum fee would serve to enable smugglers and traffickers to pay the fees for asylum seekers to extort their help in smuggling enterprises.

Response: DHS recognizes the challenges that gender-based violence survivors face when fleeing from the violence of their abusers. This final rule establishes the Form I-589 fee at only \$50 because DHS believes it is not an unreasonable amount. DHS disagrees that the fee forces applicants to choose between applying for different forms of relief or protection and enables smugglers and traffickers to extort applicants. DHS does not believe that establishing an asylum application fee of \$50 unduly burdens or harms any applicants. DHS carefully assessed the costs associated with the adjudication of asylum applications and other types of immigration benefit requests and concluded that the \$50 fee for asylum applications is warranted. The approximate cost of adjudicating an asylum application is \$366. A \$50 fee is well below the full cost of adjudicating the application. Moreover, the asylum application fee is in line with international treaty obligations under the 1951 Refugee Convention, as incorporated by reference in the 1967 Refugee Protocol, and domestic implementing law.

DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter stated that USCIS is promising the same inadequate service it has been providing in the past few years and is asking immigrant and refugee families to pay more to not get their applications processed. The commenter stated that the proposal to charge for asylum applications contradicts the 2005 Notice of Adjustment of the Immigration Benefit Application Fee Schedule which states, "fees collected from persons filing immigration benefit applications and petitions are deposited into the Immigration Examinations Fee Account and are used to fund the full cost of providing

immigration benefits, including the full cost of providing benefits such as asylum and refugee admission for which no fees are assessed."

Response: DHS acknowledges the concerns of the commenter related to delays in the processing of applications. DHS has experienced a continuous, sizeable increase in the affirmative asylum backlog over the last several years. One of the ways in which DHS seeks to alleviate the pressure of the increasing workload on the administration of immigration benefits is to charge a \$50 fee for asylum applications. The fee will generate some revenue to help offset costs. As far as the 2005 notice is concerned, it described the asylum fee requirements, but does not preclude the establishment of a fee.

DHS declines to make changes in this final rule in response to the comment.

Comment: Some commenters wrote that they question the statutory authority to charge a fee to asylum applicants. Commenters stated that United States is obligated to accept asylum seekers under international and domestic law, and therefore should not refuse asylum seekers because of an inability to pay the fee. One commenter wrote that charging an asylum fee would have global consequences effecting the standard of care and rule of law in humanitarian protections. Comments stated that the United States has no precedent in international law to charge for asylum, a fee for asylum applications is discriminatory, and a fee for asylum is against the values of the United States.

Response: DHS recognizes the vulnerable situations of many individuals who apply for asylum. DHS considered all of the points the commenters raised when deciding to establish an asylum application fee. INA section 208(d)(3), 1158(d)(3) specifically authorizes the Attorney General to impose a fee for the consideration of an asylum application that is less than the estimated cost of adjudicating the application. As stated

in the NPRM, DHS considered the authority provided in INA section 208(d)(3), whether the fee would be paid in installments or over time, and various fee amounts. DHS decided to establish a \$50 fee because it could be paid in one payment, would generate some revenue to offset costs, and not be so high as to be unaffordable to even an indigent alien. 84 FR 62320. Thus, the lack of resources that asylum applicants possess and the burdens that they face contributed to DHS's decision to establish a minimal \$50 fee.

Furthermore, DHS disagrees that there is no precedent in international law for charging an asylum application fee. DHS believes that the asylum application fee may arguably be constrained in amount, but a fee is not prohibited by the 1951 U.N. Convention Relating to the Status of Refugees ("1951 Refugee Convention"), 1967 U.N. Protocol Relating to the Status of Refugees ("1967 Refugee Protocol"), United States constitution, or domestic implementing law. Article 29(1) of the 1951 Refugee Convention and the 1967 Refugee Protocol, as incorporated by reference, refers to the imposition of fees on those seeking protection, and limits "fiscal charges" to not higher than those charged to nationals of a given country for similar services, but does not bar the imposition of such fiscal charges. The \$50 fee is reasonably aligned with the fees charged to United States nationals for other immigration benefit requests.

Comment: One commenter stated that if asylum seekers have to pay for their own initial Employment Authorization Document (EAD), it is likely that asylees will not apply for an EAD, which may be used against them when USCIS adjudicates their asylum application.

Response: DHS infers that the commenter is suggesting that asylum applicants will pursue unauthorized employment rather than pay the Form I-765 fee to lawfully obtain an

EAD, and that will result in USCIS denying their application because they worked in the U.S. without authorization. DHS expects that asylum applicants will not pursue such an option and instead find a lawful way to pay the fee. As DHS noted in the NPRM, initial applicants with pending claims of asylum are a large workload volume for USCIS. In this final rule, DHS emphasizes that the person receiving the benefit should pay the fee. While DHS appreciates the need for asylum seekers to obtain lawful employment while their applications are pending, Congress has made it clear that fees primarily fund USCIS. After analyzing the costs of EADs for asylum applicants and considering the other factors raised by the commenters, DHS maintains its position that asylum applicants should pay the fee for the initial and renewal EADs.

Comment: Some commenters wrote that the fee for asylum applications would cause the U.S. to break its treaty obligations and contradicts the intent of the 1980 Refugee Act. Some commenters agreed and more specifically stated that the proposal would conflict with Congressional intent to offer humanitarian assistance to those fleeing persecution regardless of national origin, race, age, gender, or financial status. A commenter said requiring asylum applicants to pay a fee violates the principle of non-refoulement because it would likely result in the expulsion of potential refugees merely on the basis of their financial status, and since the imposition of the asylum application fees would also be a barrier to apply for relief under the Convention Against Torture, it also conflicts with U.S. treaty commitments. Multiple commenters indicated an inability to pay the proposed fee would hinder asylum seekers' ability to apply for asylum and gain needed protection, thereby forcing asylum seekers to return to their country of origin to face further persecution and even death. A commenter wrote that the asylum fee proposal

would increase the number of cases sent to immigration courts because individuals would not have the funds to pay for asylum applications. A few commenters stated that the unprecedented fee would restrict life-saving access to the legal system.

A commenter provided a lengthy comment on the 1951 Refugee Convention and the Refugee Act of 1980, stating that courts have interpreted the federal regulations establishing the asylum process and the INA as creating a constitutionally protected right to petition the United States for asylum. This in turn triggers the safeguards of the Fifth Amendment's Due Process Clause. The commenter said, because the proposed fee would operate as complete bar to some asylum seekers' ability to exercise their constitutionally protected right to petition for asylum, it violates the guarantee of due process that accompanies that right. The commenter stated that the rule should therefore be rejected. The commenter also said DHS has also failed to consider Article 32 of the 1951 Refugee Convention, which provides that refugees shall be expelled only pursuant to a decision reached in accordance with due process of law. The commenter said the United States cannot recognize the right to apply for asylum as a component of due process for the purposes of its own Constitution while contending that Article 32 of the 1951 Refugee Convention can be satisfied without such a guarantee. Similarly, the commenter said DHS neglects Article 3's guarantee of equal protection by facially discriminating among refugees based on wealth and disparately affecting refugees based on national origin or race. Another commenter spoke of several court cases that set due process and equal protections precedent for asylees: (1) *Mathews v. Eldridge*, 424 U.S. 319 (1976), (2) *Griffin v. Illinois*, 351 U.S. 12, 19 (1956), (3) *Smith v. Bennett*, 365 U.S. 708 (1961), and (4) *Burns v. State of Ohio*, 360 U.S. 252, 258 (1959).

Some commenters pointed to the 1994 asylum reform initiative, which sought to impose a \$130 fee on asylum applicants but was withdrawn following extraordinary opposition from the public. The argument that won then is applicable now, the commenter wrote, and that charging for an asylum application is contrary to United States international obligations to permit refugees to seek asylum in the United States and in violation of 8 U.S.C. 1158(a)(1).

Several commenters noted that the vast majority of signatories to the 1951 Refugee Convention or 1967 Refugee Protocol do not charge an asylum fee. Multiple commenters wrote that the U.S. would become just the fourth nation to charge fees for asylum. Similarly, a commenter said only three countries currently charge a fee for asylum because such a policy is “universally considered” dangerous, discriminatory, and wrongheaded. Similarly, several comments stated that the United States has been a world leader in refugee protection for a long time and wrote that if the U.S. begins charging fees for asylum, other nations may choose to follow suit. The commenters described this outcome as “disastrous” given the increasing need for refugee resettlement worldwide. A commenter wrote that imposing a fee for asylum seekers is not feasible and would break with international precedent by denying such individuals access to “a universal human right.” A commenter suggested there was a global consensus for rejecting fees for refugees and asylum seekers and wrote that any additional barriers to asylum adjudication could result in “even more deaths.” Another commenter expounded on this point and questioned why USCIS neglected to discuss why most nations do not charge fees for asylum. The commenter also requested that USCIS “investigate the context of migration” in the nations that do charge fees for asylum, and said that, of these, only

Australia was another “Western” nation. One commenter stated that charging a fee for asylum would place the U.S. “in the same position as countries that abuse human rights” and would contravene the work the U.S. has done to become a leader in refugee protection. A few commenters said that a fee for Form I-589 would make the United States the first, and only, country to charge asylum applicants to access protection with no possibility of fee waiver.

One commenter wrote that Australia’s direct cash assistance to asylum seekers has no equivalent in the United States. Another commenter added that Australia, whose policies towards asylum seekers have garnered international criticism, charges half of what DHS proposes to charge for asylum applications. A commenter noted that the United States will now have harsher asylum regulations than Iran, whose policies allow asylum seekers to obtain a fee waiver.

Response: DHS disagrees that the establishment of an asylum application fee is in violation of United States international treaty obligations, the principle of non-refoulement, and domestic implementing law. Although the United States is a party to the 1967 Refugee Protocol, which incorporates Articles 2 through 34 of the 1951 Refugee Convention, the Protocol is not self-executing. *See, e.g., Stevic*, at 428 n.22. The asylum statute at INA section 208 and withholding of removal statute at INA section 241(b)(3) constitute the U.S. implementation of international treaty obligations related to asylum seekers. DHS believes that the asylum application fee may arguably be constrained in amount but is not prohibited by the 1951 U.N. Convention Relating to the Status of Refugees (“1951 Refugee Convention”), 1967 U.N. Protocol Relating to the Status of Refugees (“1967 Refugee Protocol”), United States constitution, or domestic

implementing law. Article 29(1) of the 1951 Refugee Convention, and as incorporated by reference in the 1967 Refugee Protocol, refers to the imposition of fees on refugees, and limits “fiscal charges” to not higher than those charged to nationals of a given country for similar services. A \$50 fee is reasonably aligned with the fees charged to U.S. nationals for other immigration benefit requests. Moreover, INA section 208(d)(3), 8 U.S.C. 1158(d)(3), specifically authorizes DHS to impose a fee for the consideration of an asylum application that is less than the estimated cost of adjudicating the application. The approximate cost of an asylum application is \$366. Thus, a \$50 fee for asylum applications is in line with U.S. international treaty obligations and domestic implementing law.

DHS disagrees with the commenters’ assertions that a \$50 fee would operate as a complete bar on asylum seekers’ ability to apply for asylum and access to equal protection and due process of law. The commenter refers to Article 32 of the 1951 Refugee Convention, which provides that “[t]he expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law.” The commenter also refers to Article 3 of the 1951 Refugee Convention, which states that the provisions of the Convention shall apply “to refugees without discrimination as to race, religion, or country of origin.” DHS believes that the establishment of a minimal fee of \$50 to apply for asylum is not cost-prohibitive or overly burdensome for asylum seekers. This final rule does not bar asylum seekers from filing asylum applications. Also, charging a \$50 fee for an asylum application does not restrict an asylum seeker’s access to a decision reached in accordance with due process of law or discriminate against refugees.

Moreover, DHS does not intend to recover the estimated full cost of adjudicating the asylum application, as the fee amount is well below the approximate full cost of \$366 for adjudicating an asylum application. DHS maintains that charging a fee for asylum applications will help alleviate the pressure that the growing asylum workload places on the administration of other immigration benefits and would generate some revenue to help offset costs.

As discussed in the NPRM, DHS requested a report from the Law Library of Congress on fees charged to asylum applicants by countries that are a party to the 1951 Refugee Convention and/or its 1967 Refugee Protocol. The Law Library of Congress surveyed the 147 signatory countries to the 1951 Refugee Convention and/or the 1967 Refugee Protocol, and of 147 countries, identified three countries that charge a fee for initial applications for asylum or refugee protection. DHS considered the asylum fees charged by other nations, including Australia, Fiji, and Iran, and the \$50 fee is in line with the fees charged by these other nations. *See* 84 FR 62319.

DHS disagrees with commenters' assertions that charging a fee for asylum would place the United States in the same position as countries that abuse human rights and would contravene the work the United States has done to become a leader in refugee protection. DHS acknowledges the comments related to the policies of other nations, such as Australia and Iran. Each nation has its own unique needs and different asylum workloads. Given the growing scale of the affirmative asylum workload in the United States, DHS explored ways to alleviate the pressure of the affirmative asylum workload. DHS believes that establishing a minimal fee of \$50 for Form I-589 would help USCIS

generate revenue and offset costs, as well as mitigate fee increases for other immigration benefit requests.

Comment: Some commenters said the asylum application fee, Migrant Protection Protocols (MPP), CBP “metering,” and “safe third country agreements” are counter to the international legal principle of non-refoulement and indicate a clear effort on the part of the administration to dismantle asylum in the United States.

Response: The commenter’s concerns regarding MPP, CBP “metering”, and safe third country agreements are outside of the scope of this rulemaking and DHS provides no response to those subjects in this final rule. DHS believes that fees associated with access to asylum and work authorization in the United States are not prohibited by the 1951 U.N. Convention Relating to the Status of Refugees (“1951 Refugee Convention”), 1967 U.N. Protocol Relating to the Status of Refugees (“1967 Refugee Protocol”), United States constitution, or domestic implementing law, and do not run counter to the principle of non-refoulement. Article 29(1) of the 1951 Refugee Convention, and as incorporated by reference in the 1967 Refugee Protocol, refers to the imposition of fees on refugees seeking protection, and limits “fiscal charges” to not higher than those charged to nationals of a given country for similar services, but does not bar the imposition of such fiscal charges. The \$50 fee is reasonably aligned with the fees charged to United States nationals for other immigration benefit requests. INA Section 208(d)(3) authorizes the imposition of fees for asylum applications. The asylum application fee is in line with domestic implementing law and does not contravene international treaty obligations.

Comment: Some commenters suggested that migration patterns in the U.S. are unique and questioned whether the proposed rule was a racist and xenophobic response to

increasing levels of immigration from Latin America. Some commenters discussed the characteristics of common countries of origin for asylees. Two commenters wrote that the asylum fee provision would impact thousands of Asian immigrants, and provided data from FY 2017 that shows 27,759 Chinese immigrants and 4,057 Indian immigrants applied for asylum, accounting for 12 percent and 2.9 percent of asylum seekers.

Another commenter stated that approximately 1.5 million Africans have left Africa for the United States or Europe since 2010, according to the United Nations, and that Nigeria was the seventh most represented country of origin for affirmative asylum cases filed in the U.S. from 2016-2018 according to a DHS report. Another commenter claimed that the asylum fee is indicative of xenophobia and racial animus toward those from Mexico and Central America, as Mexico, Haiti, El Salvador, Honduras, and Guatemala, respectively, had the highest denial rates of the 10 nationalities with the most asylum decisions between 2012 and 2017 (according to a 2018 report by CNN). The commenter claimed that high denial rates for people from these countries are partly due to the inaccessibility of legal assistance, and higher fees will exacerbate the disparity. One commenter stated that if the United States is not willing to address the root causes of migration, it cannot also place a fee on asylum seekers fleeing the violence and poverty of the countries that the U.S. refuses to aid.

Response: DHS disagrees that the asylum application fee is a racist and xenophobic response to increasing levels of migration and acknowledges the concerns of the commenters related to asylum seekers fleeing violence and poverty. Asylum is a discretionary benefit available to those who meet the definition of a refugee and are otherwise eligible. DHS recognizes that many legitimate asylum seekers face poverty

and violence and considered the challenging circumstances that many asylum seekers face when deciding to establish a minimal fee of \$50. The fee is well below the cost of adjudicating the asylum application, which is consistent with INA section 208(d)(3). The establishment of an asylum application fee is not animated by racism or xenophobia, but rather, it is animated by a need to respond to the increasing affirmative asylum workload and generate some revenue to offset costs. USCIS must address these issues regardless of the myriad factors that contribute to individuals claiming asylum in the United States.

Comment: Some commenters discussed the impact of an asylum fee on children. One commenter said the proposed rule disregards the best interests of children, as it would charge unaccompanied children for applying for asylum, writing that children should not have to shoulder the burden of the large backlog of cases and slow processing of immigration applications. One commenter said that 56 percent of the applications from Central America were filed by unaccompanied children, many of whom are fleeing the most high-volume countries of origin and are in danger without the help of the U.S. Another commenter noted that derivative applicants who do not file independent asylum applications cannot assert their own, independent claims. Many asylum-seeking families submit individual applications for all family members to pursue every possible avenue of relief for all family members. The cost per application will have a negative impact on these families. Multiple commenters wrote that applying a fee to asylum applications could result in deportations or compel vulnerable children and families to return to countries they fled, risking continued persecution or death. Several commenters pointed out that asylum seekers are in danger of human trafficking and other crimes, and that the asylum fee bars them from the protections that legal status affords. A few commenters

stated that asylum should only be based on evidence of perceived or actual persecution and not whether asylum seekers have financial assets. A commenter suggested the asylum fee proposal was “cruel and inhumane” and that asylum seekers should not have to prioritize asylum fees over feeding their families.

Response: DHS acknowledges the commenters’ concerns about the potential effects of the asylum application fee on children and their families. DHS recognizes that the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, provides a range of protections for unaccompanied alien children. DHS excludes unaccompanied alien children in removal proceedings, a particularly vulnerable population, from the imposition of a \$50 asylum application fee. 8 CFR 106.2(a)(20).

DHS acknowledges the commenters’ concerns about asylum seekers’ ability to pay fees for multiple asylum applications depending on the circumstances of principal and derivative applicants, including children. DHS considered the effect of a fee on asylum seekers and believes it would not impose an unreasonable burden on applicants or prevent asylum seekers from seeking protection. The services that USCIS provides at no or below cost impacts the fees imposed on other fee-paying applicants. DHS seeks to make the USCIS fee schedule more equitable for all applicants and petitioners.

Nevertheless, DHS considered the challenges that asylum seekers face and establishes an asylum application fee that is well below the cost of adjudicating the application.

Comment: Multiple commenters discussed the very limited resources with which asylum seekers come to the U.S., and the resulting inaccessibility of transportation, housing, healthcare, and other necessities. Several commenters noted that asylum seekers are ineligible for public assistance programs unless and until they are granted asylum, and

they rely on nonprofit and community resources for housing, basic toiletries, school supplies, clothing, and public transportation. The commenters claim that the asylum fee unjustly burdens those who need resources and support the most. One commenter cited a Human Rights Watch publication to claim that asylum seekers' financial resources often fail to cover the bare necessities of life, such as food, medicine, and shelter. Another commenter said that many asylum seekers do not have financial resources because of "the nature of flight from perilous situations," and wrote that asylum seekers are considered "non-qualified" immigrants for the purposes of qualification for federal public assistance.

One commenter said that USCIS claims the \$50 fee is large enough to produce a revenue stream while small enough to remain affordable. The commenter cited a Washington Post article that discusses the extreme poverty of asylum seekers to emphasize the inability of these people to pay any fee, no matter how small. Another commenter added that USCIS should take into account \$50 as a percentage of Gross National Income (GNI) in asylees' home countries, citing World Bank and TRAC Immigration data. A commenter wrote that the \$50 fee for asylum would not be a deterrent for some asylum seekers, but that the "calculus is not so simple" for others who will not be able to afford the fee. The commenter provided anecdotes about the personal backgrounds of asylum seekers to provide context about the challenging financial situations many asylum seekers or refugees face.

Response: DHS acknowledges the challenges that asylum seekers face, including extreme poverty and limited access to resources. In recognition of these circumstances, DHS establishes a minimal \$50 fee for Form I-589 for most applicants (unaccompanied

alien children in removal proceedings who file Form I-589 with USCIS are not required to pay the fee). DHS considered various fee amounts and whether the fee would be paid in installments over time. DHS has established a minimal \$50 fee that can be paid at one time, would not require an applicant to save for an unreasonable amount of time, would generate revenue to offset costs, and would not be so high as to be unaffordable to an indigent applicant. *See* 84 FR 62319. DHS does not intend to recover the full cost of adjudicating asylum applications via the Form I-589 fee. DHS will recover the additional costs of asylum adjudications by charging other fee-paying applicants and petitioners more. DHS does not intend to discourage meritorious asylum claims or unduly burden any applicant, group of applicants, or their families.

Comment: A commenter stated that this NPRM functions under the “deterrence paradigm” to prevent asylum seekers from coming to the United States. They claimed that such deterrence policies do not work, citing a report by the American Immigration Council which showed that comprehensive knowledge of the dangers and possible futility of seeking asylum had little impact on the intentions of Hondurans to seek asylum in 2014.

Response: DHS does not intend to deter legitimate asylum seekers from filing asylum applications via the \$50 asylum application fee. The goals behind establishing a \$50 asylum application fee include alleviating the pressure of the growing affirmative asylum workload on the administration of other immigration benefit requests and generating some revenue to offset costs. DHS believes the minimal fee of \$50 is not unreasonably burdensome and does not prevent legitimate asylum seekers from submitting asylum applications.

Comment: A few commenters indicated that the \$50 fee does not mitigate the fee increase of other immigration benefit requests. One of these commenters stated that since DHS will still rely on other benefit requesters to cover the costs of the asylum process, as authorized by Congress, the decision to charge an asylum fee is unacceptable.

A few commenters reasoned that, because the process costs around \$300 per applicant, a \$50 fee would not meaningfully address the deficit associated with asylum adjudication but would still be prohibitively expensive for vulnerable people. One commenter added that this is an arbitrary departure from the “full cost” standard required for federal agencies, and that USCIS should charge applicants the full cost of adjudicating the application.

One commenter cited the Asylum Division’s quarterly statistics, which indicate that DHS experienced a 40 percent decrease in affirmative filings between 2017 and 2018. The commenter stated that USCIS is unable to alleviate a growing backlog despite a drop in affirmative filings. Two commenters cited a Migration Policy Institute study which shows that many factors contributing to the backlog are the result of U.S. policies.

Response: DHS carefully assessed the costs associated with the adjudication of asylum applications and other types of immigration benefit requests and concluded that the \$50 fee for asylum applications is warranted. A minimal fee would mitigate the fee increase of other immigration benefit requests. DHS also relied on INA section 208(d)(3), which provides that “fees shall not exceed the Attorney General’s costs in adjudicating” the asylum application. The approximate cost of adjudicating an asylum application is \$366, and thus, the fee is below the full cost of adjudicating the application. The lower fee amount represents DHS’s efforts to balance the needs and interests of USCIS in

generating some revenue to offset costs against the socio-economic challenges faced by some asylum seekers.

DHS acknowledges the comments related to the growing affirmative asylum backlog, which played into DHS's decision to establish an asylum application fee. USCIS has taken several actions to address the affirmative asylum backlog, including: identifying and employing strategies to maximize efficiencies in case processing across workloads; increasing adjudicative capacity by expanding its field office workforce and continuing significant facilities expansion; and reverting to reform scheduling, also known as Last In, First Out (LIFO) scheduling, which involves scheduling the most recently filed applications for interviews ahead of older filings. *See* USCIS announcement on Last in, First Out scheduling (January 2018), available at <https://www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog>. LIFO scheduling has contributed to a decrease in the growth of the asylum backlog. Even though USCIS has taken a range of measures to address the backlog, the number of pending affirmative asylum cases remains high.

Comment: One commenter cited a 2011 New York Immigrant Representation Study to say that with decreased ability to support themselves, asylum seekers would be far less likely to afford legal counsel and therefore have less chance of prevailing on their asylum claims.

Response: DHS believes that a minimal fee of \$50 will not prevent asylum seekers from securing legal counsel or affect their chance of prevailing on their asylum claims.

Asylum seekers may secure legal counsel as needed to assist them with the asylum application process. This final rule does not hinder or affect asylum seekers' access to

counsel. With or without legal counsel, asylum applicants are given the opportunity to provide the information needed for an adjudicator to make a decision about their eligibility for asylum. DHS declines to make any changes in this final rule in response to the comment.

**14. Form I-600A/I-600 Supplement 3, Request for Action on
Approved Form I-600A/I-600**

Comment: A commenter supported changes in the handling of Hague Adoption Convention Transition Cases, commenting that their personal experience in the adoption process had been very difficult. The commenter stated that having a prescribed system would be an improvement.

Response: DHS appreciates the support for the changes in handling intercounty adoption cases and agrees that the prescribed system is an improvement upon previous practice.

**15. Form I-601A, Application for Provisional Unlawful Presence
Waiver**

Comment: Multiple commenters opposed increasing the fee for Form I-601A because it would harm family unity, discourage the use of consular processing, and undermine the use of Form I-601A to improve efficiency.

Response: DHS recognizes that Form I-601A can aid family unity and improve administrative efficiency through the use of consular processing. However, DHS disagrees with the commenters' contention that the fee increases enacted in this final rule for Form I-601A, from \$630 to \$960, undermines those goals. DHS adjusts the fee for Form I-601A to reflect the estimated full cost of adjudication. If DHS did not adjust fee to provide for USCIS to recover full cost, USCIS would be unable to devote sufficient

resources to adjudication to limit the growth of pending caseload, thereby undermining the goals of family unity and efficient processing.

DHS declines to make adjustments in this final rule in response to these comments.

Comment: A commenter opposed the fee increase for Form I-601A because such waivers have allowed thousands of immigrants to pursue lawful permanent residence through consular processing. The commenter said the proposed increase for this waiver application, in conjunction with the costs of consular processing, would discourage immigrants from seeking lawful status and place them at risk of removal and long-term separation from their families.

Response: DHS recognizes that the provisional waiver process has enabled family unity and the use of consular processing to gain lawful permanent residence. However, DHS disagrees with the commenter's assertion that the fee increase for Form I-601A will discourage immigrants from seeking lawful status or result in long-term separation for families. DHS believes that the fee increase of \$330, from \$630 to \$960, likely represents a small portion of the overall cost of utilizing consular processing to pursue lawful permanent residence. DHS also notes that noncitizens with an approved Form I-601A still trigger the unlawful presence ground of inadmissibility found in INA section 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B) upon departure.

DHS declines to make changes in this final rule in response to the comment.

16. Form I-751, Petition to Remove Conditions on Residence

Comment: Multiple commenters wrote regarding increases in the fee for Form I-751. Commenters wrote that the fee for Form I-751 would cause individuals who are unable to

afford the new fee failing to petition to remove the conditions on their permanent residence, thereby losing their conditional lawful permanent resident status.

Response: DHS recognizes the importance of Form I-751 to individuals in conditional lawful permanent resident status. However, DHS disagrees with the commenters' contention that the fee increase for Form I-751, from \$595 to \$760, will render Form I-751 unaffordable to these individuals. Conditional lawful permanent residents have nearly two years between gaining that status and the 90-day period in which they are required to file Form I-751, during which they are able to work and save to afford the fee, or they may pay with a credit card. DHS adjusts the fee for Form I-751 to reflect the estimated full cost of adjudication and declines to make adjustments in this final rule in response to these comments.

Comment: Many commenters indicated the Form I-751 fee increase and elimination of the fee waiver would make it more difficult for low-income families to file timely and could have severe consequences, including the conditional resident's loss of lawful status and the risk of being placed into removal proceedings. A commenter stated that the unbundling and resulting increase in the fee for adjustment of status and ancillary applications, and the increased fee for provisional waivers could prevent low-income individuals from applying for immigration benefits. The commenter asked that USCIS hold current fees in place or increase the fees by a modest amount. One commenter said the proposed change would affect many older applicants who maybe be on fixed incomes, as well as people in single-income households.

Response: DHS acknowledges the changes in fee waiver eligibility and the increase in the fee for Form I-751 implemented in this final rule will render the process of removing

conditions on lawful permanent resident status more expensive for individuals. However, DHS disagrees with the commenters' contention that the fee increase for Form I-751, from \$595 to \$760, will render Form I-751 unaffordable to these individuals.

Conditional lawful permanent residents have nearly two years between gaining that status and the 90-day period in which they are required to file Form I-751, during which they are able to work and save to afford the fee.

DHS declines to adjust this final rule in response to these comments.

17. Form I-765, Application for Employment Authorization

Comment: A commenter wrote that Form I-765 fees are causing students to consider leaving the United States following graduation, removing talented workers from the U.S. economy and tax base. The commenter stated that the proposal would further disincentivize foreign students from studying in the United States. A commenter also wrote that the proposed fee increases could impede immigrant student's career advancement.

Response: DHS acknowledges the sizeable increase in the Form I-765 fee implemented in this final rule, adjusting the fee from \$410 to \$550. DHS adjusts the fee for Form I-765 to reflect the estimated full cost of adjudication. Although DHS recognizes that this fee increase imposes an additional burden on nonimmigrant students seeking employment authorization for Optional Practical Training, off-campus employment under the sponsorship of a qualifying international organization, or due to severe economic hardship, DHS is unaware of data to support the commenter's contention that fee for Form I-765 serves to deter students from coming to the United States. DHS declines to exempt students from the increased filing fee because USCIS must determine the

student's eligibility under the applicable regulations at the time of application and the fee is necessary to recover the full costs of the adjudication. DHS does not believe the fee is an unreasonable burden for students who need employment-based training. DHS believes that employment in the United States will continue to appeal to individuals despite an increase of \$140 in the cost of applying for an EAD.

DHS declines to make changes in this final rule in response to the comment.

Comment: Multiple commenters opposed the change to charge asylum applicants for their first Form I-765, Application for Employment Authorization. The comments are summarized as follows:

- Charging asylum seekers for the first work permit creates a “catch 22” situation where people cannot work so cannot afford to pay their asylum fees and may incentivize people to work illegally.
- USCIS should not charge \$50 for asylum applications and further charge for an EAD while asylum cases are pending.
- Requiring individuals who are not authorized to work to pay such a substantial fee to acquire work authorization is cruel and counterintuitive.
- Asylum seekers have historically not been charged for their initial EAD because their flight from their country of origin leaves them in dire financial situations, and they often lack family support in the United States to assist them.
- Requiring asylum applicants to pay for an initial EAD before they have authorization to work will worsen the already precarious situation of a vulnerable population.

- People subject to the fee have already spent substantial time and money to get to the United States, have likely spent time in immigration detention, and have not been authorized to work since leaving their home country.
- USCIS should continue to exempt asylum seekers from fees associated with EADs because these individuals would not be able to afford fees before they can legally work. It did not make sense to charge asylum seekers for work permits before being granted protection.
- The EAD fee for asylum seekers will act as an unjust deterrent for asylum seekers.
- To levy an asylum fee in conjunction with the EAD fee was beyond contemplation and abominable and questioned how the government could expect asylum-seekers to obtain funds to cover these costs.
- The proposal was far from benign and employers could pay this work permit fee.
- This fee will force asylum applicants into seeking unauthorized work, putting them at a higher risk of exploitation, placing an undue burden on investigative agencies, and ultimately putting those applicants in danger of facing further consequences for attempting to work without authorization.
- A fee for an initial work permit is illogical, because the U.S. benefits from self-sufficiency of asylum seekers and should therefore want to expedite the employment authorization process.
- It will burden local communities and service providers that must provide social services to asylum applicants unable to work.

- Local communities will suffer lost wages and tax revenue, as well as the labor that would otherwise be provided by asylees.
- State, local, community, and religious organizations will attempt to cover the EAD fee for asylum seekers, straining their resources and preventing them from serving more people.
- Preventing asylum seekers from authorized work restricts them from lawfully paying a fee for asylum.
- Allowing asylum seekers to have work authorization benefits local economies by asylum seekers paying taxes, filling skills gaps, and building the workforce.
- Asylees often bring a wide range of skills and experience and are useful to many businesses, and that the proposal would deny U.S. businesses of the opportunity to hire these workers.
- Nearly 65 percent of the asylum seekers in the commenter's program arrive in the U.S. with experience in STEM and healthcare fields.
- Employers would have difficulty finding labor substitutes if asylum seekers were kept out of the workforce. USCIS should conduct additional analysis on the impact of new fees for employment authorization.
- USCIS has not calculated the losses to tax revenue and the broader economy associated with a reduced number of asylees in the U.S.
- Asylees often come to the U.S. with in-demand skills, including skills that would be useful in the healthcare and information technology sectors, and the USCIS should estimate the costs borne to employers who would use asylees.

Response: DHS acknowledges the concerns of the commenters related to the requirement of a fee (\$550) for initial filings of Form I-765 for applicants with pending asylum applications. Initial EAD applicants with pending asylum applications account for a large volume, approximately 13 percent, of the Form I-765 workload forecast and DHS has decided to no longer provide this service for free. Charging initial Form I-765 applicants with pending asylum applications allows DHS to keep the fee for all fee-paying EAD applicants lower. Asylum applicants will pay no more and no less than any other EAD applicant (except for those who are eligible for a fee waiver) for the same service.

DHS is acting in compliance with Section 208(d)(3) of the INA, which provides that, “[n]othing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 286(m).” DHS believes that charging asylum applicants for EADs does not impose an unreasonable burden on asylum seekers. This final rule does not impose or seek to impose any obligation on the part of employers, states, or community or religious organizations to pay the Form I-765 fee. Also, this final rule does not seek to burden local communities or service providers. DHS declines to make changes in this final rule in response to these comments.

USCIS disagrees that charging asylum seekers for the first work permit creates a conflict between contradictory conditions where aliens cannot work to pay their asylum fees and may incentivize people to work illegally. No asylum applicant may receive employment authorization before 180 days have passed since the filing of his or her

asylum application. INA section 208(d)(2), 8 U.S. C. 1158(d)(2); 8 CFR 208.7(a)(1).

This requirement has been in effect for over twenty years. *See*, Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Section 604, Pub. Law 104-208; see also 62 FR 10337. Thus, an asylum seeker is unlikely to come to the United States expecting to be authorized to work immediately. Asylum seekers can, and do, rely on their own means, as well as family or community support to economically sustain themselves in the United States during the period of time that they are not employment authorized.

Comment: Several commenters wrote that if asylum seekers are unable to obtain employment authorization, they may be unable to pay for legal counsel, which will make it more difficult for them to prevail on the asylum applications. One commenter cited “Accessing Justice: The Availability & Adequacy of Counsel in Immigration Proceedings,” a study that showed that among non-detained individuals in immigration court, those with counsel saw success in 74 percent of cases compared with 13 percent of those unrepresented.

Response: DHS recognizes the economic challenges faced by asylum seekers. However, DHS does not believe that charging asylum seekers for a work authorization application will prevent them from obtaining legal counsel. DHS does not believe that the EAD fee is unduly burdensome for asylum seekers. Furthermore, DHS is acting within the scope of its statutory authority to establish fees for adjudication services, in accordance with INA sections 208(d)(3) and 286(m). DHS declines to make changes in response to these comments.

Comment: A commenter stated that fee exemptions for EAD applications by asylees should apply not only to initial applications, but also renewals. The commenter said the original rationale was that the initial EAD lasts for 2 years, and it was expected that asylees would be granted lawful permanent residence within that two-year period. Currently, however, the processing times for permanent residence by asylees range up to 26 months, so the commenter said USCIS should eliminate the fee for applications for renewal of employment authorization filed by asylees.

Response: DHS acknowledges the concerns related to processing times for EADs and adjustment of status applications. DHS does not believe that the fee for renewal EAD filings will present an insurmountable burden for asylees. Asylees are employment authorized incident to their status. DHS will continue to exempt asylees from the initial Form I-765 fee. However, considering that they are employment authorized incident to their status as an asylee and the EAD is matter of convenience and not necessary for ongoing employment, asylees submitting I-765 renewal applications will be required to pay the relevant fee, unless the asylee filed for adjustment of status on or after July 30, 2007 and before [INSERT EFFECTIVE DATE OF FINAL RULE] and paid the Form I-485 filing fee. DHS declines to adjust this final rule in response to these comments.

Comment: One commenter suggested that initial asylum applicants seeking employment authorization should be exempt from fees. Instead, they propose that the Form I-765 fee should increase by \$10 to offset the cost.

Response: DHS appreciates the commenter's suggestion. DHS considered continuing to exempt asylum applicants from paying for their first Form I-765 filing. However, to more closely align with the beneficiary-pays principle, DHS declines to require other fee-

paying applicants to subsidize the cost of adjudicating the initial EAD applications of asylum applicants. DHS declines to adopt the change suggested by this commenter.

Comment: One commenter pointed out that work-eligible unaccompanied children need access to EADs in order to access housing, food, and clothing. Many minors reach adulthood before their Form I-589 application is adjudicated, losing access to foster care and other financial support, leaving them as reliant on work as adult applicants. Another commenter said that women and children will be particularly affected by the EAD application fee and stated that a fee waiver is necessary for these applications. Given that asylum seekers do not have access to social welfare benefits, women are especially at risk of hunger, abuse, homelessness, trafficking, and other coercive employment practices. This commenter cited data from the Women's Refugee Commission which emphasizes the benefits of employment for women who have experienced trauma, as many asylees have.

Response: DHS acknowledges that asylum applicants need access to employment authorization. DHS does not believe that this final rule hinders or prevents asylum seekers from applying for employment authorization. DHS believes that the EAD fee is not unduly burdensome for asylum seekers and is acting within the scope of its statutory authority to establish fees for adjudication services, in accordance with INA sections 208(d)(3) and 286(m). Regarding unaccompanied alien children (UAC), a UAC may be in the custody of the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR) or residing with a sponsor. *See* 8 USC 1232(b) and (c). A UAC should not need an EAD for an identity document, and to the extent that they do, the sponsor for the UAC is generally responsible for his or her Form I-765 fee. After turning

18, the same policy considerations for charging them for the Form I-765 apply as for charging all adults.

Comment: A few commenters claimed that the processing time for EAD applications is too long as is, and the new Form I-765 fee will present an unsurmountable burden.

Doubling the waiting period, along with the \$490 fee, presents an unjust financial hurdle for many asylum seekers and will prevent them from attaining self-sufficiency through work.

Response: DHS acknowledges that the fee and waiting period for the initial EAD may be an economic challenge to some asylum applicants, but DHS disagrees that it is insurmountable or unduly burdensome. Many asylum seekers spend thousands of dollars to make the journey to the United States. It is not unduly burdensome to require that asylum seekers plan and allocate their financial resources to pay a fee that all other noncitizens must also pay. USCIS must incur the costs of adjudicating Form I-765 submitted by an asylum seeker, and DHS does not believe it should shift that cost to other fee payers. Charging a fee for adjudication services is in line with INA section 208(d)(3), which provides that “[n]othing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.” DHS declines to make changes in this final rule in response to these comments.

18. Form I-817, Application for Family Unity Benefits

Comment: A commenter said the fee decrease for Form I-817 is puzzling in light of the current processing and adjudication of the corresponding benefits because this form currently experiences inordinate delays for processing.

Response: DHS acknowledges that processing times for many forms, including Form I-817, have exceeded USCIS' processing time goals. DHS is setting the fee for Form I-817 at the level sufficient to recover the estimated full cost of adjudicating USCIS's anticipated workload receipt volumes. DHS hopes to be able to devote sufficient resources to Form I-817 adjudication to reduce pending caseload. DHS declines to make any adjustments in this final rule in response to the comment.

19. Form I-821D, DACA Renewal Fee

Comment: Many commenters wrote that they opposed the Form I-821D DACA renewal fees. Commenters stated that increasing DACA fees would make it difficult for individuals to renew their work permits and individuals could lose the ability to work legally in the United States. Commenters highlighted that many DACA requestors are students and may have difficulty paying the proposed fee in addition to the fee for filing Form I-765. Commenters wrote that the proposed fee increase would cause emotional and financial hardships for the families of DACA recipients. Commenters stated that the imposition of a fee for DACA would constitute an attempt to terminate the DACA program. Some comments stated that the Supreme Court might decide the future of the DACA program in the next few months; therefore, DACA recipients should not pay more for an uncertain benefit.

Response: DHS will not impose the proposed Form I-821D, Consideration of Deferred Action for Childhood Arrivals fee. It is not included in this final rule. USCIS will not receive any revenue from Form I-821D. Therefore, DHS removed the marginal costs directly attributable to the DACA policy from its cost baseline that informs the fee calculations for this final rule. The revenue DHS anticipated from the Form I-821D DACA fee in its NPRM to recover costs associated with overheads and cost reallocation will be collected through adjustments to the other fees addressed in this final rule.⁸⁸ DACA requestors will continue to pay the fees in place before September 5, 2017, \$410 for Form I-765, Application for Employment Authorization, as well as a separate biometric services fee of \$85.

Comment: Multiple commenters suggested that the ability to receive immigration protection and work authorization under DACA is crucial for immigrant survivors of domestic and sexual violence. The commenters cited a DOJ special report from December 2014 which indicates that women between the ages of 18 and 24 experience the highest rate of rape and sexual assault when compared to women of other age groups. The commenters stated that because most DACA requestors are young immigrants, the DACA eligible population is particularly vulnerable to violence and abuse.

One commenter said that increasing the DACA renewal fee by 55 percent will jeopardize the employment of domestic abuse survivors. The commenter stated that

⁸⁸ Although DHS requires DACA requestors to continue paying the fee for Form I-765, it has removed all DACA workload and fee-paying volume projections from USCIS' ABC model due to our decision to not impose a fee for Form I-821D in this final rule, consistent with Scenario D of the NPRM and the FY 2016/2017 fee rule. In its rules to establish USCIS fees, DHS has generally not relied on revenue from sources that are temporary in nature, including DACA. *See* 81 FR 73312. Including temporary programs in the model would allocate fixed costs and overhead to these programs, thereby introducing financial risk because USCIS would not be able to recover full cost if they are discontinued.

when a DACA holder is a victim of domestic violence and becomes eligible for U nonimmigrant status, it is important that they be able to renew their DACA and related work permits while they wait for their U nonimmigrant status so that can remain employed and not have to financially rely on their abusers. The commenter stated that processing time for petitions for U nonimmigrant status is between 52.3 and 53 months.

Response: DHS will not impose a fee for Form I-821D in this final rule.

However, DACA requestors will continue to be required to submit Form I-765 for an EAD. To request a DACA renewal, DHS will continue to require the \$410 Form I-765 fee and the \$85 biometric services fee that were in effect before September 5, 2017. Furthermore, DHS reiterates that Form I-918 has no fee and Form I-192 remains fee waivable for U nonimmigrant status petitioners.

DHS declines to make changes in this final rule in response to these comments.

20. Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status

Comment: A commenter said the fee review for EB-5 forms, such as Form I-829, failed to meet the objectives of ensuring USCIS has adequate resources and to recover the full operating costs of administering the national immigration benefits system. The commenter said the modest 4 percent increase for Form I-829 fee is clearly too low for adequate service and noted that despite the form having a statutory requirement to be adjudicated within 90 days of filing, the processing time for this form is currently between 22 and 45 months.

Response: DHS acknowledges that processing times for many forms, including Form I-829, have exceeded the goals established by USCIS. Furthermore, DHS acknowledges

its obligation to adjudicate Form I-829 filings within 90 days of the filing date or interview, whichever is later. *See* INA section 216(c)(3)(A)(ii), 8 U.S.C. 1186b (c)(3)(A)(ii). In this final rule, DHS adjusts the fee for Form I-829 to \$3,900 to reflect the estimated full cost of adjudication. In estimating the full cost of adjudication, USCIS considers the costs to adjudicate incoming workloads and does not consider the resources necessary to adjudicate existing pending caseloads. If USCIS considered the cost to adjudicate existing, pending caseloads in its fee reviews, this would require future immigration benefit requestors to subsidize the cost of adjudicating previously received applications and petitions. DHS will not require future applicants and petitioners to subsidize the adjudication of existing, pending caseloads.

DHS declines to make changes in this final rule in response to the comment.

21. Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA))

Comment: A commenter said that the NPRM provided no explanation for the 532 percent fee increase for Form I-881. The commenter questioned if adjudication had changed drastically to justify the fee increase. Similarly, a couple commenters stated that USCIS' justifications did not explain the fee increase and the proposal was contrary to the purpose of the Nicaraguan Adjustment and Central American Relief Act (NACARA).

Response: DHS disagrees with the commenters' contention that DHS failed to explain or justify the fee increase for Form I-881. This final rule adjusts the fee for Form I-881 from \$285 for individuals or \$570 for families to a single fee of \$1,810. As stated in the NPRM, DHS has not adjusted the fee for Form I-881 since 2005. Thus, the fee has not

reflected USCIS' estimated full cost of adjudication since that time. The large increase results from a need for the fee to recover its proportionate share of USCIS' estimated full costs. In this final rule, DHS adjusts the fee for Form I-881 to reflect the estimated full cost of adjudication.

DHS declines to make change in this final rule in response to these comments.

22. Forms I-924, Application For Regional Center Designation Under the Immigrant Investor Program, and I-924A, Annual Certification of Regional Center

Comment: A commenter said the filing fee for Form I-924 is “already vastly out of proportion” with the work required to process the form. The commenter said the current fee of \$17,795 may be appropriate for entities seeking a new regional center designation or an approval of an exemplar Form I-526 petition but is not reasonable for smaller-scale changes like a change to a regional center's name, ownership, or organizational structure. The commenter suggested there should be a much lower fee to accompany such minor changes (which are mandatory notifications to USCIS).

Another commenter said the fee adjustment for Forms I-924 and I-924A fails to meet the agency's stated objectives of adjusting fees to ensure USCIS has the necessary resources to provide adequate service to applicants and can recover the full operating costs associated with administering the immigration benefits system.

Response: DHS acknowledges that there may be a difference between the cost of adjudicating a Form I-924 filing that requests a new regional center designation and a filing that amends an existing regional center. However, DHS does not have data to document the difference in effort and cost between different types of Form I-924 filings.

Thus, DHS estimated the full cost of adjudication for Form I-924 based on an estimate of the average level of effort required to adjudicate Form I-924. As noted in the rule initially establishing the \$17,795 for this form, the proposed fee “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.”⁸⁹

DHS disagrees with the commenter’s contention that the fee for Form I-924 is too low to provide adequate service. In its fee review, USCIS estimated that the fee for Form I-924 necessary to reflect the full, estimated cost of adjudication would be less than the existing fee of \$17,795. In recognition of the resources available to I-924 filers and to limit the fee increases for other form types, DHS decided to maintain the fee for Form I-924 at the current level of \$17,795 in this final rule.

DHS declines to make changes in this final rule in response to these comments.

23. Form I-929, Petition for Qualifying Family Member of a U-1

Nonimmigrant

Comment: Multiple commenters suggested the proposed \$1,285 or 559 percent increase in the Form I-929 fee is excessive. The commenters stated that the petition benefits crime victims’ family members. A commenter said the proposed fee would create a financial hardship for immigrant families and the proposed rule ignores the fact that survivors of domestic violence, sexual assault, and human trafficking may desperately

⁸⁹ USCIS, *U.S. Citizenship and Immigration Services Fee Schedule*, 81 FR 73292, 73310 (Oct. 24, 2016).

need timely processing of ancillary applications to escape and overcome abuse. Another commenter said the proposed increase would inhibit a vulnerable population from reuniting with spouses, children, and in the case of minors, parents—directly in tension with congressional intent. A commenter indicated this increase would make applying extremely difficult for individuals who have qualified family members. A commenter stated that it is important to incentivize individuals to come forward and report when they have been the victim of a crime and by keeping derivative applications for U-visa applicants affordable, USCIS would ensure that agencies prioritize public safety and family unity.

Response: DHS recognizes the importance of Form I-929 for promoting family unity for U nonimmigrants and their family members. In recognition of this importance, and consistent with its commitment to maintain fee waiver availability of statutorily protected classes of individuals, DHS proposed in the NPRM to continue to make the fee for Form I-929 waivable for those who file Form I-912, Request for Fee Waiver, and meet the fee waiver eligibility criteria. *See* 84 FR 62297. In this final rule, DHS reaffirms that the fee for Form I-929 will remain waivable for petitioning U nonimmigrants or lawful permanent residents who file Form I-912, Request for Fee Waiver, and meet the fee waiver eligibility criteria. DHS believes that maintaining access to fee waivers for this vulnerable population mitigates any concerns that the increase in the fee for Form I-929 would inhibit family unity.

In this final rule, DHS establishes the fee for Form I-929 as \$1,485 to reflect the estimated full cost of adjudication, which includes the anticipated cost of fee waivers for Form I-929. DHS recognizes that this represents a significant increase of \$1,255 in the

fee. DHS notes that this increase is due, in part, to its commitment to preserve access to fee waivers for certain vulnerable populations. Because DHS anticipates that many filers will meet the fee waiver criteria, USCIS must charge fee-paying applicants more to recover the cost of processing fee-waived forms.

DHS declines to make changes in this final rule in response to these comments.

24. Form N-400, Application for Naturalization

a. N-400 Fee Increase

Comment: Some commenters stated that USCIS does not have statutory authority for raising the naturalization fees.

Response: DHS disagrees that USCIS does not have the statutory authority to raise naturalization fees. The Form N-400 fee adjustment is consistent with INA section 286(m), 8 U.S.C. 1356(m) (authorizing DHS to charge fees for adjudication and naturalization services at a level to “ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants and other immigrants”)⁹⁰ and the CFO Act, 31 U.S.C. 901-03 (requiring each agency’s Chief Financial Officer (CFO) to review, on a biennial basis, the fees imposed by the agency for services it provides, and to recommend changes to the agency’s fees). Currently, there are no statutory provisions that require USCIS to limit the naturalization

⁹⁰ The longstanding interpretation of DHS is that the “including” clause in section 286(m) does not constrain DHS’s fee authority under the statute. The “including” clause offers only a non-exhaustive list of some of the costs that DHS may consider part of the full costs of providing adjudication and naturalization services. *See* 8 U.S.C. 1356(m); 84 FR 23930, 23932 n.1 (May 23, 2019); 81 FR 26903, 26906 n.10 (May 4, 2016).

application fee. DHS declines to make any changes in this final rule in response to these comments.

Comment: Many commenters stated that Congress has asked USCIS to keep citizenship affordable, consistent with Congressional intent, USCIS has historically followed this directive by using other fees to subsidize naturalization fees, and that the proposed increase in naturalization fees and removal of fee waivers violates Congressional intent. A commenter provided quotations from 2010 and 2016 rulemakings stating this policy objective and wrote that USCIS is arbitrarily departing from the policy of reducing economic barriers to naturalization. Commenters also cited the U.S. Code’s citizenship criteria and noted the absence of economic status. Commenters cited the 2019 DHS Appropriations Act and a recent Congressional Committee report in making this argument and especially opposing the removal of fee waivers for Form N-400. A commenter also cited Consolidated Appropriations Acts from 2012, 2017, and 2019 as evincing Congressional intention to reduce financial barriers to naturalization. The commenter also quoted a Senate Committee report from 2015 and House Committee report from 2020 to the same effect. Another commenter provided two House of Representatives reports from 2018 and 2019, also writing that the proposal contravenes Congressional intent.

Multiple commenters stated that the proposal “undermin[es] the special consideration that obtaining U.S. citizenship deserves.” A commenter wrote that USCIS irrationally dismissed Congressional instructions to remove barriers to naturalization by relying on a principle of “self-sufficiency” that USCIS asserts without support. Another commenter stated that USCIS acknowledged its departure from Congressional intent, and

that its stated justification – a “hypothetical concern” that waivers could disrupt services – is insufficient. A commenter stated that, while reducing the subsidy provided by other immigration fees to naturalization may be appropriate, it is cynical of USCIS to use naturalization fees to fund ICE while making no commitment to reducing the months-or-years-long wait times for citizenship interviews. A commenter provided a citation to a USCIS statement reaffirming the special consideration given for naturalization in making fee determinations.

A commenter stated that increasing naturalization fees would impact families and that DHS must therefore perform a “family policymaking assessment,” citing a 1998 Omnibus Appropriations Act. The commenter wrote that N-400s are the forms most likely to impact immigrant families.

A commenter wrote that the Northern District of California issued a nationwide preliminary injunction, effective December 2, 2019, barring USCIS from limiting access to naturalization for LPRs.

Two commenters cited the United Nations Declaration of Human Rights’ statement that the right to a nationality also includes the right to “change [one’s] nationality,” and therefore there should be no arbitrary barriers that prevent naturalization.

One commenter cited a 2012 Migration Policy Institute study which found that the United States lags behind other English-speaking countries in naturalization rates, writing that these countries have made active attempts to encourage naturalization. A few commenters emphasized the role of naturalization in providing personal security for immigrants, particularly those who are in danger of worker exploitation without the full

legal rights of citizenship. A commenter requested that DHS more thoroughly analyze the costs of impeding access to naturalization, which include long-term reduced economic and social mobility for impacted populations.

Response: DHS recognizes the importance of naturalization to individual beneficiaries and American society as a whole. However, there are no specific provisions in the law (including the INA or the United Nations Declaration of Human Rights) that require USCIS to set fees to encourage individuals to obtain U.S. citizenship.

In response to comments, DHS provides that the fee for Form N-400 will remain fee waivable for VAWA self-petitioners T and U nonimmigrants, SIJ petitioners and recipients who have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency, and Special Immigrant Afghan and Iraqi translators. DHS is aware of the United Nations' Universal Declaration of Human Rights, and we agree with the declaration's article 15 which provides that everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.⁹¹ Congress has authorized DHS to fund USCIS naturalization services from fees, and does not fund USCIS through appropriations. *See* INA section 286(m), 8 U.S.C. 1356(m). Our fees are set using notice and comment rulemaking as permitted by law and we provide a robust explanation of the need for the fees and respond to public comments. Furthermore, the fee for an application for naturalization will be \$1,170 and fee waivers will be available to VAWA, T, U, SIJ and Afghan/Iraqi SIV applicants. *See* new 8 CFR 106.2(b)(3) and 106.3(a)(3). DHS recognizes that some

⁹¹ *See* Universal Declaration of Human Rights, Available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf (last viewed March 16, 2020).

applicants would need to pay for the fees absent a fee waiver but does not believe the increase will prevent people from filing for naturalization. As previously indicated, USCIS monitors the proportion of lawful permanent residents who naturalize over time and this tracking has a high degree of accuracy and the most recent published analysis shows that the proportion of LPRs naturalizing increased over time from the 1970s to 2004, despite the increase in the naturalization fee over that time period.

Comment: An individual commenter stated that the rule's justification – that fee increases are needed to cover costs – does not support the Form N-400, Application for Naturalization, fee increase. The commenter wrote that USCIS' projected cost increases are only 13 or 20 percent and the proposal would raise fees by 60 percent.

Response: DHS acknowledges that the fee for Form N-400, Application for Naturalization, is increasing by a greater percentage than the total increase in USCIS costs and the average increase in fees generally. DHS is raising the fee for Form N-400 from \$640, plus the \$85 biometric services fee, if applicable, to a total fee including biometric services fee of \$1,160 if filed online or \$1,170 if filed on a paper application. The estimated average fee of \$1,165 is \$445, or 61.4 percent, above the previous combined cost of Form N-400 and the biometric services fee.

The fee for this form is increasing more than for most other forms because DHS has historically held the fee for Form N-400 below the estimated cost to USCIS of adjudicating the form in recognition of the social value of citizenship. However, in this final rule DHS is emphasizing the beneficiary-pays principle for establishing user fees. This means that the fee for Form N-400 will now represent the estimated full cost to USCIS of adjudicating the form, plus a proportional share of overhead costs and the costs

of providing similar services at a reduced or no charge to asylum applicants and other immigrants. In other words, the fee for Form N-400 will now be determined in the same manner as most other USCIS fees. Because DHS has held the fee for Form N-400 below full cost in the past, adjusting to full cost requires an increase in excess of the volume-weighted average increase of 20 percent. If DHS did not increase the fee for Form N-400 this amount, other fees would need to increase further to generate the revenue necessary to recover full cost, including the costs of Form N-400 not covered by its fee. Thus, DHS believes the increase in the fee for Form N-400 is fully justified.

Comment: Many commenters opposed the proposed fee increase by comparing its 60 percent increase against the 4 percent inflation rate over the same period. A commenter recommended that DHS raise the fee for Form N-400 to \$737.70, to account for inflation. A commenter wrote that DHS should base naturalization fee increases on inflation only. Another commenter stated that, adjusted for inflation since its original price in 1985, the citizenship application should cost \$85, rather than the \$725 it currently is or the proposed \$1,170. Likewise, another commenter cited a Stanford News article in commenting that the inflated price of naturalization applications should only be \$80.25. Another commenter stated that, if inflated since 1994, the current naturalization fee would be \$95. Another commenter recommended that naturalization fees be set at a percentage of the taxable income reported by applicants over the past 2 years. A commenter stated that the proposed naturalization fee increases should be phased in over a number of years in order to reduce its burden on applicants.

Response: DHS appreciates the recommendations but neither adjusting the fee for Form N-400 by inflation nor phasing the fee increase in gradually over time would result in

sufficient revenue to recover the cost of adjudicating and processing Form N-400. DHS is increasing the fee for Form N-400, Application for Naturalization, to recover the full cost of adjudication. The revenue generated by the previous fee is insufficient to recover the full cost of adjudication. DHS held the current N-400 fee at less than the cost of adjudication when it last adjusted the fee on December 23, 2016. *See* 81 FR 73307. In this final rule, DHS emphasizes the beneficiary-pays principle of user fees so that applicants will be primarily responsible for covering the cost of adjudicating their applications. This requires an increase in the fee for Form N-400 to \$1,160 for online filing or \$1,170 for paper filing. Phasing in the increase over multiple years would require increasing other fees by greater amounts to generate the revenue necessary to cover the costs not recovered due to the lower Form N-400 fee. Therefore, DHS declines to adopt the commenters' suggestions.

Comment: A commenter stated that the fees for Forms N-400 and N-600 should not be more than \$500, and indicated that DHS should decrease the fees so that more immigrants can afford to apply without relying on a fee waiver. The commenter stated that the fee increase is a hardship and referenced refugees, Special Immigrant Visas, and Afghan/Iraqi interpreters should pay lower fees for humanitarian reasons.

Response: Charging a limited fee shifts the cost of processing and adjudicating those benefits to other applicants and petitioners, which is not equitable given the significant increase in Form N-400 filings in recent years.⁹² The new fees for Forms N-600 and N-

⁹² Based on filing volume trends in recent years, USCIS forecasts an increase of 82,827 Form N-400 applications, nearly a 10 percent increase from the FY 2016/2017 fee rule forecast. *See* NPRM Table 4: Workload Volume Comparison.

400 implement the beneficiary-pays principle, which ensures that those individuals who receive a benefit pay for the processing of the relevant application, petition, or request. The N-400 fees of \$1,160 if filed online and \$1,170 if filed on paper are set to recover the full cost of adjudicating the Form N-400.⁹³ In addition, DHS has provided in the final rule that certain Afghan/Iraqi interpreters are eligible for N-400 fee waivers, provided that they file Form I-912, Request for Fee Waiver, and meet the fee waiver eligibility requirements. *See* 8 CFR 106.3.

Comment: An individual commenter stated that the rule's justification – that fee increases are needed to cover costs – does not support the naturalization fee increase. The commenter wrote that USCIS' projected cost increases are only 20 percent and the proposal would raise fees by 60 percent.

Response: As stated in the NPRM, in crafting prior fee rules, DHS reasoned that setting the Form N-400 fee at an amount less than its estimated costs and shifting those costs to other fee payers was appropriate in order to promote naturalization and immigrant integration.⁹⁴ DHS now believes that shifting costs to other applicants in this manner is not equitable given the significant increase in Form N-400 filings in recent years.⁹⁵ Therefore, DHS proposes to no longer limit the Form N-400 fee to a level below the cost of adjudication, thereby mitigating the fee increase of other immigration benefit requests and implementing the beneficiary-pays principle. In this final rule, DHS institutes a

⁹³ For more information, see Appendix VII: Final Fees by Immigration Benefit Request that accompanies this final rule.

⁹⁴ *See, e.g.*, 75 FR 33461; 81 FR 26916.

⁹⁵ Based on filing volume trends in recent years, USCIS forecasts an increase of 82,827 Form N-400 applications, nearly a 10 percent increase from the FY 2016/2017 fee rule forecast. *See* Table 4: Workload Volume Comparison.

\$1,160 fee for Form N-400 if filed online and a fee of \$1,170 if filed on paper to recover the full cost of adjudicating the Form N-400, as well as the cost of similar service provided without charge to asylum applicants and other immigrants.⁹⁶

DHS acknowledges that the fee for Form N-400, Application for Naturalization, is increasing by a greater percentage than the total increase in USCIS costs and the average increase in fees generally. DHS is raising the fee for Form N-400, Application for Naturalization, from \$640, plus the \$85 biometric services fee, if applicable, to a fee of \$1,160 if filed online or \$1,170 if filed on a paper application. The estimated average fee of \$1,165 is \$445, or 61.4 percent, above the previous combined cost of Form N-400 and the biometric services fee.

Comment: Multiple commenters requested that USCIS ensure that naturalization remain affordable. A commenter stated that the cost and fees are a significant amount and discourages immigrants from applying to become US citizens. The commenter cited to a 2015 Pew Research Center asked Mexican green-card holders additional 13 percent of Mexican and 19 percent of non-Mexican lawful immigrants identified financial and administrative barriers, mainly the cost of naturalization. Two commenters said that barriers to naturalization disproportionately endanger Mexican workers, who are more likely to experience worker exploitation and four times more likely to die in the workplace than U.S.-born workers. Another commenter indicated that the naturalization fee amounted to a month's gross income for an immigrant and therefore would make it too difficult to afford citizenship applications. Another commenter indicated that the

⁹⁶ For more information, see Appendix VII: Final Fees by Immigration Benefit Request of the supporting documentation that accompanies this final rule.

naturalization fee represents 50 to 100 percent of a foreign resident's monthly income. A commenter questioned the naturalization application fee increased based on 2 hours of work and asked about the hourly wage or a week's salary for a typical American household. Another commenter opposed USCIS' rationale, writing that while it may receive more naturalization applications, naturalization adjudication levels remain flat despite receipt increases. An individual commented that the proposed naturalization fee increase would prevent residents from seeking citizenship, citing data on financial and administrative barriers as bars to naturalization. Another individual described the extent of the fee's burden by comparing it against the average income of immigrants.

A commenter wrote that the proposal would act as a barrier to immigrants with middle or lower class income and cited an analysis from the Pew Research Center that found immigrants age 16 and over who arrived in the U.S. in the past five years had median annual earnings of \$24,000, and those who arrived in the U.S. in the last ten years had median annual earnings of \$32,000. The commenter cited another analysis from the same organization showing the U.S. foreign-born population was 44.4 million in 2017, and that 800,000 immigrants applied for naturalization in 2018. One commenter provided citations to various sources detailing the widespread lack of adequate savings among many Americans, particularly black and Latino households, and that the proposal would deprive families of the ability to work and pursue opportunities. The commenter said the proposal would cause "irreparable harm" to families forced out of the legal immigration system by unaffordable fees.

Response: DHS understands that the increase for the naturalization application may affect those applying. As explained in the NPRM, in crafting prior fee rules, DHS

reasoned that setting the Form N-400 fee at an amount less than its estimated cost and shifting those costs to other fee payers was appropriate in order to promote naturalization and immigrant integration.⁹⁷ DHS now believes that shifting costs to other applicants in this manner is not equitable given the significant increase in Form N-400 filings in recent years.⁹⁸ Therefore, DHS will no longer limit the Form N-400 fee, thereby mitigating the fee increase of other immigration benefit requests and implementing the beneficiary-pays principle. In this final rule, DHS institutes a fee of \$1,160 for Form N-400 if filed online and a fee of \$1,170 if filed on a paper form to recover the full cost of adjudicating the Form N-400.⁹⁹

Comment: A commenter faulted USCIS' economic model for the Form N-400 fee increases. The commenter wrote that USCIS increased the activity-based cost (ABC) model baseline with no explanation, failed to account for fee waivers, increased the model output for Form N-400 by 18 percent, and failed to account for the cost-savings of online Form N-400 filings. A commenter stated that the proposal belies its "beneficiary-pays" principle by charging naturalization applicants a higher amount than the cost of processing of their own applications, subsidizing other immigration-related expenditures. Likewise, another commenter wrote that the proposal arbitrarily departs from past practice of capping the "model output" increase to 5 percent, setting the new level at 18-19 percent. A commenter wrote that the proposed naturalization fee increase could

⁹⁷ See, e.g., 75 FR 33461; 81 FR 26916.

⁹⁸ Based on filing volume trends in recent years, USCIS forecasts an increase of 82,827 Form N-400 applications, nearly a 10 percent increase from the FY 2016/2017 fee rule forecast. See NPRM Table 4: Workload Volume Comparison.

⁹⁹ For more information, see Appendix VII: Final Fees by Immigration Benefit Request of the supporting documentation that accompanies this final rule.

actually be detrimental to USCIS finances, as fewer immigrants would apply. The commenter faulted USCIS' rationale as failing to discuss operational effectiveness despite increasing fees beyond projected processing volume increases and failing to justify a \$745-per-hour processing cost for naturalization applications – a cost exceeding that charged by private lawyers to corporate clients. The commenter also cited Government Finance Officers Association guidelines in writing that high-demand benefits are made affordable by government entities.

Response: DHS understands the commenter's concerns regarding the effect the fee increase on USCIS' financial well-being. DHS recognizes that, if the increase in fee for Form N-400 discouraged significant numbers of individuals from naturalizing, USCIS could realize less revenue than with a lower fee for Form N-400. However, DHS believes that most individuals will continue to value American citizenship, even if it is more expensive to naturalize. In the wake of past increases in the fee for Form N-400, USCIS has not experienced a decline in application volumes. DHS does not anticipate that Form N-400 application volumes will decrease following the fee increase in this final rule.

DHS notes that the critiques of its ABC model misunderstand what model outputs represent, how they incorporate fee waivers, and how they translate into final fees. DHS never limits the model output for any form type. The model output represents the estimated fee-paying unit cost for a given form. Meaning, the model output would recover the full cost of adjudicating that form type, given the anticipated fee-paying rate for that form. However, given that DHS determined to limit the fee increase for certain form types, USCIS must reallocate costs that will not be recovered by the lower, limited

fees to other form types. Thus, the fees for most form types are greater than the calculated model outputs in order to generate revenue sufficient to cover the cost of adjudicating form types with fees held below the model output and ensure that USCIS achieve full cost recovery overall. DHS acknowledges that, in past fee rules, DHS has limited the increase in the fee for Form N-400 below the model output for that form. This choice forced other fee-paying applicants to pay higher fees and bear the cost of generating the revenue that was not recovered from the Form N-400 fees because of the lower fee. In the NPRM, DHS noted that it no longer believes this approach to setting the fee for Form N-400 is equitable, given high volumes of Form N-400 filings, the significant amount of costs other fee-paying applicants would have to bear if DHS limited the increase in fee for Form N-400, and its emphasis on the beneficiary-pays principle of user fees. Therefore, DHS disagrees that this change in practice is arbitrary.

The commenter is mistaken in calculating the cost per hour to process Form N-400 as \$745. As with all USCIS fees, the fee for Form N-400 reflects not only the direct costs of processing an individual Form N-400 filing but also the cost of providing similar services at no or reduced charge to asylum applicants and other immigrants. Furthermore, each fee incorporates costs related to USCIS overheads and general administrative costs. In this final rule, DHS establishes a fee of \$1,160 for Form N-400 if filed online and a fee of \$1,170 if filed on paper to reflect the full cost to USCIS of processing these filings. DHS believes it has fully justified these fees.

Comment: Another commenter faulted DHS' abandonment of the "ability-to-pay" principle, asking for more transparency as to the changes in N-400 trends and how other applicants subsidized naturalization. The commenter also stated that DHS' assumption

that applicants will continue to submit applications regardless of their eligibility for a fee waiver is unfounded. The commenter provided another citation to the proposal where DHS appears to recognize that removing fee waivers would impact application decisions, and then states that it cannot predict the proposal's impact on applications. A different commenter stated that, in a footnote, USCIS indicates that the true intent of the proposal is to impose a "self-sufficiency" principle and impose barriers to naturalization contrary to Congressional intent. A commenter also stated that when President Johnson signed the Immigration and Naturalization Act of 1965 into law, it ushered in our modern era with a more equitable system.

Response: The quote of President Johnson cited by the commenter referred to the elimination of the previous quota system that had severely restricted the number of people from outside Western Europe who were allowed to immigrate to the United States. The 1965 Act did not discuss the fees for naturalization. The 1965 Act did not provide for specific fee exemptions or waivers. DHS considered the self-sufficiency principles as established by Congress along with other provision of the law and the added cost to other fee-paying applicants and petitioners. DHS believes that it is neither equitable nor in accordance with the principle of self-sufficiency that Congress has frequently emphasized, to continue to force certain other applicants to subsidize fee-waived and reduced-fee applications for naturalization applicants who are unable to pay the full cost fee.

Comment: A commenter contrasted the proposed rule against a speech from Vice President Pence where he stated, "America has the most generous system of legal immigration in the history of the world," writing that the proposal would be inconsistent

with this statement. The commenter also provided statistics of the number of immigrants who naturalize in the United States against higher figures from Australia, Canada, and the United Kingdom.

Response: DHS does not agree that this final rule is inconsistent with the Vice-President's statement.¹⁰⁰ The statement did not include any references to fee or fee waivers or exemptions, instead the statement references the ability of different people with different backgrounds to be able to naturalize. The rate of naturalization has increased over the years and DHS does not believe that this final rule would have a significant effect on the number of people filing Form N-400.

Comment: A commenter claimed that USCIS has failed to provide the evidence necessary for the agency to save money by no longer providing printed N-400 forms for people with low technology literacy, requiring them to access the forms at public libraries and community organizations. The commenter wrote that USCIS has failed to account for the impact those savings had on the agency's budget, as well as on the ability of LPRs to submit their naturalization applications.

Response: As the commenter points out, DHS is encouraging applicants to file online when they can, moving toward modernizing all of our services, minimizing the use of paper, and increasing agency efficiency through technology. It requires 10 days to receive forms after ordering them from the phone and mail service, as opposed to immediate access via the website. All USCIS forms are easily accessible by visiting the

¹⁰⁰ Remarks by Vice President Pence at a Naturalization Ceremony, July 4, 2019, available at <https://www.whitehouse.gov/briefings-statements/remarks-vice-president-pence-naturalization-ceremony> (last visited March 9, 2020).

USCIS website, and applicants may either file electronically or download the form and submit it in paper format according to the form instructions. If an individual visits a USCIS office, we will direct them to digital tools and USCIS Contact Center phone number. Understanding some individuals may not have access to the digital tools, our staff will make them aware of resources, such as libraries that offer free computer online services, including many that offer a Citizenship Corner. USCIS works closely with accredited community-based organizations and local libraries to provide access to information and computers. Public libraries can be a resource for immigration information, and many have a Citizenship Corner where the public can visit and learn more about the citizenship process libraries may also have computers that the public may use to access forms, complete, and print them. USCIS has enjoyed a costs savings from reducing the storage and mailing of paper forms, as well as destroying unused stocks of paper forms when versions changed, but not enough of a savings to have an appreciable effect on the new fees in this final rule.

Comment: A commenter recommended several alternatives to the proposed fee increases, including bundling fees for Forms I-90 and N-400, offering premium processing at a fee, offering tiered pricing for Form N-400, and offering fee reductions based on applicant an 's income taxes. A commenter suggested that USCIS adopt a sliding scale application fee for naturalization based on income. Another commenter suggested a payment installment plan for immigrants who cannot pay the full amount at once, as well as micro-loans. The commenter also suggested the creation of a citizenship foundation similar to that which funds the National Park Service.

Response: As previously indicated, DHS recognizes that filing fees are a burden for some people of limited financial means. Creating and maintaining a new system of tiered pricing, family caps, installments plans, or micro-loans would be administratively complex and would require even higher costs than in the NPRM. Such payment systems would require staff dedicated to payment 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. However, as previously stated, the cost of fee waivers and reduced fees are borne by all other fee payers because they must be transferred to those who pay a full fee to ensure full cost recovery. DHS believes that it is more equitable to align with the beneficiary-pays principle. Thus, USCIS takes a relatively careful position with respect to transferring costs from one applicant to another through the expansion of fee waiver eligibility and discounting fees. To set fees at various levels based on income, as suggested by the commenter, would require deviation from the underlying fee-setting methodology and require some of the costs for those applications to be reassigned to other benefit requests. Therefore, DHS did not incorporate a reduced fee, sliding scale, or family cap in this final rule or the other suggestions provided by commenters.

Comment: One commenter took issue with the use of terms like “moral turpitude” and “good moral character” since these terms lack a legal definition. The commenter said the proposed fee increases would prevent many LPRs from pursuing citizenship, and that the lack of a legal definition for certain terms would increase the amount of time individuals are at risk of losing legal status.

Response: DHS did not propose a change to the eligibility provisions for benefit requests such as adjustment of status to lawful permanent resident or naturalization, for which a “crime involving moral turpitude” and “good moral character” may be relevant statutory terms. Therefore, we are not including changes to those terms in the final rule.

b. Effect on Naturalization Applicants

Comment: Many comments offered various comments on the effects of the proposed naturalization fee increase on naturalization applicants. Commenters wrote that the new fees:

- Would prevent residents from seeking citizenship, citing data on financial and administrative barriers as bars to naturalization.
- Will not just delay, but ultimately prevent low income and poor immigrants from naturalizing, and the U.S. is engaging in implicit racism, citing the U.S.’s history of denying citizenship based on race.
- The proposal would punish immigrants who did their utmost to obey immigration laws.
- The proposal would harm the Latino community - more than half of the immigrants currently eligible to naturalize are Latino while 71 percent of the population that face the greatest barriers to naturalization are Latino.
- Naturalization fees are a significant bar to Mexican immigrants becoming U.S. citizens with 13 percent of Mexican and 19 percent of non-Mexican lawful immigrants identifying financial and administrative barriers, mainly the cost of naturalization, as a reason preventing their naturalization

- 2.1 million immigrants are eligible for naturalization in the state of California, and the new fee would severely affect 1 million Californians including 768,024 that live in Los Angeles County
- The proposal would increase immigrants' dependence on predatory financing in order to support their naturalization applications.
- Would harm eligible parents of U.S. children who will either have to pay a higher fee or forgo naturalization, subjecting themselves and their children to the stresses of uncertain status.
- The mental health problems and traumas faced by children of undocumented parents would be exacerbated.
- The increase is harmful- the United States Census Bureau reported that between 1970 and 2010 the percentage of foreign-born populations who naturalized decreased from 64 percent to 44 percent, A 20 percent decrease in 40 years is a drastic drop and one reason for this is due to the increased in prices for naturalization applications.
- Naturalization provides personal security for immigrants, particularly those who are in danger of worker exploitation without the full legal rights of citizenship.
- Citizenship helps members of immigrant communities to feel secure enough to report crime, which improves neighborhood safety.
- Limiting working class immigration would be contrary to the interests of the U.S. society and economy.
- Naturalization boosts American democracy, economy, and diversity.

- Everyone benefits from residents naturalizing, citing a study showing that naturalization increases net taxable income and GDP.
- Naturalization increases individual earnings. A San Francisco Pathways to Citizenship Initiative study program’s participants used financial assistance to afford the naturalization application fee. The funds provided by the city to support such fees “would be depleted almost immediately” if the proposed rule goes into effect.
- Citizenship promotes social benefits, such as English proficiency, quality of employment, and buy-in to U.S. democratic principles.
- Naturalization improves immigrant language skills.
- If half of LPRs naturalized, GDP would increase between \$37 and \$52 billion annually.
- LPRs must navigate many hurdles to naturalize, and that at a certain point, the United States misses out on the benefits of high naturalization rates because of these hurdles. Naturalization boosts American democracy, economy, and diversity, citing a Catholic Immigration Network study.
- Naturalization increases civic engagement, naming many naturalized citizens who have gone on to hold elected office.
- A 2015 Urban Institute study shows that naturalization increased individual earnings by 8.9 percent, employment rates by 2.2 percent, and homeownership by 6.3 percent, with the earnings and employment improvements resulting in \$5.7 billion of additional income in the 21 cities studied and increases home ownership and incomes

- If eligible immigrants naturalized, federal, state, and city revenues would increase by \$20 billion while New York City government benefit expenditures would decrease by \$34 million.
- A 2015 Urban Institute study demonstrates that if just half of eligible immigrants in the United States naturalize, it would increase GDP by \$37–52 billion, annually, and if all eligible immigrants in 21 U.S. cities naturalized, home ownership would increase by more than 45,000 people and an additional \$2 billion in tax revenue would be recognized.
- A 2002 Bratsberg et al. study showed that naturalization led to wage increases as observed in the same individuals over time.
- A 2012 Migration Policy Institute study shows naturalization contributes to increased economic growth through consumer spending.
- Several show the current application fee discourages naturalization, and that naturalization positively impacts wages, the economy, and immigrants' integration into society.
- A 2019 Migration Policy Institute study shows that naturalized citizens over the age of 25 have similar levels of post-secondary education to U.S.-born citizens and that, through naturalization, these immigrants can better integrate into and contribute to their local communities. The naturalization fee increases have caused the number of immigrants eligible to naturalize but not doing so to 9 million, and the proposal would diminish U.S.-specific human capital.

- A 2019 Center for Migration Studies paper shows the impact of naturalization on college degree attainment, English-language skills, employment in skilled occupations, healthcare, poverty level, and home ownership.

Response: DHS appreciates and acknowledges all of the positive aspects of naturalization. DHS does not intend for the new fees to prevent individuals from applying for naturalization, that they require applicants to depend on predatory financing to pay naturalization application fees, and we do not believe the rule will have those effects. Therefore, DHS declines to make any changes in this final rule on these bases.

USCIS monitors the proportion of lawful permanent residents who naturalize over time. This analysis has a high degree of accuracy because it uses administrative data rather than survey data (as the Census does) to assess changes in naturalization patterns. The most recent published analysis shows that the proportion of LPRs naturalizing increased over time from the 1970s to 2004, despite the increase in the naturalization fee over that time period.¹⁰¹ DHS does not have any data that indicates that this trend would change.

Comment: A commenter stated that all asylees rely on naturalization for the right to petition for certain family members. The commenter stated that with the additional financial burden of naturalization fees, family reunification for asylees will be delayed or prevented.

¹⁰¹ See USCIS, Trends in Naturalization Rates: FY 2014 Update (November 2016), available at <https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports/Trends-in-Naturalization-Rates-FY14-Update.pdf>.

Response: DHS recognizes that asylees may petition for family members after completing the naturalization process. DHS wants every person eligible to apply for naturalization to submit an application. Likewise, we encourage anyone eligible to petition for the immigration of qualifying family members. DHS does not believe that asylees would be unduly burdened by naturalization fees and does not agree that naturalization fees would prevent or delay family reunification for asylees. DHS is also unaware of any specific statutory provision requiring DHS to provide naturalization applications to asylees with limited fees. DHS declines to make any changes in this final rule in response to this comment.

Comment: Another commenter stated that the NPRM would further disadvantage people with disabilities and chronic mental health conditions, contrary to Congressional intent to make immigration benefits available to eligible noncitizens regardless of disability. The commenter wrote that, in addition to the increased naturalization fees, people with disabilities and chronic mental health conditions often must pay to appeal erroneous findings by USCIS officers who conduct naturalization interviews with no medical training and make assumptions regarding their clients' disabilities.

Response: DHS is adjusting its fees in this final rule to recover the estimated full cost of providing adjudication and naturalization services. As the commenter suggests, DHS is applying the fees in this final rule to all applicants regardless of their having a disability or not. The comment seems to equate physical disability and mental health conditions with poor financial condition, but DHS does not know that to generally be the case, and DHS is not basing fee policies on that assumption but rather emphasizing the beneficiary-pays principle. Further, USCIS monitors the proportion of lawful permanent residents

who naturalize over time. This analysis has a high degree of accuracy because it uses administrative data rather than survey data (as Census does) to assess changes in naturalization patterns. The most recent published analysis shows that the proportion of LPRs naturalizing increased over time from the 1970s to 2004, despite the increase in the naturalization fee over that time period.¹⁰² DHS declines to make changes in this final rule in response to the comment.

c. N-400 Reduced Fee

Comment: Commenters stated that the fee waiver and partial fee waiver would be eliminated for families with income between 150 percent and 200 percent of the poverty level and almost eliminated for everyone else. A commenter indicating the eliminating the reduced fee for people with incomes from 150 to 200 percent of the FPG would make it too difficult for immigrants to afford citizenship. An individual commenter mentioned the fee waiver and partial fee waiver system strengthened by the Obama administration, and stated that this rule would eliminate these options for families with income between 150 percent and 200 percent of the poverty level and almost eliminate waivers for everyone else.

Response: DHS acknowledges that eliminating the reduced fee for the naturalization application will limit the number of people who receive a reduced fee and slightly increase the number of people who are required to pay the full fee. However, few applicants have requested the reduced fee since its creation and significantly fewer

¹⁰² See USCIS Trends in Naturalization Rates: FY 2014 (November 2016) Update, available at <https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports/Trends-in-Naturalization-Rates-FY14-Update.pdf>.

applicants than predicted took advantage of the reduced fee option. In other words, the reduced fee option was not widely received, and DHS does not believe its elimination will significantly hinder the number of people who cannot pay the full fee established in this final rule.

The estimated total number of approved reduced fee requests in fiscal year 2017 was 3,624 (0.83 percent). The total number of denied reduced fee requests was 733. In total, DHS estimates the annual number of requests for a reduced Form N-400 fee that would be filed absent the proposed change is 4,357 (0.6 percent). For comparison, the total number of Form N-400 filed in fiscal year 2017 was 581,998. *See* Table 38 in the RIA.

DHS proposes to eliminate the reduced fee in order to recover the estimated full cost for naturalization services. In addition, eliminating the Form I-942 will reduce the administrative burden on the agency to process the Form I-942. USCIS would recover the cost of adjudicating Form N-400 and not transfer Form N-400 costs to other form fees.

d. Case Processing

Comment: A commenter wrote that the proposed naturalization fee increase is not supported by any improvement in quality of services. It added that, in 1998, INS announced a fee increase but claimed that it would only follow a reduction in the backlog and acceleration of processing speeds. The commenter contrasted this statement against the current backlog of 700,000, cited from a 2019 Colorado State Advisory Committee paper. The commenter also provided a lengthy quotation from a 2017 OIG report stating that USCIS has introduced operational inefficiencies as processing times doubled and

naturalization interviews were cancelled. The commenter mentioned the suspension of InfoPass services specifically as an example of diminished customer service.

A commenter wrote that the proposal would compound policies made at the local level which are already increasing barriers to naturalization, such as the USCIS field office in Seattle's 2019 decision to shift caseloads to offices more than 142 or 174 miles away.

A commenter provided figures of the LPRs eligible to naturalize and the backlogs in Denver and that the fee increase will further deter eligible adults from naturalizing.

A commenter claimed that without increasing fees, with automation and management reforms, the Form N-400 processing period in their region has decreased to an average of less than 12 months, undermining the necessity of a fee increase.

Response: DHS does not believe the rule changes will delay processing or deny access. USCIS will adapt and change its process as necessary to avoid or minimize any delays in case processing. Nevertheless, by enabling USCIS to hire more employees to process requests, including requests on hand, USCIS also believes the new fees will help reduce backlogs.

25. Other Naturalization and Citizenship Forms

Comment: A commenter opposed the Form N-600 fee increase, writing that USCIS would receive more revenue and avoid administrative difficulties if the fee were reasonable. A commenter opposed the fee increase for Forms N-600 and N-535 [sic], stating that no explanation has been provided to explain why those increases are necessary.

Response: DHS disagrees with this comment. DHS calculated the estimated cost to USCIS of adjudicating Form N-600. This change aligns more closely with the beneficiary-pays principle to ensure that individuals who receive an immigration benefit or service from USCIS bear the cost of providing that benefit or service. Therefore, DHS believes the fee as established is reasonable based on USCIS costs.

Comment: A commenter stated that the Form N-600 fee is especially cruel as it has been inflated for years, “not getting their certificate of citizenship limits their college options, and most families have more than one child.”

Response: DHS disagrees that the fees for Forms N-600 and N-600K were inflated for years. As noted in the FY 2016/2017 fee rule, the current fees for Forms N-600 and N-600K assumed that approximately one third of applicants would receive a fee waiver. *See* 81 FR 73928. To recover full cost, DHS set the fees for Forms N-600 and N-600K at a level for fee-paying applicants to cover the cost of fee-waived work. *Id.*

In this fee rule, the fees for Forms N-600 and N-600K are decreasing mainly because of the proposed limitation of fee waivers, which will enable greater cost recovery for several form types and limit the need for cost reallocation to fee-paying applicants. The proposed fees provide for the full recovery of costs associated with adjudicating the forms. In addition, DHS is providing fee waivers for the humanitarian categories for Forms N-400, N-600, and N-600K.

In addition, not obtaining a certificate of citizenship does not limit a person’s college options because there are other means to establish citizenship. Upon meeting the requirements of INA 320, children of U.S. citizens automatically acquire U.S. citizenship. Applying for a certificate of citizenship is only one means to acquire proof

of such citizenship. Applicants who acquired U.S. citizenship may also obtain a passport to establish proof of citizenship. Further, some colleges permit nonimmigrants and lawful permanent residents to attend college.

Comment: Commenters opposed the proposed fees for the following naturalization and related forms:

- N-300, Application to File Declaration of Intention;
- N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA); and
- N-470, Application to Preserve Residence for Naturalization Purposes.

These commenters stated that immigrants who need to file these special forms would face additional barriers to naturalization.

Commenters indicated that some immigrants use Form N-300 in order to work in certain states. The proposed rule would increase this fee by 389 percent, to \$1,320 or five weeks of minimum wage take-home pay.

Some immigrants use Form N-336 to file an appeal if their naturalization application is denied by USCIS. The proposed rule would increase this fee by 151 percent, to \$1,755 or seven weeks of minimum wage take-home pay. The commenter stated that USCIS provided no justification for its Form N-336 fee increase and that the increase would especially affect the most vulnerable populations by charging a total of \$2,925 to navigate a faulty system.

Some immigrants use Form N-470 if they plan to work abroad for a U.S. company, university, or government agency before applying for U.S. citizenship. The

proposed rule would increase this fee by 351 percent, to \$1,600 or six weeks of minimum wage take-home pay.

The comment stated that in all of these cases, immigrants living in the United States could be prevented from increasing their income, obtaining the right to vote, and reuniting with family members abroad because they are unable to afford the proposed naturalization fees.

Response: Consistent with full cost recovery and the beneficiary-pays principle emphasized throughout this final rule, the new fees represents USCIS' estimated full cost of adjudicating the forms at the time of USCIS' FY 2019/2020 fee review. USCIS used all available data at the time it conducted its fee review to estimate the full cost of adjudication for benefit requests. DHS does not believe that the changes in the fees will limit the ability of noncitizens to obtain the required documentation to be eligible to work if qualified.

H. Comments on Changes to Form I-129, Petition for a Nonimmigrant Worker

Comment: Multiple commenters objected to the increase in fees for petitions requesting O and P nonimmigrant status. Commenters highlighted the increased costs and burdens to U.S.-based petitioners, including non-profit organizations, small entities, and cultural institutions. Some commenters objected to treating petitions for O and P visa classifications differently, as DHS proposed to create Form I-129O for entities to petition for O visa classification and Form I-129MISC to petition for P visa classification and other categories of nonimmigrant visas. A commenter wrote that the proposed Form I-129MISC would only further delay P-visa classification processing, especially as P, Q, R, and H-3 visa classifications are vastly different. Another commenter said the I-129MISC

classifications are so vastly different that there is a higher risk that an officer will apply certain criteria to the P visa classification that is only applicable to another classification. A few commenters stated Form I-129MISC is an inappropriate option for P visa classification and instead suggest combining P visa classification form with Form I-129O or creating a separate P visa classification form to replicate I-129O with minor modifications.

Response: DHS acknowledges similarities between the uses of O and P nonimmigrant visa classifications. However, USCIS currently records time per adjudication (i.e. completion rates) for Form I-129 petitions requesting O visa classification discretely so we are able to calculate a separate fee for the O nonimmigrant classification. Time spent adjudicating petitions requesting P visa classification are aggregated with the time spent adjudicating all of the nonimmigrant classifications requested using the new Form I-129MISC. Thus, USCIS is unable to distinguish the time spent adjudicating petitions requesting P nonimmigrant workers from the time spent on adjudicating requests for the other types of workers included in Form I-129MISC, and therefore we have not calculated a separate fee for the P classification. Therefore, DHS declines commenters' suggestions to charge the same amount for petitions requesting O nonimmigrant classification and P nonimmigrant classification and implements fees based on data that show adjudications of O nonimmigrant petitions require more staff, and are therefore more costly, than adjudications of petitions for nonimmigrant classifications that may be requested using Form I-129MISC. DHS will revisit the fees for all of the new Forms I-129 that are created in this rule in the next biennial fee review.

Comment: Commenters on the effect of the religious worker program stated:

- That the proposed changes to Form I-129 unduly burden religious organizations because religious workers have limited means to petition for R nonimmigrants, hindering their ability to provide pastoral care while respecting vows of poverty.
- Petitioners requesting R nonimmigrant workers currently pay a \$460 fee for Form I-129. Under the proposal, the fee would be \$705, a \$245 or 53 percent increase.
- The steep fee increases would have a chilling effect on U.S. religious workers and would burden religious orders and their vital work in American communities.
- International religious workers provide critical pastoral care and social services for American parishioners and communities.
- These fees would disproportionately affect small religious organizations that serve a charitable function in our society.

Response: In this final rule, DHS adjusts the fees for all types of Form I-129 to reflect the estimated full cost of adjudication. DHS does not believe that the fee increases implemented in this final rule will impose unreasonable burdens on petitioners, churches, religious organizations, or small entities who wish to petition for a nonimmigrant religious worker. DHS realizes that many religious workers have limited means and some take a vow of poverty, but the R-1 religious worker does not petition for his or her own employment and is not responsible for paying the Form I-129 fee, because the organization is required to submit Form I-129 and pay the fee. DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter noted that the changes to the way USCIS reviews and adjudicates H-1B petitions have resulted in slower processing times, shifting standards for approval of petitions, and an increase in Requests for Evidence (RFEs).

Response: DHS is unsure how the commenter thinks changes in H-1B nonimmigrant adjudications impact this rulemaking. DHS is breaking the Form I-129 into several forms that will focus the information collected and instructions on the nonimmigrant category. DHS anticipates that this will result in more efficient completion and adjudication of the forms and declines to make changes in this final rule in response to the comment.

Comment: Many commenters called the 25-person limit for Form I-129 petition for H-2A, O, or P performers “arbitrary.” A few commenters stated that USCIS fails to provide any information or data supporting the 25-person limit or increased fees. One commenter questioned how USCIS determined their per worker/petition cost because it would cost the same to have a petitioner with one beneficiary as it would to have a petitioner with 25 beneficiaries. A few commenters suggested that the proposed 25-beneficiary cap as applied to arts ensembles would multiply costs for arts organizations and would preclude them from considering larger performing groups. The commenters also said the 25-beneficiary cap would create “new risks for USCIS confusion” and unnecessary processing delays. A commenter suggested that O- and P-nonimmigrant classifications also limit the numbers of beneficiaries on a single petition, reasoning that USCIS should not apply the same fee for cases with fewer beneficiaries. Some commenter’s stated that the separating of I-129 will create confusion and delays.

Response: DHS disagrees with commenters that the separating of Form I-129 will create confusion and delays. USCIS is limiting the number of named beneficiaries to 25 that may be included on a single petition for H-2A, H-2B, H-3, O,¹⁰³ P, Q, E, and TN

¹⁰³ While O-1 petitions are limited to a single named beneficiary, a petition for O-2 nonimmigrant workers may include multiple named beneficiaries in certain instances. *See* 8 CFR 214.2(o)(2)(iii)(F).

workers. As previously discussed in section I of the preamble of the NPRM, limiting the number of named beneficiaries simplifies and optimizes the adjudication of these petitions, which can lead to reduced average processing times for a petition. Because USCIS completes a background check for each named beneficiary, petitions with more named beneficiaries require more time and resources to adjudicate than petitions with fewer named beneficiaries. This means the cost to adjudicate a petition increases with each additional named beneficiary. Thus, limiting the number of named beneficiaries may ameliorate the inequity of petitioners filing petitions with low beneficiary counts who effectively subsidize the cost of petitioners filing petitions with high beneficiary counts.

DHS acknowledges similarities between the uses of O and P nonimmigrant classifications. Annual receipt data for each nonimmigrant classification petitioned for on Form I-129 can be found in the Regulatory Impact Analysis throughout Section (K) and more specifically Table 7. However, USCIS currently records time per adjudication (i.e. completion rates) for Form I-129 petitions requesting O nonimmigrants discretely, but records time spent adjudicating petitions requesting P nonimmigrants aggregated form such that it is combined with the time spent adjudicating all classes of nonimmigrant classifications that may be requested using the new Form I-129MISC. Thus, USCIS is unable to distinguish the time spent adjudicating petitions requesting P nonimmigrants from the time spent on adjudicating requests for the other types of visas included in Form I-129MISC. Therefore, DHS cannot charge a separate fee for P nonimmigrants or charge the same amount for petitions requesting O and P nonimmigrants. DHS implements fees based on data that show adjudications of O

nonimmigrant petitions require more staff, and are therefore more costly, than adjudications of petitions for nonimmigrant workers that may be requested using Form I-129MISC. The evidence suggests that the additional fee in this final rule does not represent a significant economic impact on these entities.

Comment: A few commenters wrote that applicants with one or two beneficiaries are subsidizing applications with multiple beneficiaries, which could further diminish, if not eliminate, farmers' margins. A few commenters indicated that limiting petitions to 25 named beneficiaries and requiring farmers to file separate petitions would create an immense paperwork burden; multiplying the costs to access the H-2A program; and increasing the workload for USCIS as well as for farmers who produce labor intensive agricultural commodities.

Response: DHS agrees that petitions with one or two named beneficiaries subsidize petitions with greater numbers of named beneficiaries, because petitions with fewer named workers require less time to process but pay the same fee. In this final rule, DHS adjusts the fees for all types of Form I-129 to reflect the estimated average cost of adjudication for the relevant form. Setting the fee at the level of the average cost necessarily entails some cross-subsidization between petitions that are less costly to adjudicate and those that are more costly to adjudicate.

DHS data indicates that the limit of 25 named beneficiaries per petition established in this final rule will significantly limit the amount of cross-subsidization between petitions with few named workers and many named workers. Previously a single petition might contain a single named worker or hundreds of named workers, implying a high level of cross-subsidization, given the disparity between the cost of

adjudicating a petition with a single named worker and the cost of adjudicating a petition with hundreds of named workers. Limiting the number of named beneficiaries per petition to 25 effectively limits the amount of cross-subsidization per petition, because it limits the maximum disparity in the number of background checks to 24 (25 – 1) and overall cost of adjudications between petitions.

DHS declines to make changes in this final rule in response to these comments.

Comment: A few commenters suggested a flat application fee with an add-on fee per beneficiary.

Response: DHS considered and rejected the approach suggested by the commenter. Past experience has demonstrated to DHS the complexity of administering sliding scale fees. DHS believes that the system implemented in this final rule of limiting an individual petition to a maximum of 25 named beneficiaries minimizes the administrative complexity, while also clearly delineating the cost for individual petitioners. DHS acknowledges that this system continues cross-subsidization between petitions that include few named beneficiaries and those that include 25 named beneficiaries, but DHS determined that 25 was a logical number because USCIS immigration services officers could generally adjudicate a petition with 1-25 named workers in 2 hours. 84 FR 62309. DHS believes that the administrative simplicity of this system outweighs concerns about cross-subsidization.

Comment: Some commenters generally opposed limiting the number of H-2A beneficiaries and increasing fees. One commenter opposed the fee changes for named and unnamed beneficiaries. The commenter stated DHS lacks a large amount of data, including the amount of time and effort required to process these petitions. Several

commenters expressed support for USCIS lowering the fees for unnamed I-129 petitions, but opposed increasing the fees for a Form I-129 with named beneficiaries. One commenter stated that USCIS' justification for separating fees for named and unnamed petitions are valid, but due to the significantly higher filing fee for petitions filled with a named worker, petitioners will be incentivized to file unnamed worker petitions and require significantly more resources to be expended by the State Department in order for workers to obtain their visas. A commenter stated that the department failed to explain why it does not discuss an option of using improved technology to reduce processing time for named beneficiary petitions.

Response: In this final rule, DHS establishes the fee for each Form I-129 subtype at the estimated average cost of adjudication. DHS used all available data at the time it conducted its fee review to estimate the cost of adjudication for Form I-129 subtype. DHS disagrees with the commenter who wrote that USCIS did not have sufficient data.

DHS acknowledges that some petitioners may choose to file petitions for unnamed workers with a lower fee than petitions for named workers with a higher fee. However, choosing to petition for unnamed workers also incurs additional costs associated with consular processing. Furthermore, in some instances, petitioners may need to submit petitions for named workers. Thus, DHS does not believe its changes to the fee structure for petitions with named and unnamed beneficiaries will substantially change petitioner behavior.

DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter stated that members of its trade association would face a 529 percent increase in filing costs because of the proposed Form I-129H2A changes. The

commenter stated that this change is contrary to Congressional intent and that USCIS' justification relies on it performing duplicative background checks on workers who have already been vetted by the Department of State. A few commenters doubted that USCIS could use background checks to determine whether workers have left the country for 3 months after 3 years, reasoning that CBP officials do not record land-based departures from the country. One commenter suggested USCIS develop an entry and exit system to help track the amount of time a worker has spent in and out of the country and having an online system should expedite the process and allow USCIS and the petitioner to get an approval at a more efficient speed. Another commenter said that forgoing the full background check and instead just doing a shorter update background check on petitions for workers who already possess a visa and who are already in the United States could save extraordinary amounts of time, money, and effort.

Response: USCIS must conduct full background checks on named workers and does not merely check to determine how much time the worker has spent outside of the United States. In this final rule, DHS establishes the fee for Form I-129H2A at the level estimated to represent the full cost of adjudication. DHS declines to make changes in this final rule in response to these comments.

Comment: Many commenters generally opposed the changes to the Form I-129 and its fees as it applies to the arts, writing that artists should be treated better and the arts should be promoted. A commenter stated that the proposal would diminish the quality of arts in the United States, as artists would be unable to afford to tour and make a living from their craft. Commenters indicated that the proposal would harm local communities, small businesses, and non-profits, as artists would be unable to afford to perform here. A

commenter wrote that artists' contribution to the U.S. market is greater than what they actually "earn," mentioning that artists help draw in international demand. Commenters also stated that international artists provide a vital service in promoting cultural exchange and U.S. soft diplomacy. A commenter wrote that its art school teaches Scottish music, and hindering the school's ability to procure Scottish talent would operate to the detriment of the school, its students, and the community it serves. One commenter stated their organization already navigates significant uncertainty in gaining approval for petitions, due to lengthy processing times, uneven application of statutes and policies, and extensive and even unwarranted requests for further evidence to support petitions. The commenter stated that the proposed fees would only exacerbate these issues for performers. A few commenters said this NPRM would make it harder for their businesses to hire foreign musicians. Some commenters said the proposal would create financial barriers that will harm U.S. arts organizations and the local economies these organizations support. The commenters stated that if artists are unable to come to the U.S., the public will be denied the opportunity to "experience international artistry." One commenter that provides legal services to overseas artists and performance groups wrote that the proposal would negatively impact their business and its clients, many of whom are small businesses.

Response: DHS agrees with the commenters' views of the arts a vitally important and beneficial. Nevertheless, the fees DHS establishes in this final rule are intended to recover the estimated full cost to USCIS of providing immigration adjudication and naturalization services. DHS does not intend to deter or unduly burden petitioners requesting workers in the arts, but any preferential treatment provided to petitioners for

performers and musicians is borne by other petitioners, applicants, and requestors. DHS declines to require other applicants and petitioners subsidize the cost of petitioning for workers in the arts.

Comment: Some commenters discussed the rule's impact on farmers and the H-2A program. Several commenters said their use of H-2A workers allows them to have trained and trusted labor that has been properly vetted through the USCIS system.

Likewise, several commenters said the proposed increase of H-2A filing fees would be especially harmful considering the difficulty farmers have obtaining enough and

dependable domestic workers. A commenter stated that the proposed increase of H-2A filing fees would contravene the Executive Order on Buy American and Hire American.

In contrast, one commenter expressed support for increased fees and rationalized that fees would improve their ability to compete with farms that spend less on labor and make it more appealing for farms to consider hiring citizens.

Response: In this final rule DHS adjusts the fees for all types of Form I-129 to reflect the estimated full cost of adjudication. DHS declines to make changes in this final rule in response to these comments.

Comment: Multiple commenters referenced an OIG report titled "H-2 Petition Fee Structure Is Inequitable and Contributes to Processing Errors." A few commenters said USCIS uses this report as justification for their proposed changes, but they claimed the audit separates filings into small (1–10), medium (11–40) and large (more than 40) and does not suggest limiting the number of beneficiaries to specifically 25. One commenter said the report explicitly refrains from recommending a change in fees, noting that collecting more detailed cost data will be critical for USCIS to "inform its H-2 petition

fee setting activities.” Another commenter quoted the report saying that a “flat fee is not consistent with Federal guidelines that beneficiaries pay for the full (or actual) cost of services provided or that established user fees be based on costs and benefits.”

Response: DHS appreciates commenters’ references to the report by the DHS Office of the Inspector General. As stated in the NPRM, DHS establishes separate fees of forms for different types of Form I-129 filings to distinguish the different cost of adjudicating different kinds of petitions. DHS believes that the changes implemented in this final rule, including establishing a maximum limit of 25 named beneficiaries per petition, and differentiated fees based on whether a petition requests named or unnamed workers, are consistent with and responsive to the recommendation of the DHS OIG report.

Consistent with the recommendations highlighted by commenters, DHS used detailed cost data to distinguish between the average cost of adjudicating petitions with named and unnamed beneficiaries where applicable. In establishing different fees that distinguish the differences in the average cost of adjudication, DHS addresses concerns that the previous flat fees were not consistent with the beneficiary-pays principle of user fees.

DHS declines to make changes in this final rule in response to these comments.

Comment: A few commenters stated that USCIS does not provide any data, evidence, or information in its proposed rule regarding the costs associated with conducting site visits through the Administrative Site Visit and Verification Program (ASVVP). The commenters added that USCIS has failed to articulate how these site visit costs are not already covered by the \$500 Fraud Prevention and Detection Fee and other related fees submitted by petitioners for certain categories of nonimmigrant workers, such as for

certain H-1B and L workers. One commenter concluded that USCIS must disclose this data so that the public can fully evaluate whether the increased fees that USCIS is proposing accurately encompass the ASVVP costs associated with adjudicating certain categories of nonimmigrant workers.

Response: DHS disagrees with the commenter's assertion that DHS failed to provide any data related to the costs of the ASVVP program. In the supporting documentation published on November 14, 2019 to accompany the NPRM, DHS identified \$5.4 million in payroll and travel costs of the ASVVP program. As DHS described in the NPRM, USCIS attributed these costs to the relevant form types in proportion to their share of the total ASVVP costs of \$5.4 million. Form I-129H1 received \$3.6 million of these costs while Form I-129L received \$0.6 million, Form I-129MISC received \$1.0 million, and Form I-360 received \$0.1 million. These figures do not sum to \$5.4 million due to rounding.

USCIS cannot use revenue from the statutory Fraud Prevention and Detection Fee to cover the costs of the ASVVP program. USCIS scopes all activities funded by the Fraud Detection and Prevention Fee outside of its fee reviews, because DHS is unable to adjust the fee by rulemaking. Furthermore, USCIS, by statute, does not retain the entirety of the Fraud Detection and Prevention Fee. As explained in the NPRM, the USCIS FY 2019/2020 fee review, like previous fee reviews, estimates the costs to be recovered by fees deposited into the Immigration Examinations Fee Account. Unlike the fees addressed in this rulemaking, the Fraud Detection and Prevention Fee is not deposited into the IEFA. Instead, that revenue is deposited into the Fraud Detection and Prevention

Account and is used for different purposes beyond the scope of this final rule. DHS declines to make changes in this final rule in response to the comment.

Comment: A commenter opposed the increased L-1 application fees and took issue with USCIS' rationale that the fee is based on "the completion rate for the average of L-1 petitions." The commenter stated that if USCIS diverted resources away from adjudicating L-1 petitions, imposing adjudicatory criteria unauthorized by INA or USCIS regulations, and issuing unnecessary, duplicative RFEs, the completion rate for L-1 nonimmigrants would return to its historical norm.

Response: USCIS used the most recent data available at the time it conducted the FY 2019/2020 fee review. Contemplating alternatives suggested by the commenter are beyond the scope of this rulemaking. DHS declines to make changes in this final rule in response to the comment.

Comment: A few commenters wrote to oppose the fee increases for transitional workers in the Commonwealth of the Northern Mariana Islands (CNMI). These commenters stated the proposed fees would put a financial burden on businesses and the economic development of CNMI. A commenter wrote that the CNMI was still recovering from recent disasters and noted that the economy had barely stabilized after Super Typhoon Yutu hit in October of 2018. The commenter referred to a U.S. Department of the Interior report that documented the shortage of U.S.-eligible workers affecting businesses in the Commonwealth and said the proposed fee increase of 53 percent for Petitions for a CNMI-only Nonimmigrant Transitional Worker would place a financial burden on businesses still recovering from disasters. The commenter requested that the increase for this petition be tabled, citing the provisions of U.S. PL 110-229 that detailed Congress'

intent to grant the Commonwealth as much flexibility as possible in maintaining existing businesses and other revenue sources.

Response: In this final rule, DHS establishes fees that reflect the average cost of adjudication. DHS declines to make other applicants and petitioners subsidize petitions for transitional workers in the CNMI and does not make changes in response to these comments.

I. Premium Processing

Comment: Multiple commenters opposed the proposal to lengthen the timeframe for USCIS to take an adjudicative action on petitions filed with a request for premium processing from 15 calendar days to 15 business days. Commenters stated that the proposed change would reduce the level of service that USCIS provides to petitioning entities and delay the arrival of greatly needed workers, thereby imposing an economic cost on petitioners. Multiple commenters said the relaxation of the premium processing deadline would result in slower adjudications, higher prices, and slowed hiring.

Response: DHS acknowledges that some petitioners may wait up to four or more days longer for USCIS to take an adjudicative action on a petition for which a petitioner has requested premium processing service. DHS further acknowledges that this may result in slightly longer waits for workers for petitioning entities. However, DHS disagrees that adjusting the timeframe for adjudicative action on a petition for which premium processing service has been requested from 15 calendar days to 15 business days would meaningfully harm petitioning entities. DHS was not able to quantify the estimated cost to petitioning entities of these additional delays.

DHS is adjusting the timeframe for premium processing for multiple reasons. The current timeframe does not consider the days on which USCIS staff are unavailable to adjudicate cases, such as when there is a federal holiday or inclement weather preventing employees from coming to work. Therefore, a surge in applications may coincide with a period when USCIS staff have substantially less than 15 working days to receipt and adjudicate a petition with premium processing. In the past, there have been instances when USCIS was unable to adjudicate all of the petitions for which petitioners requested premium processing within the 15-calendar day timeframe. This led USCIS to refund the premium processing fee for petitions that were not adjudicated within 15 calendar days and to temporarily suspend premium processing service. DHS believes that extending the premium processing timeframe from 15 calendar days to 15 business days will allow USCIS adequate time to take adjudicative action on petitions and will provide petitioners with a consistent and predictable experience. Therefore, DHS declines to adopt the commenters' suggestions.

Comment: Multiple commenters said that the premium processing delay would harm American businesses that face workforce gaps and that the cost of premium processing service reduces arts organizations' budgets for other activities. The commenters wrote that the change to the premium processing timeline would exacerbate these inefficiencies and increase uncertainty. Additionally, it would only further lower USCIS' accountability standards. A commenter similarly stated that increasing the premium processing timeframe would adversely impact businesses that pay premium processing fees because of their urgent workforce needs, and they suggested that further delays to the processing timeline would have a "chilling effect" on the overall process. One

comment stated that changing the premium processing time will deter businesses from doing business in the United States. Another commenter added that in many cases, the issuance of an RFE is a stalling technique and that if DHS premium processing regulations to be 15 business days instead to calendar days that senseless and unnecessary RFEs will not continue.

Response: DHS understands that sometimes a petitioning employer needs USCIS to take quick adjudicative action. However, as stated in the NPRM, DHS believes that changing from calendar days to business days may reduce the need for USCIS to suspend premium processing for petitions during peak seasons. This may permit USCIS to offer premium processing to more petitioning businesses each year. DHS believes the possibility that a petitioner requesting premium processing service may need to wait a few additional days for adjudicative action is a small cost to impose for being able to expand premium processing to more requests and reduce the likelihood for future suspensions of premium processing service. DHS does not think additional days will reduce the desire of businesses to request premium processing. DHS also disagrees with the assertion that USCIS issues RFEs as a stalling tactic. USCIS officers issue RFEs, in their discretion, to provide the petitioner an opportunity to supplement the record when eligibility has not been established. USCIS officers do not send RFEs just because they are near the 15-day maximum time for action.

Comment: Commenters requested that USCIS reinstate the “traditional expedite” option for non-profits that seek to enhance the cultural and social interest in the United States.

Response: USCIS has implemented an expedite policy for certain petitions in the past. Whether a petitioner seeks to enhance the cultural and social interest in the United States

may have been considered when USCIS decided to favorably exercise its discretion when considering expedite requests. However, expedited processing is a policy that is implemented using guidance and not governed by regulations. DHS is amending USCIS' fees and fee-related regulations in this final rule that require notice and comment rulemaking to effectuate. Petitioners do not pay a fee when submitting an expedite request, and the decision to grant or deny an expedite request does not affect the fees required for the underlying petition. Thus, expedite policy is outside the scope of this rulemaking. DHS may consider whether to provide expedited processing for certain petitions based on its workload in other areas and ability to meet promised deadlines. Also, depending on the immigrant or nonimmigrant classification sought, the petitioner may request premium processing service by filing Form I-907 and paying the associated fee. This final rule, though, makes no changes in response to this comment.

Comment: A commenter asked if DHS would consider the additional revenue received by USCIS from higher premium processing fees as another revenue stream.

Response: DHS understands that the commenter is suggesting that USCIS consider additional revenue from higher premium processing fees. The INA permits DHS to charge and collect a premium processing fee for employment-based petitions and applications. The fee revenue must be used to provide certain premium-processing services to business petitioners and to make infrastructure improvements in the adjudications and customer service processes. By statute, the premium processing fee must be paid in addition to any applicable petition/application fee. The statute provides that DHS may adjust this fee according to the Consumer Price Index. *See* INA section 286(u), 8 U.S.C. 1356(u); Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762,

2762A–68 (Dec. 21, 2000). DHS increased the USCIS premium processing fee in both 2018 and 2019. *See* 83 FR 44449 (Aug 31, 2018) (increasing the fee to reflect inflation from \$1,225 to \$1,410); 84 FR 58303 (Oct. 31, 2019) (increasing the fee from \$1,410 to \$1,440).

DHS regularly considers if USCIS' premium processing fee should be adjusted considering the rate of inflation, cost, and revenue needs. DHS prefers to adjust the premium processing fee outside of rules, like this one, that adjust fees comprehensively based on USCIS' full costs recovery model. The primary reason is because the premium processing fee may be adjusted by inflation; notice and comment rulemaking is not required. *See* 84 FR 58304. In addition, USCIS regularly analyzes whether to remove eligible categories based on its ability to meet demand or designate new benefit requests as eligible for premium processing in accordance with previous 8 CFR 103.7(e); new 8 CFR 106.4. For example, DHS recently determined that a few categories of employment authorization documents qualify as employment-based petitions and applications for business customers under INA section 286(u), 8 U.S.C. 1356(u). Thus, USCIS is considering permitting premium processing requests for qualifying categories of employment authorization that may be requested on USCIS Form I-765. When and if USCIS decides to provide premium processing for additional requests, USCIS will announce on its website, those requests for which premium processing may be requested, the dates upon which such availability commences and ends, and any conditions that may apply. New 8 CFR 106.4(e). This final rule, though, makes no changes in response to this comment and adjusts only USCIS' non-statutory, non-premium processing fees that

DHS has the authority to adjust for full cost recovery via public notice and comment rulemaking.

J. 9-11 Response and Biometric Entry-Exit Fee for H-1B and L-1 Nonimmigrant Workers (Pub. L. 114-113 Fees)

Comment: DHS received many comments on the change in how DHS interprets the statutory language in Public Law 114–113 to change the benefit requests to which the fee would apply. The comments are summarized as follows:

- USCIS lacks the authority to create such a fee increase and that only Congress has this authority.
- USCIS lacks the authority to reinterpret language from Public Laws 111-230 (2010) and 114-113 (2015) and that the proposal invents ambiguity that does not exist with respect to the extension of the \$4,000 or \$4,500 fee to extension petitions.
- Extending the Public Law 114-113 fee for qualifying H-1B and L-1 petitions is contrary to Congressional intent and represents an effort to deter legal immigration from certain countries. DHS’s interpretation of Pub. L. 114-113 is inconsistent with the agency’s historical regulatory interpretation.
- Congress set the amounts and parameters for the fees and Public Law 111-230 (2010) and Public Law 114-113 (2015) do not support the revisions.
- Congress’ consistent reenactment of the statute without changing the statute’s meaning with respect to when the fee is required suggests Congressional intent that the scope of the 9-11 Response fee continue.

- Examples of Congress' use of the language in Public Law 114-113 demonstrate that the DHS interpretation is not consistent with the intent of Congress.
- Congress provided clear and unambiguous language instructing DHS that the additional fee be combined with the fraud prevention and detection fee and the proposed change is an effort to thwart the plain instruction of Public Law 114-113.
- Language from Public Laws 111-230 and 114-113 support that the current statutory language was not ambiguous and the addition of the word combined in 2015 in Public Law 114-113 was not merely a clarifying edit as stated in the NPRM and Congress' actions over the past decade make it clear that the filing fee does not apply to extension petitions.
- Federal courts would not grant *Chevron* deference to the agency's effort to reinterpret the word combined because it is a non-complex, nontechnical word in common public usage and the agency does not have special expertise in determining the definition of combined.
- This interpretation is not only correct, it is mandated by the statutory language.
- Congress limited the circumstances requiring the 9-11 Response fee to only those for an application for admission and this language does not naturally apply to applicants for extension of time, for an amendment to terms, or for a change in status.
- The fees would negatively affect employers because it would require them to pay the fee multiple times for the same employee because the duration of an approval may be less than one year.

- Companies that hire from countries like India, where beneficiaries may wait for an immigrant visa number for decades, would have to file extensions until the worker becomes a permanent resident.
- Because USCIS routinely limits the expiration date of Form I-797 approval notices to the end date of the specific contract, resulting in short approval periods, employers will be forced to file extension petitions once the Statement of Work is renewed, incurring new filing and legal fees. The fee would result in employers opting not to hire or extend nonimmigrant employees which would have negative impacts on workers, companies, and the overall economy. H-1B and L-1 workers benefit the economy by increasing business efficiency, reducing costs for specialized work, and filling workforce gaps.

Response: DHS disagrees with the commenters' assertions that the statutory language is unambiguous or that DHS does not have the authority to interpret the statutory language. The statutory text refers to, among other things, an increase to H-1B and L-1 filing and fraud prevention and detection fees. Such fees are typically collected by DHS, either by USCIS upon the filing of an H-1B or L-1 petition or by CBP for certain visa-exempt L-1 nonimmigrants. The statutory text clearly shows that Congress intended DHS, in addition to the U.S. Department of State, to administer Pub. L. 114-113 and collect the associated fees. Such authority is also consistent with the general authority provided to DHS under INA section 214(a) and (c)(1), 8 U.S.C. 1184(a) and (c)(1), as well as, by incorporation, the specific authority provided in INA section 214(c)(12), 8 U.S.C. 1184(c)(12). DHS also explained in the NPRM how the statutory text is ambiguous, and that explanation remains unchanged.

DHS understands that it must provide a valid explanation of its changed position and provide a reasoned explanation for disregarding facts that underlay the prior policy. *See Encino Motorcars, LLC, v. Navarro*, 136 S.Ct. 2117, 2125 (2016). DHS acknowledges the commenters' concerns about the effect of our change in interpretation on petitioning employers, and that the statute is open to different interpretations. However, DHS is providing considerable advance notice of this change to those affected by it, and the fee will only apply to future petitioners after the effective date of this final rule. DHS may change its initial interpretation when engaging in rulemaking and consider different interpretations when deciding to continue with a current policy. *See, Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837, 863 (1984). As we stated in the NPRM, DHS believes that the Public Law 114–113 fee should apply to all extension of stay petitions because that interpretation gives meaning to all of the statutory text. That interpretation is also the most consistent with the goal of the statute to ensure employers that overly rely on H-1B or L nonimmigrant workers' pay an additional fee by making the fee applicable to petitions, including extensions of H-1B or L status, filed by employers that meet the statute's 50 employee/50 percent test, regardless of whether or not the fraud fee also applies. 84 FR 62322. In other words, the fee should apply to all H-1B or L-1 petitions, whether for new employment or an extension of stay. Consequently, DHS makes no changes in response to these comments.

Comment: A commenter requested that USCIS reinstate policy memoranda related to deference, such as the 2004 USCIS Memorandum, The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity. The commenter also requested

that USCIS enforce 8 CFR 214.2(1)(14)(i) to provide appropriate deference to officers' prior decisions regarding L-1. The commenter wrote that this would mitigate the need for fee increases for L1- nonimmigrant petition filings.

Response: DHS has no intent to reinstate the 2004 memo in this fee rule. This final rule is focused on establishing appropriate fees for different nonimmigrant worker classifications and not altering existing evidentiary requirements, such as those found at 8 CFR 214.2(1)(14)(i). Consequently, the changes suggested by this commenter were not mentioned or proposed in the NPRM and are outside the scope of this final rule.

K. Comments on Other General Feedback

Comment: Commenters wrote that fees should be raised based on inflation or social security cost of living increases, and that fee increases would be unnecessary if USCIS trained its officers.

Response: As explained in the NPRM and this final rule, DHS adjusts USCIS' fee schedule to ensure full cost recovery. DHS cannot guarantee that future inflation rates or social security cost of living adjustments applied to fees will yield sufficient revenue to ensure full cost recovery. In other words, adjusting fees by inflation or social security cost of living adjustments may be insufficient to recover the full cost of providing adjudication and naturalization services. As a result, DHS rejects the notion that fees should be raised based on inflation or social security cost of living increases and will continue to comply with the CFO Act by evaluating fees on a biennial basis and recommending adjustments to USCIS' fee schedule, as necessary.

Comment: A commenter opposed scenario A and stated that it would be unreasonable for the agency to compel the public to evaluate six different scenarios. The commenter

added that, in order for the final rule to be valid, it must include only the fee schedule that the public was given adequate time to evaluate, and the agency may not use the final rule to codify a “suite of alternative fee schedules” that it can switch between at will without public comment.

Response: DHS stated in the NPRM that subject to certain limitations, the proposed fees may change in the final rule based on policy decisions, in response to public comments, intervening legislation, and other changes. 84 FR 62327. To reduce the uncertainty that such conditions present to the affected public, USCIS proposed six fee scenarios that lay out what the fees would be if certain conditions materialize and present a range of fees.

Id. DHS disagrees that the public is incapable of reviewing and commenting on multiple proposed fee scenarios. The fee schedule adopted in this final rule falls within the range of the six scenarios. The policies implemented in this final rule are the same, or are logical outgrowths of, those contained in the NPRM.

The intent of the comment period provided under the APA is to allow agencies to consider public feedback on proposed rules and make changes as appropriate. Because a single change made in response to public comments may affect multiple fees, it is impossible to provide a final set of fees in a NPRM unless it were to be adopted without any modification, thereby negating the value of public feedback. DHS declines to make any adjustments in the final rule in response to these comments.

Comment: A commenter said the severability provision suffers from “logical outgrowth” concerns, stating that it would do nothing to protect a final rule if key provisions of the proposed rule changed so much in the final rule that the public was not given fair notice. In contrast, a commenter stated they “wholly” agreed with the severability provision

because the provisions each part function independent of other provisions. The commenter supported codifying the intent that provisions be severable to protect the goals of the proposed rule.

Response: DHS is unsure of the relationship between a logical outgrowth and severability to which the commenter refers. DHS is making no changes in this final rule that the public would not view as a possibility based on the contents of the proposed rule. DHS realizes that many parts of this final rule are interrelated, but most are severable and can be implemented independently from the remainder of this final rule's provisions.

DHS declines to make any adjustments in the final rule in response to these comments.

Comment: A commenter wrote that DHS should allow applicants to elect their delivery method for their secure document, DHS failed to justify why the agency is adopting Signature Confirmation Restricted Delivery (SCRD) to deliver secure documents, and DHS should publish a notice in the Federal Register each time USCIS proposes to add SCRD to any additional document beyond Permanent Resident Cards, Employment Authorization Cards, and Travel Booklets. One commenter supported SCRD as the sole method of delivery for secure documents. Another commenter wrote that it is an unnecessary burden to place on low-income or rural residents to travel to the post office or arrange to hold a secure document for pick-up.

Response: USCIS may use the United States Postal Service (USPS) Secure Confirmation Restricted Delivery (SCRD) service for delivery of all USCIS secure identification documents: Permanent Resident Card, Employment Authorization Document, and Travel Document Booklets once this final rule is effective. New 8 CFR 103.2(b)(19)(iii)(A).

USCIS already uses SCR D when documents are returned by USPS as undeliverable after being sent by Priority Mail with Delivery Confirmation. USCIS plans to use only USPS initially for SCR D when appropriate because only the USPS can deliver to post office boxes and military addresses (i.e. APO addresses). Other delivery services like FedEx or UPS would just leave the package on the doorstep, require a signature, or require it to be picked up. In addition, the current application process does not support choosing a different delivery method, although DHS is exploring more delivery methods as a future capability.

USPS's Signature Confirmation Restricted Delivery (SCR D) product requires the addressee to provide proof of identification and sign for delivery of their secure document. Applicants may also designate an agent to sign on their behalf, by notifying USPS and completing PS Form 3801, Standing Delivery Order, or PS Form 3801-A, Agreement by a Hotel, Apartment House, or similar. SCR D permits USCIS and applicants to track their document utilizing the USPS website up to when the document is delivered. The authority for USCIS to use the SCR D process will improve tracking and accuracy of delivery and will improve resolution of questions from applicants. Recipients will also have the ability to change their delivery location by going to the USPS website and selecting "hold for pickup" to arrange for pickup at a post office at a date and time that suits them. It is not unnecessarily cumbersome or unreasonable to expect document recipients to undertake the time and expense to ensure that documents as important as those issued by USCIS get into the right people's hands.

L. Cost Analysis and DHS Rationale for Fee Adjustments

Comment: Many commenters stated that USCIS proposed a 21 percent fee increase without evidence that it will improve immigration benefit services. Some commenters suggested that USCIS should find ways to revise the NPRM and include data that would make the connection between fee and efficiency increases in the adjudication process, as currently there is no evidence linking the two. Other commenters wrote that USCIS should rescind inefficient policies rather than increase fees to subsidize them, higher fees pass the costs of USCIS inefficiency to the public, fee hikes are not justified because USCIS has record long processing times, and needs to revert to its prior procedures for processing cases before increasing fees.

Response: As explained in the NPRM, USCIS considered all cost and operational data that was available at the time it conducted the FY 2019/2020 fee review, including data related to potential cost-saving measures. It does not account for recent cost-saving initiatives for which data was not yet available at that time. However, USCIS will evaluate and incorporate any relevant cost-savings data into its next biennial fee review. To the extent that potential process efficiencies are recognized in the next biennial fee review, cost-savings may lessen the impact of future fee adjustments.

Similarly, DHS recognizes that certain USCIS policies may increase the cost of completing its work. USCIS accounted for those cost increases where it had data available at the time it conducted the FY 2019/2020 fee review. It does not account for recent policy initiatives that may increase costs for which data were not available at the time of the FY 2019/2020 fee review. In its next biennial fee review, USCIS will

continue the practice of using all available data to determine total costs and appropriate fees to recover those costs.

DHS believes that USCIS policies are necessary for the agency to effectively achieve its mission and fulfil statutory mandates. USCIS faithfully adheres to immigration law and carefully considers the pros, cons, costs, and ramifications of all policy initiatives it undertakes. In its FY 2019/2020 fee review, USCIS estimated total costs to the agency of providing immigration adjudication and naturalization services. In the NPRM and this final rule, DHS has fully explained and justified the cost increases that necessitate USCIS fee adjustments.

Comment: Another commenter criticized USCIS' use of the ABC model to predict the cost of adjudicating forms. The commenter wrote that the model predicts different costs in 2019 compared to 2016 with no explanation, USCIS increased the ABC model baseline with no explanation and USCIS' explanation for "low volume reallocation" is used as a pretext for the Department's policy priorities.

Response: USCIS' cost projections for the FY 2019/2020 biennial period have increased relative to the FY 2016/2017 biennial period. However, DHS disagrees with the commenter's assertion that it provided no explanation of the change in USCIS' costs between 2016 and 2019. The NPRM provides USCIS' FY 2018 AOP amount used as a baseline to inform FY 2019/2020 cost projections. It also explains projected cost increases over the FY 2019/2020 biennial period from that FY 2018 baseline, including the need for additional staff, pay adjustments for existing staff, and other net additional costs. *See* 84 FR 62286 (Nov. 14, 2019). Additionally, DHS clarifies that USCIS' ABC model does not predict costs. Instead, it assigns cost projections to operational activities

and then to immigration benefit requests as explained in the supporting documentation that accompanies this final rule.

DHS categorically denies that “low volume reallocation” or “cost reallocation” is a pretext with any intent other than to exercise its discretion to limit the fee for certain applications and petitions in recognition that fees set at the ABC model output for these forms would be overly burdensome and possibly unaffordable for the affected applicants, petitioners, and requestors.¹⁰⁴ In its discretion, DHS determined that it would be appropriate to limit the fee increase for the following forms, while also rounding to the nearest \$5 increment:

- Form I-290B, Notice of Appeal or Motion,
- Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant,
- Form I-600, Petition to Classify Orphan as an Immediate Relative,
- Form I-600A, Application for Advance Processing of an Orphan Petition,
- Form I-600A/I-600, Supplement 3, Request for Action on Approved Form I-600A/I-600,
- Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative,
- Form I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, and
- Form I-800A, Supplement 3, Request for Action on Approved Form I-800A.

¹⁰⁴ DHS may reasonably adjust fees based on value judgments and public policy reasons where a rational basis for the methodology is propounded in the rulemaking. See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

In the NPRM, DHS explained that limiting the fee increase for these forms requires DHS to shift the costs to other fee-paying applicants, petitioners, and requestors via increased fees for other forms. If USCIS did not perform cost reallocation, then fees for other applications and petitions would be lower than those implemented in this final rule, and USCIS would not recover its estimated full cost of providing immigration adjudication and naturalization services. As explained in the NPRM, DHS determined that it would deviate from previous fee rules by not limiting the fee increase for the following forms:

- Form I-601A, Provisional Unlawful Presence Waiver,
- Form I-765, Application for Employment Authorization,
- Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant,
- Form N-300, Application to File Declaration of Intention,
- Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings,
- Form N-400, Application for Naturalization, and
- Form N-470, Application to Preserve Residence for Naturalization Purposes.

DHS outlined in its NPRM that other fees would be lower in recognition of additional revenue anticipated from the fee increases for these forms. The primary objective of not limiting the fee increase for these forms is to reduce the cost burden placed upon other fee-paying applicants, petitioners, and requestors.

DHS declines to make changes in this final rule in response to the comment.

Comment: Commenters attended a February 3, 2020 meeting with USCIS to observe the ABC cost modeling software. In follow-up comments, the attendees said that many questions remain outstanding about how USCIS developed its proposal. Many of their

follow-up comments were the same as those made by other commenters, which are responded to in other sections of this preamble. Some of their comments were unique due to observations of the software, including:

- Why have the costs for Form N-400s risen so dramatically,
- Can USCIS explain the 900 line items in the budget,
- Scenario modeling other than references to the six Scenarios A-F as described in the proposed rule, and
- USCIS explained that cost reallocation takes place outside of the ABC model but did not show the spreadsheet.

Response: In its NPRM, DHS provided the public with an opportunity to request an appointment to view the ABC software that USCIS uses to help calculate immigration benefit fees. *See* 84 FR 62281. The purpose of the February 3, 2020 meeting was to provide an overview of the software and demonstrate how it works. In other words, USCIS allowed these public commenters (who requested an appointment) to view the software and showed them how it leverages operational data inputs (i.e. FY 2019/2020 cost baseline, receipt volume projections, and completion rates) to determine the activity costs and fee-paying unit costs that inform proposed fees. A discussion regarding cost increases associated with Form N-400 and a detailed explanation of each USCIS budget line item was outside the scope of this meeting, which was focused on the ABC software. USCIS officials did not provide deliberative materials or supplemental information to these public commenters that is not in the record for the NPRM and in the docket. Although briefly discussed, the public commenters did not specifically ask USCIS officials during the meeting to view the separate spreadsheet used to calculate cost

reallocation. However, as explained in the supporting documentation that accompanies this final rule, cost reallocation is simply the process USCIS uses to reassign costs to each form fee to ensure full cost recovery. Total reassigned costs are the sum of the products of the fee-paying volume and model output for those forms with fees held below the model output, less the sum of the products of the fee-paying volume and the final fees for those same forms. Explained another way, a spreadsheet assigns the cost of limited fee increases or workload without fees to the fees that DHS does not limit for various policy reasons. We call this process cost reallocation. USCIS multiplies the fee-paying receipt forecast by the model output for each form. This calculates a total cost for that form. For the fees that DHS does not limit, we use the total cost for each form to reallocate the cost of limited fee increases or workload without fees. As a result, forms with the highest cost receive a larger share of cost reallocation. While terminology may have been different,¹⁰⁵ this is the same process that DHS used in the previous three fee rules. *See* 84 FR 62294. DHS believes that assigning more costs to forms with the highest cost is in line with the beneficiary pays principal emphasized throughout this rule.

DHS declines to make changes in this final rule in response to these comments.

Comment: Another commenter discussed information needed, but not provided at the meeting (even upon request in some cases) in order to understand how the software works. Because USCIS has failed to provide stakeholders with the opportunity to analyze the entire set of relevant information that USCIS has used to calculate the

¹⁰⁵ Previous proposed IEFA fee schedules referred to limited fee increases as “low volume reallocation” or “cost reallocation.” The FY 2016/2017 proposed fee schedule used both phrases. *See* 81 FR 26915. The FY 2010/2011 and FY 2008/2009 proposed fee schedules used the phrase “low volume reallocation.” *See* 75 FR 33461 and 72 FR 4910, respectively.

proposed new fees, the commenter opposed the entire new rule and requested that USCIS continue using the current fee schedule until USCIS provides access to the “FULL SET” of information it used and enough organized time to submit comments.

Response: The purpose of the February 3, 2020 meeting was to provide an overview and demonstration of the ABC software that USCIS uses to calculate immigration benefit fees. As was offered in the NPRM, USCIS officials provided the attendees with complete information on the inputs for the fee calculations and explained how the software works. An attendee posed several questions that would have required USCIS to provide deliberative information, granular assumptions underlying all aspects of the USCIS budget, an in-depth explanation of particular fee adjustments, and policy rationale associated with the Form N-400 fee (in excess of what is in the NPRM and supporting documentation). The questions asked went beyond the software demonstration, would have expanded the meeting considerably, and would have provided the attendee additional information that was not relevant. DHS believes that all relevant information is readily available in the NPRM and supporting documentation.

DHS declines to make changes in this final rule as a result of the comment.

1. Workload Projections

Comment: Multiple commenters stated that USCIS used unreasonable workload receipt projections in its cost model. One commenter cited figures in Table 5 of the NPRM detailing the average annual fee-paying receipts projection and said that they do not reflect the stated subtotals and grand totals. Similarly, another commenter said USCIS has not explained the source for its data on volume projections entered into the ABC

model. Commenters also highlighted concerns with projected workload and fee-paying receipts for certain individual form types such as Form I-526.

Response: DHS acknowledges that workload receipt volume projections used in the FY 2019/2020 fee review did not materialize in FY 2019 exactly as forecasted. USCIS' Volume Projection Committee (VPC) developed workload volume projections for the FY 2019/2020 fee review in FY 2017. The VPC considers all available data at the time it finalizes projections, including statistical forecasts for each form, analysis of recent trends, and consideration of future policy initiatives that are known at that time. The VPC integrates this information with subject matter expertise and judgement to provide unified receipt volume projections by form type for use in the biennial fee review and other operational planning purposes.

Certain filing trends have changed since USCIS forecasted the FY 2019/2020 fee review workload and fee-paying receipt volumes. USCIS simply cannot predict all filing changes that will affect actual receipt volumes. USCIS used the best information available at the time it conducted the FY 2019/2020 fee review to develop workload and fee-paying receipt volume forecasts.

DHS declines to make changes in this final rule in response to these comments.

Comment: Some commenters stated that USCIS based its workload receipt forecasts on limited and unrepresentative data, using data only from June 2016 to May 2017.

Commenters stated that USCIS did not explain why it chose this period. A commenter also said that USCIS' fee-paying volume assumptions reflect "filing trends and anticipated policy changes," but it is not clear how USCIS accounted for these factors. Another commenter said that projected volumes do not account for current processing

times. Estimates used FY 2016-2017 data, but processing times have increased since then.

Response: The commenters are generally mistaken. DHS did not use a single 12-month period of data to project anticipated workloads for the FY 2019/2020 biennial period. To establish workload projections, USCIS' VPC always evaluates the best available information, including historical application volumes and trends, including data that extend far beyond a single 12-month period. For example, USCIS used 10 years of data to estimate Form I-90 renewals. In accordance with this procedure, USCIS evaluated all available information at the time it conducted the FY 2019/2020 fee review to establish its workload projections for the biennial period. *See* 84 FR 62289. Therefore, DHS rejects the claims that its volume forecasts are unsubstantiated.

USCIS did use data from the June 2016 to May 2017 period to estimate a proportion of individuals who pay the filing fee by form type. In its NPRM, DHS referred to this proportion as "fee-paying percentage." *See* 84 FR 62290. DHS used this data to calculate fee-paying volumes for each form type under current policy and to estimate the effects of policy changes in the NPRM. DHS used data from the June 2016 to May 2017 period because it was the most current data available at the time USCIS conducted the FY 2019/2020 fee review and using a full year of data can smooth out fluctuations that may occur from month to month. DHS believes that use of this data is correct and appropriate and declines to make changes in this final rule in response to these comments.

Comment: A commenter wrote that the NPRM does not make clear whether projected receipts only include new applications anticipated in 2020, or also includes applications in the backlog.

Response: DHS reiterates that all workload figures in this final rule are projected volumes and do not include existing pending caseload. 84 FR 62288 (stating that revenue estimates were based on projected volumes).

Comment: A commenter who attended the February 3, 2020 software review meeting at USCIS stated that evidence does not support the projected figure for future Form N-400 filings. The commenter stated that receipts may decrease because of the fee increase and elimination of fee waivers. The NPRM says USCIS adjudicated 830,673 Forms N-400 in FY 2016/2017 and expects to adjudicate 913,500 in the FY 2020–21 biennium. The commenter understood from the meeting that USCIS “surveyed its staff,” but said it does not know how staff came up with the application volume data to arrive at their volume projections. The commenter questioned USCIS’ assertion that they will receive more N-400s than in the previous year given the drastic fee increases the agency seeks.

Response: DHS used the best information available at the time USCIS conducted the FY 2019/2020 fee review to develop receipt volume projections. The VPC considered all relevant statistical forecasts, recent trend analysis, and subject matter expertise. It also considered the potential effects of future policy changes. The VPC does not survey staff generally. Instead, the VPC considers input of subject matter experts in conjunction with statistical forecasts to determine a final volume forecast.

2. Completion Rates

Comment: A commenter wrote that USCIS should use completion rates to estimate all activity costs as was done in the previous USCIS fee rulemaking. A commenter wrote that the NPRM provides only some completion rates, but the information by itself is not useful in assessing justifications for proposed fee increases. A commenter wrote that Table 6 in the NPRM demonstrates that completion rates for most forms are as low as 1 – 2 hours, indicating that most forms include fees at a cost of hundreds of dollars an hour. A commenter wrote that the completion rates for Form N-400 with a filing fee of \$1,170 come out to a cost of \$745.22 an hour, whereas an EB-5 form for a wealthy investor includes a filing fee of \$4,015 at a rate of \$464 an hour. The commenter asked why it costs USCIS so much less to work on Form I-526, which is a much more complicated and time consuming petition requiring very specialized and more experienced officers, than that required to adjudicate Form N-400. Other commenters also mentioned the disparate hourly rates between Form N-400 and EB-5 workload, stating that the proposed fees are not supported by the costs of completion and that the cost per completion rate for these forms shows the fees are a wealth test.

Response: It is not accurate to say that USCIS used completion rates to estimate all activity costs in the previous rulemaking. In the last three fee rules, USCIS used completion rates to assign costs from the Make Determination activity to individual cost objects (i.e. forms). USCIS continued this approach in the FY 2019/2020 fee review. The fees DHS enacts in this final rule are based on the same methodology that was used in previous fee rules.

DHS understands the skepticism induced by simply dividing a form's proposed fee by the completion rate in an attempt to estimate the hourly processing cost. However, the calculation performed by the commenter does not accurately represent the per hour cost of adjudicating a particular form. Such a calculation presumes that all costs are associated with the Make Determination activity and ignores the costs associated with other activities, such as the Issue Document activity, that are not based on completion rates. In addition, all fees greater than the model output (i.e. receive cost reallocation) represent the full amount of both the estimated cost of adjudicating the form and other costs associated with providing similar services at no or reduced charge to asylum applicants and other immigrants. USCIS' fees must recover estimated full costs, not just the direct costs to adjudicate forms.¹⁰⁶

DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter criticized USCIS for not disclosing actual case completion per hour statistics in the NPRM or supporting documentation.

Response: DHS provided completion rates (hours per completion) in Table 6 of the NPRM. *See* 84 FR 62292. Appendix Table 10 of the supporting documentation that accompanies this final rule also includes them.

Comment: A commenter wrote that USCIS does not explain whether prior year expenses used in calculations for immigration application fees under Section IV(B) include activities that courts later enjoined, or whether the calculation included legal costs related

¹⁰⁶ *See* FY 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation with Addendum, which is part of the docket for this final rule. It provides more information on how USCIS conducted the fee review and defines the activities in it.

to litigating the issues in court. If so, the commenter asked that USCIS recalculate expense and completion rates.

Response: As explained in the NPRM, proposed fees are informed by cost projections for the FY 2019/2020 biennial period. *See* 84 FR 62888. DHS does not use prior year expenses to calculate immigration benefit request fees. Additionally, as stated in the supporting documentation that accompanies this final rule, USCIS does not track actual costs by immigration benefit request. Therefore, DHS does not believe that an additional explanation is necessary and declines to make changes in this final rule in response to the comment.

3. USCIS Staffing

Comment: Multiple commenters wrote that the NPRM seeks to justify fee increases by a need for more staffing, yet USCIS has employees performing enforcement work for ICE and CBP. Other commenters supported the addition of employees to improve USCIS case processing times.

Response: In response to the migration crisis at the United States southern border, USCIS did provide staff on detail to ICE for clerical assistance in the creation and management of immigration case files. USCIS detailed the staff to ICE without reimbursement as provided in law. *See* Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019, Pub. L. 116-26, tit. III (Jul. 1, 2019). This temporary support to ICE represented a miniscule proportion of total USCIS staff. Marginal costs associated with this effort are not in this final rule, as USCIS did not assume an additional staffing requirement for this workload in the FY

2019/2020 fee review. Additionally, DHS does not assign USCIS employees to perform enforcement work for ICE and CBP.

DHS proposed to hire additional USCIS employees for the reasons stated in the NPRM. USCIS estimates that it must add an additional 1,960 positions in FY 2019/2020 (relative to FY 2018 authorized staffing levels) to address incoming workload.¹⁰⁷

However, the fee schedule that has been in place since December 23, 2016 is insufficient to fund this additional staffing requirement. The total estimated staffing requirement of 20,820 in this final rule represents an increase of 6,277 or 43 percent from the FY 2016/2017 fee rule (14,543). DHS believes that this estimate is lawful and fully justified based on the best information available to USCIS at the time it conducted the FY 2019/2020 fee review.

Comment: Another commenter said USCIS indicates that it uses a staffing model to predict needs based on workload receipts and target processing times, but USCIS has not identified target processing times or described its method for calculating workload receipts, other than to explain that a committee looked at trends and models. Further, the commenter said it is not clear what outputs that staffing model generated.

Response: DHS uses multiple, different techniques to forecast USCIS' workloads. Ultimately, the VPC reviews, deliberates, and reaches a final consensus on every forecast, as described in the NPRM and elsewhere in this final rule. DHS uses these workload forecasts as inputs to Staffing Allocation Models, which determine the

¹⁰⁷ This represents 138 fewer positions than reflected in the NPRM due to the removal of estimated additional staff associated with DACA. See the Form I-821D, DACA Renewal Fee section for additional information regarding why DHS is not implementing a fee for Form I-821D in this final rule.

estimated staffing requirements for USCIS. DHS outlines USCIS' total estimated IEFA authorized staffing requirement by directorate in Appendix Table 7 of the supporting documentation that is in the docket for this final rule. *See* 84 FR 62281. DHS declines to make changes in this final rule as a result of the comment.

Comment: A commenter said USCIS needs to fill important open positions in order to address significant backlogs, citing a 2019 USCIS report to Congress.

Response: DHS concurs with this commenter's statement. This is one reason why DHS is adjusting USCIS' fees in this final rule. DHS believes that the final fees will yield additional revenue that USCIS can use to hire and fill additional positions necessary for adjudicating incoming workload. The ability to adjudicate incoming workload may help USCIS mitigate future backlog growth.

Comment: A commenter wrote that USCIS does not explain why the NPRM includes funding for a 44 percent increase in staffing levels from FY 2016/2017, or why this increase was not anticipated in the 2016 fee rule just 3 years earlier. The same commenter stated that USCIS should at the very least provide the public with a version of fee review supporting documentation Appendix Table 6 that goes back 10 years, broken down by directorate, and actual staffing numbers for each fiscal year. Similarly, another commenter said USCIS fails to explain why the increase of 5,000 in staff from 2018 to 2019 is merited.

Response: DHS articulated in the NPRM that, "This additional staffing requirement reflects the fact that it takes USCIS longer to adjudicate many workloads than was planned for in the FY 2016/2017 fee rule and that workload volumes, particularly for work types that do not currently generate fee revenue, have grown." *See* 84 FR 62286.

Although USCIS used all available data at the time it conducted the FY 2016/2017 fee review, it necessarily used historical data and trends to inform its projections. USCIS was unable to foresee these additional staffing needs at the time it implemented the FY 2016/2017 fee rule because of nearly unprecedented growth in workloads such as credible fear and affirmative asylum. Furthermore, USCIS could not perfectly anticipate all policy and operational changes that influence adjudication times.

USCIS cannot afford the estimated staffing requirement necessary to address its incoming workload under the previous fee structure. If USCIS maintains current staffing levels, DHS believes that backlogs would grow. Therefore, DHS adjusts USCIS' fees in this final rule to generate additional revenue that may be used to fund staff that will adjudicate incoming workload and potentially mitigate or stabilize future backlog growth.

DHS declines to make changes in this final rule in response to these comments.

4. Cost Baseline

Comment: Multiple commenters claimed that DHS did not adequately explain the growth in USCIS costs from the FY 2016/2017 fee rule and that DHS failed to provide justifications for 57 percent of the increase in costs from the previous fee rule. A commenter stated that USCIS dismisses the option of reducing projected costs with a single sentence and is a “fatal defect” in the NPRM. Other commenters said that in overstating workload volumes, DHS overestimated the costs to be recovered by USCIS' fee schedule.

Response: In its NPRM, DHS highlighted changes from USCIS' FY 2018 Annual Operating Plan (AOP) to the FY 2019/2020 cost baseline. *See* 84 FR 62286. The authorized staffing levels and FY 2018 AOP costs are higher than FY 2016/2017 fee rule

projections. After the FY 2016/2017 fee rule became effective on December 23, 2016, USCIS funded additional staff and other agency initiatives through a combination of additional revenue resulting from higher fees and available carryover funds. Per Figure 4 of the supporting documentation that accompanies this final rule, USCIS expected to draw down its carryover funds in FY 2019 and FY 2020 because base operating costs were projected to exceed incoming revenue. In other words, USCIS forecasted an annual operating deficit in both years. DHS determined that USCIS cannot sustain recurring annual operating deficits of this magnitude and continue to fund itself in this manner, necessitating an adjustment to the fee schedule based on the results of the FY 2019/2020 fee review.

As detailed in the NPRM, a primary driver of cost growth from the FY 2018 AOP to the FY 2019/2020 cost baseline is payroll for on-board and new staff. *See* 84 FR 62286. This staff is necessary to process the projected workload receipt volume, which exceeds USCIS' current workload capacity. Strategic investments in staffing may help USCIS mitigate or stabilize future backlog growth. Furthermore, net additional costs include non-pay general expense enhancements for requirements such as secure mail shipping for permanent resident cards and other secure documents (\$27 million), USCIS headquarters consolidation (\$32 million), increased background checks (\$18 million), IT modernization efforts (\$32 million), customer engagement center (\$23 million), and inflationary increases for contracts. This final rule does not transfer funds to ICE or implement new DACA fees. Therefore, DHS removed \$207.6 million for ICE and \$18.7 million of DACA costs in this final rule. Table 6 is a revised crosswalk summary from

the FY 2018 AOP to the FY 2019/2020 cost baseline used to inform the fee schedule in this final rule.

Table 6: Revised Cost Baseline Projections

FY 2019/2020 Fee Review IEFA Non-Premium Budget (in Millions)	
Total Base FY 2018 IEFA Non-Premium Budget	3,585.6
Plus: Net Spending Adjustments	217.2
Total Adjusted FY 2018 IEFA Non-Premium Budget	\$ 3,802.8
Plus: Transfer to ICE	-
Plus: Pay Inflation and Promotions/Within Grade Increases	280.2
Plus: Net Additional Costs	249.0
Total Adjusted FY 2019 IEFA Non-Premium Budget	\$ 4,332.0
Plus: Pay Inflation and Promotions/Within Grade Increases	218.6
Plus: Net Additional Costs	5.8
Total Adjusted FY 2020 IEFA Non-Premium Budget	\$ 4,556.4

DHS did not overstate its projected costs for recovery via USCIS’ fee schedule. Generally, whenever an overestimate of workload and/or fee-paying receipts materialize, proposed fees are often understated. For example, assume there is a total cost estimate of \$100.00 for an agency to recover via one user fee. If there were 100 projected fee-paying applicants to assign a total cost estimate of \$100.00 to, then the proposed fee would be \$1.00. However, if the actual fee-paying receipt volume materialized at half or 50, then the proposed fee should have been double or \$2.00 to recover full cost because there were fewer fee-paying applicants to absorb the \$100.00. Using this same example, even if the \$100.00 was high due to an overestimate of volume projections and it should have been only \$80.00 (to account for a notional marginal cost change), the proposed fee would

remain \$2.00 ($\$80.00 / 50 = \1.60 or \$2.00 when rounded to the nearest whole dollar).¹⁰⁸

As previously explained, USCIS uses the best information available at the time it conducts biennial fee reviews.¹⁰⁹ Forecasts may not materialize exactly as initially projected due to many factors. Consequently, USCIS reevaluates its fees on a biennial basis and makes adjustments, if necessary.

DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter stated that USCIS rests the proposed new fees on the outcome of a budget model but gives little indication of how it derived the budget in the first place. For example, USCIS states that the budget is derived from the FY 2018 AOP, but it is not clear from the proposal and supplemental material what estimates, assumptions, or operating practices this plan embodies or why this plan is relevant (instead of a more recent plan or actual operating figures). In addition, the commenter said USCIS states that its budget reflects an “adequate level of operations,” plus “funding for [certain] enhancements,” but does not explain either concept. The commenter also said the proposal does not give commenters a full understanding of other aspects of the budget, including the ICE funds transfer, staff salaries and benefits, what assumptions are driving the estimates of budget growth, how much carryover USCIS is budgeting for or how that affects the proposed fees, and how USCIS plans to use premium processing revenue or why such revenue does not offset any of the fees that USCIS proposes based on its non-premium budget.

¹⁰⁸ In reality, a lower receipt volume often does not produce a cost reduction within the span of a two-year period due to fixed costs associated with facilities, staff, and other overhead.

¹⁰⁹ OMB Circular A-25 clarifies that “full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.”

Response: As explained in the supporting documentation that accompanies this final rule, USCIS establishes an AOP (detailed budget execution plan) at the beginning of each fiscal year that is consistent with the annual spending authority enacted by Congress. The FY 2018 AOP is USCIS' basis for the FY 2019/2020 cost baseline, which informs proposed fees in the NPRM and final fees in this final rule. DHS clarifies that USCIS considers an "enhancement" to be additional funding in excess of the base annual operating plan. This estimated additional funding (i.e. cost projections) are outlined in both the NPRM and Cost Baseline section of this final rule.

Information and assumptions about USCIS' carryover are located in the IEFA Non-Premium Carryover Projections section of the supporting documentation that accompanies this final rule. Additionally, premium processing revenue, as explained in the Premium Processing section of this final rule, may only be used for limited purposes as provided by law.

DHS declines to make changes in this final rule in response to the comment.

Comment: Commenters identified differences between their estimate of USCIS' expenditures in FY 2018-2019 and DHS' cost estimates for those years in the NPRM. The commenters contended that DHS appears to have substantially overstated USCIS' FY 2018-2020 costs. Additionally, commenters noted that USCIS' FY 2019-2021 congressional justifications convey lower amounts than DHS' cost estimates in the NPRM.

Response: The commenters' conclusion that USCIS' FY 2018-2019 actual expenditures are less than its cost estimates for those years in the NPRM is correct. Furthermore, the commenters' observation that USCIS' FY 2019-2021 congressional justifications

requested less budgetary authority than the cost estimates for those years in the NPRM is also correct. However, contrary to the commenters' assertions, this does not mean that DHS overstated USCIS' costs or that USCIS does not need to collect the amount of revenue it identified in the NPRM.

DHS developed cost estimates for addressing projected incoming workloads during the FY 2019/2020 period. As identified in the NPRM, USCIS is unable to fully fund its estimated budgetary requirements (i.e. FY 2019/2020 cost baseline or cost projections) via the existing fee schedule, thereby necessitating fee adjustments in this final rule. Thus, USCIS expended less in FY 2018-2019 than its cost projections for addressing incoming workloads precisely because it did not have sufficient available resources to meet its estimated budgetary requirements. Similarly, the congressional justifications cited by the commenters reflect USCIS' estimates, at different points in time, of the funds it would be able to execute based on anticipated resources available to the agency under current policy and fees, rather than the cost projections of addressing incoming workloads forecasted during the FY 2019/2020 fee review. Therefore, DHS's NPRM cost projections differ from actual expenditures and congressional justifications because they reflect USCIS' estimated budgetary requirements to fully address projected incoming workloads as of a particular point in time.

Given that USCIS did not have available resources equivalent to its estimated budgetary needs in FY 2018 and 2019, it was not able to hire the number of staff estimated by its Staffing Allocation Models. The underfunding of USCIS' requirements increased processing times and backlogs. USCIS' fee schedule must recover the

estimated costs of addressing incoming workloads to ensure that it has sufficient resources to operate and limit the future growth of processing times and backlogs.

DHS declines to make adjustments in this final rule in response to these comments.

Comment: Similarly, a commenter stated that the NPRM uses opaque and invalid budget assumptions and neither the proposed rule nor the commenter's meeting with USCIS have provided any way for the public to adequately understand, much less analyze, future costs and revenue estimates. The commenter said cost and revenue baselines are not aligned, as USCIS is using two completely different time periods to inform its proposed fee rule: a relatively antiquated time period (June 2016 to May 2017) as the baseline for revenues, and a relatively recent time period (FY 2018) as the baseline for costs. The commenter characterized this as "perplexing" given that USCIS surely knows its actual costs and revenues for any prior fiscal year. The commenter also detailed their analysis that concluded that projected costs and revenues do not match actual costs and revenues, which the commenter said raises several issues that USCIS must explain to the public.

Response: DHS disagrees with the commenter's contention that USCIS' budget assumptions are opaque and invalid. The commenter is incorrect in stating that USCIS used two different time periods to determine revenue and cost projections for the FY 2019/2020 fee review and that the revenue and cost baseline are not aligned. USCIS used data from June 2016 to May 2017 to determine one data element, fee-paying percentages, that informed its FY 2019 and FY 2020 revenue forecasts. This is only one data input among several that USCIS considers in forecasting revenue. DHS maintains that its use

is appropriate. Furthermore, USCIS used the same data to inform the FY 2018 AOP, insofar as it was also an input into the FY 2018 USCIS revenue forecast.

DHS declines to make changes in this final rule in response to the comment.

Comment: A commenter wrote that there is an especially great burden on USCIS to disclose a full and transparent accounting for why it requires an average annual budget of \$4.67 billion, as the role of the agency's cost-modeling software is simply to accept this number "as a received truth" and allocate it among all of the various form types. This commenter said USCIS provides almost no explanation for why it is projecting such high costs, especially when the agency's actual costs in FY 2018, 2019, and 2020 were so much lower than its own projections.

Response: DHS acknowledges that USCIS' actual expenditures in FY 2019 were less than the projected costs in this final fee rule. Furthermore, the commenter is correct in stating that the FY 2019 and FY 2020 cost projections in the NPRM exceed the total budget authority requested for USCIS in the Congressional Justifications that accompany the President's annual budget proposal for those years. This reflects the fact that the revenue generated under the previous USCIS fee schedule was insufficient to adequately fund the agency's needs. The President's budget proposal did not request authority for USCIS to spend money that it was not expecting to have. The difference between the cost projections and actual USCIS expenditures across this time manifested in backlog growth and unmet operational needs. It does not reflect inaccurate projections of the cost to USCIS of fully funding its operational requirements.

DHS has fully explained and justified USCIS' projected costs to meet its operational requirements and address its projected workload. Therefore, DHS declines to make changes in this final rule in response to the comment.

Comment: Commenters stated that, during a meeting with USCIS Office of the Chief Financial Officer, the group discussed the timing and availability of information in the FY 2019/2020 fee review. A commenter stated that the cost-modeling software uses information from 2017, which precedes most of the notable USCIS policy changes of the past 3 years. The commenter stated that USCIS apparently attempts to predict how costs for a given form type will change in the future, but there has been no comprehensive modeling of the many recent developments that would tend to reduce agency costs and put downward pressure on user fees.

The commenter stated that USCIS does not appear to have accounted for many recent policy changes because data was not available "at the time it conducted this fee review." The commenters wrote that more recent data could change the number of people applying for immigration benefits, and thus USCIS' budget estimates and fee calculations. Another commenter stated that the rule does not suggest that USCIS has estimated and accounted for the combined effect of these multiple initiatives, nor could it have done so comprehensively as the Administration's adoption of new initiatives that could affect the number of people seeking immigration benefits has continued even since April 2019 when USCIS completed its fee review and November 2019 when DHS published the NPRM. The commenter said this also raises serious questions about whether the fee review complies with the statutory requirement for USCIS to conduct such a review and make recommendations based on the relevant "costs incurred." The

commenter said the proposal's reliance on 2018 cost projections is unreasonable. The commenter said more recent data and projections were available or could have been if USCIS had waited just a bit longer, and USCIS provides no reason that 2018 figures are more relevant. The same commenter said the proposal is additionally unreasonable because it is based on projections for FY 2019 and FY 2020, a period that has nearly passed. The commenter said USCIS should have based its modeling on more recent data and projected results for the time period when any new fee rule would be in effect.

A commenter wrote that USCIS excludes savings and benefits already realized such as efficiencies gained through investments in information technology, closures of international offices, and lower refugee intake. Similarly, a commenter wrote that the RIA fails to present data and evidence on a number of recent changes designed to reduce costs, including limiting the availability of printed study materials, no longer providing printed Forms N-400, centralizing all customer inquiries and complaints on a call center, and introducing electronic filing for many benefits.

Response: DHS acknowledges that it did not incorporate cost increases or savings from policy initiatives for which data was not available at the time USCIS conducted the FY 2019/2020 fee review. DHS rejects the implication that it inappropriately failed to account for future policy initiatives. DHS must adjust USCIS fees through notice and comment rulemaking which, especially for a rule with a billion-dollar impact, is a lengthy process that requires policy planning, analysis, a proposed rule, reading and responding to comments, and a final rule. DHS must publish a final rule that only makes changes that are a logical outgrowth from the proposed rule, and a totally new budget with minor changes in costs or savings cannot be substituted between the proposed and final rules,

although we adjust for substantial sums based on intervening legislation as we did for appropriated funds for ICE and the Citizenship and Integration Grant Program discussed elsewhere. The immigration policy environment changes so frequently that if USCIS were to delay finalizing a fee review until cost data was available for all future policy initiatives, DHS would be unable to adjust fees timely, thereby posing a fiscal risk to USCIS. Biennial fee reviews must reflect USCIS' cost projections as of a particular point in time as best can be determined. The same logic applies to other operational metrics including completion rates, revenue forecasts, and workload projections. USCIS always leverages the best information available at the time it conducts a biennial fee review, but it necessarily results in some costs or savings realized or to be realized not being incorporated in the final fees simply due to the passage of time for rule development and finalization.

In recognition of the constantly evolving immigration policy environment and its obligations under the INA and the CFO Act, USCIS regularly conducts biennial fee reviews. The two-year review mandate in the CFO Act forces fee setting agencies to address the effects of just these sorts of policy and practice changes on their fees; otherwise, bureaucratic inertia could cause an agency to not address the soundness of their fees versus costs and services. As it is, the two-year period provides agencies with a reasonable period within which to regularly address such issues, subject to the time constraints of notice and comment rulemaking previously mentioned. To the extent that the recent policy initiatives identified by the commenters affect USCIS' costs, those effects will be captured in USCIS' next biennial fee review. If the totality of new

initiatives reduces USCIS' costs, it may result in lower fees in the future for applicants and petitioners.

DHS declines to make changes in this final rule in response to the comments.

Comment: A commenter wrote that their own estimates suggest USCIS is attempting to increase revenue by around 49 percent over current revenue projections based on estimated growth in applications. The commenter said this is an extraordinary amount of revenue extracted from its most vulnerable users.

Response: DHS is unable to replicate the commenter's estimate and does not know the source or validity of these calculations. Regardless, as explained in the NPRM and this final rule, DHS must adjust USCIS' fees to recover the estimated full cost of providing adjudication and naturalization services. DHS declines to make changes in this final rule in response to this comment.

Comment: A commenter said that USCIS states that it recognizes revenue when work is completed, asserting that the implications of this accounting principle on USCIS' budget and fee modeling is not clear but could be quite significant. For example, the commenter said it is unclear whether revenue estimates are based on actual cash flow or the amount of revenue that is recognized in a current year or if USCIS' budget is inflated with the costs of processing applications for which USCIS received a fee in a prior year.

Response: DHS clarifies that all figures in the USCIS fee review, NPRM, and this final rule reflect projected costs, workload and associated revenue for the FY 2019/2020 biennial period. DHS did not overstate or inflate the USCIS' cost baseline because it does not include workload for which USCIS received a fee in a prior year.

DHS declines to make changes in this final rule in response to the comment.

5. Alternative Funding Sources

Comment: Commenters wrote that funding for USCIS should come from another source. Multiple commenters indicated that Congress should provide appropriations to USCIS to decrease the burden on immigrants. Some commenters also indicated that USCIS did not consider the \$10 million appropriation for citizenship grants in setting its fees.

Response: As stated in the NPRM, fees have funded USCIS since its inception.

Approximately 97 percent of USCIS' annual funding comes from fees. USCIS must rely on fees until the law changes or Congress appropriates funding. For FY 2019 and FY 2020, Congress appropriated \$10 million for the Citizenship and Integration Grant Program. *See* Consolidated Appropriations Act, 2019, Pub. L. 116-6, div. A, tit. IV (Feb. 15, 2019) and Consolidated Appropriations Act, 2020, Pub. L. 116-93, div. D, tit. IV (Dec. 20, 2020). At the time USCIS conducted the FY 2019/2020 fee review, Congress had not appropriated \$10 million for the Citizenship and Integration Grant Program. As a result, USCIS did not expect to receive the appropriations in FY 2019 or FY 2020. Therefore, USCIS' FY 2018 AOP and FY 2019/2020 fee review cost baseline accounted for these funds in the IEFA non-premium budget. In this final rule, DHS clarifies that \$10 million (IEFA non-premium funds; not appropriated funds) remains in the cost baseline for other agency initiatives. However, USCIS does not assign \$10 million to only naturalization-related forms (i.e. N-336, N-400, N-565, N-600, and N-600K) in its final ABC model because Congress appropriated funds for the Citizenship and Integration Grant Program. Instead, USCIS reassigns \$10 million of non-premium funds to other fee-paying forms, thereby reducing the costs assigned to and final fees for naturalization-related forms.

DHS declines to make any changes in this final rule in response to these comments.

M. ICE Transfer

Comment: Many commenters wrote that they disagree with the proposed transfer of USCIS IEFA funds to ICE. They provided a number of reasons for their objections.

Another commenter concluded that eliminating the revenue transfer to ICE enforcement would reduce USCIS' claimed need to eliminate ability-to-pay waivers.

Response: DHS removed the transfer of IEFA funds to ICE from this final rule because Congress appropriated \$207.6 million to ICE in FY 2020. *See Consolidated Appropriations Act, 2020, Pub. L. 116-93, div. D, tit. IV (Dec. 20, 2019).* DHS may fund activities conducted by any component of the department that constitute immigration adjudication and naturalization services using the IEFA. *See INA section 286(m), (n), 8 U.S.C. 1356(m), (n).* Nevertheless, the fees established by this final rule are not calculated to provide funds to ICE.

Comment: A commenter suggested that USCIS use the money currently spent on detention by ICE to instead streamline and simplify the application process.

Response: Congress appropriates funds for ICE Enforcement and Removal Operations. Those funds are not available for use by USCIS. DHS declines to make changes in this final rule in response to this comment.

Comment: A commenter wrote that recent legislative action suggested USCIS would abandon the plan to transfer funds to ICE, so the commenter asked that USCIS confirm in its final rule that it does not have the authority to transfer IEFA funds to ICE collected.

Response: DHS may fund activities conducted by any component of the department that constitute immigration adjudication and naturalization services using the IEFA. *See* INA section 286(m), (n), 8 U.S.C. 1356(m), (n). DHS removed the transfer of IEFA funds to ICE from this final rule because Congress appropriated \$207.6 million to ICE in FY 2020. *See* Consolidated Appropriations Act, 2020, Pub. L. 116-93, div. D, tit. IV (Dec. 20, 2019). The fees established in this final rule are not calculated to provide funds to ICE.

N. Processing Times and Backlogs

Comment: A commenter wrote that USCIS should focus on the processing times and becoming more efficient. The commenter also suggested that USCIS could benefit from a more streamlined electronic process. One commenter wrote that electronic filing glitches, lost documents, erroneous rejections, and lengthy holds should be addressed before fees are raised. One commenter said USCIS should increase filing technology and training of Service Officers to ensure they have the legal knowledge of the regulations and have the platform to adjudicate cases efficiently. The commenter said technology allocations should specifically focus on electronic filing systems that can reduce processing times and make document and forms submission from U.S. employers seamless.

Response: DHS strives to save money, be efficient, and process all requests in a timely manner while maintaining the integrity of the United States immigration system. USCIS agrees with commenters that electronic filing, processing, and record keeping for immigration benefit requests is likely to provide operational efficiencies that could aid USCIS in better using its existing resources and potentially reduce processing times and

backlogs. Although USCIS is aggressively moving to expand e-processing to more form types, its current operational needs dictate that it must increase fees to cover projected costs. If USCIS realizes operational efficiencies through the expansion of electronic benefit request filing and processing, those cost savings will be reflected in upcoming fee reviews and may result in future fees that are lower than they would have been in the absence of such efficiencies. Training, software, and equipment costs are part the IEFA budget. USCIS encourages its employee to discuss with their supervisor if they believe that they lack the resources necessary to do their jobs.

DHS declines to make changes in this final rule in response to these comments.

Comment: Many commenters who opposed the NPRM noted that immigration benefit request backlogs and processing times have increased under the current administration despite a fee increase in December 2016. Many commenters stated that since 2010, USCIS increased filing fees by weighted averages of 10 percent and 21 percent but has not achieved any associated improvement in processing times, backlogs, or customer service. Commenters cited reports stating that during that same period USCIS' backlog has increased by more than 6,000 percent and that the overall average case processing time increased 91 percent between 2014 and 2018. Commenters wrote that fees should not increase until USCIS improves its efficiency and management. Commenters wrote that an increase in fees must be accompanied by improvement in processing times, reduced backlogs, improved customer service, and services that do not discriminate against the working class, low-income applicants, and others who face financial hardships.

Response: DHS recognizes the continued growth of USCIS case processing backlogs since it last adjusted the USCIS fee schedule on December 23, 2016. *See* 81 FR 73292 (Oct. 24, 2016). The fees established at that time proved insufficient to fund USCIS at the level necessary to prevent growth in case processing backlogs. USCIS' costs grew more than expected at that time because of disproportionate growth in humanitarian workloads that did not generate revenue, increased adjudicative time requirements per case for many different workloads (i.e. increased completion rates), additional staff, and other factors.

DHS is adjusting fees in this final rule because they are insufficient to generate the revenue necessary to fund USCIS at levels adequate to meet its processing time goals. Adjustments to USCIS' fee schedule will generate more revenue to fund the operational requirements necessary to meet projected incoming workloads and prevent further deterioration in processing times. The new fees will allow USCIS to hire more people to adjudicate cases and possibly prevent the growth of backlogs. USCIS will continue to explore possibilities for business process efficiencies. Future fee adjustments will reflect any efficiencies realized by USCIS.

DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter suggested that USCIS should internally review its processes and determine how they might be streamlined before increasing fees. A few commenters stated that increased RFEs and mandatory in-person interviews, among other policies, are labor intensive and should be addressed to decrease the backlog before fees are increased.

Response: USCIS continually evaluates its processes and pursues efficiencies to the greatest extent possible. As explained in the NPRM, USCIS considered all cost and

operational data that was available at the time it conducted the FY 2019/2020 fee review, including potential process efficiencies. It does not account for recent process efficiencies for which data was not yet available at the time. However, USCIS will evaluate and capture any relevant cost-savings data for process efficiencies during its next biennial fee review. To the extent that potential process efficiencies are recognized in the next biennial fee review, cost-savings may lessen the impact of future fee adjustments.

DHS declines to make changes in this final rule in response to the comment.

Comment: A commenter said an increase in fees would only further burden those who seek services and are repeatedly met with inefficiency, long wait times, and the inability to get answers. This commenter said USCIS has taken away services, such as the ability to make InfoPass appointments online, and rerouted those inquiries to Customer Service Center where wait times to receive calls back make emergency situations that require an InfoPass appointment even more frustrating. Another commenter also mentioned the difficulty in making InfoPass appointments as an example of how USCIS services have declined in recent years due to mismanagement. Commenters said USCIS should end policies and practices that raise fees to support the continued administration of backlog-expanding policies and practices.

Response: USCIS continually evaluates potential operational efficiencies. Reductions in the use of in-person appointments through InfoMod enable USCIS to redirect resources to adjudication, potentially improving overall customer service. USCIS evaluates and incorporates all available information on both cost-savings and cost increases as part of its biennial fee reviews, including the effects of policy changes and their impact on

operational processes. This final rule adjusts USCIS' fee schedule to recover the estimated full cost of providing immigration adjudication and naturalization services; removing or reconsidering all USCIS policies and practices is beyond the scope of this rulemaking.

DHS declines to make changes in this final rule in response to these comments.

Comment: Another commenter noted that USCIS' only concrete plan was to spend money on reducing fraud, which would not efficiently reduce the backlog.

Response: DHS disagrees with the commenter's statement that its only concrete plan is to spend more money on reducing fraud. USCIS intends to use revenue from the fees to fund multiple initiatives, including increased staffing across the agency. DHS adjusts USCIS' fee schedule in this final rule to recover the estimated full cost of providing immigration adjudication and naturalization services for anticipated incoming workloads. USCIS does not incorporate the cost of addressing existing pending caseloads in its biennial fee reviews, as it would be inequitable to require new applicants and petitioners to pay for the cost addressing previously submitted applications and petitions for which USCIS already collected fees. To the extent fee adjustments result in additional revenue for USCIS, those additional resources may help limit future growth in pending caseload. DHS declines to make changes in this final rule in response to the comment.

Comment: Some commenters noted USCIS' failure to implement the recommendations of the USCIS Ombudsman's Report, which provides a number of recommendations for improving adjudication times. One of these commenters said DHS's failure to consider, address, or implement recommendations from other federal government offices is telling,

asserting that these changes are simply intended to make the asylum process more challenging for asylum applicants, and to deter asylum applicants.

Response: DHS notes that one of the USCIS Ombudsman's recommendations is to address delays in processing Form I-765 by ensuring sufficient staffing resources are available to provide for timely adjudication. DHS adjusts USCIS' fee schedule in this final rule, including the fee for Form I-765, to provide for the recovery of full estimates of the costs of providing immigration adjudication and naturalization services. The Ombudsman did not recommend an increase in the Form I-765 fee; however, adjusting the fee schedule will enable USCIS to devote more resources, including staffing, to the adjudication of all applications and petitions, including Form I-765. DHS reiterates that it does not intend to make the asylum process more complicated.

DHS declines to make changes in this final rule in response to these comments.

O. Fee Payment and Receipt Requirements

Comment: Multiple commenters opposed the proposal to allow DHS to require the payment of certain fees by particular methods, as described in the relevant form instructions. Commenters wrote that any potential future requirement to pay fees through electronic means such as Pay.gov would limit the ability of individuals who lack access to bank accounts or credit cards to apply for immigration benefits. Commenters also wrote that requiring payment through electronic means would restrict the availability of immigration benefits for individuals who lack computer and internet access.

Commenters stated that it is important to maintain the ability to pay fees using cashier's checks and money orders, because they are available to individuals without access to other banking services, such as a credit card. Another commenter cited data from the

New York City Department of Consumer and Worker Protection, which found that less than two-thirds of immigrant households in New York have access to products such as checking and savings accounts and that 11 percent are unbanked and 22 percent are underbanked. A few commenters cited Federal Deposit Insurance Corporation numbers in writing that the proposal would inhibit the immigrant portion of the “unbanked” and “underbanked” households in the United States from applying.

Multiple commenters said prohibiting cashier’s checks or money orders would disproportionately affect low-income immigrants and a few commenters indicated it would impose a substantial burden on asylum seekers. One commenter said 85 percent of the immigrant clients they help need to use money orders, and this provision would negatively affect them. Commenters said the proposal would lead to wide scale confusion and inefficiency among immigrant and advocacy groups and requested that USCIS continue to accept cashier’s checks and money orders.

Response: In this final rule, DHS does not restrict the method of payment for any particular immigration benefit request. This final rule clarifies the authority for DHS to prescribe certain types of payments for specific immigration benefits or methods of submission. DHS does not have data specific to USCIS benefit requestors’ access to the internet and/or banking but understands that particular populations submitting requests may have attributes that make access to a bank account more or less challenging. DHS acknowledges that some requestors may not use banks or use them on a limited basis for a number of reasons. However, any person who can purchase a cashier’s check or money order from a retailer can just as easily purchase a pre-paid debit card that can be used to

pay their benefit request fee.¹¹⁰ In addition, since 2018 requesters can use a credit card to pay for a USCIS form filing fee that gets sent to and processed by one of the USCIS lockboxes, or split the fees between more than one credit card.¹¹¹ The credit card used does not have to be the applicant's; however, the person who is the owner of the credit card must authorize use of his or her credit card. Therefore, DHS believes that requiring the use of a check, credit, or debit card will not prevent applicants or petitioners from paying the required fees. In addition, resources such as libraries offer free online services, access to information and computers that the public may use to access forms, complete, print or submit them. Nevertheless, in evaluating future changes to acceptable means of payment for each immigration benefit request, DHS will consider the availability of internet access and different means of payment to the affected populations.

DHS declines to make changes in this final rule in response to these comments.

Comment: A few commenters raised concerns about nonrefundable fees and rejecting checks over 365 days old, which they said were listed in the NPRM without explanation. The commenters stated that relevant fees should be refundable in certain situations, including when an applicant's health or family conditions have changed or when an immigrant is denied on a clear USCIS error.

Response: DHS provided a complete explanation of its reasoning behind its proposed stale check or refund requirements. *See* 84 FR 62295 and 62296. In addition, DHS is continuing its policy to issue fee refunds if there is a clear USCIS error, but we will not

¹¹⁰ See, e.g., Visa Prepaid Cards, at <https://usa.visa.com/pay-with-visa/cards/prepaid-cards.html> (last viewed 2/24/20).

¹¹¹ See USCIS Expands Credit Card Payment Option for Fees <https://www.uscis.gov/news/news-releases/uscis-expands-credit-card-payment-option-fees>

codify that discretionary practice as a requirement on USCIS. DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter suggested that USCIS should publish any restriction of payment in the Federal Register. The commenter also suggested that USCIS should accept financial instruments regardless of their age and, if it does not process, give applicants 14 days to correct any payment errors. The commenter wrote that USCIS should not be rejecting applicants because of payment problems unknown to them or out of their control.

Response: DHS declines to publish any change in acceptable payment instruments in the Federal Register. However, where DHS limits acceptable instruments locally, nationwide, or for certain USCIS benefit requests, it issues multiple communications and provides sufficient advance public notice to minimize adverse effects on any person who may have plans to pay using methods that may no longer be accepted.¹¹² As far as the age of payment instruments, as stated in the NPRM, USCIS generally accepts and deposits payments dated up to one-year before they are received although 6 months old is a general standard often followed in the financial services industry. *See* 84 FR 62295. Because of the large volume of payments that USCIS receives on a daily basis, handling dishonored payments adds unnecessary administrative burden to its intake process. Assigning employees to handle defective payments and, as suggested by the commenter, holding filings and billing for fees that were not properly submitted, is an opportunity

¹¹² *See, e.g.*, USCIS Updates Fee Payment System Used in Field Offices, available at <https://www.uscis.gov/news/news-releases/uscis-updates-fee-payment-system-used-field-offices> (Last Reviewed/Updated: 3/07/2019).

cost to USCIS because those employees could otherwise adjudicate immigration benefit requests. DHS believes that it is the responsibility of the remitter to submit proper fees. USCIS will take ameliorative action if a payment error is caused by the agency. However, USCIS has no obligation to insulate filers from a payment problem caused by the requester's financial institution, agent, lawyer, third party check validation service, or similar parties. DHS makes no changes in response to these comments.

P. Fees Shared by CBP and USCIS

Comment: One commenter suggested that previous fee reviews failed to account for the actual adjudication costs of these forms. They questioned if CBP costs were accounted for in previous fee reviews.

Response: DHS acknowledges that previous adjustments to the USCIS fee schedule did not account for CBP costs for instances where CBP uses the same form as USCIS. DHS set those fees using USCIS costs and CBP collected the fee that was established. This final rule refines the fee calculation by considering CBP costs and workload volumes in establishing the fees for shared forms. However, CBP workload volumes and associated revenue are backed out from the fee schedule shown in the NPRM and this final rule because that revenue is not available to USCIS for the purposes of funding its immigration adjudication and naturalization services. This ensures that USCIS' projected revenue matches its estimated costs of adjudication.

Comment: A commenter said that the hike in fees shared by CBP and USCIS are drastic and unjustified because the cost to legalize status will rise to thousands of dollars per person.

Response: DHS recognizes that adjustments to the fees for forms shared by USCIS and CBP represent a sizeable increase in the cost of those forms. However, the fees adopted in this final rule represent the estimated full cost of adjudication. DHS declines to make changes to the final fee schedule on the basis of this comment.

Comment: Another commenter questioned why the NPRM did not include more recent information regarding CBP costs and suggested that if CBP needs the revenue, they should have their own higher fees or fund their operations through annual appropriations.

Response: DHS used the most recent CBP data available at the time USCIS conducted the FY 2019/2020 fee review. It includes cost and workload volume information from FY 2017 as the basis for FY 2019/2020 projections. This is consistent with the data used to develop all other workload and cost projections represented in the fee schedule. The fees set in this final rule that affect CBP are only those forms that USCIS prescribes, but CBP shares for certain functions. DHS has determined that it is appropriate to set the fees for these forms at a level sufficient to ensure that both USCIS and CBP recover the estimated full cost of adjudication, including the cost of providing similar services at no charge to other immigrants. Therefore, DHS makes no changes in this final rule in response to the comment.

Q. Paperwork Reduction Act (PRA) Comment Responses

Comment: Multiple commenters noted that the increased requirements and additional evidence required for filing the Form I-912, Request for Fee Waiver should increase the time burden to applicants. This includes one commenter who noted that the submitted “Instructions for request for fee waiver” states that the form will take 1 hour and 10 minutes per response, but the currently approved form states it would take 2 hours and 20

minutes. The commenter said USCIS did not provide rationale on why the newly revised form would take half the time when it has not been simplified. A commenter stated that the proposed changes to Form I-912 would present burdens to applicants with increased evidence requirements and repetitious and extraneous information collection. The commenter recommended that USCIS revert and retain the previous version of Form I-912.

Response: DHS agrees that it used an outdated burden estimate in the NPRM. In this final rule, DHS has updated the estimated time burden for Form I-912 from 1 hour and 10 minutes to the currently approved 2 hours and 20 minutes.

Comment: One commenter noted that using the Paperwork Reduction Act to introduce a revised fee waiver form, with new requirements, in October 2019 in lieu of using a NPRM and then eliminating fee waivers in this rule, was a waste of the public's time to review both documents. A few commenters stated that eligibility based on receipt of a means-tested benefit was due to be eliminated, but the case *City of Seattle*, a court placed a nation-wide injunction on that action, thereby affecting USCIS' plans to constrict eligibility standards for fee waivers. USCIS has already eliminated the means-tested benefit criteria for fee waivers, which drastically limited access to immigration benefits. The proposed rule narrows the criteria for fee waivers even further and eliminates the financial hardship criteria entirely which means 400,666 individuals annually, about the population of Tampa, FL, would be detrimentally impacted. Another commenter stated that the fee increases are an attempt to get around the currently enjoined 2019 fee waiver rules because it eliminates fee waivers for most applicants. The commenter stated that the proposal seeks to restrict legal immigration and naturalization for "poor and non-white

people.” Another commenter recommended that while the Form I-912 revision is enjoined by the U.S. District Court for the Northern District of California that USCIS request public comment on a new proposed Form I-912 that maintains options to demonstrate qualification through receipt of means-tested benefits, financial hardship, or income of up to 150 percent of the federal poverty level. The commenter wrote that USCIS is required by the injunction to restart the information collection request clearance process anew for a revised I-912 form that conforms to the Court's decision. The commenter wrote that because the version of the Form I-912 published as supporting material to USCIS's November 14, 2019 NPRM, for which comment periods with a cumulative total length of slightly more than 60 days are now ending, does not meet the Court's specifications, USCIS may not move forward with implementation of this revised I-912 based on the present notice-and-comment process.”

Response: The comment refers to the effort by USCIS to revise the USCIS policy guidance on fee waivers. On September 28, 2018, USCIS published a 60-day notice in the *Federal Register* requesting comments on the revised Form I-912 and instructions and posted the documents for review in docket USCIS–2010–0008 at www.regulations.gov. 83 FR 49120 (Sept. 28, 2018). The revisions to the fee waiver form revised the evidence USCIS would consider in evaluating inability to pay, required federal income tax transcripts to demonstrate income, and required use of the Form I-912 for fee waiver requests. USCIS complied with the Paperwork Reduction Act and the Office of Information and Regulatory Affairs, OMB (OIRA) approved the form changes on

October 24, 2019.¹¹³ On October 25, 2019, USCIS published the revised Form I-912 and instructions, along with corresponding revisions to the USCIS Policy Manual and a Policy Alert. The revised form and manual took effect on December 2, 2019.

DHS did not consider this rulemaking’s impact on that policy change because DHS was proposing comprehensive reforms to fee waivers which were not certain to occur, and the rulemaking was separate and independent of the October 25, 2019, form and policy change. USCIS was losing hundreds of millions of dollars each year to fee waivers and it decided not to wait for the comprehensive DHS fee rulemaking while it continued to “forgo increasing amounts of revenue as more fees are waived.” 84 FR 26138 (June 5, 2019). Nonetheless, on December 11, 2019, the revised Form I-912 was preliminarily enjoined, nationwide, by the U.S. District Court for the Northern District of California. *See* Order Granting Pls.’ Mot. for Nationwide Prelim. Inj., *City of Seattle v. DHS*, 3:19-cv-7151-MMC (N.D. Cal., Dec. 11, 2019). By stipulation of the parties and as agreed to by the court, that injunction will remain pending publication of this final rule. The injunction does not require that USCIS may only revise the Form I-912 in a way that conforms to the Court's decision. Nonetheless, while this final rule is not affected by *City of Seattle*, the decision in that case only requires that the October 25, 2019 fee waiver policy changes required notice and comment rulemaking to effectuate. DHS is conducting notice and comment rulemaking with this final rule and the *City of Seattle*

¹¹³ The approved package is available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201910-1615-006# (last visited Feb. 17, 2020).

injunction does not prevent USCIS from moving forward with implementation of the Form I-912 revision in accordance with this rulemaking.

Comment: Several commenters stated that the proposed rule also fails to comply with a federal agency's requirements under the Paperwork Reduction Act by failing to provide the public with a 60-day opportunity to comment on the collection of information under the proposal. One commenter states that “when proposed rule was initially published on November 14, 2019, it provided 60 days for the public to submit comments on draft forms and instructions. USCIS then posted no fewer than 145 such documents on regulations.gov for public review. Then, on December 9, 2019, published another proposed rule that reduced the period for public comments on draft forms and instructions to only 45 days. This clear breach of the Paperwork Reduction Act (PRA) leaves insufficient time for the public to adequately comment on the massive volume of form changes proposed by the agency. USCIS must therefore extend the comment period for PRA review by at least another 30 days.” Another commenter stated that “while the extension notice of December 9, 2019 extends the public comment period, it simultaneously shortens it for the related forms, in violation of the Paperwork Reduction Act.¹¹⁴ The extension notice states: DHS also notes and clarifies the comment period for the information collection requests (forms) that the proposed rule would revise in accordance with the Paperwork Reduction Act. The comment period for the NPRM will end on December 30, 2019, including comments on the forms DHS must submit to OMB for review and approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-12.

¹¹⁴ Paperwork Reduction Act of 1995, Pub. L. No. 104-13, §451(b), 110 Stat. 163 (1995) (codified at 44 U.S.C. 3501 et seq)].

The NPRM contained erroneous references to comments being accepted for 60 days from the publication date of the proposed rule. The commenter requests that the public comment period be open for 60 days.

Response: DHS regrets any erroneous references in the NPRM. Nevertheless, as the commenters have indicated, DHS published the proposed revisions to the information collection requirements for public comment for a cumulative period of more than 60 days. Thus, DHS has complied with the public comment period requirements of 5 CFR 1320.11 for the information revisions associated with this rule.

Comment: A commenter wrote that the collection of a valid domestic address for named workers in a Form I-129 petition is duplicative given that USCIS conducts a background check for named beneficiaries listed on Form I-129. The commenter also wrote that USCIS “failed to articulate in its proposed rule why this new question is necessary.”

Response: DHS disagrees with the comment that this question is duplicative. Providing a valid domestic address for the beneficiary helps USCIS to conduct the background check and otherwise ensure the integrity of the information provided on the Form I-129. In addition, USCIS will use a beneficiary’s U.S. address to notify them if USCIS denies a request to change status or extend stay.

Comment: A commenter wrote that, “USCIS [should] adopt a timeline that allows for a sufficient grace period and does not conflict with high-volume filing seasons” when implementing the new forms and recommended a six-month grace period. The commenter wrote that USCIS should consider high-volume filing seasons, for which petitioners prepare months in advance, noting that “refusing to accept a prior version of a form during that time could cause undue burden on the public.”

Response: DHS will not adopt the recommendation to provide a minimum six-month grace period before the new forms are mandatory for submission. DHS does not believe that requiring use of the new forms immediately will cause undue burden on the public. The proposed forms essentially incorporate the same information as the previous forms, but the new forms are shorter because they are focused on the specific nonimmigrant classification. In addition, DHS believes the public has had sufficient notice of the proposed forms. DHS first published the NPRM on November 14, 2019, subsequently extended the comment period on December 9, 2019, and the rule is not effective until 60-days after publication. USCIS will consider high-volume filing seasons when establishing the implementation process for these new forms.

Comment: A commenter wrote, “about the inclusion of E-Verify questions on each of the new [Forms I-129], even when participation in E-Verify is not mandated for participation in nonimmigrant program (*sic*), as it could be used inappropriately to target employers for enforcement action.” The commenter recommended that USCIS either remove the E-Verify questions from forms where it is not mandated, or add language to the form instructions to say that “...these questions are optional and are not outcome determinative, such that if a petitioner leaves the information blank it will not result in a rejection.” The commenter also pointed out a typographical error.

Response: USCIS does not accept the recommendation to remove E-Verify-related questions on Forms I-129 where participation is not mandated. Petitioners who choose not to participate in E-Verify are not required to enroll in the system; only those who are already enrolled will need to provide E-Verify information. Requiring the petitioner’s name as listed in E-Verify, as well as their E-Verify Company Identification Number or

Client Company Identification Number, if applicable, protects the interests of U.S. workers by preventing fraud and abuse of E-Verify and employment eligibility rules. Having this information on all of the I-129 versions maximizes E-Verify's reliability and integrity by confirming that certain categories of employees who are authorized for employment with a specific employer incident to status are working for the employer specified on the petition.

USCIS Form Instructions indicate that all questions should be answered fully and accurately. They also provide direction to write "N/A" or "None" when a question doesn't apply to the applicant, petitioner, requestor or beneficiary.

USCIS reviewed all of the new I-129 forms and corrected typographical errors related to the E-Verify questions.

Comment: A commenter pointed out that on Form I-129H1, "...in Part 2. Information about this Petition, question 1, Item 1D repeats Item #1C. It appears it should read 'Free Trade, Chile (H-1B1).'" The commenter also wrote that they recommended "...that Part 5. Basic Information About the Proposed Employment and Employer, questions 9 and 10 be struck as they ask for information that is beyond what is required for eligibility for H-1B status.

Response: USCIS has updated Form I-129H1, Part 1., Item Number 1, Item 1D.

Regarding Part 5., Item Numbers 9 and 10, these questions relate to the "experience required for the position" and "special skills" for the position, both of which are relevant to determining if the wage level selected on the Labor Condition Application (LCA) corresponds to the position as described in the petition. Per 20 CFR 655.705(b), while the U.S. Department of Labor "administers the labor condition application process," the

U.S. Department of Homeland Security (DHS) “determines whether the petition is supported by an LCA which corresponds with the petition.”

Petitioner’s responses to these questions provide USCIS with a more complete picture of the requirements for the proffered position. This may help to reduce RFEs on this topic, as USCIS officers will have additional information when initially adjudicating the case.

Comment: A commenter wrote that they appreciated that “...specific program requirements have been laid out in the instructions...” for the new Form I-129H2A and Form I-129H2B that “...will be helpful for newer employers, agents, and attorneys.” The commenter objected, however, to the “...additional requirements for each program that have not been previously required that are either burdensome or too broad” and that USCIS could ascertain them “...through its own systems...” The commenter also indicated that, “...Part 6. Petitioner and Employer Obligations, question 14, which requires the H-2A petitioner and each employer to consent to "allow Government access" to the H-2A worksite is overly broad and goes beyond 8 CFR 214.2(h)(5)(vi) which only requires consent to “allow access to the site by DHS officers.”

Response: The data collections included in Form I-129H2A and Form I-129H2B have a regulatory basis. While they might technically be ascertainable through USCIS systems, this would result in substantially greater operational burdens and, hence, greater expense being passed onto petitioners. It is also reasonable that petitioners should properly be on record whether the relevant requirements are met.

Regarding the Petitioner and Employer Obligations, Item Number 14, USCIS has changed the language to “DHS access.”

Comment: A commenter wrote that the requirement on Form I-129H2B for the petitioner “...to provide evidence of why substitution is necessary and that the requested number of workers has not exceeded the number of workers on the approved temporary labor certification...” could be “...burdensome on the petitioner and delay processing.” The commenter also suggested that Forms I-129H2A and I-129H2B be reviewed for consistency, noting that helpful language about what evidence to provide appeared in one of these forms but not in the other.

Response: The H-2B Substitution regulation at 8 CFR 214.2(h)(6)(viii) states that to substitute beneficiaries who were previously approved for consular processing but have not been admitted with aliens who are currently in the United States, the petitioner shall file an amended petition with fees at the USCIS Service Center where the original petition was filed, with a statement explaining why the substitution is necessary and evidence that the number of beneficiaries will not exceed the number allocated on the approved temporary labor certification, such as employment records or other documentary evidence to establish that the number of visas sought in the amended petition were not already issued. Thus this requirement is clearly supported by the regulations.

USCIS has reviewed the forms for consistency and updated Form I-129H2B to include the appropriate note under Part 3., Item Number 24.

Comment: A commenter wrote that proposed Form I-129MISC “...would make applications for R nonimmigrant workers less efficient and more confusing.” The commenter stated that, “The current version of the form is organized and follows a clear structure...” but that “...the proposed revised Form I-129 moves from one topic to

another, not following a logical progression.” The commenter also wrote that, “...certain questions are redundant and...broaden the scope of the question needlessly.”

Response: The comment does not specify how the organization fails to follow the progression of the regulation. Notably, the new Form I-129MISC structure contains much of the eligibility information in the main petition. The R Supplement is limited to questions about the beneficiary’s family, the relationship between the foreign and U.S. organizations, and the attestation, including attestation regarding secular employment, as required by R-1 regulations. 8 CFR 214.2(r)(8). Plus, petitioners no longer must search through lengthy instructions that do not apply to their petition.

Comment: One commenter wrote that on Form I-129MISC, “Part 1, Question #10 does not include an option to select "Not Applicable" if a Social Security number is not available.”

Response: USCIS has added an “(as applicable)” parenthetical to the U.S. Social Security Number field on the form. Per USCIS Form Instructions, all questions should be answered fully and accurately. Any questions that do not pertain to the applicant, petitioner, requestor or beneficiary should be answered with “N/A” or “None,” according to the instructions.

Comment: A commenter noted that, “Part 2, Question #3 requests that a petitioner for amended status provide the receipt number of the petition they seek to amend. However, in Part 3, Question #17, the petitioner would have to enter the receipt number again. This is repetitive. There are several bases for classification in which a previous receipt number would be necessary for adjudication.” The commenter “...recommend[ed] that USCIS

consolidate and only request a receipt number once for any basis that would be applicable.

Response: On Form I-129MISC, Part 2 relates to information about the basis for the filing (new employment, continued employment, change of status, or amended petition), and, if an amended petition, asks for the receipt number of the petition being amended. Part 3, on the other hand, seeks information about the beneficiary, requesting the most recent petition or application number for the beneficiary. These requests are not necessarily duplicative as a previous receipt number does not always mean the filing is an amended petition. Eliminating the question about the receipt number of the petition to be amended in Part 2 would make matching the amended petition with the original petition more burdensome.

Comment: A commenter wrote that, “Part 4, Questions #9 and #10 ask if the beneficiary has ever been granted or denied the classification requested. The current version of the form limits the scope of these questions to the last 7 years. By removing the time limitation on this question, USCIS is requesting information that may be overly burdensome for petitioners and beneficiaries to provide, if the information has been lost over time. Information beyond 7 years is also unnecessary for USCIS' adjudication, as that time period would necessarily encompass enough time to demonstrate that a beneficiary who had spent the maximum 5 years in a previous R-1 status had spent the requisite one year outside the United States to be eligible for readmission.”

Response: USCIS notes that P-1A individual athletes have a 10-year admission period when your account for their initial and extension period of stay while other P categories may have their period of stay extended in one-year increments. 8 CFR 214.2(p)(14).

While the R-1 classification does have a 5-year limit, USCIS will count only time spent physically in the United States in valid R-1 status toward the 5-year maximum period of stay, and an R-1 may be able to “recapture” time when he or she has resided abroad and has been physically present outside the United States for the immediate prior year. 8 CFR 214.2(r)(6).¹¹⁵ Thus the time the beneficiary may have been in R-1 status in the United States may be longer than the immediately preceding 7 years in some scenarios. USCIS does not believe the questions to be overly burdensome since we are not initially requiring supporting evidence.

Comment: A commenter pointed out a typographical error in Part 5., Question #6 of Form I-129MISC. ““If the answered ‘No’...’ should be ‘If you answered ‘No’.”

Response: USCIS has corrected this typographical error.

Comment: A commenter wrote that, “R-1 Classification Supplement Section 1, Question #18 has been revised to provide less context and detail for this request for information about secular employment. Specifically, the phrase ‘[i]f the position is not a religious vocation...’ has been removed, making the question much broader than the previous version. This broad question is more difficult for petitioners to answer and could result in answers that create more confusion for adjudicators.”

Response: In the R-1 Classification Supplement, Section 1, Item Number 18, removal of the phrase “[i]f the position is not a religious vocation...” aligns the question to the relevant regulatory text. Specifically, the regulation at 8 CFR 214.2(r)(8)(xi) requires the

¹¹⁵ See Procedures for Calculating the Maximum Period of Stay for R-1 Nonimmigrants, available at https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2012/March/R-1_Recapture_%20AFM_Update_3-8-12.pdf

prospective employer to attest “[t]hat the alien will not be engaged in secular employment,” without regard to the type of religious worker position that the beneficiary will hold. As to the commenter’s concern that the revised wording creates a “much broader” question that is more difficult to answer, we note that it remains a yes or no question, requiring further explanation only if the prospective employer answers “no” to the required statement.

R. Statutory and Regulatory Responses

1. General Comments on the Regulatory Impact Analysis

Comment: One commenter cited the APA and Supreme Court precedent, stating that the asylum fee is such a departure from prior policy that the agency must provide a “reasoned analysis for the change.” The commenter wrote that the agency provided no evidence, analysis, or discussion to support its conclusions, and that under the APA and Executive Orders 12866 and 13563, USCIS failed to identify and evaluate all potential economic and non-economic costs and ensure that those costs are outweighed by benefits and that the regulations impose the least burden to society. The commenter wrote that E.O 12866 requires agencies to assess all costs and benefits and should select those approaches that maximize benefits (including potential economic, environment, public health and safety, and other disadvantages; distributive impacts, and equity.

Response: DHS has identified and evaluated potential economic and non-economic costs as summarized in table 7 of the Executive Orders 12866 and 13563 sections of this rule, table 1 of the Regulatory Impact Analysis, and in the Small Entity Analysis document. As stated in multiple places in this final rule, DHS is changing USCIS fees to recover the costs of administering its adjudication and naturalization services. DHS is not changing

USCIS fees with the intent to deter requests from low-income immigrants seeking family unity or deterring requests from any immigrants based on their financial or family situation. DHS will continue to explore efficiencies that improve USCIS services and may incorporate corresponding cost savings into future biennial fee reviews and rulemakings accordingly.

Comment: Multiple commenters generally stated that the RIA does not accurately analyze the impact of reduced economic activity generated by immigrants as a result of more arduous immigrant requirements under this rule. Some commenters requested that USCIS analyze whether reduced administrative costs as a result of increased fees would be offset by a reduction in the economic value generated by immigrants due to more costly fees. Similarly, a commenter wrote that the proposed rule does not account for the harm posed by increased naturalization fees such as reduced wages, broken families, and increased vulnerability to domestic violence.

Response: DHS notes that previous fee increases in 2007, 2010 and 2016 have had no discernible effect on the number of filings that USCIS received.¹¹⁶

DHS recognizes the contributions that naturalized citizens make to American society. However, USCIS must fund itself through fees. DHS does not have any data to establish that these fees, though required, are a significant impediment to naturalization or economic and social mobility. As stated in the proposed rule and elsewhere in this final rule, DHS performs a biennial review of the fees collected by USCIS and may recommend changes to future fees. DHS reviewed research cited by commenters as

¹¹⁶ See RIA, Section M: Fee Waivers.

evidence that the cost increases discussed in the rule would be a barrier to immigration and found no evidence to support the conclusion that the fee changes would have a quantifiable causal effect on wages, family cohesion or domestic violence. DHS declines to conduct further analysis on this issue or make changes in this final rule in response to this comment.

DHS recognizes the economic and societal value of nonimmigrants, immigration, and naturalization. DHS agrees that new citizens and naturalization are of tremendous economic and societal value and generally agrees with the points made by, and the studies cited by, commenters. DHS is not adjusting the USCIS fee schedule to impede, reduce, limit, or preclude naturalization and did not propose to adjust the USCIS fee schedule to reduce, limit, or preclude immigration in any way for any specific immigration benefit request, population, industry or group, including members of the working class.

DHS acknowledges that some individuals will need to save, borrow, or use a credit card in order to pay fees because they may not receive a fee waiver. DHS does not know the price elasticity of demand for immigration benefits, nor does DHS know the level at which the fee increases become too high for applicants/petitioners to apply. However, DHS disagrees that the fees will result in the negative effects the commenters' suggested. DHS believes that immigration to the United States remains attractive to millions of individuals around the world and that its benefits continue to outweigh the costs noted by the commenters. DHS also does not believe that the NPRM is in any way discriminatory in its application and effect. DHS did not target any particular group or

class of individuals. Therefore, DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter wrote that the RIA does not consider the costs to the families and communities of asylum seekers who will need to help cover fees for indigent individuals.

Response: DHS did not consider the costs to the families and communities of asylum seekers, who will need assistance with fees for indigent individuals who are more likely to be asylum seekers. DHS expects that charging this fee will generate some revenue to offset adjudication costs but is not aligning with the beneficiary-pays principle, as the estimated cost of adjudicating Form I-589 exceeds \$50. DHS recognizes that these families and communities will have to find a way to pay, whether through their communities, friends, loans, or credit cards. DHS discusses the impact of the asylum fee and determines that some applicants may no longer apply for asylum in Section P, Charge a Fee for Form I-589 Application for Asylum and for Withholding, of the final RIA. DHS notes that some applicants would be able to find other means to pay for this application fee, such as borrowing money or using a credit card. DHS is not able to estimate the effect of the new \$50 fee on asylum applicants who may not be able to afford the new fee and cannot accurately or reliably predict how many applicants would no longer apply for asylum as result of the \$50 fee.

Comment: Multiple commenters wrote that USCIS failed to sufficiently analyze the price elasticity or price sensitivity of naturalization applications, and as a result total agency revenue could actually decrease due to reduced naturalization applications from higher fees under the proposed rule. One commenter cited research demonstrating that

subsidizing naturalization fees for low income individuals increased applications by 41 percent. A commenter wrote that USCIS argues that the lack of a fee waiver will not affect the number of requests filed, however research shows that fee waiver standardization increased applications for low income immigrants. A commenter wrote that USCIS fails to produce an incremental analysis considering the difference in money flow between the original situation and the proposed changes.

Response: DHS acknowledges that one randomized control trial mentioned by the commenter observed a 41 percent increase in applications for naturalization amongst immigrants randomly selected to have their filing fees paid by an outside party.

Commenters cited another study's findings that standardization of the fee waiver process, and incorporation of the FPG for determining eligibility resulted in the largest increases in naturalization rates for low-income immigrants. While DHS acknowledges immigrants facing financial challenges encounter added difficulty paying filing fees, these studies highlight the impact of removing fees entirely on many immigrants who would not have naturalized without full subsidization or waiver, thus these effects are not informative of price sensitivity in the context of this rule.

DHS has not omitted data describing the price sensitivity to fees, rather, the agency has no data describing the myriad complex and changing unobservable factors that may affect each immigrant's unique decision to file for a particular immigration benefit. DHS notes that previous fee increases in 2007, 2010 and 2016 have had no discernible effect on the number of filings that USCIS received.¹¹⁷

¹¹⁷ See RIA, Section M: Fee Waivers

Comment: A commenter wrote that USCIS failed to present an accurate analysis of increased administrative processing costs under the proposed rule, wherein “hundreds of thousands” of means-tested applicants will begin submitting fee waiver requests under the household income basis.

Response: Based on the OIDP survey, as described in the RIA, approximately 16.36 percent of all fee waiver applications become ineligible by lowering the income criteria from 150 percent to 125 percent of the FPG. As a result, DHS estimates about 22,940 fewer fee waiver applications will be eligible for a fee waiver according to the approval eligibility criterion to limit fee waivers to households with income at or below 125 percent of FPG. *See* 8 CFR 106.3. Therefore, DHS disagrees that USCIS failed to present an accurate analysis of increased administrative processing costs under the proposed rule.

Comment: A commenter wrote that the RIA suggests that USCIS cannot reliably predict the number of asylum applicants who would be deterred by the proposed rule’s \$50 fee, but then argues it would be a smaller number without providing any data to back the claim.

Response: As stated in the NPRM RIA and in this Final Rule RIA (Section P), DHS agrees with the commenter that USCIS cannot reliably estimate the numbers of asylum applications who may not be able to afford the \$50 fee for Form I-589. DHS does not believe that the new fee will deter asylum applications, and the commenter provides no data to support its claim that it will.

2. Methodology Issues

Comment: Some commenters had issue with the timelines used in the RIA. A commenter wrote that the proposed rule covers a 10-year implementation period, but USCIS' calculations do not show the impact of fees on workload over a 10 year period. A commenter wrote that the RIA uses receipts from June 2016 to May 2017 to make revenue projections for FY 2019/2020, however USCIS does not explain why this time frame is used or why it doesn't align with the Federal government's fiscal quarters.

Response: The calculations in this rule's RIA estimate the annual amounts of each proposed change in Table 1. In further detail of each proposed change, transfers, costs, or cost savings are displayed in relation to the affected population. USCIS then shows the total costs over 10-years discounted at 3 percent and 7 percent (*see* RIA Section 2 – Total Estimated Transfers and Costs of Regulatory Changes) as suggested by regulatory in guidance. *See* Circular A-4, (Sept. 17, 2003).¹¹⁸ The preamble of this rule bases receipt and revenue projection data covering two years due to the biennial fee study. This study is repeated and analyzed every two years. However, USCIS does not choose to alter its fee schedule through regulation every two years. Therefore, the impacts in the RIA cover a longer timeline to estimate the perpetual impacts of this rule.

Comment: A commenter provided the following criticism of the methodologies and data used by USCIS in developing the RIA:

- USCIS estimates 1 hour and 10 minutes to complete Form I-912 when the actual OMB approved burden is 2 hours and 20 minutes.

¹¹⁸ Available at: <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>. (Sept. 17, 2003) (last viewed April 2, 2020).

- USCIS states that data on fee waiver requests were not available due to limitations, but the agency does not explain what their limitations are.
- USCIS used fee waiver data from lockbox facilities in October 2017 but does not report any data related to the surveys and provides no insight into why data for just one month was appropriate for cost projections.

Response: DHS agrees with the commenter that the time burden estimate utilized in the proposed rule was incorrect. For this final rule, USCIS has accounted for the new burden places on applicants as the current time burden for Form I-912 of 1 hour and 10 minutes to 2 hours and 20 minutes under this rule. The cost calculations for the final rule have been updated accordingly. DHS used data that was collected from a statistically valid random sample from October 2, 2017 to October 27, 2017 on approved fee waivers. Using a standard statistical formula based on the average annual fee waiver population, DHS determined that a random sample size of 384 applications was necessary to yield statistically significant results with a 95 percent confidence level and a 5 percent confidence interval. USCIS analyzed data on 4,431 approved fee waiver requests, which exceeded the necessary sample size of 384 for statistical significance. The study of statistics allows us to apply the results from this statistically valid random sample to the population of fee waivers resulting in the same results 95 percent of the time. This data from the survey is in Section (E) of the Regulatory Impact Analysis and Table 10 of the RIA displays the overall approvals, denials, and foregone revenue estimates of a 5-year average. Additionally, DHS has included the raw data of the survey questions and results in the appendix Office of Intake Production (OIDP) Fee Waiver Results from October 2, 2017 to October 27, 2017 stand-alone RIA found in the docket of this final rulemaking.

Comment: Similarly, another commenter provided the following critiques of the methodologies and data used by USCIS in developing the RIA:

- USCIS underestimates the need and subsequent costs that a number of applicants will have for legal representation in completing new form requirements as well as opportunity costs of time for HR specialists and attorneys used in the economic analysis.
- The economic analysis showed that services previously provided without user fees are a transfer from the Federal government to the applicant, however this is not accurate as tax revenues do not support the functions of USCIS.

Response: While DHS acknowledges that some attorneys charge higher fees than those used in the economic analysis, the agency continues the standard practice of using BLS average occupational earnings estimates. Similarly, it is acknowledged that some petitioners may incur additional legal fees. The economic analysis does not describe every immigrants' situation, rather, DHS presents our best estimates of the impact of the rule. In addition, form fees that required no change in time burden, documentation, or biographical information will be a transfer from current fee-paying applicants and/or petitioners to those filing for a particular immigration benefit using a form with a revised form fee. The RIA calculates the new costs and/or cost savings to applicants/petitioners, from the impact of each policy decision. In this final rule, each policy justification is included in the RIA summary table, with the estimated benefits of the provision. Cost savings and benefits are displayed for both the applicant(s)/petitioner(s) and the DHS. Once the new fees are established, DHS calculates the opportunity costs of the time burden required for completing the applicable impacted forms. If the only change in the

rule to a specific benefit request is to increase the fee, the RIA does not specifically calculate the total amount of new fees per year that will be paid for all filings of that particular benefit because those amounts and the new fee times projected volume are already included in the tables and text describing the fee calculation model. Finally, DHS does not include the costs for applicants to hire legal representation in completing forms because DHS does not require that applicants hire anyone to assist them in preparing USCIS benefit requests.

Comment: A commenter wrote that USCIS excludes savings and benefits already realized such as efficiencies gained through investments in IT, closure of international offices, and lower refugee intake. A commenter wrote that the RIA fails to present data and evidence on a number of recent changes designed to reduce costs including limiting the availability of printed study materials, no longer providing printed N-400 forms, centralizing all customer inquiries and complaints on a call center, and introducing electronic filing for many benefits.

Response: DHS acknowledges that there are these costs savings. The RIA calculates cost savings and efficiencies to applicants/petitioners that are built into the ABC model. Despite the money saved it still leads USCIS to these fee changes. In this final rule, each policy justification is included in the RIA summary table, with the estimated benefits of the provision. Cost savings and benefits are displayed for both the applicant(s)/petitioner(s) and the DHS. Once the new fees are established, DHS calculates the opportunity costs of the time burden required for completing the applicable impacted forms. If the only change in the rule to a specific benefit request is to increase the fee, the RIA does not specifically calculate the total amount of new fees per year that

will be paid for all filings of that particular benefit because those amounts and the new fee times projected volume are already included in the tables and text describing the fee calculation model.

3. Other Comments on the Cost-Benefit Analysis

Comment: A commenter wrote that the proposed rule does not consider less costly alternatives to raising fees such as reducing operating costs, drawing on carryover funds, or seeking discretionary appropriations from Congress. The commenter also suggested that USCIS should analyze the impacts of slowly increasing the proposed fees on a year by year basis until reaching the desired level in order to avoid disruption. Another commenter also said USCIS fails to consider less burdensome alternatives.

Response: As mentioned in response to a previous comment, for FY 2019 and FY 2020, Congress appropriated \$10 million for the Citizenship and Integration Grant Program. *See Consolidated Appropriations Act, 2019, Pub. L. 116-6, div. A, tit. IV (Feb. 15, 2019) and Consolidated Appropriations Act, 2020, Pub. L. 116-93, div. D, tit. IV (Dec. 20, 2020).* Other than that, USCIS receives no appropriations to offset the cost of adjudicating immigration benefit requests.¹¹⁹ 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 that would materially change IEFA fees are provided, then DHS could pursue a rulemaking to adjust fees appropriately.

DHS considered alternatives such as using existing carryover funds instead of adjusting fees. However, DHS determined that USCIS has insufficient carryover funds to

¹¹⁹ Congress provides USCIS with appropriations for the E-Verify program.

obviate the need to adjust fees. As stated in the Supporting Documentation accompanying this rule, USCIS projected that, if DHS did not adjust fees, USCIS would exhaust all of its existing carryover funds during the FY 2019/2020 biennium, reaching a carryover balance of -\$1.069 billion at the end of FY 2020. USCIS cannot have a negative carryover balance, as a negative carryover balance indicates that USCIS has incurred costs greater than its available financial resources. USCIS must maintain a positive carryover balance to ensure that USCIS is able meet its financial obligations at times when USCIS operating costs temporarily exceed its revenues.

DHS does not believe that gradually adjusting the USCIS fee schedule over multiple years represents a reasonable alternative to this final rule, as such an approach would ensure that USCIS does not recover full cost and is not able to fully fund its operational requirements while the new fees are phased-in. DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter wrote that the cost analysis provided in the NPRM was “incomplete and arbitrary” and rejected the NPRM’s “allegation” that the agency’s operations are conducted efficiently. The commenter cited Congressional testimony and an article from the American Immigration Lawyers Association that discussed USCIS’ decreased cost-effectiveness and changes to operational procedures that have increased costs without tangible improvements to adjudication quality.

Response: USCIS analyzed the impacts of this rule using the best available data at the time the analysis was written in an objective manner. USCIS’s goal in the analysis was to produce an objective assessment of the cost, benefits, and transfers associated with this rule as required by Executive Orders 12866 and 13563. DHS believes these operational

changes are necessary to ensure that applicants seeking immigration benefits are properly vetted and eligible for the benefit for which they have applied.

4. Impacts on Lower-Income Individuals and Families

Comment: One commenter cited research from the Kaiser Family Foundation, the Urban Institute and the Foundation for Child Development, demonstrating that even though U.S. citizen children with an immigrant parent are more likely to live in families with a full-time worker, such families still experience economic hardships that carry adverse health and developmental outcomes for children. The commenter cited research from various other sources documenting the impact of economic hardships and stated that the proposal would exacerbate such hardships. The commenter wrote that changes to the fee waiver program would discourage low-income families from applying for needed benefits and may lead to family separation, an outcome that would carry profound negative impacts on child health and well-being. The commenter also said that “decades of research” demonstrates that family stability supports early childhood health and development and wrote that the fee increases making naturalization less accessible for low-income immigrants would yield poor health outcomes among children. A commenter addressed the proposed rule’s potential impact on health care, including forgone medical care, increased detrimental health conditions, and increased costs to the health care system. The commenter suggested there would be cost increases for State Medicaid programs and urged USCIS to fully analyze and explain such costs.

Response: DHS recognizes that the fee increases may create an economic hardship for some families. Furthermore, DHS acknowledges the studies and data cited suggesting that many families struggle to afford healthcare and connecting such financial risks to

adverse health and developmental outcomes in children. However, collectively these studies suggest that the incomes of some immigrant families may result in adverse outcomes, rather than that present USCIS fees have caused such outcomes. The comments do not indicate that net costs of the final rule would be improved by shifting the costs of certain benefit requests to other requestors.

5. Impacts on Immigrant Populations in Distinct Geographic Areas

Comments:

- Citing economic conditions in the State of California, including information about earnings, the State's high poverty rate, and the increasing costs of housing, commenters underscore their opposition to all aspects of the proposed rule that would act as a barrier between low-income immigrants and benefits for which they qualify.
- One million individuals would be adversely impacted by the proposed rule in Los Angeles County. There are 1.5 million immigrants in Los Angeles and the proposed rule would impede their ability to apply for, or renew, immigration benefits allowing them to work, attend school, and access critical community services.
- The immigrant community would have to choose between using their income to provide for their families or applying for immigration benefits for which they qualify.
- The proposal would make it nearly impossible for more than 50,000 low-income non-citizens in San Francisco to seek or renew immigration benefits.

- Individuals in full-time, minimum wage jobs would need to dedicate a full month's salary towards green card applications and many immigrants earn even less and may not be able to afford immigration benefits at all.
- Alameda county is the fourth most diverse county in the nation with more than half a million immigrants, and that 90,000 adults eligible for naturalization in the county would be faced with insurmountable barriers in securing their status, keeping communities together, and participating fully in civic life. The proposal would exacerbate existing socio-economic and health disparities in San Joaquin Valley in California which suffers from socio-economic and health disparities, including the fact that over half of the area's residents are enrolled in Medicaid and nearly 20 percent use SNAP benefits and more than 40 percent of children are living with at least one foreign-born parent.
- The American Immigration Council found 357,652 Minnesota residents (or 6.6 percent of the State's total population) were U.S.-born Americans with at least one immigrant parent, and that "nearly half" of all the immigrants in Minnesota were naturalized citizens. The rule would have a disproportionately negative impact on low-income and vulnerable immigrants and would limit access to essential immigration benefits to the wealthy.

Response: This rule in no way is intended to reduce, limit, or preclude any specific immigration benefit request from any population, industry, or group. DHS acknowledges that individuals earning the federal minimum wage may need to use an entire paycheck to pay the filing fee for Form I-485. While studies indicate that some lawful immigrants who have not naturalized cite administrative and financial barriers as a reason for not

naturalizing, this alone does not establish that previous fee levels were prohibitive. Similarly, financial support provided by communities to local immigrants does not establish that these immigrants would be unable to afford fees set by this rule. None of the studies cited by commenters conclude that the rule would explicitly preclude access to any specific immigration benefit request, population, industry, or group. USCIS must fund its operations from fees regardless of state and regional economic conditions, the costs of housing, household earnings, and poverty. This final rule provides for some fee waivers and does not preclude individuals from receiving public benefits or pursuing higher-paying opportunities for work in more affordable communities.

6. Immigrants' Access to Legal and Supportive Services

Comment: One commenter wrote that workshops run by non-profit immigration legal service providers are “the most efficient model” to help vulnerable populations seek immigration relief and wrote that the proposed changes to the fee waiver forms would make it harder for these providers to complete applications in the workshop setting. The commenter also said the proposed rule would “decrease the resources practitioners can dedicate to actual legal representation” due to the increased burden associated with generating Forms I-912 that are already denied at a high rate, and without cause, by USCIS. One commenter said their organization, and other organizations like Kids in Need of Defense, provide social services and legal assistance to unaccompanied children, and wrote that if organizations that provide such services pro bono “must find ways to subsidize unreasonable fees,” they may have to reduce the number of children they serve. Another commenter that provides services to survivors of gender-based violence said if

their organization must divert resources towards fundraising for application fees it may be unable to serve the same volume of clients.

Response: DHS recognizes the challenges that gender-based violence survivors face when fleeing from the violence of their abusers. In addition, there continues to be no fees for Form I-914 or I-918 for applications for T or U non-immigrant status. DHS believes that these fee exemptions and waivers mitigate concerns that other provisions of this final rule may harm victims of abuse and domestic violence. The RIA calculates the new costs and/or cost savings to applicants/petitioners from the impact of each policy decision. In this final rule, each policy justification is included in the RIA summary table, with the estimated benefits of the provision. Cost savings and benefits are displayed for both the applicant(s)/petitioner(s) and the DHS.

DHS does not include the costs for applicants to hire legal representation in completing forms because DHS does not require that applicants hire anyone to assist them in preparing USCIS benefit requests. Similarly, DHS recognizes comments concerning individuals and community organizations that choose to donate valuable assistance to applicants, but DHS finds no evidence that the rule prevents organizations from choosing to continue providing a level of assistance. DHS declines to make changes in this final rule in response to these comments.

7. Impacts on Students from Low Income Families

Comment: One commenter stated the proposed rule would have “far-reaching effects” on employers, international students, H-1B nonimmigrants, L-1 nonimmigrants, EB-5 investors, DACA recipients, asylum seekers, and those seeking naturalization, and provided a “visual representation” of the proposed fee schedule increases that shows the

average increase will be “far greater” than the 21 percent average increase cited in the proposal.

Response: The commenter does not provide details or explanations of the far-reaching impacts that it estimates will result from an increase in USCIS immigration benefit request fees that DHS can address in this final rule short of abandoning the rule altogether. When DHS increased USCIS fees in 2007, 2010, and 2016 there were no far reaching impacts on the classifications and applicants that the comment mentions, aside from, as discussed elsewhere in this final rule, a large increase in the number of fee waivers granted to naturalization applicants since 2010. DHS is increasing the fees that USCIS charges for immigration adjudication and naturalization services to recover the costs of running its programs. DHS can readjust the fees in its next fee rulemaking that follows its next biennial fee review if necessary. Still, in this final rule, DHS is addressing the issues that the commenter touches on by expanding fee waivers and exemptions from what was proposed, not charging a DACA renewal fee, and not transferring any fee revenue to ICE.

Comment: One commenter cited research from the Community College Research Center at Columbia University demonstrating that more than a third of community college students come from families with incomes less than \$20,000 per year, and research from the Migration Policy Institute showing immigrants and their children make up nearly a third of community colleges’ student population. The commenter said immigrant-origin students at community colleges face unique challenges, and cited research demonstrating that such students are more likely to apply for financial aid, are typically “debt inverse,” and cover most of their own educational expenses. The commenter said the proposed fee

increases and elimination of fee waivers will prove “punishing” for hard-working, low-income immigrant students by denying them opportunities to adjust their status, pursue citizenship, and apply for DACA renewal.

A commenter said more than 600 Latina girls participate in one of its programs with a 99 percent high school graduation rate and wrote that the prohibitive costs for immigration benefits would hinder this success since many of these participants work full time while attending school. Another commenter said the proposal would generate additional cost burdens for economically disadvantaged students and their families, placing “the dream of completing a degree” out of reach for many students. The commenter also wrote that 46 percent of the Latino population aged 18 and over in its area were born outside the United States, while only 4 percent of Latinos under age 18 were born outside the United States. The commenter stated this statistic meant that the proposal would have a strong negative effect on immigrant families already struggling to support their college-age children.

Response: DHS acknowledges the studies and statistics presented by commenters demonstrating that paying for college is a significant challenge for many students, more so for students of lower income. These studies also show that community college and student loans are among the existing market-oriented solutions available to mitigate the cost burden of pursuing higher education. DHS is changing USCIS fees to recover the costs of administering its adjudication and naturalization services. DHS is not changing USCIS fees with the intent to deter requests from low-income immigrants seeking to reunite with family or based on race, financial, or family situation.

8. Impacts on Victimized Groups and Other Vulnerable Populations

Comment: A commenter suggested that the costs associated with the proposed rule vastly outweighed any benefits of the proposed rule and said DHS had not attempted to quantify the cost associated with being unable to receive protections under a winning asylum claim. The commenter said the proposal did not offer any evidence that a \$50 fee for asylum applications would deter “frivolous filings” and wrote that DHS’ goal in promulgating the proposal was simply to reduce the number of people filing asylum claims. The commenter also said the introduction of a \$490 fee for employment authorization would negatively impact asylum seekers and the “overstretched” organizations that assist asylum seekers.

Response: DHS does not believe that establishing an asylum application fee of \$50 unduly burdens or harms any applicants. DHS carefully assessed the costs associated with the adjudication of asylum applications and other types of immigration benefits and concluded that the \$50 fee for asylum applications is warranted. The approximate cost of adjudicating an asylum application is \$366, and the \$50 fee is well below the full cost of adjudicating the application. Moreover, the asylum application fee is in line with international treaty obligations under the 1951 Refugee Convention, as incorporated by reference in the 1967 Refugee Protocol, and domestic law.

DHS recognizes the economic challenges faced by asylum seekers. However, DHS does not believe that charging asylum seekers for a work authorization application will prevent them from obtaining legal counsel. DHS does not believe that the EAD fee is unduly burdensome for asylum seekers.

Comment: Many commenters wrote that immigrants are particularly vulnerable to violence or abuse, and cited research from the *Journal of Interpersonal Violence* demonstrating that immigrant women are more likely than U.S. born women to suffer violence or death from intimate partners. The commenters wrote that this problem was especially acute among Asian and Pacific Islander populations, citing research from the *Asian Pacific Institute on Gender-Based Violence*. The commenters wrote that the proposed fee schedule increases would reinforce abusers' ability to use immigration status and financial circumstances as tools to abuse victims, citing research from various sources documenting the tactics used and the frequency of such abuse. The commenters said it was "crucial" for immigrant survivors of abuse to access immigration relief in order to ensure they can "seek and find safety." One commenter said the proposal would make it harder for victims of abuse to apply for immigration relief independently of their abusers and said the proposed elimination of fee waivers was "frustrating the intent of Congress" to enable victims to escape "unhealthy power dynamics." A commenter wrote that the proposal to limit the availability of fee waivers and increase fees would negatively impact survivors of domestic violence because the changes would deprive this vulnerable population of the opportunity to pursue immigration protections that Congress specifically provided for them.

Response: In this final rule, VAWA self-petitions, applications for T nonimmigrant status application, petitions for U nonimmigrant status and applications for VAWA cancellation or suspension of deportation are fee exempt, and fee waivers will remain available for all ancillary forms associated with those categories. DHS believes that these fee exemptions and waivers mitigate concerns that other provisions of this final rule may

harm victims of abuse and domestic violence. DHS declines to make changes in this final rule in response to these comments.

Comment: One commenter wrote that the proposal would disproportionately impact women, children, and older adults because these populations often depend on means-tested public benefits or familial support due to their inability to find work. Another commenter cited research from various sources documenting the numbers of U.S. born children living with an undocumented family member and the fact that many of these children are born to DACA-eligible parents. The commenter described the consequences of children living with an undocumented parent, including the fear of being separated from their families and higher rates of post-traumatic stress disorder or similar mental health problems. The commenter cited research from several sources demonstrating how U.S. born children of undocumented parents stand to benefit when their parents achieve legal status. The commenter said the proposal would make it harder for undocumented parents to achieve adjustment of status and wrote that their children and families would be harmed by the family's reduction of disposable income due to the fee increases.

Response: DHS is changing USCIS fees to recover the costs of administering its adjudication and naturalization services. DHS is not changing USCIS fees with the intent to deter requests from low-income immigrants seeking family unity or deterring requests from any immigrants based on their race, financial, or family situation. While one commenter shared survey results indicating many undocumented immigrants are eligible to adjust their status, this alone does not suggest this rule would preclude them from doing so. DHS recognizes such individuals will consider many factors, including future earnings and costs, before deciding if, how and when to adjust their status. DHS

appreciates and acknowledges all of the positive contributions of immigrants to the United States.

Comment: Some commenters cited data from a variety of sources to underscore their comment that the proposal would create barriers that disproportionately harm low-income immigrant women. The research cited by the commenters demonstrated that immigrant women are at a higher risk of economic insecurity due to pay disparities and other forms of discrimination, that domestic violence carries severe economic consequences including jeopardizing women's job prospects, that immigrant women are vulnerable to abuse from employers, and that women take on a disproportionate share of caregiving responsibilities. The commenters said these factors would make it more difficult for immigrant women to account for the "onerous cost increases" in the proposed rule and would be deprived of access to immigration benefits at a higher rate than males. Another commenter cited research from the National Women's Law Center demonstrating that Latinas make \$0.54 cents for every dollar earned by a white, non-Hispanic male, and have less resources to spend on necessities despite the fact that Latinas are "breadwinners" in more than 3 million households. The commenter wrote that the proposed fee increases and elimination of fee waivers would make it less likely that Latinas could become U.S. citizens.

Response: DHS acknowledges the comments about Latina women, but DHS is not adjusting its fees with a planned effect on any particular group or class of individuals. This rule adjusts USCIS' fee schedule to recover its cost. With limited exceptions as noted in the NPRM and this final rule, DHS establishes its fees at the level estimated to represent the full cost of providing adjudication and naturalization services, including the

cost of relevant overhead and similar services provided at no or reduced charge to asylum applicants or other immigrants. This is consistent with DHS's legal authorities. *See* INA section 286(m), 8 U.S.C. 1356(m).

As stated previously, the USCIS fee changes in 2007, 2010 and 2016 had no effect on the number of benefit requests received.¹²⁰ The commenters simply assert that the fees are too high for certain potential benefit request filers without providing data to support their assertions. DHS has no way to effectively determine how these new fees will affect anyone, but DHS believes that benefit request filings will not decrease substantially.

Comment: Some commenters wrote that survivors of violence may pursue immigration benefits through non-humanitarian channels and would no longer have access to fee waivers under the proposed rule. The commenters said the elimination of fee waivers, coupled with the increased fees for naturalization, would force LPR survivors to choose between providing basic necessities for their families and pursuing citizenship.¹²¹ A commenter said the heightened standards for fee waiver eligibility, combined with increased fees for naturalization or adjustment of status, would cause irreparable harm to survivors of gender-based violence. The commenter said that access to immigration relief and regularization of immigration status increases employment opportunities and decreases vulnerability to continued abuse for survivors, and that survivors should not have to choose between pursuing citizenship and acquiring food and shelter for their families.

¹²⁰ *See* RIA, Section M: Fee Waivers.

¹²¹ National Women's Law Center; California Partnership to End Domestic Violence; Illinois Coalition Against Domestic Violence; National Partnership for New Americans; Texas RioGrande Legal Aid, Inc.

Response: DHS recognizes the challenges that gender-based violence survivors face when fleeing from the violence of their abusers. Victims of abuse that file a VAWA self-petition, an application T nonimmigrant status or petition for U nonimmigrant status, or an application for VAWA cancellation or suspension of deportation are fee exempt, and fee waivers remain available for filing all ancillary forms associated with those categories. DHS proposed adjustments to USCIS' fee schedule to ensure full cost recovery. DHS did not target any particular group or class of individuals. With limited exceptions as noted in the NPRM and this final rule, DHS establishes its fees at the level estimated to represent the full cost of providing adjudication and naturalization services.

Comment: Another commenter wrote that removing the financial hardship grounds for fee waivers “overlooks” the financial challenges survivors of violence face, including ruined credit scores, high levels of debt, relocation costs, medical bills from injuries, and attorney and court costs. The commenter also said the heightened documentation requirements, including the time-consuming process of obtaining IRS documents, would negatively impact survivors because they often need to move quickly to meet deadlines and avoid delays in filing that would harm the merits of their applications in adjudication. The commenter wrote that the proposed rule falls short of the “any credible evidence” standard Congress mandated for humanitarian-based benefit requests by “impermissibly requiring specific types of evidence,” such as IRS documentation.

Response: To obtain a fee waiver, an applicant must demonstrate that he or she is at or below 125 percent of the FPG, and submit the form along with the information and evidence available in order to establish eligibility. The applicant need only provide sufficient information to establish why the documentation is not available and not that it

is unavailable directly or indirectly as a result of the victimization. The form provides space for explanations and attachments are accepted, but a separate declaration is unnecessary. Although not required by statute, USCIS has provided flexibilities in the instructions for the VAWA, T, and U populations, permitting them to submit information regarding their inability to obtain documentation on their income with their fee waiver request. DHS will presume that the inability of this group of applicants to submit certain evidence is the result of the victimization and abuse and not require proof of a nexus between victimization and the inability to pay, but the request must demonstrate inability to pay to the extent necessary for USCIS to grant a discretionary fee waiver. All applicants for a fee waiver are subject to the evidence requirements as provided in the revised form instructions, which include more flexible rules with respect to the groups these comments mention. If individuals are unable to obtain documents without risking further abuse, they can explain why they are unable to obtain such documentation and submit other evidence to demonstrate their eligibility. Obtaining information from the IRS in transcripts, a W-2, or proof of non-filing, if applicable, is sufficient documentation to establish the necessary income or no income.

Comment: Several comments were submitted about LGBTQ asylum seekers and transgender applicants. These comments are summarized as follows:

- LGBTQ people suffer significant economic hardships, have past medical conditions and traumas, language barriers that make it more difficult to find housing and employment, difficulty finding legal services, and other challenges.

- The proposal would disproportionately impact transgender people because they are more likely to be indigent and are frequently seeking asylum as they seek to escape “extraordinary levels of violence and persecution.”
- Violence and persecution towards transgender people was well-documented in reports and analyses from the U.S. Department of State and various other sources.
- LGBTQ asylum seekers face dangers in their countries of origin which do not protect them from violence and oppression.
- According to the United Nations High Commissioner for Refugees, 88 percent of LGBTQ asylum seekers and refugees fleeing persecution from the Northern Triangle have faced sexual or gender-based violence in their home country.
- LGBTQ and HIV-positive individuals sometimes seek asylum in the United States as a result of persecution by their own families and communities and often cannot rely on family or community networks in the United States for financial support and therefore require the United States to intervene.
- A commenter that serves the LGBT community, survivors of misogyny, homophobia, transphobia, family rejection, and gang violence said the proposed fee increases would be especially burdensome for the populations it serves and increase filing fees for its clients by \$22,700 annually.
- The proposal would further victimize and isolate LGBTQ refugees seeking asylum and many older LGBTQ people who have lived in the U.S. for many years.

- LGBTQ, women, and minors would be “hardest hit” by the proposed fee increases given the pervasive nature of gender inequity and prejudice against LGBTQ populations.

Response: DHS acknowledges that asylum applicants face challenges. DHS is not adjusting the USCIS fee schedule to reduce, limit, or preclude any individuals or groups of individuals from requesting asylum or seeking any other type of immigration benefit and does not intend to discourage meritorious asylum claims or unduly burden any applicant or group of applicants. More broadly, DHS is adjusting the USCIS fee schedule to recover the full cost of providing immigration adjudication and naturalization services (with some exceptions, as stated earlier). However, in recognition of the circumstances particular to asylum applicants, DHS is not aligning the fee with the beneficiary-pays principle and does not intend to recover the full cost of adjudicating Form I-589 asylum applications. Instead, DHS is establishing a \$50 fee for Form I-589 even though the estimated adjudication costs exceed \$50. DHS has determined that the only exception to the fee should apply to unaccompanied alien children in removal proceedings who file Form I-589 with USCIS. DHS does not believe that it is reasonable or appropriate to make additional exceptions to the fee, particularly on the basis of factors tied to underlying asylum claims.

DHS expects that charging a \$50 fee to asylum applicants except for the narrow group of unaccompanied alien children will generate some revenue to offset adjudication costs. With respect to charging a fee to initial Form I-765 EAD applicants with pending asylum applications, DHS will be able to keep the fee for all fee-paying EAD applicants

lower. Asylum applicants will pay no more and no less than any other EAD applicant (except for those who are eligible for a fee waiver) for the same service.

DHS is acting in compliance with sections 208(d)(3) of the INA, which provides that, “[n]othing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 286(m).” DHS believes that charging asylum applicants for asylum applications and EADs does not impose an unreasonable burden on asylum seekers.

Comment: One commenter wrote that foreign national students represent the majority of science, technology, engineering and mathematics (STEM) graduates from master’s degree and Ph.D. programs, and that these students help fill the demand for “high-level technical talent,” permit U.S. universities to sustain competitive STEM programs, and help cement America’s role as a leader in technological innovation. The commenter discussed the demand for highly skilled technical workers and cited research showing that there were 3.3 million STEM job openings in 2016, but only 568,000 students graduating with STEM degrees. The commenter said that employers of all sizes, and across industries, faced challenges in securing high-skilled, available candidates, and that issues relating to “employment immigration” were of utmost importance to the technology industry. The commenter expressed their support for comprehensive immigration reform that meets employers’ demands in a globally competitive and digital economy. Another commenter said the proposal would accelerate the loss of U.S. information technology jobs. The commenter said access to information technology

workers on H-1B nonimmigrant workers was critical for the industry and wrote that the proposal would make U.S.-based information technology projects “less economically viable.” The commenter said proposed fee increases would make it more difficult to create and retain information technology jobs in the U.S.

Response: DHS recognizes that immigrants and international students make significant contributions to the U.S. technology industry. The commenter’s suggestion that high demand by globally competitive firms for high-skilled occupations would be affected by the fee changes is not clearly explained or supported with evidence.

9. Impacts to Industries that Use H-2A Workers

Comment: A commenter provided statistics detailing the economic condition of farmworkers in the U.S. and said many of its farmworker clients struggle to meet their families’ financial needs despite working long hours. The commenter cited figures from the Department of Labor (DOL) showing that farmworkers’ average household income ranged from \$20,000 to \$24,999 per year, and that 33 percent of farmworkers have family incomes below 100 percent of FPG. The commenter said farmworkers’ wages are low “through no fault of their own” and wrote that farm work is seasonal by nature, a fact that causes periods of unemployment and fluctuating incomes throughout the year. The commenter drew upon its experience serving farmworker clients in remarking that low-wage farm work should not indicate an immigrant’s inability to be self-sufficient. The commenter also said a majority of its clients use fee waivers or other forms of financial assistance to pay for applications and wrote that the combination of fee increases and the elimination of fee waivers would mean that its communities will be hard hit.

Response: The commenters do not offer evidence to support their claims that the new fees will result in the negative effects suggested. Seasonal farmworkers employed as H-2A workers are not required to pay any fees or expenses for recruitment, travel, or USCIS petitions, so it is assumed that the immigrant workers that the commenter is referencing immigrated to the U.S. as beneficiaries of a petition for a family member. In that case, the immigrant will be subject to an affidavit of support from a family member who must support them at an income above 125 percent of FPG. If the farmworker is a TPS registrant, then they may request a fee waiver.

DHS is changing USCIS fees to recover the costs of administering its adjudication and naturalization services. DHS is not changing USCIS fees with intent or effect of deterring requests from low-income immigrants seeking family unity or deterring requests from any immigrants based on their financial or family situation.

Comment: Some commenters opposed the proposed rule increasing burdens on employers participating in the H-2A program. One commenter wrote that farmworkers help sustain the \$47 billion agriculture industry and that immigrants have supplied the industry with a needed workforce. One commenter stated its members need H-2A workers because there are no domestic workers willing to perform jobs its members need. The commenter wrote that the proposal would diminish employers' use of the H-2A program, an outcome that the commenter also wrote would lead to the elimination of jobs in certain sectors, slowed economic growth, and reduced national security due to a less secure food supply. Another commenter said the proposal would make it cost prohibitive for small farms and ranchers to remain in production and suggested that the loss of agricultural production was a national security concern. One commenter suggested that

the proposal, in conjunction with Policy Memo PM-602-0176, would increase ranchers costs by 274 percent (rather than 87 percent). The commenter wrote that since agricultural producers are price takers, they are unable to pass these extra costs onto consumers and would see their margins depleted. The commenter said it would support a flat application fee with an additional add-on for each beneficiary (such as \$425 per application and \$10 per beneficiary). Other commenters stated that the proposed increase would hurt agriculture businesses because they cannot pass down additional costs to consumers. One commenter stated low-wage H-2A agricultural workers would have their fees increased by four times the amount of H-1B workers, who are more likely to be able to afford the proposed increase, which highlights the “deeply flawed” perspective that those workers that serve as the backbone of our agricultural industry are less necessary to the U.S. economy. A commenter wrote these increased fees could lead to decreased participation in the H-2A program. A commenter indicated that the proposed increase of H-2A filing fees would burden the livestock industry, substantially and disproportionately harming small businesses.

Response: DHS understands the need for nonimmigrant workers to meet seasonal demands in agriculture in the United States and is sympathetic to the costs for agricultural employers involved in doing so. With that in mind, DHS notes, preliminarily, that the current fee for Form I-129 is \$460, and DHS is imposing a fee for new Forms I-129H2A of \$415 for petitions for unnamed workers – an actual reduction in the filing fee from the current \$460. We note that the filing fee for named H-2A workers, however, will be increasing from \$460 to \$850 per petition, with a maximum of 25 named workers per each H-2A petition. The change in these filing fees, as provided in this final rule, is

consistent with the recommendation of the DHS Office of the Inspector General (OIG) of March 6, 2017.¹²² That report reviewed whether the fee structure associated with the filing of H-2 petitions is equitable and effective, and recommended separate fees for petitions with named workers, which, due to the need to verify eligibility of individually named workers, is more costly to USCIS than the costs associated with adjudicating petitions filed on behalf of unnamed workers.¹²³ Consistent with the OIG's recommendation, USCIS conducted a study to address the inequities identified in the OIG report, and, based on its study, USCIS determined that the filing fees in this final rule reflect the relative costs to USCIS in processing these two different types of H-2A petitions. USCIS also notes that limiting the number of beneficiaries in an H-2A petition with named workers to a maximum of 25 is intended not only to make the processing of such petitions more efficient, but to provide better data on the actual costs of adjudicating various nonimmigrant classifications, thereby permitting USCIS to refine its fee calculations in the future to better reflect relative costs.

10. Effects on other Federal agencies

Many commenters wrote about their predictions of the problems that the fee rule would cause other Federal agencies and their employee. Those commenters wrote that the new USCIS fees would result in the following:

- Would place an unnecessary burden on the IRS by requiring fee waiver applicants to provide IRS documentation to demonstrate their eligibility.

¹²² DHS OIG, *H-2 Petition Fee Structure Is Inequitable and Contributes to Processing Errors* (Mar. 6, 2017), available at www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-42-Mar17.pdf.

¹²³ DHS OIG, *H-2 Petition Fee Structure Is Inequitable and Contributes to Processing Errors* (Mar. 6, 2017), available at <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-42-Mar17.pdf>.

- Would require IRS verification and did not consider whether the IRS was prepared to handle a substantial increase in requests for documents.
- The increases to employment authorization application fees may place vulnerable workers in exploitative arrangements which would make DOL incur increased burden for enforcing federal workplace laws.
- Increased immigrants' fear of government officials would hamper DOL workplace investigations and enforcement.
- Would cause the IRS to lose income revenue from a reduction in asylum applications and would need to dedicate more resources to investigations of tax liability for unauthorized employment.
- DOL would need to investigate more incidences of wage theft and unsafe working conditions because many asylum seekers would be forced into the unauthorized workforce due to their inability to afford work authorization fees.

Response: With regard to the documentation required from the IRS for fee waivers, all other Federal agencies, including the Department of the Treasury and Department of Labor, reviewed the NPRM through the interagency review process and provided no objections, thus DHS believes that the IRS and DOL can handle any additional workload arising from this rule.

IV. Statutory and Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

The fee schedule that went into effect on December 23, 2016 was expected to yield approximately \$3.4 billion of average annual revenue during the FY 2019/2020 biennial period. This represents a \$0.9 billion, or 36 percent, increase from the FY 2016/2017 fee rule projection of \$2.5 billion. *See* 81 FR 26911. The projected revenue increase is due to higher fees as a result of the FY 2016/2017 fee rule and more anticipated fee-paying receipts. The FY 2016/2017 fee rule forecasted approximately 5.9 million total workload receipts and 4.9 million fee-paying receipts, excluding biometric services. *See* 81 FR 26923-4. However, the FY 2019/2020 fee review forecasts approximately 8.5 million total workload receipts and 7.0 million fee-paying receipts, excluding biometric services. This represents a 44 percent increase to workload and a 43 percent increase to fee-paying receipt assumptions.¹²⁴

Executive Orders (E.O.) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been designated an

¹²⁴ *See* FY 2019/2020 Immigration Examinations Fee Account Fee Review Supporting Documentation with Addendum, which is part of the docket for this final rule. DHS revised the volumes to exclude DACA and change fee-paying assumptions for Forms N-400, N-600, and N-600K, as discussed later in this preamble.

“economically significant regulatory action” under section 3(f)(1) of E.O. 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB). E.O. 13771 directs agencies to reduce regulation and control regulatory costs. Because the estimated impacts range from costs to cost savings, this final rule is considered neither regulatory or deregulatory under EO 13771. Details on the estimated impacts of this final rule can be found in the rule’s economic analysis, section 2.

This final rule adjusts certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). It also removes certain fee exemptions, changes fee waiver requirements,¹²⁵ alters premium processing time limits, and modifies intercountry adoption processing. This final rule removes the proposed fee that was introduced in the NPRM of this rule for Form I-821D;¹²⁶ it does not provide for the proposed transfer of any Immigration Examination Fee Account (IEFA) funds collected by USCIS to ICE;¹²⁷ it reassigns the proposed National Record Center (NRC) costs that do not directly apply to the genealogy program, thereby setting genealogy fees lower than proposed;¹²⁸ and it now allows for a \$10 reduction in filing fee for applicants who file online for forms that are electronically available by USCIS rather than submit paper applications.¹²⁹

¹²⁵ Also, in this final rule DHS consolidates the Director’s discretionary provision on fee waivers to remove redundancy. 84 FR 62363. New 8 CFR 106.3.

¹²⁶ 84 FR 62320, 62362; proposed and new 8 CFR 106.2(a)(2)(38).

¹²⁷ 84 FR 62287, 84 FR 67243. This final rule does not transfer funds to ICE. Therefore, DHS removes \$207.6 million for ICE from its cost baseline, resulting in lower fees than if DHS pursued the transfer of funds.

¹²⁸ 84 FR 62315, 62316, 62362; proposed and new 8 CFR 106.2(c)(1) – (c)(2); new 8 CFR 106.2(c)(1) – (c)(2).

¹²⁹ New 8 CFR 106.2(d).

USCIS conducted a comprehensive biennial fee review and determined that current fees do not recover the full cost of providing adjudication and naturalization services. Therefore, DHS adjusts USCIS fees by a weighted average increase of 20 percent, adds new fees for certain immigration benefit requests, establishes multiple fees for nonimmigrant worker petitions, and limits the number of beneficiaries for certain forms. This final rule is intended to ensure that USCIS has the resources it needs to provide adequate service to applicants and petitioners. It also makes changes related to setting, collecting, and administering fees. DHS has kept certain fees, such as the fee for the Form N-400, Application for Naturalization, below the level indicated by the fee setting model based on policy choices, or provided that certain fees may be waived, transferring the costs not covered by the lower or waived fee to other benefit requests. However, in this rule, DHS is focusing on the beneficiary pays principle and assigning fees to those who are going to directly reap the benefits of the applicable immigration benefit request. DHS's policy shift to the beneficiary-pays principle, as detailed in the preamble, recognizes that different immigration services provide varying levels of societal net benefits (whether economic or humanitarian), and previously DHS accounted for some aspects of the social benefit of specific services through holding fees below their cost.¹³⁰ However, DHS believes that the beneficiary-pays principle is generally more equitable and has largely adopted it in this fee rule. Regardless, fee schedule adjustments are necessary to recover the full operating costs of administering the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and

¹³⁰ Government Accountability Office (GAO), *Federal User Fees: A Design Guide* (May 29, 2008), available at <https://www.gao.gov/products/GAO-08-386SP>. (last accessed Feb. 24, 2020).

fairly adjudicating requests for immigration benefits, while protecting Americans, securing the homeland, and honoring our values. This final rule also makes certain adjustments to fee waiver eligibility, filing requirements for nonimmigrant workers, the premium processing service, and other administrative requirements.

For the 10-year implementation period of the rule, DHS estimates the annualized costs of the rule to be \$13,856,291, annualized at either 3- and 7- percent discount rates. DHS estimates the annualized cost savings to be \$6,192,201 to \$22,546,053. DHS estimates the annualized net societal costs and savings of the rule to range from costs of \$7,664,090 to savings of \$8,689,762. Over the 10-year implementation period of the rule, DHS estimates annualized transfers to the government from applicants/petitioners to be \$551,842,481 annualized at either 3- and 7-percent discount rates. Over 10-year implementation period of the rule, DHS estimates the annualized transfers of the rule between different groups of fee-paying applicants and/or petitioners to specific form populations is \$832,239,426, annualized at either 3- and 7-percent discount rates.

The final revenue increase is based on USCIS costs and volume projections available at the time of the USCIS fee review. Table 7 provides a detailed summary of the provisions of this final rule and their impacts.

Table 7. Summary of Provisions and Impacts - Costs, Transfers, and Benefits of this Final Rule Summary			
Provision	Purpose of Provision	Estimated Costs or Transfers of Provision	Estimated Benefits of Provision

<p>(a) Reduced Fees for Filing Online.</p> <ul style="list-style-type: none"> • Form I-90, Application to Replace Permanent Resident Card • Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA) • Form N-400, Application for Naturalization • Form N-565, Application for Replacement Naturalization/Citizenship Document • Form I-130/130A, Petition for Alien Relative • Form N-600, Application for Certificate of Citizenship • Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 • Form I-539/539A, Application To Extend/Change Nonimmigrant Status • Form G-1041, Genealogy Index Search Request • Form G-1041A, Genealogy Records Request 	<p>USCIS does not require that immigration benefit requests be filed online. Voluntarily, filing on paper remains a valid option. However, for forms currently eligible for online filing, the fee will be \$10 more if filed on paper.</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • A transfer of \$6.1 million annually from applicants/petitioners who will pay \$10 more for those same filings on paper to fee-paying applicants/petitioners filing eligible forms online for a particular immigration benefit or request as a result of the final applicable USCIS filing fees. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • None. 	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> • None. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • Facilitates electronic processing and adjudications which helps streamline USCIS processes. This could reduce costs and could speed adjudication of cases. • Results in more accurately prepared and supported requests accompanied by necessary evidence and documentation. Reduces the need for USCIS to request additional data, clarifying information, or documents. • Reduce the collection of unnecessary or duplicative information as the system guides requestors to provide responses that comply with requirements and instructions that are pertinent to their benefit requests <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • USCIS will save in reduced intake and storage costs at the USCIS Lockbox or other intake facilities. Based on current USCIS internal lockbox analysis at this time, each submission completed online rather than through paper provides a cost savings of \$7 per submission and operational efficiencies to both USCIS and filers—benefits that will accrue throughout the immigration lifecycle of the individual and with the broader use of online filing and e-processing. • USCIS also realizes cost savings from no longer having to send paper-based notices, requests, and other
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			<p>communications to requestors via mail.</p> <ul style="list-style-type: none"> Decrease the risk of mishandled, misplaced, or damaged files; increase availability of administrative records; and decrease occasionally lost paper files; electronic records would not be physically moved around to different adjudication offices. USCIS could easily redistribute electronic files among adjudications offices located in different regions, for better management of workload activities.
<p>(b) Secure Mail Initiative.</p>	<p>USCIS will use the Signature Confirmation Restricted Delivery as a method of delivery of secure documents for USCIS.</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> None. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> DHS will experience a cost of \$34.5 million from the United States Postal Service (USPS) for total mail cost, which includes Signature Confirmation Restricted Delivery confirmation to re -send secure documents to the proper recipient. When they fail to make it to their proper recipient. 	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> Applicants with unstable addresses or who move often will be more certain to receive their documents. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> USCIS and applicants can track their document using the USPS website up to when the document is delivered. Recipients will also have the ability to change their delivery location by going to the USPS website and selecting “hold for pickup” to arrange for pickup at a post office at a date and time that suits them. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> Ensure secure and important identity documents issued by USCIS are delivered to the address of person to whom they rightfully belong. Will reduce the likelihood of mis-delivered documents that could be mis-used.

<p>(c) Clarify Dishonored Check Re-presentation Requirement and Fee Payment Method, and Non-refundability.</p>	<p>DHS is changing its provision in this rule that if a check or other financial instrument used to pay a fee is returned as unpayable <i>because of insufficient funds</i>, USCIS will resubmit the payment to the remitter institution one time.</p> <p>If the remitter institution returns the instrument used to pay a fee as unpayable a second time, USCIS will reject the filing. USCIS will not re-deposit financial instruments returned as unpayable for a reason other than insufficient funds.</p> <p>In addition, DHS may reject a request that is accompanied by a check that is dated more than 365 days before the receipt date.</p> <p>DHS is also clarifying that fees are non-refundable regardless of the result of the immigration benefit request or how much time the request requires to be adjudicated</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • None. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • None. 	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> • None. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • By clarifying the dishonored fee check re-presentation processes, USCIS will reduce administrative burdens and processing errors associated with fee payments. • In the event that the bank that issues the credit card rescinds the payment of a fee to USCIS, USCIS will be able to invoice the responsible party (applicant, petitioner, or requestor) and pursue collection of the unpaid fee in accordance with 31 CFR 900 – 904 (Federal Claims Collection Standards). Clarifying that fees are due regardless of the result or how long the decision takes, and there are no refunds, is expected to result in USCIS losing fewer credit card disputes.
<p>(d) Eliminate \$30 Returned Check Fee.</p>	<p>DHS is removing the \$30 charge for dishonored payments.</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • None. 	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> • \$0.17 million annual savings.

		<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • There may be an increase in insufficient payments by applicants because the \$30 fee may serve as a deterrent for submitting a deficient payment. 	<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • The current \$30 charge and the potential of having a benefit request rejected encourages applicants to provide the correct filing fees when submitting an application or petition. • Applicants who submit bad checks will no longer have to pay a fee. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • DHS will not have to seek payment of the \$30 fee if payment is dishonored resulting in a savings to USCIS as it spends more to collect the \$30 returned payment charges than the \$30 itself. USCIS hires a financial service provider to provide fee collection services to pursue and collect the \$30 fee. This expense would no longer be necessary with this change. • DHS assumes that the current \$30 charge and the potential of having a benefit request rejected encourages applicants to provide the correct filing fees when submitting an application or petition.
<p>(e) Removal of Fee waivers.</p>	<p>DHS is limiting fee waivers to statutorily mandated fee waivers and two other humanitarian programs and to those applicants who have an annual household income of less than 125% of the Federal Poverty Guidelines (FPG). Additionally, fee waiver applicants cannot have been admitted into the</p>	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> • A transfer of \$368.3 million annually to those applicants who previously received a fee waiver from different groups of fee-paying applicants. These transfers derive from applicable USCIS filing fees. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • None. 	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> • Current fee-paying applicants are no longer burdened with covering the costs for those applicants who currently receive fee waivers. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • None.

	<p>United States subject to an affidavit of support under INA section 213A, 8 U.S.C 1183a or be subject to the public charge inadmissibility ground under INA section 212(a)(4), 8 U.S.C. 1182(a)(4).</p>	<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> Limiting fee waivers may adversely affect some applicants’ ability to apply for immigration benefits. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> None. 	<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> This provision may reduce administrative costs to USCIS of adjudicating fee waiver requests. It may also reduce the amount of training or guidance necessary to adjudicate unique fee waiver requests.
<p>(f) Fee Exemptions.</p>	<p>DHS is removing the fee exemptions for an initial request for an employment authorization document (EAD) for the following classifications:</p> <ul style="list-style-type: none"> Citizen of Micronesia, Marshall Islands, or Palau; Granted Withholding of Deportation; Temporary Protected Status (TPS) if filing an initial TPS application for individuals under 14 years of age or over 65 years of age. Applicant for Asylum and Withholding of Deportation or Removal. 	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> A transfer of \$3.9 million annually in filing fees to the categories listed in the provision that are no longer exempted from different groups of fee-paying applicants of Form I-765. 	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> None.
		<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> This could result in lost wages for the workers who may not be able to afford the costs of filing Form I-765 and lost productivity for the employers that hire these workers. The lost wages and productivity can be considered as costs of the forgone benefits. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> None. 	<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> The removal of fee exemptions for these populations may reduce further increases of other fees to the fee-paying population. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> Continuing to provide these fee exemptions would result in the costs of those services being transferred to the fees for other forms. Removing the exemptions allows DHS to recover the costs of adjudication of Form I-765 for these categories from those who benefit from the service instead of other fee payers.

<p>(g) Changes to Biometric Services Fee.</p>	<p>DHS is incorporating the biometric services cost into the underlying immigration benefit request fee instead of charging a flat \$85 biometric services fee.</p> <p>DHS will require a \$30 biometric services fee for an applicant for asylum or an alien approved for parole who applies for employment authorization (c)(8)'s, TPS initial applications and re-registrations, EOIR applicants, and term CNMI resident program applicants.</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> \$12.4 million costs for asylum applicants paying the biometrics service fee and for those completing and submitting new Form I-600A/600 Supplement 3. 	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> \$15.0 million in transfers from the government to fee paying applicants/petitioners for, EOIR, TPS, and term CNMI resident applicants resulting from a \$55 reduction in biometrics service fees per applicant.
		<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> None. <p>DHS/USCIS-</p> <ul style="list-style-type: none"> None. 	<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> Simplifies the process to submit payments. May result in fewer incorrect payments and therefore, fewer rejected applications. Biometric costs incorporated into the fee will actually correspond to the services provided. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> Eliminating the separate payment of the biometric services fee will decrease the administrative burden required to process both a filing fee and biometric services fee for a single benefit request. USCIS can assign a biometric cost to the form fee that is based on the appropriate contract instead of a standard cost.
<p>(h) Discontinue bundling of interim benefits when Forms I-765 and I-131 are filed concurrently with pending Form I-485 or when a Form I-485 is pending.</p>	<p>DHS is requiring separate fees for Forms I-765 and/or I-131 when filed concurrently with Form I-485 or when a Form I-485 is pending.</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> A transfer of \$597.3 million from those applicants who file for Forms I-765 and/or I-131 concurrently filed with Form I-485 or while it is pending to different groups of fee-paying applicants. 	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> Not estimated.
		<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> None. 	<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> None.

			<p>DHS/USCIS –</p> <ul style="list-style-type: none"> • The provision will isolate stand-alone interim benefit applicants from those concurrently filing Form I-485 allowing USCIS to more accurately assess fee-paying percentages, fee-paying volumes, and fees for all three benefit types. • Easier to administer separate fees than to determine if the Forms I-131 and/or I-765 is supposed to be free or require a fee. • Form I-485 applicants will be treated the same as other applicants for employment authorization and advance parole. Requests for interim benefits associated with a pending Form I-485 will be adjudicated the same as all other requests for interim benefits.
(i) Form I-485 Fee for Children Under 14, Filing with Parent.	DHS is requiring payment of the full \$1,130 fee for a child under the age of 14 years when concurrently filing Form I-485 with a parent.	<p>Quantitative: Applicants-</p> <p>A transfer of \$11.4 million from applicants who concurrently file a Form I-485 with a child under the age of 14 to different groups of fee-paying applicants.</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • Not estimated.
		<p>Qualitative: Applicants – DHS/USCIS –</p> <ul style="list-style-type: none"> • None. 	<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • Easier to administer one single fee for Form I-485 will reduce the burden of adjudication and better reflect the cost of adjudication.
(j) Allow Individuals with Advance Parole to use Form I-131A, Application for Travel Document (Carrier Documentation)	DHS is expanding the population eligible to use Form I-131A to include individuals with advance parole documents.	<p>Quantitative: Applicants-</p> <p>A transfer of \$10.1 annually to applicants who file Form I-131A from different groups of applicants.</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • None.

		<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> In addition to the filing fee, DHS estimated a qualitative per unit cost per applicant for the opportunity cost of time for completing Form I-131A and submitting one passport-sized photo of \$32.66 per unit application cost. <p>DHS/USCIS-</p> <ul style="list-style-type: none"> None. 	<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> Individuals who lose their advance parole cards while abroad now have a defined process to receive carrier documentation to return to the U.S. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> None.
<p>(k) Separating Form I-129, Petition for a Nonimmigrant Worker, into Different Forms, and Limit Petitions Where Multiple Beneficiaries are Permitted to 25 Named Beneficiaries per Petition.</p>	<p>DHS is separating the Petition for a Nonimmigrant Worker, Form I-129, into several forms with different corresponding fees.</p> <p>DHS also is imposing a limit of 25 named beneficiaries per petition where multiple beneficiaries are permitted.</p>	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> A transfer of \$75.1 million in filing fees of visa category specific petitions from petitioners using the specific new Form I-129 classification forms to different groups of fee-paying petitioners. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> Not estimated. 	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> \$5.9 million if HR specialist file, \$12.8 million if in-house lawyers file, or \$22.3 million if outsourced lawyers file in annual savings to the petitioners filing Form I-129 new visa category specific petitions. The annual savings will be in the Form I-129 opportunity costs of time to complete the different form classifications. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> None.
		<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> None. 	<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> Separating forms will reduce the need to navigate lengthy instructions that do not apply to their petition. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> By splitting the form and introducing several different fees, this provision will simplify or consolidate the information requirements for petitioners and applicants as well as better reflect the cost to adjudicate each specific nonimmigrant classification type.

(l) Extend premium processing timeframe from 15 calendar days to 15 business days.	DHS is changing the premium processing timeframe from 15 calendar days to 15 business days.	Quantitative: Applicants- <ul style="list-style-type: none"> • Not estimated. 	Quantitative: Applicants- <ul style="list-style-type: none"> • Not estimated
		Qualitative: Petitioners – <ul style="list-style-type: none"> • An employer may lose some productivity but USCIS has no way to estimate what that loss may be. • Applicants and employers may have to wait 4 days or longer for decisions on their cases DHS/USCIS – <ul style="list-style-type: none"> • None. 	Qualitative: Petitioners – <ul style="list-style-type: none"> • Removes petitioner expectation of 15 calendar day processing to allow for better business planning. Premium processing is for quick adjudication and certainty, but they lose no productivity from the additional 4 days. DHS/USCIS – <ul style="list-style-type: none"> • USCIS will have additional time to process a petition before it has to issue a refund for not meeting the guaranteed timeline. • In addition, the extra time will allow USCIS to avoid suspending premium processing service as often as has recently been required when premium processing request volumes are high.
(m) Creation of Form I-600A/600 Supplement 3, Request for Action on Approved For I-600A/I-600 and new fee.	<p>DHS is creating a new form, Form I-600 Supplement 3, Request for Action on an Approved Form I-600A/I-600 and new fee to clarify the regulations and formalize current practice for requests for action on approved Forms I-600A/I-600.</p> <p>DHS is altering the validity period for a Form I-600A approval in an orphan case from 18 to 15 months to</p>	Quantitative: Applicants- <ul style="list-style-type: none"> • \$0.14 million costs for completing and submitting new Form I-600A/600 Supplement 3. 	Quantitative: Applicants – <ul style="list-style-type: none"> • None.
		Qualitative: Applicants – <ul style="list-style-type: none"> • None. DHS/USCIS- <ul style="list-style-type: none"> • \$0.13 million in costs for processing and reviewing the new Form I-600A/600 Supplement 3. 	Qualitative: Applicants – <ul style="list-style-type: none"> • Improve and align the adjudication and approval processes for adoptions from countries that are party to the Hague Adoption Convention and countries that are not. • Clarify the process for applicants who would like to

	<p>remove inconsistencies between Form I-600A approval periods and validity of the Federal Bureau of Investigation (FBI) background check.</p>		<p>request an extension of Form I-600A/I-600 and/or another type of approved change to their application/petition.</p> <p>DHS/USCIS –</p> <ul style="list-style-type: none"> Standardizes USCIS process and provides for the ability to collect a fee. Improve and align the USCIS adjudication and approval processes for adoptions of children from countries that are party to the Hague Adoption Convention and from countries that are not. Changing the validity period to 15 months will make the Form I-600A approval periods consistent with the validity of FBI biometric related background checks. The uniform 15-month validity period will also alleviate the burden on prospective adoptive parents and adoption service providers to monitor multiple expiration dates.
<p>(n) Changes to Genealogy Search and Records Requests.</p>	<p>DHS is changing how USCIS processes genealogy requests.</p> <p>DHS is expanding the use of electronic genealogy requests; changing the search request process so that USCIS can provide requesters with digital records, if they exist; and changing the genealogy fees.</p> <p>DHS is also offering an online filing fee, for those genealogy searches and records requests.</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> DHS estimates the new annual costs to file Form G-1041 index search requests and Form G-1041A records requests will be \$1.3 million annually. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> In addition to the filing fee increase, DHS estimated qualitative per unit cost of \$14.70 per index search requests and records request. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> USCIS will still need to 	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> Index search and records requestors who file online, will pay a reduced fee of \$10 dollars compared to those who file by paper. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> Genealogy search and records request process changes will increase accuracy and decrease wait times for requestors. Fewer individuals may need to file Form G-1041A to request a record if it is provided digitally in

		<p>mail some records in cases where requestors who cannot submit the forms electronically need to submit paper copies of both forms with required filing fees.</p>	<p>response to a Form G-1041 filing.</p> <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • Reduce costs for mailing, records processing, and storage costs because electronic versions of records requests will reduce the administrative burden on USCIS. • USCIS will save \$16 to \$45 per index search service and \$26 to \$55 for each textual file retrieved. • The provisions are streamlining the genealogy search and records request process increases accuracy.
<p>(o) Remove Reduced Fee for Naturalization Applicants Using Form I-942, Request for Reduced Fee.</p>	<p>DHS is eliminating the reduced fee option for Form N-400 that applies to applicants whose documented household income is greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines.</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • A transfer of \$3.7 million annually from applicants who previously filed Form N-400 with the reduced fee. These individuals will no longer be able to request a reduced Form N-400 fee using Form I-942 from different fee-paying applicants. 	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • None.
		<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • Applicants will have a total per unit cost for N-400 applications of \$182.12 (opportunity cost to file, biometric collection and travel) with the increased filing fee. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • None. 	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> • \$0.05 million annual quantitative savings to the applicants filing for a N-400 will be in the I-942 opportunity costs of time, to complete the form being eliminated. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • A qualitative benefit to DHS by eliminating the Form I-942 will reduced the administrative burden on the agency to process the Form I-942.

<p>(p) Charge for an initial Form I-765 while an asylum application is pending.</p>	<p>DHS will require a fee for an initial Application for Employment Authorization, Form I-765, when asylum applicants apply for asylum or file an Application for Asylum and for Withholding of Removal, Form I-589. Currently, USCIS exempts these initial applicants from a fee with pending asylum applications.</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • A transfer of \$118.8 million annually to applicants who file an initial Form I-765 with a pending asylum application from different fee-paying applicants. • Applicants could have costs in lost wages and employers could have costs in terms of lost productivity. <p>DHS/USCIS-</p> <ul style="list-style-type: none"> • None. 	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • Other EAD applicants will not be required to subsidize EADs for pending asylum applicants. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • None.
<p>(q) Charge a fee for Form I-589, Application for Asylum and for Withholding of Removal.</p>	<p>DHS will require a \$50 fee for Form I-589, Application for Asylum and for Withholding of Removal.</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • A transfer of \$5.5 million from Asylum applicants filing Form I-589 to different fee-paying applicants. 	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • \$0.74 million in transfers from the government to asylum I-589 applicants who will pay a reduced fee of \$50 for Form I-485 Application to Register Permanent Residence or Adjust Status from \$1,130 to \$1,080 because their I-589 was approved.
		<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • Some applicants may not be able to afford this fee and will no longer be able to apply for asylum. 	<p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • None.
<p>(r) Combining Fees for Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 [NACARA]).</p>	<p>DHS is combining the current multiple fees charged for an individual or family into a single fee for each filing of Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100, the Nicaraguan Adjustment and Central American Relief Act</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • A transfer of \$0.43 million annually to those who apply for suspension of deportation or special rule cancellation of removal under NACARA using Form I-881 from different groups of fee-paying individuals. 	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> • \$0.03 million in savings from the reduced passport-style photos requirement. They currently have to provide 4 photos and now they will only be required to provide 2 which will save each applicant money and by not traveling to ASC facilities, for biometric collection/submission.
		<p>Qualitative: Applicants –</p>	<p>Qualitative: Applicants –</p>

	[NACARA)].	<ul style="list-style-type: none"> None. DHS/USCIS – <ul style="list-style-type: none"> None. 	<ul style="list-style-type: none"> None. DHS/USCIS – <ul style="list-style-type: none"> Combining the two IEFA fees into a single fee will streamline the revenue collections and reporting. A Single Form I-881 fee may help reduce the administrative and adjudication process for USCIS more efficient.
(s) Clarify who must pay a 9-11 Response and Biometric Entry-Exit Fee for H-1B and L-1.	DHS will apply the 9-11 Response and Biometric Entry-Exit Fee to all covered petitions (meaning those meeting the 50 employee/50 percent H-1B or L test), whether for new employment or extension.	Quantitative: Applicants- <ul style="list-style-type: none"> A transfer of \$199.2 million in petition fees to the government from fee paying petitioners for extensions into the 9-11 Response Biometric Entry-Exit account. Qualitative: Applicants- <ul style="list-style-type: none"> None. DHS/USCIS – <ul style="list-style-type: none"> None. 	Quantitative: Applicants – <ul style="list-style-type: none"> None. Qualitative: Applicants- <ul style="list-style-type: none"> Fee will consistently be applied to all H-1B or L-1 petitions, whether for new employment or extension. DHS/USCIS – <ul style="list-style-type: none"> The collected fees will help increase the 9-11 Response and Biometric Entry-Exit fee account for biometric entry-exit screening, deficit reduction, and other public purposes funded by general Treasury revenues.

A full regulatory impact analysis (RIA) of this final rule can be found in the docket at www.regulations.gov. In addition to the impacts summarized here, Table 8 presents the accounting statement as required by Circular A-4.¹³¹

Table 8. OMB A-4 Accounting Statement (\$, 2019), period of the analysis 2020 - 2029				
Category	Primary Estimate	Minimum Estimate	Maximum Estimate	Source Citation
BENEFITS				

¹³¹ OMB Circular A-4 is available at: www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf.

Annualized Monetized Benefits over 10 years	N/A	N/A	N/A	
	N/A	N/A	N/A	
Annualized quantified, but un-monetized, benefits Unquantified Benefits	<p>USCIS sets fees at levels sufficient to cover the full cost of the corresponding services associated with fairly and efficiently adjudicating immigration benefit requests and at a level sufficient to fund overall requirements and general operations, including 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 or reduced charge.</p> <p>This final rule will help reduce the administrative and adjudication process for USCIS more efficient. Limiting fee waivers may reduce administrative costs to USCIS of adjudicating fee waiver requests. It may also reduce the amount of training or guidance necessary to adjudicate unique fee waiver requests.</p> <p>Removing the exemptions allows DHS to recover the costs of adjudicating Form I-765 for these categories from those who benefit from the service instead of other fee payers. Continuing to provide these fee exemptions would result in the costs of those fee services being transferred to the fees for other forms. This final rule will help reduce the administrative and adjudication process for USCIS more efficient.</p>			RIA
COSTS				
Annualized monetized costs over 10 years (discount rate in parenthesis)	N/A	(3%) \$7,664,090	(3%) -\$8,689,762	RIA
	N/A	(7%) \$7,664,090	(7%) -\$8,689,762	
Annualized quantified, but un-monetized, costs	N/A			
Qualitative (unquantified) costs	<p>DHS is unable to quantify how many people will not apply because they do not have access to fee waivers and we acknowledge that some individuals will need to save, borrow, or use a credit card in order to pay fees because they do not have recourse to a fee waiver. DHS does not know the price elasticity of demand for immigration benefits, nor does DHS know the level at which the fee increases become too high for applicants/petitioners to apply.</p> <p>While DHS acknowledges immigrants facing financial challenges encounter added difficulty paying filing fees, any potential effects are expected to be indirect reductions in consumption of other goods with relatively more elastic demand. DHS is unable to quantify the extent</p>			

	<p>to which the rule could result in some immigrants choosing to live in less costly areas, seeking out higher earnings opportunities, curtailing other purchases or rethinking their immigration altogether.</p> <p>DHS has not omitted data describing the price sensitivity to fees, rather, the agency has no data describing the myriad complex and changing unobservable factors that may affect each immigrant's unique decision to file for a particular immigration benefit. DHS notes that previous fee increases in 2007, 2010 and 2016 have had no discernible effect on the number of filings that USCIS received, and, in response to public comments, acknowledges that evidence presented indicating naturalization increases when previous fees were waived entirely does not support the claim that immigration benefits are sensitive to the changes implemented by this rule.¹³² DHS does not know the individual financial circumstances of each applicant/petitioner applying for a particular immigration benefit.</p> <p>DHS believes that immigration to the United States remains attractive to millions of individuals around the world and that its benefits continue to outweigh the costs associated. Therefore, DHS believes the price elasticity of demand for immigration services is inelastic and increases in price will have a minimal or no impact on the demand for these services. This is true for all immigration services impacted by this rule.</p> <p>USCIS will look at future rulemakings, to encourage other forms being made available (either in phases by benefits requests or a certain number per year), to file online as DHS shifts to a more electronic immigration system.</p> <p>USCIS will still need to mail some records in cases where requestors who cannot submit the forms electronically need to submit paper copies of both forms with required filing fees, as a result of changes to Genealogy Search and Records Requests.</p>	
TRANSFERS		

¹³² See RIA, Section E: Removal Fee Waivers.

<p>Annualized monetized transfers: From whom to whom?</p> <p>Annual transfer payments from specific form populations to different groups of fee-paying applicants/petitioners for a particular immigration benefit or request.</p>	<p>(3%) \$832,239,426</p> <p>(7%) \$832,239,426</p>	<p>RIA</p>
<p>Annualized monetized transfers: From whom to whom?</p> <p>Annual transfer payments to Government from Fee-Paying applicants/petitions</p>	<p>(3%) \$551,842,481</p> <p>(7%) \$551,842,481</p>	<p>RIA</p>
<p><i>Miscellaneous Analyses/Category</i></p>	<p><i>Effects</i></p>	
<p>Effects on state, local, and/or tribal governments</p>	<p>None</p>	
<p>Effects on small businesses</p>	<p>The fees in this rule will not have a significant economic impact on a substantial number of small entities for entities filing Forms I-129, I-40, I-360, I-910.</p> <p>The impact of this final rule for those entities that file Forms I-129, I-140, I-360, I-910, I-924, and G-1041/1041A that submit petitions on behalf of nonimmigrant and immigrant workers will face an increase or decrease in filing fees.</p> <p>DHS is unable to estimate the number of G-1041 index searches and G-1041A records requests considered small; however, some will receive a reduced fee and savings, by filing online. Therefore, DHS does not currently have sufficient data on the requestors for the genealogy forms to definitively assess the estimate of small entities for these requests. DHS is unable to estimate by how much because DHS does not know how many individuals will have access to a computer and/or internet capability. The case management tracking system used by DHS for genealogy requests does not allow for requestor data to be readily pulled.</p>	
		<p>FRFA and Small Entity Analysis (SEA)</p>

	I-924/I-924A Regional centers are difficult to assess because there is a lack of official data on employment, income, and industry classification for these entities. It is difficult to determine the small entity status of regional centers without such data. Due to the lack of regional center revenue data, DHS assumes regional centers collect revenue primarily through the administrative fees charged to investors.	
Effects on wages	None	None
Effects on Growth	None	None

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, or governmental jurisdictions with populations of less than 50,000.¹³³ A detailed Small Entity Analysis is available in the docket of this rulemaking at <http://www.regulations.gov>.

Individuals, rather than small entities, submit the majority of immigration and naturalization benefit applications and petitions. This final rule will primarily affect entities that file and pay fees for certain immigration benefit requests. Consequently, there are six categories of USCIS benefits that are subject to a small entity analysis for this final rule: Petition for a Nonimmigrant Worker, Form I-129; Immigrant Petition for

¹³³ A small business is 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.

an Alien Worker, Form I-140; Civil Surgeon Designation, Form I-910; Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360; Genealogy Forms G-1041 and G-1041A, Index Search and Records Requests; and the Application for Regional Center Designation Under the Immigrant Investor Program, Form I-924.

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, Form I-910 or Form I-360. 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, Forms G-1041 and G-1041A, to determine whether such filings were made by entities or individuals 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. DHS is publishing this Final Regulatory Flexibility Analysis (FRFA) to respond to public comments and provide further information on the likely impact of this rule on small entities.

1. Final Regulatory Flexibility Analysis (FRFA)

a. A Statement of Need for, and Objectives of, the Rule

DHS issues this final rule consistent with INA section 286(m),¹³⁴ 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

¹³⁴ See 8 U.S.C. 1356(m).

similar services provided without charge to asylum applicants or other immigrants,” and the CFO Act,¹³⁵ 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 2019/2020 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 adjustments are necessary to associated with administering the nation’s lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits, while protecting Americans, securing the homeland, and honoring our values.

b. 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.

Comment: Some commenters wrote that the proposed rate increase would certainly suppress the ability of hundreds of thousands of people to research their family history. These commenters stated this would have a significant economic impact on a substantial number of small entities and prevent businesses from making profits providing information to others.

¹³⁵ See 31 U.S.C. 901-03.

Response: DHS acknowledges the scope of the increase in fees for Form G-1041 and G-1041A. DHS recognizes that some small entities may be impacted by these increased fees but cannot determine how many or the exact impact.¹³⁶ USCIS receives fewer than 10,000 genealogy requests each year, so the fees should not affect hundreds of thousands of people as the commenter mentions.

DHS took into consideration all of the comments pertaining to Form G-1041 Genealogy Index Search Request and G-1041A Genealogy Record Request fees from the proposed and lowered the fees in this final rule. The fee for the Genealogy Index Search Request, Form G-1041 is increasing from \$65 to \$160, an increase of \$95 (146 percent) for those who use the electronic form. The fee for Form G-1041A will increase from \$65 to \$265, an increase of \$200 (308 percent) for those who mail in this request. DHS is setting the fee \$10 lower for requesters who use the electronic version and file this request online. The fee for Form G-1041A is increasing from \$65 to \$255, an increase of \$190 (292 percent) for those who use the electronic form.

In this final rule, DHS adjusts the fees for all categories of Form I-129 to reflect the estimated full cost of adjudication. The evidence provided in the stand-alone Small Entity Analysis available in the docket of this rulemaking suggests that the additional fees in this rule do not impose a significant economic impact on a substantial number of small entities. As for the comment stating that low-wage H-2A agricultural workers would have their fees increased, this rule imposes no fees on H-2A workers because the

¹³⁶ See economic analysis (RIA) Section M *Changes to Genealogy Search and Records Requests* and Section E in the SEA for further detailed information pertaining to the economic impact on small entities.

petitioning entity is prohibited from passing any of the costs of the recruitment, hiring, petitioning, travel or housing to the H-2A worker. DHS declines to make changes in this final rule in response to these comments.

Comment: A commenter said the proposed rule is contrary to the RFA because it fails to take into account the burdens of its regulatory actions on small entities, including small businesses and non-profits. Several commenters stated that USCIS should revise its RFA analysis to consider the economic impact of the proposed rule on small entities that file or pay for any immigration benefits applications.

Response: As required by the RFA, DHS considered whether this rule will have a significant economic impact on a substantial number of small entities. DHS also considered all types of entities as required by the RFA including small businesses, small not for profits, and small governmental jurisdictions that filed petitions with USCIS. The full analysis of these findings are found in the stand-alone Small Entity Analysis for this final rule found in the docket of this rulemaking.

Comment: A commenter said the majority of livestock producers are family businesses that play a critical role in the production of food and fiber products in the United States and require labor during several different periods each year. The commenter stated these businesses must fill out named beneficiary petitions for extension of stay, and that with marginal cost increases between 44 and 87 percent, small business employers will “disproportionately bear the burden” of the proposed fee increases.

Response: This final rule in no way is intended to reduce, limit, or prevent the filing of a request for any specific immigration benefit by any population, industry, or group. DHS agrees that immigrants are an important source of labor in the United States and

contribute to the economy. DHS acknowledges that some employers will pay the increased Form I-129H-2A fee; however, they will only have to submit one petition based on the number of named beneficiaries.

The SEA analyzed the impacts of this rule on entities that were considered small based on employee count or revenue. Entities with missing revenue data were excluded. Among the 346 small entities with reported revenue data, all experienced an economic impact of considerably less than 2 percent with the exception of 11 entities. Those 11 small entities with greater than a 2 percent impact filed multiple petitions and had a low reported revenue. Therefore, these small entities may file fewer petitions as a result of this rule. Depending on the immigration benefit request, the average impact on all 346 small entities with revenue data ranges from -0.12 to 0.63 percent as shown in Table 7, of the SEA. In other words, no matter which version of the newly separated Form I-129 is applicable, the absolute value of the average impact on the described 346 small entities is less than 1 percent. DHS does not believe that the benefit request fees established by this final rule would make an individual forego filling a vacant position rather than submitting a petition for a foreign worker with USCIS.

The SEA outlines using the subscription or public-use databases identified previously. DHS assembled revenue and employment information on these entities and determined that 556, or 85.5 percent of these petitioners met the definition of small entities. Of those that we determined could be classified as small entities, 71 percent had annual revenues of less than a million and approximately 9 percent of them had petitioned for five or more workers over that year. Thus, DHS does not believe that the

final rule will have a significant impact on a substantial number of small entities in any one industry, including agriculture.

Comment: A commenter wrote that the Small Entity Analysis (SEA) presented in the NPRM was inaccurate because it failed to include the proposal's impact on hundreds of non-profit service providers that support LPRs' pursuit of naturalization. The commenter stated that many of these organizations cover costs related to legal consultation and preparation with their own resources, and that the agency should analyze how these organizations would be impacted by the proposal.

Response: Organizations that help applicants complete naturalization applications are not the subject of the regulations being revised in this rule, or the relevant statute, INA section 386(m), 8 U.S.C. 1356(m), which authorizes USCIS to set fees and provide discretionary fee waivers to applicants. *See* 5 U.S.C. 603(b)(4) (requiring only "a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities *which will be subject to the requirement*" (emphasis added)); *see* 5 U.S.C. 603(b)(3) (requiring only "a description of and, where feasible, an estimate of the number of small entities *to which the proposed rule will apply*" (emphasis added)); *see also* *Mid-Tex Elec. Co-op., Inc. v. FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (finding "Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy" and limiting the impact analysis requirement "to small entities subject to the proposed regulation"). Therefore, any impacts on such organizations are too indirect to require inclusion in the SEA since the RFA only requires consideration of direct impacts to small entities. Additionally, the

naturalization applicants themselves are individuals and therefore are not subjects for RFA consideration.

Comment: Another commenter stated that one example of how the rule's cost analysis is unsupported by evidence is USCIS' conclusion that only 1 percent of small businesses would be impacted. The commenter said the methodology used relies upon the *lack* of signups/registrations on several website directories, but nowhere does the agency use the data it actually collects from businesses in every I-129 form submitted (e.g., company size, gross and net income, number of employees requested), all of which the commenter said is readily available within USCIS. Moreover, the commenter said the DOL's Labor Condition Application and Program Electronic Review Management (PERM) usage listing employers and numbers of employees sought shows the top 10–20 users are major corporations, while small and midsize businesses hire between 1–10 people a year, most often one-offs. The commenter said the fact that these companies mostly hire just one worker explains that the overall cost and bureaucracy is a barrier to employer participation.

Response: USCIS does not collect revenue and the number of employees for all categories of Forms I-129, as stated in the stand-alone SEA. Therefore, USCIS relied on a third-party sources (Hoover's, Cortera, Manta, and Guidestar) to obtain this information (see table 4 of the SEA). DHS obtained petitioner data filed for Forms I-129 from internal databases for fiscal year 2017 (FY 2017), spanning from October 2016 to September 2017.¹³⁷ This petitioner data included the employer firm name, city, state, ZIP

¹³⁷ Source: DHS, USCIS, Office of Performance and Quality.

code, employer identification number (EIN)¹³⁸, number/type of filing, and petitioner or beneficiary name. Filing data did not include information needed to classify the entity according to size standards, such as revenue or number of employees, so DHS used third party sources to obtain this information. Therefore, for the analysis of the effects on Forms I-129, DHS used several data sources to capture information on the characteristics of entities required to pay these fees.

One of the databases used by USCS was Hoover's online database of U.S. entities, a subscription service of Dun & Bradstreet. Hoover's covers millions of companies and uses revenue from several years and is one of the largest and most respected databases of company data. A majority of the entities in the SEA sample size were found in Hoovers. From these sources, DHS determined the North American Industry Classification System (NAICS) code,¹³⁹ revenue, and employee count for each entity in the sample. A list of NAICS codes for each entity matched in Forms I-129, I-140, I-910 and I-360 can be found in Appendix A, along with the SBA threshold for each industry cluster.¹⁴⁰ In order to determine an entity's size, DHS first classified each entity by its NAICS code, and then used the SBA size standards to compare the requisite revenue or employee count threshold for each entity. Based on the NAICS code, some entities are classified as small based on their annual revenue and some based on the number of employees. Comment: A commenter wrote these fees would

¹³⁸ An Employer Identification Number (EIN) is a nine-digit number that U.S. Internal Revenue Service assigns in the following format: XX-XXXXXXX. It is used to identify the tax accounts of employers. Employer Identification Number, p 2. <https://www.irs.gov/pub/irs-pdf/p1635.pdf>.

¹³⁹ U.S. Census Bureau, NAICS code listing: <http://www.census.gov/eos/www/naics/>.

¹⁴⁰ SBA size standards effective October, 2017. Visited April, 2018. https://www.naics.com/wp-content/uploads/2017/10/SBA_Size_Standards_Table.pdf.

disproportionately affect small religious organizations that serve a charitable function in our society.

Response: DHS disagrees that these fees would disproportionately affect small religious organizations. USCIS used internal data as indicated below in section (B)(1)(d), of the FRFA, including entities who petition on behalf of foreign religious workers. DHS used the same databases mentioned previously to search for information on revenue and employee count. DHS used the same method as with Forms I-129 and I-140 to conduct the SEA based on a representative sample of the impacted population. As detailed in Section of D of the SEA, DHS determined that, based on the standard statistical formula, 420 randomly selected entities from a population of 760 unique entities filed Form I-360 petitions. Therefore, DHS was able to classify 388 of 420 entities as small entities that filed Form I-360 petitions, including combined non-matches (5), matches missing data (74), and small entity matches (309). DHS also used the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar). The 74 matches missing data that were found in the databases lacked revenue or employee count data. DHS determined that 388 out of 420 (92.4 percent) entities filing Form I-360 petitions were small entities.

Similar to other forms analyzed in this RFA, DHS calculated the economic impact of this rule on entities that filed Form I-360 by estimating the total costs associated with the final fee increase for each entity. Among the 309 small entities with reported revenue data, each would experience an economic impact considerably less than 1.0 percent. The greatest economic impact imposed by this final fee change totaled 0.35 percent and the smallest totaled 0.000002 percent. The average impact on all 309 small entities with

revenue data was 0.01 percent. DHS also analyzed the final costs of this rule on the petitioning entities relative to the costs of the typical employee's salary. Guidelines suggested by the 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.¹⁴¹ According to the Bureau of Labor Statistics (BLS), the mean annual salary is \$53,290 for clergy,¹⁴² \$46,980 for directors of religious activities and education,¹⁴³ and \$35,860 for other religious workers.¹⁴⁴ Based on an average of 1.5 religious workers¹⁴⁵ petitioned for per entity, the additional average annual cost would be \$22 per entity.¹⁴⁶ The additional costs per entity in this final rule represent only 0.04 percent of the average annual salary for clergy, 0.05 percent of the average annual salary for directors of religious activities and education, and 0.06 percent of the average annual salary for all other religious workers.¹⁴⁷ Therefore, using average annual labor cost guidelines, the additional regulatory compliance costs in this final rule are not significant.

¹⁴¹ Office of Advocacy, Small Business Administration, "A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act", page 19:

<https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf>

¹⁴² Bureau of Labor Statistics, U.S. Department of Labor, "Occupational Employment Statistics, May 2018, "Clergy": <https://www.bls.gov/oes/2018/may/oes212011.htm>

¹⁴³ Bureau of Labor Statistics, U.S. Department of Labor, "Occupational Employment Statistics, May 2018, "Directors of Religious Activities and Education": <https://www.bls.gov/oes/2018/may/oes212099.htm>

¹⁴⁴ Bureau of Labor Statistics, U.S. Department of Labor, "Occupational Employment Statistics, May 2018, "Religious Workers, All Other": <https://www.bls.gov/oes/2018/may/oes212099.htm>.

¹⁴⁵ USCIS calculated the average filing per entity of 1.5 petitions, from the Form I-360 Sample with Petition Totals in Appendix E, of the SEA for the U.S. Citizenship and Immigration Services Fee Schedule NPRM. Calculation: (total number of petitions from each sample id) / (total number of sample Form I-360 petitions) = 618/420 = 1.5 average petitions filed per entity.

¹⁴⁶ Calculation: 1.5 average petitions per entity * \$15 increase in petition fees = approximately \$22 additional total cost per entity.

¹⁴⁷ Calculation: \$22 per entity / \$53,290 clergy salary x 100 = .04 percent;

\$22 per entity / \$46,980 directors of religious activities and education x 100 = .05 percent;

\$22 per entity / \$35,860 other religious workers x 100 = .06 percent.

c. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the rule, and a detailed statement of any change made to the final rule as a result of the comments.

No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA).

d. 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 rule are those that file and pay fees for certain immigration benefit applications and petitions on behalf of a foreign national. These applications include Form I-129, Petition for a Nonimmigrant Worker; Form I-140, Immigrant Petition for an Alien Worker; Form I-910, Civil Surgeon Designation; Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant; Genealogy Forms G-1041 and G-1041A, Index Search and Records Requests; and Form I-924, Application for Regional Center Designation Under the Immigrant Investor Program. Annual numeric estimates of the small entities impacted by this fee increase total (in parentheses): Form I-129 (77,571 entities), Form I-140 (22,165 entities), Form I-910 (428 entities), and Form I-360 (698 entities).¹⁴⁸ DHS was not able to determine the numbers of regional centers or

¹⁴⁸ Calculation: 90,726 Form I-129 * 85.5 percent = 77,571 small entities; 30,321 Form I-140 * 73.1 percent = 22,165 small entities; 476 Form I-910 * 90.0 percent = 428 small entities; 760 Form I-360 * 91.9 percent = 698 small entities.

genealogy requestors that would be considered small entities, therefore does not provide numeric estimates for Form I-924 or Forms G-1041 and G-1041A.¹⁴⁹

This rule applies to small entities, including businesses, non-profit organizations, and governmental jurisdictions filing for the above benefits. Forms I-129 and I-140, will see a number of industry clusters impacted by this rule. *See* Appendix A of the SEA for a list of impacted industry codes for Forms I-129, I-140, I-910, and I-360. Of the total 650 small entities in the sample for Form I-129, most entities were small businesses (556 or 85.5 percent) with 41 small not-for-profit entities and only 4 small governmental jurisdictions. Similarly, of the total 550 small entities in the sample for Form I-140, most entities were small businesses (402 or 73.1 percent) with 6 small not-for-profit entities and 0 small governmental jurisdictions. The fee for the application for civil surgeon designation (Form I-910) will apply to physicians requesting such designation. There were 300 small entities in the sample for Form I-910, consisting of 270 small governmental jurisdictions and 270 (or 90 percent) small entities that were either small businesses or small not-for-profits. The fee for Amerasian, widow(er), or special immigrants will apply to any entity petitioning on behalf of a religious worker. Finally, Form I-924 will impact any entity seeking designation as a regional center under the Immigrant Investor Program or filing an amendment to an approved regional center application. Captured in the dataset for Form I-924 is also Form I-924A, which regional centers must file annually to establish continued eligibility for regional center designation for each fiscal year.

¹⁴⁹ Small entity estimates are calculated by multiplying the population (total annual receipts for the USCIS form) by the percentage of small entities, which are presented in subsequent sections of this analysis.

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 individuals¹⁵⁰. If professional genealogists and researchers submitted such requests in the past, they did not identify themselves as commercial requestors and therefore could not be segregated within the pool of 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. DHS assumes genealogists have access to a computer and the Internet. DHS is unable to estimate the online number of index searches and records requests; however, some will receive a reduced fee and cost savings, by filing online. Therefore, DHS does not currently have sufficient data on the requestors for the genealogy forms to definitively assess the estimate of small entities for these requests. though DHS is unable to estimate by how much because DHS does not know how many individuals will have access to a computer and/or internet capability.

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

DHS is separating Form I-129, Petition for a Nonimmigrant Worker, into several forms with different corresponding fees, from the previous \$460. Currently, employers may use Form I-129, to petition for CW, E, H-1B, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, Q-1, or R-1 nonimmigrant workers. As applicable, employers also may use Form I-129 to apply for E-1, E-2, E-3, or TN nonimmigrant

¹⁵⁰ See Genealogy Program, 73 FR 28026 (May 15, 2008) (final rule).

status for eligible workers. DHS is separating the Petition for a Nonimmigrant Worker, Form I-129, into several forms. These forms will include information from the various supplemental forms for specific types of workers. DHS will have different fees for these new forms. The final fees are calculated at a more detailed level than the current fees.

The current fee for Form I-129 is \$460. DHS will impose the following fees for new Forms I-129 (separated into new forms by worker type):

- Form I-129H1, Petition for Nonimmigrant Worker: H-1 Classifications - \$555
- Form I-129H2A, Petition for Nonimmigrant Worker: H-2A Classification (Named Beneficiaries) - \$850
- Form I-129H2B, Petition for Nonimmigrant Worker: H-2B Classification (Named Beneficiaries) - \$715
- Form I-129L, Petition for Nonimmigrant Worker: L Classifications - \$805
- Form I-129O, Petition for Nonimmigrant Worker: O Classifications - \$705
- I-129E&TN, Application for Nonimmigrant Worker: E and TN Classifications; and I-129MISC, Petition for Nonimmigrant Worker: H-3, P, Q, or R Classification - \$695
- Form I-129H2A, Petition for Nonimmigrant Work Classification: H-2A Classification (Unnamed Beneficiaries) - \$415
- Form I-129H2B, Petition for Nonimmigrant Worker: H-2B Classification (Unnamed Beneficiaries) - \$385.

For petitioners filing Form I-129 for H-2A and H-2B workers with only unnamed beneficiaries, DHS will impose a lower fee than the current filing fee. DHS will increase the fee when filed for all other worker types. The fee adjustments and percentage increases or decreases are summarized in Table 9.

Immigration Benefit Request	Current Fee	Final Fee	Fee Increase/Decrease	Percent Change
Form I-129H1 – Named Beneficiaries	\$460	\$555	\$95	21
Form I-129H2A – Named Beneficiaries	\$460	\$850	\$390	85
Form I-129H2A – Unnamed Beneficiaries	\$460	\$415	-\$45	-10
Form I-129H2B – Named Beneficiaries	\$460	\$715	\$255	55
Form I-129H2B – Unnamed Beneficiaries	\$460	\$385	-\$75	-16
Form I-129O	\$460	\$705	\$245	53
Form I-129 L1A/L1B/LZ Blanket	\$460	\$805	\$345	75
Forms I-129CW, I-129E&TN, and I-129MISC	\$460	\$695	\$235	51

Source: USCIS FY 2019/2020 Final Fee Schedule (see preamble).

Using a 12-month period of data on the number of Form I-129 petitions filed from October 1, 2016 to September 31, 2017, DHS collected internal data for each filing organization including the name, Employer Identification Number (EIN), city, state, zip code, and number/type of filings. Each entity may make multiple filings. For instance, there were receipts for 530,442 Form I-129 petitions, but only 90,726 unique entities that filed those petitions. Since the filing statistics do not contain information such as the revenue of the business, DHS used third party sources of data to collect this information. DHS used a subscription-based, online database—Hoover’s—as well as three open-access databases—Manta, Cortera, and Guidestar—to help determine an organization’s

small entity status and then applied Small Business Administration size standards to the entities under examination.¹⁵¹

The method DHS used to conduct the SEA was based on a representative sample of the impacted population with respect to each form. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 384 entities, which included using a 95 percent confidence level and a 5 percent confidence interval for a population of 90,726 unique entities filing Form I-129 petitions. Based on previous experience conducting small entity analyses, DHS expects to find 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, DHS selected a sample size that was approximately 69 percent larger than the necessary minimum to allow for non-matches (filing entities that could not be found in any of the four databases). Therefore, DHS conducted searches on 650 randomly selected entities from a population of 90,726 unique entities that filed Form I-129 petitions.

Of the 650 searches for small entities that filed Form I-129 petitions, 473 searches returned a successful match of a filing entity's name in one of the databases and 177 searches did not match a filing entity. Based on previous experience conducting regulatory flexibility analyses, DHS assumes filing entities not found in the online database are likely to be small entities. As a result, in order to prevent underestimating the number of small entities this rule would affect, DHS conservatively considers all of the non-matched entities as small entities for the purpose of this analysis. Among the 473

¹⁵¹ U.S. Small Business Administration, Office of Advocacy, Size Standards Table effective August 19, 2019. Available at <https://www.sba.gov/document/support--table-size-standards>.

matches for Form I-129, DHS determined 346 to be small entities based on revenue or employee count and according to their assigned North American Industry Classification System (NAICS) code. Therefore, DHS was able to classify 556 of 650 entities as small entities that filed Form I-129 petitions, including combined non-matches (177), matches missing data (33), and small entity matches (346). Using the subscription-based, online databases mentioned above (Hoover’s, Manta, Cortera, and Guidestar), the 33 matches missing data found in the databases lacked applicable revenue or employee count data.

DHS determined that 556 of 650 (85.5 percent) of the entities filing Form I-129 petitions were small entities. Furthermore, DHS determined that 346 of the 650 entities searched were small entities based on sales revenue data, which were needed to estimate the economic impact of this final rule. Since these 346 small entities were a subset of the random sample of 650 entity 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 final fee increase for each entity and divided that amount by the sales revenue of that entity.¹⁵² Based on the final fee increases for Form I-129, DHS calculated the average economic impact on the 346 small entities with revenue data as summarized in Table 10.

Table 10: Economic Impacts on Small Entities with Revenue Data		
Immigration Benefit Request	Fee Increase / Decrease	Average Impact Percentage
Form I-129H1	\$95	0.15
Form I-129H2A – Named Beneficiaries	\$390	0.63
Form I-129H2A – Unnamed Beneficiaries	-\$45	-0.07
Form I-129H2B – Named Beneficiaries	\$255	0.41
Form I-129H2B – Unnamed Beneficiaries	-\$75	-0.12

¹⁵² Total Economic Impact to Entity = (Number of Petitions Submitted per Entity * \$X difference in current fee from final fee) / Entity Sales Revenue.

Form I-129L	\$345	0.56
Form I-129O	\$245	0.40
Forms I-129CW, I-129E&TN, and I-129MISC	\$235	0.38
Source: USCIS calculation.		

Among the 346 small entities with reported revenue data, all experienced an economic impact of considerably less than 2 percent with the exception of 11 entities. Those 11 small entities with greater than a 2 percent impact filed multiple petitions and had a low reported revenue, for any immigration benefit request made using separate Forms I-129. Therefore, these small entities may file fewer petitions as a result of this rule. Depending on the type of immigration benefit request, the average impact on all 346 small entities with revenue data ranges from -0.12 to 0.63 percent, as shown in the supporting comprehensive SEA. Therefore, the average economic impact on the described 346 small entities is less than 1 percent, regardless of which newly separate Form I-129 petition is applicable. The evidence suggests that the changes in fees imposed by this rule do not represent a significant economic impact on these entities.

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

USCIS is decreasing the fee to file Immigrant Petition for an Alien Worker, Form I-140, from \$700 to \$555, a decrease of \$145 (21 percent). Using a 12-month period of data on the number of Form I-140 petitions filed from October 1, 2016 to September 31, 2017, DHS collected internal data similar to that of Form I-129. The total number of Form I-140 petitions filed was 139,439, with 30,321 unique entities that filed petitions. DHS used the same databases previously mentioned to search for information on revenue and employee count.

DHS used the same method as with Form I-129 to conduct the SEA based on a representative sample of the impacted population. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 383 entities, which included using a 95 percent confidence level and a 5 percent confidence interval on a population of 30,321 unique entities for Form I-140 petitions. Based on previous experience conducting small entity analyses, DHS expected to find 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, DHS selected a sample size that was approximately 44 percent larger than the necessary minimum to allow for non-matches (filing entities that could not be found in any of the four databases). Therefore, DHS conducted searches on 550 randomly selected entities from a population of 30,321 unique entities that filed Form I-140 petitions.

Of the 550 searches for small entities that filed Form I-140 petitions, 480 searches successfully matched the name of the filing entity to names in the databases and 70 searches did not match the name of a filing entity. Based on previous experience conducting regulatory flexibility analyses, DHS assumes filing entities not found in the online databases are likely to be small entities. As a result, in order to prevent underestimating the number of small entities this rule would affect, DHS conservatively considers all of the non-matched entities as small entities for the purpose of this analysis. Among the 480 matches for Form I-140, DHS determined 324 to be small entities based on revenue or employee count and according to their NAICS code. Therefore, DHS was able to classify 402 of 550 entities as small entities that filed Form I-140 petitions, including combined non-matches (70), matches missing data (8), and small entity

matches (324). Using the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar), the 8 matches missing data that were found in the databases lacked applicable revenue or employee count statistics.

DHS determined that 402 out of 550 (73.1 percent) entities filing Form I-140 petitions were small entities. Furthermore, DHS determined that 324 of the 550 searched were small entities based on sales revenue data, which were needed to estimate the economic impact of the final rule. Since these 324 were a small entity subset of the random sample of 550 entity searches, they were considered statistically significant in the context of this research. Similar to Form I-129, DHS calculated the economic impact of this rule on entities that filed Form I-140 by estimating the total cost savings associated with the final fee decrease for each entity and divided that amount by sales revenue of that entity.

Among the 324 small entities with reported revenue data, each would experience an economic impact of less than -2 percent. Using the above methodology, the greatest economic impact by this fee change totaled -1.74 percent and the smallest totaled -0.00000006 percent, resulting in a cost savings as shown in the supporting comprehensive SEA. The average impact on all 324 small entities with revenue data was -0.06 percent. Because of the fee decrease, these small entities will see a cost savings per application in filing fees based on petitions. The negative number represents cost savings to the petitioner. Therefore, the larger it is, the greater the cost savings for the petitioners. The average impact on all 324 small entities with revenue data was -0.06 percent. The evidence suggests that the decreased fee in this final rule does not represent a significant economic impact on these entities.

In addition to the individual Form I-129 and Form I-140 analyses, USCIS analyzed any cumulative impacts of these form types to determine if there were any impacts to small entities when analyzed together. USCIS isolated those entities that overlapped in both samples of Forms I-129 and I-140 by EIN. Only 1 entity had an EIN that overlapped in both samples; this was a small entity that submitted 3 Form I-129 petitions and 1 Form I-140 petition. Due to little overlap in entities in the samples and the relatively minor impacts on revenue of fee increases of Forms I-129 and I-140, USCIS does not expect the combined impact of these two forms to be an economically significant burden on a substantial number of small entities.

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

By law, a civil surgeon is a physician designated by USCIS to conduct immigration medical examinations for individuals applying for an immigration benefit in the United States. Form I-910 is used by a physician to request that USCIS designate him or her as a civil surgeon to perform immigration medical examinations in the United States and complete USCIS Form I-693, Report of Medical Examination and Vaccination Record.

DHS is decreasing the fee for Civil Surgeon Designations, Form I-910, from \$785 to \$635, a decrease of \$150 (19 percent). Using a 12-month period of data from October 1, 2016 to September 31, 2017, DHS reviewed collected internal data for Form I-910 filings. The total number of Form I-910 applications was 757, with 476 unique entities that filed applications. The third-party databases mentioned previously were used again to search for revenue and employee count information.

Using the same methodology as the Forms I-129 and I-140, USCIS conducted the SEA based on a representative sample of the impacted population. To identify a

representative sample, DHS used a standard statistical formula to determine a minimum sample size of 213 entities, which included using a 95 percent confidence level and a 5 percent confidence interval on a population of 476 unique entities for Form I-910.

USCIS conducted searches on 300 randomly selected entities from a population of 476 unique entities for Form I-910 applications, a sample size approximately 40 percent larger than the minimum necessary.

Of the 300 searches for small entities that filed Form I-910 applications, 266 searches successfully matched the name of the filing entity to names in the databases and 34 searches did not match the name of a filing entity. DHS assumes filing entities not found in the online databases are likely to be small entities. DHS also assumes all of the non-matched entities as small entities for the purpose of this analysis. Among the 266 matches for Form I-910, DHS determined 189 to be small entities based on their revenue or employee count and according to their NAICS code. Therefore, DHS was able to classify 270 of 300 entities as small entities that filed Form I-910 applications, including combined non-matches (34), matches missing data (47), and small entity matches (189). DHS also used the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar), and the 8 matches missing data that were found in the databases lacked revenue or employee count statistics.

DHS determined that 270 out of 300 (90 percent) entities filing Form I-910 applications were small entities. Furthermore, DHS determined that 189 of the 300 entities searched were small entities based on sales revenue data, which were needed in order to estimate the economic impact of this final rule. Since the 189 entities were a

small entity subset of the random sample of 300 entity searches, they were statistically significant in the context of this research.

Similar to the Forms I-129 and I-140, DHS calculated the economic impact of this rule on entities that filed Form I-910 by estimating the total savings associated with the final fee decrease for each entity and divided that amount by sales revenue of that entity. Among the 189 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0 percent. The greatest economic impact imposed by this final fee change totaled -1.50 percent and the smallest totaled -0.001 percent. The average impact on all 189 small entities with revenue data was -0.116 percent. The decreased fee will create cost savings for the individual applicant of \$150. The negative number represents cost savings to the applicant. Therefore, the larger it is, the greater the cost savings for the applicants. The evidence suggests that the decreased fee by this final rule does not represent a significant economic impact on these entities.

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

DHS is increasing the fee for applicants who file using Form I-360 from \$435 to \$450, an increase of \$15 (4 percent), including entities who petition on behalf of foreign religious workers. Using a 12-month period of data on the number of Form I-360 petitions filed from October 1, 2016 to September 31, 2017, DHS collected internal data on filings of Form I-360 petitioners who file for foreign religious workers. The total number of Form I-360 petitions was 2,446, with 760 unique entities that filed petitions. DHS used the same databases mentioned previously to search for information on revenue and employee count.

DHS used the same method as with Forms I-129 and I-140 to conduct the SEA based on a representative sample of the impacted population. To identify a representative sample, DHS used a standard statistical formula to determine a minimum sample size of 332 entities, which included using with a 95 percent confidence level and a 5 percent confidence interval on a population of 760 unique entities for Form I-360 petitions. To account for missing organizations in the online subscription and public databases, DHS selected a sample size that was approximately 27 percent larger than the necessary minimum to allow for non-matches (filing entities that could not be found in any of the four databases). Therefore, DHS conducted searches on 420 randomly selected entities from a population of 760 unique entities that filed Form I-360 petitions.

Of the 420 searches for small entities that filed Form I-360 petitions, 415 searches successfully matched the name of the filing entity to names in the databases and 5 searches did not match the name of the filing entities in the databases. DHS assumes that filing entities not found in the online databases are likely to be small entities. As a result, in order to prevent underestimating the number of small entities this rule would affect, DHS conservatively assumes to consider all of the non-matched entities as small entities for the purpose of this analysis. Among the 415 matches for Form I-360, DHS determined 309 to be small entities based on revenue or employee count and according to their NAICS code. Therefore, DHS was able to classify 388 of 420 entities as small entities that filed Form I-360 petitions, including combined non-matches (5), matches missing data (74), and small entity matches (309). DHS also used the subscription-based, online databases mentioned above (Hoover's, Manta, Cortera, and Guidestar), the 74

matches missing data that were found in the databases lacked revenue or employee count data.

DHS determined that 388 out of 420 (92.4 percent) entities filing Form I-360 petitions were small entities. Furthermore, DHS determined that 309 of the 420 searched were small entities based on sales revenue data, which were needed to estimate the economic impact of this final rule. Since 309 small entities were a subset of the random sample of 420 entity searches, they were statistically significant in the context of this research.

Similar to other forms analyzed in this RFA, DHS calculated the economic impact of this rule on entities that filed Form I-360 by estimating the total costs associated with the final fee increase for each entity. Among the 309 small entities with reported revenue data, each would experience an economic impact considerably less than 1.0 percent. The greatest economic impact imposed by this final fee change totaled 0.35 percent and the smallest totaled 0.000002 percent. The average impact on all 309 small entities with revenue data was 0.01 percent.

DHS also analyzed the final costs of this rule on the petitioning entities relative to the costs of the typical employee's salary. Guidelines suggested by the 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.¹⁵³ According

¹⁵³ Office of Advocacy, Small Business Administration, "A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act", page 19:
<https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf>

to the Bureau of Labor Statistics (BLS), the mean annual salary is \$53,290 for clergy,¹⁵⁴ \$46,980 for directors of religious activities and education,¹⁵⁵ and \$35,860 for other religious workers.¹⁵⁶ Based on an average of 1.5 religious workers¹⁵⁷ petitioned for per entity, the additional average annual cost would be \$22 per entity.¹⁵⁸ The additional costs per entity in this final rule represent only 0.04 percent of the average annual salary for clergy, 0.05 percent of the average annual salary for directors of religious activities and education, and 0.06 percent of the average annual salary for all other religious workers.¹⁵⁹ Therefore, using average annual labor cost guidelines, the additional regulatory compliance costs in this final rule are not significant.

e. Genealogy Requests. Genealogy Index Search Request Form G-1041 and Genealogy Record Request, Form G-1041A

DHS is increasing the fee to file both types of genealogy requests: Form G-1041, Genealogy Index Search Request, and Form G-1041A, Genealogy Record Request. The fee to file Form G-1041 will increase from \$65 to \$170, an increase of \$105 (162 percent increase) for those who mail in this request on paper. In this rule, increases the fee for

¹⁵⁴ Bureau of Labor Statistics, U.S. Department of Labor, “Occupational Employment Statistics, May 2018, “Clergy”: <https://www.bls.gov/oes/2018/may/oes212011.htm>

¹⁵⁵ Bureau of Labor Statistics, U.S. Department of Labor, “Occupational Employment Statistics, May 2018, “Directors of Religious Activities and Education”: <https://www.bls.gov/oes/2018/may/oes212099.htm>

¹⁵⁶ Bureau of Labor Statistics, U.S. Department of Labor, “Occupational Employment Statistics, May 2018, “Religious Workers, All Other”: <https://www.bls.gov/oes/2018/may/oes212099.htm>.

¹⁵⁷ USCIS calculated the average filing per entity of 1.5 petitions, from the Form I-360 Sample with Petition Totals in Appendix E, of the SEA for the U.S. Citizenship and Immigration Services Fee Schedule NPRM. Calculation: (total number of petitions from each sample id) / (total number of sample Form I-360 petitions) = 618/420 = 1.5 average petitions filed per entity.

¹⁵⁸ Calculation: 1.5 average petitions per entity * \$15 increase in petition fees = approximately \$22 additional total cost per entity.

¹⁵⁹ Calculation: \$22 per entity / \$53,290 clergy salary x 100 = .04 percent;
\$22 per entity / \$46,980 directors of religious activities and education x 100 = .05 percent;
\$22 per entity / \$35,860 other religious workers x 100 = .06 percent.

requestors who use the online electronic Form G-1041 version from the current \$65 to \$160, an increase of \$95 (146 percent). The fee for Form G-1041A will increase from \$65 to \$265, an increase of \$200 (308 percent) for those who mail in this request on paper. The fee for Form G-1041A is increasing from \$65 to \$255, an increase of \$190 (292 percent) for those who use the electronic form.

Based on DHS records for calendar years 2013 to 2017, there was an annual average of 3,840 genealogy index search requests made using Form G-1041 and there was an annual average of 2,152 genealogy records requests made using Form G-1041A. DHS does not have sufficient data on the requestors for the genealogy forms to determine if entities or individuals submitted these requests.

DHS has previously determined that individuals usually make requests for historical records.¹⁶⁰ If professional genealogists and researchers submitted such requests in the past, they did not identify themselves as commercial requestors and, therefore, DHS could not separate these data from the dataset. 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 currently does not have sufficient data to definitively assess the impact on small entities for these requests.

However, DHS must still recover the full costs of this program. As stated in the preamble to this rule, reducing the filing fee for any one benefit request submitted to

¹⁶⁰ See “Establishment of a Genealogy Program; Proposed Rule,” 71 FR 20357 - 20368 (April 20, 2006). Available at: <https://www.regulations.gov/document?D=USCIS-2006-0013-0001>.

DHS simply transfers the additional cost to process this request to other immigration and naturalization filing fees.

For this rule, DHS is expanding the use of electronic genealogy requests to encourage requesters to use the electronic versions of Form G-1041 and Form G-1041A. DHS is changing the search request process so that USCIS may provide requesters with electronic records, if they exist, in response to the initial index request. These final changes may reduce the time it takes to request and receive genealogy records, and, in some cases, it will eliminate the need to make multiple search requests and submit separate fees. Moreover, DHS notes that providing digital records in response to a Form G-1041 request may reduce the number of Form G-1041A requests that will be filed because there would already be a copy of the record if it was previously digitized. As a result, the volume of Form G-1041A requests USCIS receives may decrease, though DHS is unable to estimate by how much. DHS recognizes that some small entities may be impacted by these proposed increased but cannot determine how many or the exact impact.

DHS recognizes that some small entities may be impacted by these increased fees but cannot determine how many or the exact impact.

f. Regional Center Under the Immigrant Investor Program, Form I-924 and I-924A

As part of the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), Congress established the EB-5 immigrant visa classification to incentivize employment creation in the United States. Under the EB-5 program, lawful permanent resident (LPR) status is available to foreign nationals who invest the required amount in a

new commercial enterprise that will create at least 10 full-time jobs in the United States. *See* INA section 203(b)(5), 8 U.S.C. 1153(b)(5). A foreign national may also invest a lower amount in a targeted employment area defined to include rural areas and areas of high unemployment. *Id.*; 8 CFR 204.6(f). The INA allots 9,940 immigrant visas each fiscal year for foreign nationals seeking to enter the United States under the EB-5 classification.¹⁶¹ *See* INA section 201(d), 8 U.S.C. 1151(d); INA section 203(b)(5), 8 U.S.C. 1153(b)(5). Not fewer than 3,000 of these visas must be reserved for foreign nationals investing in targeted employment areas. *See* INA section 203(b)(5)(B), 8 U.S.C. 1153(b)(5)(B).

Enacted in 1992, section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, 106 Stat. 1828 (Oct. 6, 1992), established a pilot program that requires the allocation of a limited number of EB-5 immigrant visas to individuals who invest through DHS-designated regional centers.¹⁶² Under the Regional Center Program, foreign nationals base their EB-5 petitions on investments in new commercial enterprises located within USCIS-designated “regional centers.” DHS regulations define a regional center as an economic unit, public or private, that promotes economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. *See* 8 CFR 204.6(e). While all EB-5 petitioners go through the same petition process, those petitioners participating in the Regional Center Program may meet

¹⁶¹ An immigrant investor, his or her spouse, and children (if any) will each use a separate visa number.

¹⁶² Current law requires that DHS annually set aside 3,000 EB-5 immigrant visas for regional center investors. Pub. L. 105-119, sec. 116, 111 Stat. 2440 (Nov. 26, 1997). If this full annual allocation is not used, remaining visas may be allocated to foreign nationals who do not invest in regional centers.

statutory job creation requirements based on economic projections of either *direct* or *indirect* job creation, rather than only on jobs directly created by the new commercial enterprise. *See* 8 CFR 204.6(j)(4)(iii), (m)(3). As of August 12, 2019, there were 826 USCIS-approved Regional Centers.¹⁶³ Requests for regional center designation must be filed with USCIS on Form I-924, Application for Regional Center Designation Under the Immigrant Investor Program. *See* 8 CFR 204.6(m)(3)-(4). Once designated, regional centers must provide USCIS with updated information to demonstrate continued eligibility for the designation by submitting a Form I-924A, Annual Certification of Regional Center, on an annual basis or as otherwise requested. *See* 8 CFR 204.6(m)(6)(i)(B).

DHS will not adjust the fee for Form I-924. The current fee to file Form I-924 is \$17,795. However, DHS is increasing the fee for Form I-924A from \$3,035 to \$4,465 per filing, an increase of \$1,430 (47 percent). Using a 12-month period of data on the number of Forms I-924 and I-924A from October 1, 2016 to September 31, 2017, DHS collected internal data on these forms. DHS received a total of 280 Form I-924 applications and 847 Form I-924A applications.

Regional centers are difficult to assess because there is a lack of official data on employment, income, and industry classification for these entities. It is difficult to determine the small entity status of regional centers without such data. Such a determination is also difficult because regional centers can be structured in a variety of

¹⁶³ USCIS Immigrant Investor Regional Centers: <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers> (last reviewed/updated Aug. 20, 2019).

different ways and can involve multiple business and financial activities, some of which may play a direct or indirect role in linking investor funds to new commercial enterprises and job-creating projects or entities.

Regional centers also pose a challenge for analysis as the 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. In the past, DHS has attempted to treat the regional centers similar to the other entities in this analysis. DHS was not able to identify most of the entities in any of the public or private 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 \$900,000 for TEA projects or \$1.8 million for a non-TEA projects per investor)¹⁶⁴ that get invested into an NCE. 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 primarily through the administrative fees charged to investors.

¹⁶⁴ U.S. Department of Homeland Security, USCIS – EB-5 Immigrant Investor Program Modernization, Final Rule. *See* 84 FR 35750. Dated July 24, 2019. Available at <https://www.govinfo.gov/content/pkg/FR-2019-07-24/pdf/2019-15000.pdf>. This amount by investor is determined between a designated Target Employment Area and non-Target Employment Area.

The information provided by regional centers as part of the Forms I-924 and I-924A does not include adequate data to allow DHS to reliably identify the small entity status of individual applicants. Although regional center applicants typically report the NAICS codes associated with the sectors they plan to direct investor funds toward, these codes do not necessarily apply to the regional centers themselves. In addition, information provided to DHS concerning regional centers generally does not include regional center revenues or employment.

DHS was able to obtain some information under some specific assumptions in an attempt to analyze the small entity status of regional centers.¹⁶⁵ In the DHS final rule “EB-5 Immigrant Investor Program Modernization,” DHS analyzed the estimated administrative fees and revenue amounts for regional centers. DHS found both the mean and median for administrative fees to be \$50,000 and the median revenue amount to be \$1,250,000 over the period fiscal years 2014 to 2017. DHS does not know the extent to which these regional centers can pass along the fee increases to the individual investors. Passing along the costs from this rule can reduce or eliminate the economic impacts to the regional centers. While DHS cannot definitively claim there is no significant economic impact to these small entities based on existing information, DHS would assume existing regional centers with revenues equal to or less than \$446,500 per year (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

¹⁶⁵ The methodology used to analyze the small entity status of regional centers is explained in further detail in Section D of the RFA section within DHS final rule “EB-5 Immigrant Investor Program Modernization,” available at 84 FR 35750.

fee increase that represents 1 percent of annual revenue is a “significant” economic burden under the RFA.¹⁶⁶

e. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

This final rule imposed lower or higher fees for filers of Forms I-129. DHS is changing the following fees for new Forms I-129 (separated into new forms by worker type). The new fee structure as it applies to the small entities outline above, resulting the following fees: I-129H1 (\$555), I-129H2A (Named Beneficiaries, \$850) I-129H2A (Unnamed Beneficiaries, \$415), I-129H2B (Named, \$715), I-129H2B (Unnamed, \$385), I-129O (\$705), I-129L (\$805), I-129CW (\$695), I-129E&TN (\$695), I-129MISC (Includes H-3, P, Q, or R Classifications, \$695), I-140 (\$555), I-910 (\$635), I-924 (\$17,795), I-924A (\$4,465), Form I-360 (\$450), G-1041 (\$170 paper, \$160 online) and G-1041A (\$265 paper, \$255 online). This final rule does not require any new professional skills for reporting.

¹⁶⁶ Calculation: 1 percent of \$446,500 = \$4,465 (the new fee for Form I-924A).

f. 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 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 final rule, significant operational changes to USCIS would be necessary. Given current filing volume 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 could 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.

For reasons explained more fully elsewhere in the preamble to the final rule, DHS chose the approach contained in this final rule.

C. Congressional Review Act

DHS has sent this final rule to the Congress and to the Comptroller General under the Congressional Review Act, 5 U.S.C. 801 *et seq.* The Administrator of the Office of Information and Regulatory Affairs has determined that this final rule is a “major rule” within the meaning of the Congressional Review Act. This rule will be effective at least 60 days after the date on which Congress receives a report submitted by DHS under the Congressional Review Act, or 60 days after the final rule’s publication, whichever is later.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written

statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The inflation-adjusted value equivalent of \$100 million in 1995 adjusted for inflation to 2019 levels by the Consumer Price Index for All Urban Consumers (CPI-U) is approximately \$168 million based on the Consumer Price Index for All Urban Consumers.¹⁶⁷

While this final rule may result in the expenditure of more than \$100 million by the private sector annually, the rulemaking is not a “Federal mandate” as defined for UMRA purposes.¹⁶⁸ 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.¹⁶⁹ This final rule does not contain such a mandate. The requirements of Title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

¹⁶⁷ See U.S. Bureau of Labor Statistics, *Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items*, available at <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202003.pdf> (last visited June 2, 2020).

Calculation of inflation: 1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2019); 2) Subtract reference year CPI-U from current year CPI-U; 3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; 4) Multiply by 100 = [(Average monthly CPI-U for 2019 – Average monthly CPI-U for 1995) / (Average monthly CPI-U for 1995)] * 100 = [(255.657 – 152.383) / 152.383] * 100 = (103.274 / 152.383) * 100 = 0.6777 * 100 = 67.77 percent = 68 percent (rounded)

Calculation of inflation-adjusted value: \$100 million in 1995 dollars * 1.68 = \$168 million in 2019 dollars.

¹⁶⁸ See 2 U.S.C. 658(6).

¹⁶⁹ See 2 U.S.C. 658(7)(A)(ii).

E. Executive Order 13132 (Federalism)

This final rule does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This final rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. DHS has determined that this final rule meets the applicable standards provided in section 3 of E.O. 12988.

G. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This final rule does not have “tribal implications” because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

H. Family Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Agencies must assess whether the regulatory action: (1) Impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) if the regulatory action financially impacts families, are justified; (6) may be carried out by State or local government or by the family; and (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the determination is affirmative, then the Agency must prepare an impact assessment to address criteria specified in the law. DHS has no data that indicates that the rule will have any impacts on disposable income or the poverty of certain families and children, including U.S. citizen children. A family may have to delay applying until they have saved funds for a fee set by this final rule, or pay the fee using a credit card. Nevertheless, DHS believes that the benefits of the new fees justify the financial impact on the family. DHS determined that this rulemaking's impact is justified and no further actions are required. DHS also determined that this final rule will not have any impact on the autonomy or integrity of the family as an institution.

I. National Environmental Policy Act (NEPA)

This final rule adjusts certain immigration and naturalization benefit request fees charged by USCIS. It also makes changes related to setting, collecting, and

administering fees. Fee schedule adjustments are necessary to recover the full operating costs associated with administering the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits, while protecting Americans, securing the homeland, and honoring our values. This final rule also makes certain adjustments to fee waiver eligibility, filing requirements for nonimmigrant workers, premium processing service, and other administrative requirements.

DHS analyzes actions to determine whether NEPA applies to them and if so what degree of analysis is required. DHS Directive (Dir) 023-01 Rev. 01 and Instruction Manual (Inst.) 023-01-001 Rev. 01 establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508. The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions ("categorical exclusions") which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(1)(iii), 1508.4. DHS Instruction 023-01-001 Rev. 01 establishes such Categorical Exclusions that DHS has found to have no such effect. Inst. 023-01-001 Rev. 01 Appendix A Table 1. For an action to be categorically excluded, DHS Inst. 023-01-001 Rev. 01 requires the action to satisfy each of the following three conditions:

- (1) The entire action clearly fits within one or more of the Categorical Exclusions;
- (2) the action is not a piece of a larger action; and

(3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Inst. 023-01-001 Rev. 01 section V.B(1)-(3).

DHS has analyzed this action and has concluded that NEPA does not apply due to the excessively speculative nature of any effort to conduct an impact analysis. This final rule fits within the Categorical Exclusion found in DHS Inst. 023-01-001 Rev. 01, Appendix A, Table 1, number A3(d): “Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.” This final rule is not part of a larger action. This final rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this final rule is categorically excluded from further NEPA review.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule, unless they are exempt. *See* Pub. L. 104-13, 109 Stat. 163 (May 22, 1995). The Information Collection table 11 below shows the summary of forms that are part of this rulemaking.

Table 11: Information Collection			
OMB Number	Form Number	Form Name	Type of Information Collection
1615-0105	G-28	Notice of Entry of Appearance as Attorney or Accredited Representative	No material or non-substantive change to a currently approved collection
1615-0096	G-1041	Genealogy Index Search Request	No material or non-substantive change to a currently approved collection
	G-1041A	Genealogy Records Request (For each microfilm or hard copy file)	

Table 11: Information Collection

OMB Number	Form Number	Form Name	Type of Information Collection
1615-0079	I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	No material or non-substantive change to a currently approved collection
1615-0111	I-129CW	Petition for a CNMI-Only Nonimmigrant Transitional Worker	No material or non-substantive change to a currently approved collection
	I-129CWR	Semiannual Report for CW-1 Employers	
1615-0146	I-129E&TN	Application for Nonimmigrant Worker: E and TN Classifications	New Collection
1615-0001	I-129F	Petition for Alien Fiancé(e)	No material or non-substantive change to a currently approved collection
1615-0009	I-129H1	Petition for Nonimmigrant Worker: H-1 Classifications	Revision of a Currently Approved Collection
1615-0150	I-129H2A	Petition for Nonimmigrant Worker: H-2A Classification	New Collection
1615-0149	I-129H2B	Petition for Nonimmigrant Worker: H-2B Classification	New Collection
1615-0147	I-129L	Petition for Nonimmigrant Worker: L Classifications	New Collection
1615-0145	I-129MISC	Petition for Nonimmigrant Worker: H-3, P, Q, or R Classifications	New Collection
1615-0148	I-129O	Petition for Nonimmigrant Worker: O Classifications	New Collection
1615-0012	I-130	Petition for Alien Relative	No material or non-substantive change to a currently approved collection
	I-130A	Supplemental Information for Spouse Beneficiary	
1615-0013	I-131	Application for Travel Document	Revision of a Currently Approved Collection
1615-0135	I-131A	Application for Travel Document (Carrier Documentation)	Revision of a Currently Approved Collection
1615-0015	I-140	Immigrant Petition for Alien Worker	No material or non-substantive change to a currently approved collection

Table 11: Information Collection

OMB Number	Form Number	Form Name	Type of Information Collection
1615-0016	I-191	Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act	No material or non-substantive change to a currently approved collection
1615-0017	I-192	Application for Advance Permission to Enter as Nonimmigrant	No material or non-substantive change to a currently approved collection
1615-0018	I-212	Application for Permission to Reapply for Admission Into the United States After Deportation or Removal	No material or non-substantive change to a currently approved collection
1615-0095	I-290B	Notice of Appeal or Motion	No material or non-substantive change to a currently approved collection
1615-0020	I-360	Petition for Amerasian, Widow(er), or Special Immigrant	No material or non-substantive change to a currently approved collection
1615-0023	I-485	Application to Register Permanent Residence or Adjust Status	No material or non-substantive change to a currently approved collection
	I-485A	Supplement A to Form I-485, Adjustment of Status Under Section 245(i)	
	I-485J	Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j)	
1615-0026	I-526	Immigrant Petition by Alien	No material or non-substantive change to a currently approved collection
1615-0003	I-539	Application to Extend/Change Nonimmigrant Status	No material or non-substantive change to a currently approved collection
1615-0003	I-539A	Supplemental Information for Application to Extend/Change Nonimmigrant Status	No material or non-substantive change to a currently approved collection

Table 11: Information Collection

OMB Number	Form Number	Form Name	Type of Information Collection
1615-0067	I-589	Application for Asylum and for Withholding of Removal	Revision of a Currently Approved Collection
1615-0028	I-600	Petition to Classify Orphan as an Immediate Relative	Revision of a Currently Approved Collection
	I-600A	Application for Advance Processing of an Orphan Petition	
	I-600/A SUPP1	Form I-600A/I-600 Supplement 1, Listing of Adult Member of the Household	
	I-600/A SUPP2	Form I-600A/I-600 Supplement 2, Consent to Disclose Information	
	I-600/A SUPP3	Form I-600A/I-600 Supplement 3, Request for Action on Approved Form I-600A/I-600	
1615-0029	I-601	Application for Waiver of Grounds of Inadmissibility	No material or non-substantive change to a currently approved collection
1615-0123	I-601A	Application for Provisional Unlawful Presence Waiver	No material or non-substantive change to a currently approved collection
1615-0030	I-612	Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended)	No material or non-substantive change to a currently approved collection
1615-0032	I-690	Application for Waiver of Grounds of Inadmissibility	No material or non-substantive change to a currently approved collection
1615-0034	I-694	Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act	No material or non-substantive change to a currently approved collection
1615-0035	I-698	Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA)	No material or non-substantive change to a currently approved collection

Table 11: Information Collection

OMB Number	Form Number	Form Name	Type of Information Collection
1615-0038	I-751	Petition to Remove Conditions on Residence	No material or non-substantive change to a currently approved collection
1615-0040	I-765	Application for Employment Authorization	Revision of a Currently Approved Collection
1615-0005	I-817	Application for Benefits Under the Family Unity Program	No material or non-substantive change to a currently approved collection
1615-0043	I-821	Application for Temporary Protected Status	No material or non-substantive change to a currently approved collection
1615-0044	I-824	Application for Action on an Approved Application or Petition	No material or non-substantive change to a currently approved collection
1615-0045	I-829	Petition by Investor to Remove Conditions on Permanent Resident Status	No material or non-substantive change to a currently approved collection
1615-0072	I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Sec. 203 of Pub. L. 105-100)	No material or non-substantive change to a currently approved collection
1615-0082	I-90	Application to Replace Permanent Resident Card	No material or non-substantive change to a currently approved collection
1615-0048	I-907	Request for Premium Processing Service	No material or non-substantive change to a currently approved collection
1615-0114	I-910	Application for Civil Surgeon Designation	No material or non-substantive change to a currently approved collection
1615-0116	I-912	Request for Fee Waiver	Revision of a Currently Approved Collection

Table 11: Information Collection

OMB Number	Form Number	Form Name	Type of Information Collection
1615-0099	I-914	Application for T nonimmigrant status	No material or non-substantive change to a currently approved collection
1615-0104	I-918	Petition for U nonimmigrant status	No material or non-substantive change to a currently approved collection
1615-0061	I-924	Application for Regional Designation Center Under the Immigrant Investor Program	No material or non-substantive change to a currently approved collection
	I-924A	Annual Certification of Regional Center	
1615-0106	I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	No material or non-substantive change to a currently approved collection
1615-0136	I-941	Application for Entrepreneur Parole	No material or non-substantive change to a currently approved collection
1615-0133	I-942	Application for Reduced Fee	Discontinuation
1615-0122	Immigrant Fee	Fee paid for immigrant visa processing	No material or non-substantive change to a currently approved collection
1615-0050	N-336	Request for a Hearing on a Decision in Naturalization Proceedings Under Section 336	No material or non-substantive change to a currently approved collection
1615-0052	N-400	Application for Naturalization	No material or non-substantive change to a currently approved collection
1615-0056	N-470	Application to Preserve Residence for Naturalization Purposes	No material or non-substantive change to a currently approved collection
1615-0091	N-565	Application for Replacement of Naturalization/Citizenship Document	No material or non-substantive change to a currently approved collection

Table 11: Information Collection			
OMB Number	Form Number	Form Name	Type of Information Collection
1615-0057	N-600	Application for Certification of Citizenship	No material or non-substantive change to a currently approved collection
1615-0087	N-600K	Application for Citizenship and Issuance of Certificate under Section 322.	No material or non-substantive change to a currently approved collection

Various USCIS Forms

This final rule will require non-substantive edits to the forms listed above where the Type of Information Collection column states, “No material/non-substantive change to a currently approved collection.” These edits include: updates to the fees collected, including changes to the collection of biometric services fees; modification of various form instructions to conform with changes to USCIS Form I-912; modification to USCIS Form N-400 to conform with the discontinuation of USCIS Form I-942; modification to various form instructions to conform with changes to the conditions for fee exemptions; removal of the returned check fee; text clarifying that a second presentment is limited to NSF checks, addition of language regarding delivery requirements of certain secured documents; general language modification of fee activities within various USCIS forms. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83-C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.¹⁷⁰

¹⁷⁰ As stated earlier DHS is removing the \$30 fee for dishonored fee payment instruments. EOIR will make conforming changes to its affected forms separately. . .

USCIS Form I-129H1

Overview of information collection:

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Petition for a Nonimmigrant Worker: H-1B Classifications.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-129H1; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for classification of an alien as an H-1B nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay of an H-1B or H-1B1 nonimmigrant worker or to change the status of an alien currently in the United States as a nonimmigrant to H-1B or H-1B1. The form serves the purpose of standardizing requests for H-1B and H-1B1 nonimmigrant workers and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under the H-1B or H-1B1 nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I-129H1 is 402,034 and the estimated hour burden per response is 4 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 1,608,136 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$207,047,510.

USCIS Form I-129H2A

Overview of information collection:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: Petition for a Nonimmigrant Worker: H-2A Classifications.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-129H2A; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested H-2A nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer or agent uses this form to petition USCIS for classification of an alien as an H-2A nonimmigrant. An employer or agent also uses this form to request an extension of

stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for H-2A nonimmigrant workers and ensuring that basic information required for assessing eligibility is provided by the petitioner. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I-129H2A is 12,008 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Named Worker Attachment for Form I-129H2A is 65,760 and the estimated hour burden per response is 0.5 hours; the estimated total number of respondents for the information collection Joint Employer Supplement for Form I-129H2A is 5,000 and the estimated hour burden per response is 0.167 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 69,739 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$6,184,120.

USCIS Form I-129H2B

Overview of information collection:

- (1) Type of Information Collection: New Collection.
- (2) Title of the Form/Collection: Petition for Nonimmigrant Worker: H-2B

Classification.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-129H2B; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested H-2B nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer or agent uses this form to petition USCIS for classification of an alien as an H-2B nonimmigrant. An employer or agent also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers and ensuring that basic information required for assessing eligibility is provided by the petitioner. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I-129H2B is 6,340 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Named Worker Attachment for Form I-129H2B is 58,104 and the estimated hour burden per response is 0.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 48,072 hours.

(7) An estimate of the total public burden (in cost) associated with the collection:

The estimated total annual cost burden associated with this collection of information is \$3,265,100.

USCIS Form I-129L

Overview of information collection:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: Petition for Nonimmigrant Worker: I-129L

Classification.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-129L; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on Form I-129L to determine a petitioner and beneficiary's eligibility for L-1A and L-1B classification. The form is also used to determine eligibility for an LZ Blanket petition. An employer uses this form to petition USCIS for classification of the beneficiary as an L-1 nonimmigrant. An employer also uses this form to request an extension of stay or change of status on behalf of the beneficiary. The form standardizes these types of petitioners and ensures that the information required for assessing eligibility is provided by the petitioner about themselves and the beneficiary. The form also enables USCIS to compile data required for an annual report to Congress assessing the effectiveness and utilization of certain nonimmigrant classifications.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of

respondents for the information collection Form I-129L is 42,871 and the estimated hour burden per response is 3 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 128,613 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$22,078,565.

USCIS Form I-129O

Overview of information collection:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: Petition for Nonimmigrant Worker: O Classification.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-129O; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer or agent uses this form to petition USCIS for classification of an alien as an O nonimmigrant worker. An employer or agent also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers and ensuring that basic information

required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under certain nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I-129O is 25,516 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Attachment 1 – Additional Beneficiary for Form I-129O is 1,189 and the estimated hour burden per response is 0.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 77,143 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$13,140,740.

USCIS Form I-129MISC

Overview of information collection:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: Petition for Nonimmigrant Worker: H-3, P, Q, or R Classification.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-129MISC; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for classification of an alien as an H-3, P, Q, or R nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay of an H-3, P, Q, or R nonimmigrant worker or to change the status of an alien currently in the United States as a nonimmigrant to H-3, P, Q, or R. The form serves the purpose of standardizing requests for H-3, P, Q, or R nonimmigrant workers, and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under the H-3, P, Q, or R nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classification.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I-129MISC is 28,799 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection H-3 Classification Supplement to Form I-129MISC, Petition for Nonimmigrant Worker: H-3, P, Q, or R Classification is 1,449 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the information collection P Classification Supplement to Form I-129MISC is 18,524 and the estimated hour burden per response is 0.5 hours; the estimated total number of

respondents for the information collection Q-1 International Cultural Exchange Alien Supplement to Form I-129MISC is 295 and the estimated hour burden per response is 0.167 hours; the estimated total number of respondents for the information collection R-1 Classification Supplement to Form I-129MISC is 1 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the information collection Attachment 1-Additional Beneficiary for Form I-129MISC is 8,531 and the estimated hour burden per response is 0.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 107,847 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$14,831,485.

USCIS Form I-129E&TN

Overview of information collection:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: Petition for Nonimmigrant Worker: E and TN Classification.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-129E&TN; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit; Not-for-profit institutions. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant

classification and/or requests to extend or change nonimmigrant status. An employer agent, or applicant uses this form to apply to USCIS for classification of an alien as an E-1, E-2, E-3, or TN nonimmigrant. An employer, agent, applicant, or CNMI investor also uses this form to request an extension of stay in one of these classifications for an alien or for themselves, or to change the status of an alien currently in the United States as a nonimmigrant or their own status if they are currently in the United States as a nonimmigrant to E-1, E-2, E-3, or TN. The form serves the purpose of standardizing requests for nonimmigrant workers in these classifications and ensuring that basic information required for assessing eligibility is provided by the applicant. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classification.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I-129E&TN is 12,709 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection E-1/E-2 Classification Supplement to Form I-129E&TN is 4,236 and the estimated hour burden per response is 1.45 hours; the estimated total number of respondents for the information collection E-3 Classification Supplement to Form I-129E&TN is 2,824 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the information collection NAFTA Supplement to Form I-129E&TN is 7,349 and the estimated hour burden per response is 0.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 50,768 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$6,545,135.

USCIS Form I-131

Overview of information collection:

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Application for Travel Document, Form I-131; Extension, Without Change, of a Currently Approved Collection.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-131; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Certain aliens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, aliens in Temporary Protected Status (TPS), and aliens abroad seeking humanitarian parole who need to apply for a travel document to lawfully enter or reenter the United States. Lawful permanent residents may now file requests for travel permits (transportation letter or boarding foil).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of

respondents for the information collection I-131 is 464,900 and the estimated hour burden per response is 1.9 hours; the estimated total number of respondents for biometrics processing is 86,000 and the estimated hour burden per response is 1.17 hours, the estimated total number of respondents for passport-style photos is 360,000 and the estimated hour burden per response is 0.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 1,163,930 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$143,654,100.

USCIS Form I-131A

Overview of information collection:

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Application for Carrier Documentation.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-131A; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. USCIS uses the information provided on Form I-131A to verify the status of permanent or conditional residents, and aliens traveling abroad on an Advance Parole Document (Form I-512 or I-512L) or

Employment Authorization Documents (EAD) with travel endorsement (Form I-766) and to determine whether the applicant is eligible for the requested travel document.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I-131A is 5,100 and the estimated hour burden per response is .92 hours; biometrics processing is 5,100 and the estimated hour burden per response is 1.17 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 10,659 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$919,275.

USCIS Form I-589

Overview of information collection:

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Application for Asylum and for Withholding of Removal.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-589; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Form I-589 is necessary to determine

whether an alien applying for asylum and/or withholding of removal in the United States is classified as a refugee and is eligible to remain in the United States.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of USCIS respondents for the information collection in Form I-589 is approximately 114,000, and the estimated annual respondents for Form I-589 filed with DOJ is approximately 150,000. The estimated hour burden per response is 13 hours per response; and the estimated number of respondents providing biometrics to USCIS is 110,000, and to DOJ (collected on their behalf by USCIS) is 150,000. The estimated hour burden per response for biometrics submissions is 1.17 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection for USCIS is 1,610,700 hours, and for DOJ is 2,125,500.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information for USCIS is estimated to be \$46,968,000 and for DOJ is \$61,800,000.

USCIS Form I-600, I-600A, Supplement 1, Supplement 2, Supplement 3

Overview of information collection:

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Petition to Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household; Supplement 2, Consent to Disclose

Information; Supplement 3, Request for Action on Approved Form I-600A/I-600.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Form I-600, Form I-600A, Form I-600A/I-600 Supplement 1, Form I-600A/I-600 Supplement 2, Form I-600A/I-600 Supplement 3; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. A U.S. citizen prospective/adoptive parent may file a petition to classify an orphan as an immediate relative under section 201(b)(2)(A) of the INA. A U.S. citizen adoptive parent may file a petition to classify an orphan as an immediate relative through Form I-600 under section 101(b)(1)(F) of the INA. A U.S. citizen prospective adoptive parent may file Form I-600A in advance of the Form I-600 filing and USCIS will make a determination regarding the prospective adoptive parent's eligibility to file Form I-600A and his or her suitability and eligibility to properly parent an orphan. If there are other adult members of the U.S. citizen prospective/adoptive parent's household, as defined at 8 CFR 204.301, the prospective/adoptive parent must include Form I-600A/I-600 Supplement 1 when filing both Form I-600A and Form I-600. A Form I-600A/I-600 Supplement 2, Consent to Disclose Information, is an optional form that a U.S. citizen prospective/adoptive parent may file to authorize USCIS to disclose case-related information that would otherwise be protected under the Privacy Act, 5 U.S.C. 552a, to adoption service providers or other individuals. Form I-600A/I-600 authorized disclosures will assist USCIS in the adjudication of Forms I-600A and I-600. USCIS has created a new Form I-600A/I-600 Supplement 3, Request for Action on Approved Form I-600A/I-600, for this information collection. Form I-600A/I-600 Supplement 3 is a form that prospective/adoptive parents

must use if they need to request action such as an extended or updated suitability determination based upon a significant change in their circumstances or change in the number or characteristics of the children they intend to adopt, a change in their intended country of adoption, or a request for a duplicate notice of their approved Form I-600A suitability determination.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I-600 is 1,200 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I-600A is 2,000 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I-600/I-600A Supplement 1 is 301 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I-600/I-600A Supplement 2 is 1,260 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the information collection Form I-600/I-600A Supplement 3 is 1,286 and the estimated hour burden per response is 1 hours; the estimated total number of respondents for the Home Study information collection is 2,500 and the estimated hour burden per response is 25 hours; the estimated total number of respondents for the Biometrics information collection is 2,520 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the Biometrics – DNA information collection is 2 and the estimated hour burden per response is 6 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 70,562.40 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$7,759,232.

USCIS Form I-765

Overview of information collection:

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Application for Employment Authorization.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-765; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. USCIS uses Form I-765 to collect information needed to determine if an alien is eligible for an initial EAD, a new replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Aliens in many immigration statuses are required to possess an EAD as evidence of work authorization.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection I-765 is 2,286,000 and the estimated hour burden per response is 4.5 hours; the estimated total number of respondents for the

information collection I-765WS is 302,000 and the estimated hour burden per response is 0.5 hours; the estimated total number of respondents for the information collection biometrics is 302,535 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection passport photos is 2,286,000 and the estimated hour burden per response is 0.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 11,934,966 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$400,895,820.

USCIS Form I-912

Overview of information collection:

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Request for Fee Waiver.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-912; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. USCIS uses the data collected on this form to verify that the applicant is unable to pay for the immigration benefit being requested. USCIS will consider waiving a fee for an application or petition when the applicant or petitioner clearly demonstrates he or she is eligible based on 8 CFR 106.3.

Form I-912 standardizes the collection and analysis of statements and supporting documentation provided by the applicant with the fee waiver request. Form I-912 also streamlines and expedites USCIS' approval, or rejection of the fee waiver request by clearly laying out the most salient data and evidence necessary for the determination of inability to pay. Officers evaluate all information and evidence supplied in support of a fee waiver request when making a final determination. Each case is unique and is considered on its own merits. If the fee waiver is granted, the application will be processed. If the fee waiver is not granted, USCIS will notify the applicant and instruct him or her to file a new application with the appropriate fee.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection I-912 is 116,832 and the estimated hour burden per response is 2.33 hours; the estimated total number of respondents for the information collection DACA Exemptions is 108 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection Director's Exemption Provision in new 8 CFR 106.3(e) is 20 and the estimated hour burden per response is 1.17 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 272,368 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$438,600.

USCIS Form I-942

This final rule discontinues the use of Form I-942, Request for Reduced Fee, because DHS is eliminating the option to request a reduced fee. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83-D, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

Differences in information collection request respondent volume and fee model filing volume projections.

DHS acknowledges that the estimates of annual filing volume in the PRA section of this preamble are not the same as those used in the ABC model used to calculate the fee amounts in this rule. For example, the fee calculation model estimates 163,000 annual Form I-589 filings while the PRA section estimates the average annual number of respondents will be 114,000. The model projects 2,455,000 Form I-765 filings while the estimated total number of respondents for the information collection I-765 is 2,096,000. As stated in the NPRM and section III.L.1 of this preamble, the VPC forecasts USCIS workload volume based on short- and long-term volume trends and time series models, historical receipts data, patterns (such as level, trend, and seasonality) or correlations with historical events to forecast receipts. Workload volume is used to determine the USCIS resources needed to process benefit requests and is the primary cost driver for assigning activity costs to immigration benefits and biometric services in the USCIS ABC model. DHS uses a different method for estimating the average annual number of respondents for the information collection over the three-year OMB approval of the control number, generally basing the estimate on the average filing volumes in the previous 3 or 5 year

period, with less consideration of the volume effects of planned or past policy changes. Nevertheless, when the information collection request is nearing expiration, USCIS will update the estimates of annual respondents based on actual filing volumes that occur after this final rule takes effect in the submission to OMB. The PRA burden estimates are generally updated at least every three years. Thus, DHS expects that the PRA estimated annual respondents will be updated to reflect the actual effects of this proposed rule within a relatively short period after a final rule takes effect.

K. Signature

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the Federal Register.

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 106

Immigration, user fees.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 216

Administrative practice and procedure, Aliens.

8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

8 CFR Part 223

Aliens, Refugees, Reporting and recordkeeping requirements,

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirement.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 240

Administrative practice and procedure, Aliens.

8 CFR Part 244

Administrative practice and procedure; Immigration.

8 CFR Parts 245 and 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Parts 248 and 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

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

8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

8 CFR Parts 301 and 319

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Parts 320 and 322

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

8 CFR Part 324

Citizenship and naturalization, Reporting and recordkeeping requirements, Women.

8 CFR Part 334

Administrative practice and procedure, Citizenship and naturalization, Courts, Reporting and recordkeeping requirements.

8 CFR Parts 341, 343a, 343b, and 392

Citizenship and naturalization, Reporting and recordkeeping requirements.

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

PART 103—IMMIGRATION BENEFIT REQUESTS; USCIS FILING REQUIREMENTS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

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

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 31 U.S.C. 9701; 48 U.S.C. 1806; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 et seq.); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112-54, 125 Stat 550. Pub. L. 115-218.

2. The heading for part 103 is revised to read as set forth above.

3. Section 103.2 amended:

a. By revising the last sentence of paragraph (a)(1) and adding a new last sentence;

b. By revising paragraph (a)(7)(ii)(D);

c. In paragraph (b)(9) introductory text, by removing “8 CFR 103.7(b)(1)(i)(C)” and adding in its place “8 CFR 106.2” in the second sentence; and

d. By revising paragraph (b)(19)(iii).

The revisions read as follows:

§ 103.2 Submission and adjudication of benefit requests.

(a) * * *

(1) * * * All USCIS fees are generally are non-refundable regardless of if the benefit request or other service is approved, denied, or selected, or how much time the adjudication or processing requires. Except as otherwise provided in this chapter I, fees must be paid when the request is filed or submitted.

* * * * *

(7) * * *

(ii) * * *

(D) Submitted with the correct fee(s). If a check or other financial instrument used to pay a fee is returned as unpayable because of insufficient funds, USCIS will resubmit 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 may be rejected. Financial instruments returned as unpayable for a reason other than insufficient funds will not be redeposited. If a check or other financial instrument used to pay a fee is dated more than one year before the request is received, the payment and request may be rejected.

* * * * *

(b) * * *

(19) * * *

(iii) *Secure identity documents.* (A) USCIS may send secure identification documents, such as a Permanent Resident Card or Employment Authorization Document, only to the applicant or self-petitioner unless the applicant or self-petitioner specifically consents to having his or her secure identification document sent to a designated agent, their attorney or accredited representative or record, as specified on the form instructions.

(B) The designated agent, or attorney or accredited representative, will be

required to provide identification and sign for receipt of the secure document.

* * * * *

§ 103.3 [Amended]

4. Section 103.3 is amended in paragraph (a)(2)(i) by removing “§103.7 of this part” and adding in its place “8 CFR 106.2”.

§ 103.5 [Amended]

5. Section 103.5 is amended in paragraph (a)(1)(iii)(B) by removing “§103.7” and adding in its place “8 CFR 106.2”.

6. Section 103.7 is revised to read as follows:

§ 103.7 Fees.

(a) *DOJ fees.* Fees for proceedings before immigration judges and the Board of Immigration Appeals are described in 8 CFR 1003.8, 1003.24, and 1103.7.

(1) *USCIS may accept DOJ fees.* Except as provided in 8 CFR 1003.8, or as the Attorney General otherwise may provide by regulation, any fee relating to any EOIR proceeding may be paid to USCIS. Payment of a fee under this section does not constitute filing of the document with the Board or with the immigration court. DHS will provide the payer with a receipt for a fee and return any documents submitted with the fee relating to any immigration court proceeding.

(2) *DHS-EOIR biometric services fee.* Fees paid to and accepted by DHS relating to any immigration proceeding as provided in 8 CFR 1103.7(a)(3) must include an additional \$30 for DHS to collect, store, and use biometric information.

(3) *Waiver of Immigration Court fees.* An immigration judge or the Board may waive any fees prescribed under this chapter for cases under their jurisdiction to the extent provided in 8 CFR 1003.8 and 1003.24.

(b) *USCIS fees.* USCIS fees will be required as provided in 8 CFR part 106.

(c) *Remittances.* 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.

(d) *Non-USCIS DHS immigration fees.* The following fees are applicable to one or more of the immigration components of DHS:

(1) *DCL System Costs Fee.* For use of a Dedicated Commuter Lane (DCL) located at specific U.S. ports-of-entry by an approved participant in a designated vehicle:

(i) \$80.00, or

(ii) \$160.00 for a family (applicant, spouse and minor children); plus,

(iii) \$42 for each additional vehicle enrolled.

(iv) The fee is due after approval of the application but before use of the DCL.

(v) This fee is non-refundable, but may be waived by DHS.

(2) *Petition for Approval of School for Attendance by Nonimmigrant Student* (Form I-17). (i) For filing a petition for school certification: \$3,000 plus, a site visit fee of \$655 for each location required to be listed on the form;

(ii) For filing a petition for school recertification: \$1,250, plus a site visit fee of \$655 for each new location required to be listed on the form.

(3) *Form I-68.* For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act:

(i) \$16.00, or

(ii) \$32 for a family (applicant, spouse and unmarried children under 21 years of age, and parents of either spouse).

(4) *Form I-94*. For issuance of Arrival/Departure Record at a land border port-of-entry: \$6.00.

(5) *Form I-94W*. For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border port-of-entry under section 217 of the Act: \$6.00.

(6) *Form I-246*. For filing application for stay of deportation under 8 CFR part 243: \$155.00.

(7) *Form I-823*. For application to a PORTPASS program under section 286 of the Act:

(i) \$25.00, or

(ii) \$50.00 for a family (applicant, spouse, and minor children).

(iii) The application fee may be waived by DHS.

(iv) If biometrics, such as fingerprints, are required, the inspector will inform the applicant of the current Federal Bureau of Investigation fee for conducting background checks prior to accepting the application fee.

(v) The application fee (if not waived) and fingerprint fee must be paid to CBP before the application will be processed. The fingerprint fee may not be waived.

(vi) For replacement of PORTPASS documentation during the participation period: \$25.00.

(8) *Fee Remittance for F, J, and M Nonimmigrants* (Form I-901). The fee for Form I-901 is:

(i) For F and M students: \$350.

(ii) For J-1 au pairs, camp counselors, and participants in a summer work or travel program: \$35.

(iii) For all other J exchange visitors (except those participating in a program sponsored by the Federal Government): \$220.

(iv) There is no Form I-901 fee for J exchange visitors in federally funded programs with a program identifier designation prefix that begins with G-1, G-2, G-3, or G-7.

(9) *Special statistical tabulations*: The DHS cost of the work involved.

(10) *Monthly, semiannual, or annual "Passenger Travel Reports via Sea and Air" tables*. (i) For the years 1975 and before: \$7.00.

(ii) For after 1975: Contact: U.S. Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

(11) *Request for Classification of a citizen of Canada to engage in professional business activities pursuant to section 214(e) of the Act (Chapter 16 of the North American Free Trade Agreement)*: \$50.00.

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

(13) *Global Entry*. Application for Global Entry: \$100.

(14) *U.S. Asia-Pacific Economic Cooperation (APEC) Business Travel Card*. Application fee: \$70.

(15) *Notice of Appeal or Motion (Form I-290B) filed with ICE SEVP*. For a Form I-290B filed with the Student and Exchange Visitor Program (SEVP): \$675.

7. Section 103.17 is revised to read as follows:

§ 103.17 Biometric services fee.

DHS may charge a fee to collect biometric information, to provide biometric collection services, to conduct required national security and criminal history background checks, to verify an individual's identity, and to store and maintain this biometric information for reuse to support other benefit requests. If a benefit request as defined in 8 CFR 1.2 must be submitted with a biometric services fee, 8 CFR part 106 will contain the requirement. When a biometric services fee is required, a benefit request submitted without the correct biometric services fee may be rejected.

8. Section 103.40 is revised to read as follows:

§ 103.40 Genealogical research requests.

(a) *Nature of requests.* Genealogy requests are requests for searches and/or copies of historical records relating to a deceased person, usually for genealogy and family history research purposes.

(b) *Forms.* USCIS provides on its website at <https://www.uscis.gov/genealogy> the required forms in electronic versions: Genealogy Index Search Request, or Genealogy Records Request.

(c) *Required information.* Genealogical Research Requests may be submitted to request one or more separate records relating to an individual. A separate request must be submitted for each individual searched. All requests for records or index searches must include the individual's:

- (1) Full name (including variant spellings of the name and/or aliases, if any).
- (2) Date of birth, at least as specific as a year.

(3) Place of birth, at least as specific as a country and preferably the country name at the time of the individual's immigration or naturalization.

(d) *Optional information.* To better ensure a successful search, a Genealogical Research Request may include each individual's:

(1) Date of arrival in the United States.

(2) Residence address at time of naturalization.

(3) Names of parents, spouse, and children if applicable and available.

(e) *Additional information required to retrieve records.* For a Genealogy Records Request, requests for copies of historical records or files must:

(1) Identify the record by number or other specific data used by the Genealogy Program Office to retrieve the record as follows:

(i) C-Files must be identified by a naturalization certificate number.

(ii) Forms AR-2 and A-Files numbered below 8 million must be identified by Alien Registration Number.

(iii) Visa Files must be identified by the Visa File Number. Registry Files must be identified by the Registry File Number (for example, R-12345).

(2) [Reserved]

(f) *Information required for release of records.* (1) Documentary evidence must be attached to a Genealogy Records Request or submitted in accordance with the instructions on the Genealogy Records Request form.

(2) Search subjects will be presumed deceased if their birth dates are more than 100 years before the date of the request. In other cases, the subject is presumed to be

living until the requestor establishes to the satisfaction of USCIS that the subject is deceased.

(3) Documentary evidence of the subject's death is required (including but not limited to death records, published obituaries or eulogies, published death notices, church or bible records, photographs of gravestones, and/or copies of official documents relating to payment of death benefits).

(g) *Index search.* Requestors who are unsure whether USCIS has any record of their ancestor, or who suspect a record exists but cannot identify that record by number, may submit a request for index search. An index search will determine the existence of responsive historical records. If no record is found, USCIS will notify the requestor accordingly. If records are found, USCIS will give the requestor electronic copies of records stored in digital format for no additional fee. For records found that are stored in paper format, USCIS will give the requestor the search results, including the type of record found and the file number or other information identifying the record. The requestor can use index search results to submit a Genealogy Records Request.

(h) *Processing of paper record copy requests.* This service is designed for requestors who can identify a specific record or file to be retrieved, copied, reviewed, and released. Requestors may identify one or more files in a single request.

§ 103.41 [Removed and Reserved]

9. Section 103.41 is removed and reserved.

10. Part 106 is added to read as follows:

PART 106—USCIS FEE SCHEDULE

Sec.

106.1 Fee requirements.

- 106.2 Fees.
- 106.3 Fee waivers and exemptions.
- 106.4 Premium processing service.
- 106.5 Authority to certify records.
- 106.6 DHS severability.

Authority: 8 U.S.C. 1101, 1103, 1254a, 1254b, 1304, 1356; Pub. L. 107-609; 48 U.S.C. 1806; Pub. L. 115-218.

§ 106.1 Fee requirements.

(a) Fees must be submitted with any USCIS benefit request or other request in the amount and subject to the conditions provided in this part and remitted in the manner prescribed in the relevant form instructions, on the USCIS website, or in a Federal Register document. The fees established in this part are associated with the benefit, the adjudication, or the type of request and not solely determined by the form number listed in 8 CFR 106.2.

(b) Fees must be remitted from a bank or other institution located in the United States and payable in U.S. currency. The fee must be paid using the method that USCIS prescribes for the request, office, filing method, or filing location, as provided in the form instructions or by individual notice.

(c) 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:

(1) 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

(2) 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.

§ 106.2 Fees.

(a) *I Forms*—(1) *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: \$415.

(2) *Application for Replacement/Initial Nonimmigrant Arrival-Departure*

Document, Form I-102. For filing an application for Arrival/Departure Record, Form I-94, or Crewman's Landing Permit, Form I-95, to replace one lost, mutilated, or destroyed: \$485.

(i) For nonimmigrant member of the U.S. armed forces: No fee for initial filing;

(ii) For a nonimmigrant member of the North Atlantic Treaty Organization (NATO) armed forces or civil component: No fee for initial filing;

(iii) For nonimmigrant member of the Partnership for Peace military program under the Status of Forces Agreement (SOFA): No fee for initial filing.

(3) *Petition or Application for a Nonimmigrant Worker, Form I-129.* For filing a petition or application for a nonimmigrant worker:

(i) Petition for H-1B Nonimmigrant Worker or H-1B1 Free Trade Nonimmigrant Worker, Form I-129H1: \$555.

(ii) Petition for H-2A Nonimmigrant Worker, Form I-129H2A, with 1 to 25 named beneficiaries: \$850.

(iii) Petition for H-2A Nonimmigrant Worker, Form I-129H2A, with only unnamed beneficiaries: \$415.

(iv) Petition for H-2B Nonimmigrant Worker, Form I-129H2B, with 1 to 25 named beneficiaries: \$715.

(v) Petition for H-2B Nonimmigrant Worker, Form I-129H2B, with only unnamed beneficiaries: \$385.

(vi) Petition for L Nonimmigrant Worker, Form I-129L: \$805.

(vii) Petition for O Nonimmigrant Worker, Form I-129O, with 1 to 25 named beneficiaries: \$705.

(viii) Petition or Application for E, H-3, P, Q, R, or TN Nonimmigrant Worker, Forms I-129E or I-129MISC, with 1 to 25 named beneficiaries: \$695.

(4) *Petition for a CNMI-Only Nonimmigrant Transitional Worker, Form I-129CW.* For an employer to petition on behalf of beneficiaries in the Commonwealth of the Northern Mariana Islands (CNMI): \$695, plus the following fees:

(i) CNMI education funding fee:

(A) \$200 per beneficiary per year.

(B) DHS may adjust this fee once per year by notice in the *Federal Register* based on the amount of inflation according to the change in the unadjusted All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average published by the Bureau of Labor Statistics since the fee was set on June 18, 2020.

(ii) A fraud prevention and detection fee: \$50 per employer filing a petition.

(iii) For filing Form I-129CWR, Semiannual Report for CW-1 Employers: No fee.

(5) *Petition for Alien Fiancé(e), Form I-129F.* (i) For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: \$510.

(ii) 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 U.S. citizen on a Petition for Alien Relative, Form I-130: No fee.

(6) *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: \$560.

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

(i) \$145 for a Refugee Travel Document for someone 16 or older.

(ii) \$115 for a Refugee Travel Document for a child under 16.

(iii) \$590 for advance parole and any other travel document except Form I-131A.

(iv) There is no fee for applicants who filed USCIS Form I-485 on or after July 30, 2007, and before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], and paid the Form I-485 fee, or for applicants for Special Immigrant Status based on an approved Form I-360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (“ISAF”).

(8) *Application for Travel Document (Carrier Documentation), Form I-131A.*

For filing an application to allow a lawful permanent resident, conditional permanent resident or other alien traveling abroad on an Advance Parole Document (Form I-512 or I-512L) or Employment Authorization Documents (EAD) with travel endorsement (Form I-766), to apply for carrier documentation to board an airline or other transportation carrier to return to the United States: \$1,010.

(9) *Immigrant Petition for Alien Workers, 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: \$555.

(10) *Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA), Form I-191.* For filing an application for discretionary relief under section 212(c) of the Act: \$790.

(11) *Application for Advance Permission to Enter as Nonimmigrant, Form I-192.* For filing an application for discretionary relief under section 212(d)(3), (d)(13), or (d)(14) of the Act, except in an emergency case or where the approval of the application is in the interest of the U.S. Government: \$1,400.

(12) *Application for Waiver of Passport and/or Visa, Form I-193.* For filing an application for waiver of passport and/or visa: \$2,790.

(13) *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 admission by 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: \$1,050.

(14) *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: \$700. In addition:

(i) The fee will be the same for appeal or a motion to reopen a denial of a benefit request with one or multiple beneficiaries.

(ii) 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 status as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (“ISAF”).

(15) *Request for Cancellation of Public Charge Bond, Form I-356*. \$25.

(16) *Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360*. For filing a petition for an Amerasian, Widow(er), or Special Immigrant: \$450. The following requests are exempt from this fee:

(i) A petition seeking classification as an Amerasian;

(ii) A self-petition for immigrant classification as an abused spouse or child of a U.S. citizen or lawful permanent resident or an abused parent of a U.S. citizen son or daughter; or

(iii) A petition for special immigrant juvenile classification; or

(iv) A petition seeking special immigrant visa or status as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (“ISAF”).

(17) *Application to Register Permanent Residence or Adjust Status, Form I-485*—(i) *Most permanent residence applications*. For filing an application for permanent resident status or creation of a record of lawful permanent residence: \$1,130.

(ii) *Asylees*. For the first Form I-485, Application to Register Permanent Residence or Adjust Status, filed by individuals who have paid the \$50 fee for Form I-589 and are subsequently granted asylum based on that Form I-589: \$1,080.

(iii) *Refugees and Special Immigrants*. There is no fee if an applicant is filing as a refugee under section 209(a) of the Act or for applicants for Special Immigrant Status based on an approved Form I-360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (“ISAF”).

(iv) *Adjustment of Status Under Section 245(i), Form I-485 Supplement A*. Persons seeking to adjust status under the provisions of section 245(i) of the Act must submit a sum of \$1,000 in addition to the fee for filing the Form I-485, unless payment of the additional sum is not required under section 245(i) of the Act. The additional sum is not required 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 a legalized alien and who is qualified for and has properly filed an application for voluntary departure under the family unity program.

(18) *Immigrant Petition by Alien Investor, Form I-526*. For filing a petition for an alien investor: \$4,010.

(19) *Application To Extend/Change Nonimmigrant Status, Form I-539*. For filing an application to extend or change nonimmigrant status: \$400. For nonimmigrant A, G, and NATO: No fee.

(20) *Application for Asylum and for Withholding of Removal, Form I-589*. For filing an application for asylum status: \$50. There is no fee for applications filed by unaccompanied alien children who are in removal proceedings.

(21) *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.

(i) There is no fee for the first Form I-600 filed for a child on the basis of an approved Application for Advance Processing of an Orphan Petition, Form I-600A, during the Form I-600A approval or extended approval period.

(ii) Except as specified in paragraph (a)(21)(iii) of this section, if more than one Form I-600 is filed during the Form I-600A approval period, the fee is \$805 for the second and each subsequent Form I-600 petition submitted.

(iii) If more than one Form I-600 is filed during the Form I-600A approval period on behalf of beneficiary birth siblings, no additional fee is required.

(22) *Application for Advance Processing of an Orphan Petition, Form I-600A*. For filing an application for determination of suitability and eligibility to adopt an orphan: \$805.

(23) *Request for Action on Approved Form I-600A/I-600, Form I-600A/I-600 Supplement 3*: \$400.

(i) This filing fee:

(A) Is not charged if Form I-600A/I-600 Supplement 3 is filed in order to obtain a first extension of the approval of the Form I-600A or to obtain a first time change of non-Hague Adoption Convention country during the Form I-600A approval period.

(B) Is charged if Form I-600A/I-600 Supplement 3 is filed in order to request a new approval notice based on a significant change and updated home study, unless a first extension of the Form I-600A approval or first time change of non-Hague Adoption Convention country is also being requested on the same Supplement 3.

(C) Is \$400 for second or subsequent extensions of the approval of the Form I-600A, second or subsequent changes of non-Hague Adoption Convention country, requests for a new approval notice based on a significant change and updated home study, and requests for a duplicate approval notice permitted with Form I-600A/I-600 Supplement 3 with the filing fee.

(ii) Form I-600A/I-600 Supplement 3 cannot be used to:

(A) Extend eligibility to proceed as a Hague Adoption Convention transition case beyond the first extension once the Convention enters into force for the new Convention country.

(B) Request a change of country to a Hague Adoption Convention transition country for purposes of becoming a transition case if another country was already designated on the Form I-600A or prior change of country request.

(iii) Form I-600A/I-600 Supplement 3 may only be used to request an increase the number of children the applicant/petitioner is approved to adopt from a transition country if the additional child is a birth sibling of a child who the applicant/petitioner has adopted or is in the process of adopting, as a transition case, and is identified and

petitioned for while the Form I-600A approval is valid, unless the new Convention country prohibits such birth sibling cases from proceeding as transition cases.

(24) *Application for Waiver of Grounds of Inadmissibility, Form I-601*. For filing an application for waiver of grounds of inadmissibility: \$1,010.

(25) *Application for Provisional Unlawful Presence Waiver, Form I-601A*. For filing an application for provisional unlawful presence waiver: \$960.

(26) *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: \$515.

(27) *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.

(28) *Application for Waiver of Grounds of Inadmissibility, 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: \$765.

(29) *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: \$715.

(30) *Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA), Form I-698*. For filing an application to adjust status from temporary to permanent resident (Pub. L. 99-603): \$1,615.

(31) *Petition to Remove Conditions on Residence, Form I-751*. For filing a petition to remove the conditions on residence based on marriage: \$760.

(32) *Application for Employment Authorization, Form I-765*: \$550.

(i) A \$30 biometric services must be included with a Form I-765 filed by:

(A) An asylum applicant with a pending Form I-589.

(B) An applicant for status as a long-term resident of the Commonwealth of the Northern Mariana Islands.

(ii) There is no fee for an initial Employment Authorization Document for:

(A) An applicant who filed USCIS Form I-485 on or after July 30, 2007, and before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], and paid the Form I-485 fee;

(B) Refugees and aliens paroled as a refugee;

(C) Aliens granted asylee status;

(D) Victims of Severe Forms of Trafficking (T-1);

(E) Nonimmigrant Victim of Criminal Activity (U-1);

(F) Dependents of certain government and internal organizations or NATO personnel;

(G) N-8 (Parent of alien classed as SK3) and N-9 (Child of N-8) nonimmigrants;

(H) Principal VAWA Self-Petitioners who have approved petitions pursuant to section 204(a) of the Act;

(I) VAWA Self-Petitioners as defined in section 101(a)(51)(D), (E), and (F) of the Act;

(J) Applicants for Special Immigrant Status based on an approved Form I-360 as an Afghan or Iraqi Interpreter, or Iraqi National employed by or on behalf of the U.S. Government or Afghan National employed by the U.S. Government or the International Security Assistance Forces (“ISAF”); and

(iii) Request for replacement Employment Authorization Document based on USCIS error: no fee.

(iv) There is no fee for a renewal or replacement Employment Authorization Document for:

(A) Any current Adjustment of Status or Registry applicant who filed for adjustment of status on or after July 30, 2007, and before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], and paid the appropriate Form I-485 filing fee.

(B) Applicants for Special Immigrant Status based on an approved Form I-360 as an Afghan or Iraqi Translator or Interpreter, Iraqi National employed by or on behalf of the U.S. Government, or Afghan National employed by or on behalf of the U.S. government or employed by the International Security Assistance Forces: and

(C) Dependent of certain foreign government, international organization, or NATO personnel.

(v) *An Application for Employment Authorization for Abused Nonimmigrant Spouse, Form I-765V*: no fee.

(vi) The Form I-765 fee for initial and renewal requestors of Consideration of Deferred Action for Childhood Arrivals is \$410. Requestors of Consideration of Deferred Action for Childhood Arrivals must also pay a biometric services fee of \$85 for an initial, renewal of, or to replace their employment authorization document.

(33) *Petition to Classify Convention Adoptee as an Immediate Relative, Form I-800.* (i) 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 Form I-800A approval period.

(ii) Except as specified in paragraph (a)(33)(iii) of this section, if more than one Form I-800 is filed during the Form I-800A approval period, the fee is \$805 for the second and each subsequent Form I-800 petition submitted.

(iii) If more than one Form I-800 is filed during the Form I-800A approval period on behalf of beneficiary birth siblings, no additional fee is required.

(34) *Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I-800A.* For filing an application for determination of suitability and eligibility to adopt a child from a Hague Adoption Convention country: \$805.

(35) *Request for Action on Approved Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I-800A Supplement 3:* \$400.

(i) This filing fee:

(A) Is not charged if Form I-800A Supplement 3 is filed in order to obtain a first extension of the approval of the Form I-800A or to obtain a first time change of Hague Adoption Convention country during the Form I-800A approval period.

(B) Is charged if Form I-800A Supplement 3 is filed in order to request a new approval notice based on a significant change and updated home study, unless a first extension of the Form I-800A approval or first time change of Hague Adoption Convention country is also being requested on the same Supplement 3.

(ii) Is \$400 for second or subsequent extensions of the Form I-800A approval, second or subsequent changes of Hague Adoption Convention country, requests for a new approval notice based on a significant change and updated home study, and requests for a duplicate approval notice, permitted with the filing of a Form I-800A, Supplement 3 and the required filing fee: \$400.

(36) *Application for Family Unity Benefits, Form I-817*. For filing an application for voluntary departure under the Family Unity Program: \$590.

(37) *Application for Temporary Protected Status, Form I-821*. (i) For first time applicants: \$50 or the maximum permitted by section 244(c)(1)(B) of the Act.

(ii) There is no fee for re-registration.

(iii) A Temporary Protected Status (TPS) applicant or re-registrant must pay \$30 for biometric services unless exempted in the applicable form instructions.

(38) *Application for Deferred Action for Childhood Arrivals, Form I-821D*. No fee.

(39) *Application for Action on an Approved Application, Form I-824*: \$495.

(40) *Petition by Investor to Remove Conditions, Form I-829*. For filing a petition by an investor to remove conditions: \$3,900.

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

(i) \$1,810 for adjudication by DHS.

(ii) \$165 for adjudication by EOIR. If the Form I-881 is referred to the immigration court by DHS, the \$1,810 fee is required.

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

(43) *Request for Premium Processing Service, Form I-907*. The Request for Premium Processing Service fee will be as provided in 8 CFR 106.4.

(44) *Application for Civil Surgeon Designation, Form I-910*: \$635. There is no filing fee for:

(i) A medical officer in the U.S. Armed Forces or

(ii) A civilian physician employed by the U.S. Government who examines members and veterans of the U.S. Armed Forces and their dependents at a military, Department of Veterans Affairs, or U.S. Government facility in the United States.

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

(46) *Petition for U Nonimmigrant Status, Form I-918*: No fee.

(47) *Application for Regional Center Designation under the Immigrant Investor Program, Form I-924*: \$17,795.

(48) *Annual Certification of Regional Center, Form I-924A*. To provide updated information and certify that a Regional Center under the Immigrant Investor Program has maintained its eligibility: \$4,465.

(49) *Petition for Qualifying Family Member of a U-1 Nonimmigrant, Form I-929*. For a principal U-1 nonimmigrant to request immigration benefits on behalf of a qualifying family member who has never held U nonimmigrant status: \$1,485.

(50) *Application for Entrepreneur Parole, Form I-941*. For filing an application for parole for an entrepreneur: \$1,200.

(51) *Public Charge Bond, Form I-945*: \$25.

(b) *N Forms*—(1) *Application to File Declaration of Intention, Form N-300*. For filing an application for declaration of intention to become a U.S. citizen: \$1,305.

(2) *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: \$1,735. There is no fee for 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.

(3) *Application for Naturalization, Form N-400*. For filing an application for naturalization: \$1,170. No fee is charged an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service.

(4) *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: \$1,585.

(5) *Application for Replacement Naturalization/Citizenship Document, Form N-565*: \$545.

(i) This fee is for filing an application for:

(A) A certificate of naturalization or certificate of citizenship;

(B) A declaration of intention in place of a certificate or declaration alleged to have been lost, mutilated, or destroyed;

(C) A changed name under section 343(c) of the Act; or

(D) 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;

(ii) There is no fee when this application is submitted under 8 CFR 338.5(a) or 343a.1 to request correction of a certificate of naturalization or certificate of citizenship that contains an error.

(6) *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: \$1,000. There is no fee for any application filed by a member or veteran of any branch of the U.S. Armed Forces.

(7) *Application for Citizenship and Issuance of Certificate Under Section 322, Form N-600K*. For filing an application for citizenship and issuance of certificate under section 322 of the Act: \$945.

(c) *G Forms, Statutory Fees, and Non-Form Fees*—(1) *Genealogy Index Search Request, Form G-1041*: \$170. The fee is due regardless of the search results.

(2) *Genealogy Records Request, Form G-1041A*: \$265. USCIS will refund the records request fee when it is unable to locate any file previously identified in response to the index search request.

(3) *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: \$190.

(4) *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.

(5) *Fraud detection and prevention fee.* (i) For filing certain H-1B and L petitions as described in 8 U.S.C. 1184(c) and USCIS form instructions: \$500.

(ii) For filing certain H-2B petitions as described in 8 U.S.C. 1184(c) and USCIS form instructions: \$150.

(6) *Fraud detection and prevention fee for CNMI.* For employer petitions in CNMI as described in Pub. Law 115-218 and USCIS form instructions: \$50.

(7) *9-11 Response and Biometric Entry-Exit Fee for H-1B Visa.* For all petitioners filing an H-1B petition who employ 50 or more employees in the United States if more than 50 percent of the petitioner's employees in the aggregate are in H-1B, L-1A or L-1B nonimmigrant status, except for petitioners filing an amended petition without an extension of stay request: \$4,000. This fee will apply to petitions filed on or before September 30, 2027.

(8) *9-11 Response and Biometric Entry-Exit Fee for L-1 Visa.* For all petitioners filing an L-1 petition who employ 50 or more employees in the United States, if more than 50 percent of the petitioner's employees in the aggregate are in H-1B, L-1A or L-1B nonimmigrant status, except for petitioners filing an amended petition without an extension of stay request: \$4,500. This fee will apply to petitions filed on or before September 30, 2027.

(9) *Claimant under section 289 of the Act.* No fee.

(10) *Registration requirement for petitioners seeking to file H-1B petitions on behalf of cap-subject aliens.* For each registration submitted to register for the H-1B cap or advanced degree exemption selection process: \$10. This fee will not be refunded if the registration is not selected or is withdrawn.

(d) *Online forms.* The fee for the following forms is \$10.00 lower than the fee established in paragraphs (a), (b), and (c) of this section when submitted to USCIS online and not in paper form:

(1) I-90, Application to Replace Permanent Resident Card;

(2) N-336, Request for a Hearing on a Decision in Naturalization Proceedings
(Under Section 336 of the INA);

(3) N-400, Application for Naturalization;

(4) N-565, Application for Replacement Naturalization/Citizenship Document;

(5) I-130/130A, Petition for Alien Relative;

(6) N-600, Application for Certificate of Citizenship;

(7) N-600K, Application for Citizenship and Issuance of Certificate Under
Section 322;

(8) I-539/539A, Application To Extend/Change Nonimmigrant Status;

(9) G-1041, Genealogy Index Search Request; and

(10) G-1041A, Genealogy Records Request.

§ 106.3 Fee waivers and exemptions.

(a) *Fee waiver.* No fee relating to any benefit request submitted to USCIS may be waived unless otherwise provided in this paragraph.

(1) An alien may apply for a fee waiver if there is a statutory or regulatory provision allowing for fee waivers including as provided by section 245(l)(7) of the Act, 8 U.S.C. 1255(l)(7). Specifically, the following categories of requestors may apply for a waiver of any fees for an immigration benefit and any associated filing up to and including an application for adjustment of status:

(i) Violence Against Women Act (VAWA) self-petitioners and derivatives as defined under section 101(a)(51) and anyone otherwise self-petitioning due to battery or extreme cruelty pursuant to the procedures in section 204(a) of the Act;

(ii) T nonimmigrants;

(iii) U nonimmigrants;

(iv) Battered spouses of A, G, E-3, or H nonimmigrants;

(v) Battered spouses or children of a lawful permanent resident or U.S. citizen and derivatives as provided under section 240A(b)(2) of the Act; and

(vi) Applicants for Temporary Protected Status, including both initial applicants and re-registering TPS beneficiaries.

(2) The following categories of requestors may apply for a waiver of any fees for an immigration benefit and any associated filing up to and including an application for adjustment of status:

(i) Special Immigrant Juveniles (SIJs) who have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency at the time of filing; and

(ii) Afghan or Iraqi Translator or Interpreter, Iraqi National employed by or on behalf of the U.S. Government, or Afghan National employed by or on behalf of the U.S. government or employed by the International Security Assistance Forces.

(3) Requestors who have been approved for the immigration benefits in paragraphs (a)(1) and (2) of this section may apply for a waiver of any fees for Form N-400, Application for Naturalization, Form N-600 Application for Certificate of

Citizenship, or Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322, as applicable.

(b) *Director's exception.* The Director of USCIS may authorize the waiver, in whole or in part, of a form fee required by 8 CFR 106.2 that is not otherwise waivable under this section, if the Director determines that such action is an emergent circumstance, or if a major natural disaster has been declared in accordance with 44 CFR part 206, subpart B. This discretionary authority may be delegated only to the USCIS Deputy Director. The Director may not waive the requirements of paragraph (c) or (d) of this section. An applicant, petitioner, or requestor may not directly submit a request to the Director. In addition, a waiver of fees as provided in this paragraph may not be provided to a requestor who is seeking an immigration benefit for which he or she:

(1) Is subject to the affidavit of support requirements under section 213A of the Act or is already a sponsored immigrant as defined in 8 CFR 213a.1 unless the applicant is seeking a waiver of the joint filing requirement to remove conditions on his or her residence based on abuse; or

(2) Is subject to the public charge inadmissibility ground under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4).

(c) *Eligibility for fee waiver.* A waiver of fees is limited to an alien with an annual gross household income at or below 125 percent of the Federal Poverty Guidelines as updated periodically in the *Federal Register* by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(d) *Form required.* A person must submit a request for a fee waiver on the form prescribed by USCIS in accordance with the instructions on the form.

(e) *Exemptions.* The Director of USCIS may provide an exemption for any fee required by 8 CFR 106.2. This discretionary authority may only be delegated to the USCIS Deputy Director. The Director must determine that such action would be in the public interest, the action is consistent with the applicable law, and the exemption is related to one of the following:

(1) Asylees;

(2) Refugees;

(3) National security;

(4) Emergencies or major disasters declared in accordance with 44 CFR part 206, subpart B;

(5) An agreement between the U.S. government and another nation or nations; or

(6) USCIS error.

(f) *Documentation of gross household income.* A person submitting a request for a fee waiver must submit the following documents as evidence of annual gross household income:

(1) A transcript(s) from the United States Internal Revenue Service (IRS) of the person's IRS Form 1040, U.S. Individual Income Tax Return;

(2) If the person was not required to file a Federal income tax return, he or she must submit their most recent IRS Form W-2, Wage and Tax Statement, Form 1099G, Certain Government Payments, or Social Security Benefit Form SSA-1099, if applicable;

(3) If the person filed a Federal income tax return, and has recently changed employment or had a change in salary, the person must also submit copies of consecutive pay statements (stubs) for the most recent month or longer;

(4) If the person does not have income and has not filed income tax returns, he or she must submit documentation from the IRS that indicates that no Federal income tax transcripts and no IRS Form W-2s were found;

(5) An alien who is applying for or has been granted benefits or status as a VAWA self-petitioner or derivative or a T or U nonimmigrant, who does not have any income or cannot provide proof of income may:

(i) Describe the situation in sufficient detail as provided in the form and form instructions prescribed by DHS to substantiate that he or she has income at or below 125 percent of the Federal Poverty Guidelines as well as the inability to obtain the required documentation; and

(ii) Provide pay statements (stubs) or affidavits from religious institutions, non-profits, or other community-based organizations verifying that he or she is currently receiving some benefit or support from that entity and attesting to his or her financial situation as documentation of income, if available; and

(6) For applications related to Special Immigrant Juvenile classification, the applicant must provide the following in lieu of documentation of gross household income:

(i) Evidence that the applicant is approved for or filed for Special Immigrant Juvenile classification, and

(ii) Evidence that the applicant remains in out-of-home care such as foster care.

§ 106.4 Premium processing service.

(a) *General.* A person submitting a request to USCIS may request 15 business-day processing of certain employment-based immigration benefit requests.

(b) *Submitting a request.* A request must be submitted on the form prescribed by USCIS and prepared and submitted in accordance with the form instructions. If the request for premium processing is submitted together with the underlying benefit request, all required fees in the correct amount must be paid.

(c) *Fee amount.* The fee amount will be prescribed in the form instructions and:

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

(2) May be adjusted once per year by notice in the *Federal Register* based on the amount of inflation according to the Consumer Price Index (CPI) since the fee was set by law at \$1,000 on June 1, 2001.

(d) *15-day limitation.* USCIS will refund the premium processing service fee, but continue to process the case if:

(1) USCIS does not issue a notice of any adjudicative action by the end of the 15th business day from the date USCIS accepted a properly filed request for premium processing for an eligible employment-based immigration benefit request, including all required fees. The adjudicative action is evidenced by the notification of, but not necessarily receipt of, an approval, denial, request for evidence (RFE) or notice of intent to deny (NOID); or

(2) USCIS does not issue a notice of a subsequent adjudicative action by the end of the 15th business-day from the date USCIS received the response to an RFE or NOID. In premium processing cases where USCIS issues an RFE or NOID within 15 business days from the initial date of acceptance, a new 15-day period begins on the date that USCIS receives the response to the RFE or NOID.

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

(e) *Requests eligible for premium processing.* (1) USCIS will designate the categories of employment-based benefit requests that are eligible for premium processing.

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

§ 106.5 Authority to certify records.

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

§ 106.6 DHS severability.

Each provision of this part is separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions will continue in effect.

PART 204—IMMIGRANT PETITIONS

11. 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.

12. Section 204.3 is amended:

- a. By revising the section heading;
- b. In paragraph (b), in the definition of “Orphan petition”, by revising the second sentence;
- c. By revising the fourth and fifth sentences of paragraph (d) introductory text; and
- d. By revising paragraphs (h)(3)(i) and (ii) and (h)(7) and (13).

The revisions read as follows:

§ 204.3 Orphan cases under section 101(b)(1)(F) of the Act (non-Hague Adoption Convention cases).

* * * * *

(b) * * *

Orphan petition means * * * The petition must be completed in accordance with the form's instructions and submitted with the required supporting documentation and, if there is not a pending, or currently valid and approved advanced processing application, the fee as required in 8 CFR 106.2. * * *

* * * * *

(d) * * * If the prospective adoptive parents fail to file the orphan petition within the approval validity period of the advanced processing application, the advanced processing application will be deemed abandoned pursuant to paragraph (h)(7) of this section. If the prospective adoptive parents file the orphan petition after the approval period of the advanced processing application has expired, the petition will be denied pursuant to paragraph (h)(13) of this section. * * *

* * * * *

(h) * * *

(3) * * *

(i) If the advanced processing application is approved:

(A) The prospective adoptive parents will be advised in writing. A notice of approval expires 15 months after the date on which USCIS received the FBI response on the applicant's, and any additional adult member of the household's, biometrics, unless approval is revoked. If USCIS received the responses on different days, the 15-month period begins on the earliest response date. The notice of approval will specify the expiration date.

(B) USCIS may extend the validity period for the approval of a Form I-600A as provided in paragraph (h)(3)(ii) of this section or if requested in accordance with 8 CFR 106.2(a)(23). During this time, the prospective adoptive parents may file an orphan petition for one orphan without fee.

(C) If the Form I-600A approval is for more than one orphan, the prospective adoptive parents may file a petition for each of the additional children, to the maximum number approved.

(D) If the orphans are birth siblings, no additional fee is required. If the orphans are not birth siblings, an additional fee is required for each orphan beyond the first orphan.

(E) It does not guarantee that the orphan petition will be approved.

(ii) In the case of an outbreak affecting a public health or other emergency:

(A) The USCIS Director or his or her designee, may extend the validity period of the approval of the advance processing application, either in an individual case or for a

class of cases if the Director or designee determines that the ability of a prospective adoptive parent to timely file a petition has been adversely affected.

(B) An extension of the validity of the approval of the advance processing application may be subject to such conditions as the USCIS Director, or officer designated by the USCIS Director, may establish.

* * * * *

(7) *Advanced processing application deemed abandoned for failure to file orphan petition within the approval validity period of the advanced processing application.* If an orphan petition is not properly filed within 15 months of the approval date of the advanced processing application:

(i) The application will be deemed abandoned;

(ii) Supporting documentation will be returned to the prospective adoptive parents, except for documentation submitted by a third party which will be returned to the third party, and documentation relating to the biometrics checks;

(iii) The director will dispose of documentation relating to biometrics checks in accordance with current policy; and

(iv) Such abandonment will be without prejudice to a new filing at any time with fee.

* * * * *

(13) *Orphan petition denied: petitioner files orphan petition after the approval of the advanced processing application has expired.* If the petitioner files the orphan petition after the advanced processing application has expired, the petition will be denied. This action will be without prejudice to a new filing at any time with fee.

* * * * *

13. Section 204.5 is amended:

a. In paragraph (m)(5), in the definition of “Petition”, by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”; and

b. By revising paragraph (p)(4).

The revision reads as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(p) * * *

(4) *Application for employment authorization.* (i) To request employment authorization, an eligible applicant described in paragraph (p)(1), (2), or (3) of this section must:

(A) File an application for employment authorization (Form I-765), with USCIS, in accordance with 8 CFR 274a.13(a) and the form instructions.

(B) Submit biometric information as may be provided in the applicable form instructions.

(ii) Employment authorization under this paragraph may be granted solely in 1-year increments, but not to exceed the period of the alien’s authorized admission.

* * * * *

§ 204.6 [Amended]

14. Section 204.6 is amended in paragraph (m)(6)(i)(C) by removing “8 CFR 103.7(b)(1)(i)(XX)” and adding in its place “8 CFR 106.2”.

§ 204.310 [Amended]

15. Section 204.310 is amended in paragraph (a)(3)(i) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2” and by removing and reserving paragraph (a)(3)(ii).

§ 204.311 [Amended]

16. Section 204.311 is amended in paragraph (u)(4) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

17. Section 204.312 is amended by revising paragraph (e)(3) to read as follows:

§ 204.312 Adjudication of the Form I-800A.

* * * * *

(e) * * *

(3)(i) If the 15-month validity period for a Form I-800A approval is about to expire, the applicant:

(A) May file Form I-800A Supplement 3, with the filing fee under 8 CFR 106.2, if required.

(B) May not file a Form I-800A Supplement 3 seeking extension of an approval notice more than 90 days before the expiration of the validity period for the Form I-800A approval, but must do so on or before the date on which the validity period expires.

(C) Is not required to pay the Form I-800A Supplement 3 filing fee for the first request to extend the approval of a Form I-800A, or to obtain a first time change of Hague Convention country during the Form I-800A approval period.

(D) Must pay the Form I-800A Supplement 3 filing fee, as specified in 8 CFR 106.2, for the second, or any subsequent, Form I-800A Supplement 3 that is filed, if the

applicant files a second or subsequent Form I-800A Supplement 3 to obtain a second or subsequent extension or a second or subsequent change of Hague Convention country.

(ii) Any Form I-800A Supplement 3 that is filed to obtain an extension of the approval of a Form I-800A or a change of Hague Convention country must be accompanied by:

(A) A statement, signed by the applicant under penalty of perjury, detailing any changes to the answers given to the questions on the original Form I-800A;

(B) An updated or amended home study as required under 8 CFR 204.311(u); and

(C) A photocopy of the Form I-800A approval notice.

(iii) If USCIS continues to be satisfied that the applicant remains suitable as the adoptive parent of a Convention adoptee, USCIS will extend the approval of the Form I-800A to a date not more than 15 months after the date on which USCIS received the new biometric responses. If new responses are received on different dates, the new 15-month period begins on the earliest response date. The new notice of approval will specify the new expiration date.

(iv) There is no limit to the number of extensions that may be requested and granted under this section, so long as each request is supported by an updated or amended home study that continues to recommend approval of the applicant for intercountry adoption and USCIS continues to find that the applicant remain suitable as the adoptive parent(s) of a Convention adoptee.

* * * * *

§ 204.313 [Amended]

18. Section 204.313 is amended in the last sentence of paragraph (a) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2” and by adding the word “birth” before “siblings”.

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

19. The authority citation for part 211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

§ 211.1 [Amended]

20. Section 211.1 is amended in the second sentence in paragraph (b)(3) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 211.2 [Amended]

21. Section 211.2 is amended in the second sentence in paragraph (b) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

**PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS;
WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

22. The authority citation for part 212 continues to read as follows:

Authority: 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185 note (section 7209 of Pub. L. 108-458), 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 CFR part 2.

§ 212.2 [Amended]

23. Section 212.2 is amended in paragraphs (b)(1), (c)(1)(ii), (d), and (g)(1) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 212.3 [Amended]

24. Section 212.3 is amended in paragraph (a) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 212.4 [Amended]

25. Section 212.4 is amended in the first sentence in paragraph (b) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 212.7 [Amended]

26. Section 212.7 is amended:

a. In paragraph (a)(1), by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2” in paragraph (a)(1); and

b. In paragraphs (e)(1) and (e)(5)(i), by removing “8 CFR 103.7(b)” and adding in its place “8 CFR 106.2”.

§ 212.15 [Amended]

27. Section 212.15 is amended in paragraph (j)(2)(ii) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 212.18 [Amended]

28. Section 212.18 is amended in paragraph (a)(2) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

29. Section 212.19 is amended by revising paragraphs (b)(1), (c)(1), (e), (h)(1), and (j) to read as follows:

§ 212.19 Parole for entrepreneurs.

* * * * *

(b) * * *

(1) *Filing of initial parole request form.* An alien seeking an initial grant of parole as an entrepreneur of a start-up entity must file Form I-941, Application for Entrepreneur Parole, with USCIS, with the required fee, and supporting documentary evidence in accordance with this section and the form instructions, demonstrating eligibility as provided in paragraph (b)(2) of this section.

* * * * *

(c) * * *

(1) *Filing of re-parole request form.* Before expiration of the initial period of parole, an entrepreneur parolee may request an additional period of parole based on the same start-up entity that formed the basis for his or her initial period of parole granted under this section. To request such parole, an entrepreneur parolee must timely file Form I-941, Application for Entrepreneur Parole, with USCIS, with the required fee and supporting documentation in accordance with the form instructions, demonstrating eligibility as provided in paragraph (c)(2) of this section.

* * * * *

(e) *Collection of biometric information.* An alien seeking an initial grant of parole or re-parole before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be required to submit biometric information. An alien seeking an initial grant of parole or re-parole may be required to submit biometric information.

* * * * *

(h) * * *

(1) The entrepreneur's spouse and children who are seeking parole as derivatives of such entrepreneur must individually file Form I-131, Application for Travel Document. Such application must also include evidence that the derivative has a qualifying relationship to the entrepreneur and otherwise merits a grant of parole in the exercise of discretion. Such spouse or child will be required to appear for collection of biometrics in accordance with the form instructions or upon request.

* * * * *

(j) *Reporting of material changes.* An alien granted parole under this section must immediately report any material change(s) to USCIS. If the entrepreneur will continue to be employed by the start-up entity and maintain a qualifying ownership interest in the start-up entity, the entrepreneur must submit a form prescribed by USCIS, with any applicable fee in accordance with the form instructions to notify USCIS of the material change(s). The entrepreneur parolee must immediately notify USCIS in writing if he or she will no longer be employed by the start-up entity or ceases to possess a qualifying ownership stake in the start-up entity.

* * * * *

PART 214—NONIMMIGRANT CLASSES

30. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305, 1356, and 1372; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Public Law 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the

Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

31. Section 214.1 is amended:

a. In paragraph (c)(1), by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”;

b. In paragraph (c)(2), by removing “§103.7 of this chapter” and adding in its place “8 CFR 106.2”;

c. By revising paragraph (c)(5); and

d. In paragraph (j) introductory text, by removing:

i. “a Form I-129” and adding in its place “an application or petition” in the first sentence; and

ii. “Form I-129” and adding in its place “application or petition” in the second and third sentences.

The revision reads as follows:

§214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(c) * * *

(5) *Decision on application for extension or change of status.* Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of USCIS. The denial of an application for extension of stay may not be appealed.

* * * * *

32. Section 214.2 is amended:

- a. By revising paragraph (e)(8)(iii), the first sentence of paragraph (e)(8)(iv) introductory text, and paragraphs (e)(8)(iv)(B) and (e)(8)(v);
- b. In paragraph (e)(20) introductory text and in two places in paragraph (e)(21)(i), by removing “Form I-129 and E Supplement” and adding in its place “the form prescribed by USCIS”;
- c. By revising paragraph (e)(23)(viii);
- d. By removing and reserving paragraph (e)(23)(xv);
- e. In paragraph (f)(9)(ii)(F)(I), by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”;
- f. By revising paragraph (h)(2)(i)(A);
- g. In paragraph (h)(2)(i)(B), by removing “Form I-129” and adding in its place “application or petition” wherever it appears;
- h. In paragraph (h)(2)(i)(D), by removing “Form I-129” and adding in its place “the form prescribed by USCIS”;
- i. By revising paragraph (h)(2)(ii);
- j. In paragraph (h)(5)(i)(A), by removing “Form I-129” and adding in its place “the form prescribed by USCIS”;
- k. By revising paragraph (h)(5)(i)(B);
- l. In paragraph (h)(6)(iii)(E), by removing “I-129” and adding in its place “the form prescribed by USCIS”;
- m. In paragraph (h)(6)(vii), by removing “Form I-129” and adding in its place “application or petition” wherever it appears;

- n. In paragraphs (h)(11)(i)(A), (h)(14), and (h)(15)(i), by removing “Form I-129” and adding in its place “the form prescribed by USCIS”;
- o. By revising paragraph (h)(19)(i);
- p. In paragraph (h)(19)(vi)(A), by removing “Petition for Nonimmigrant Worker (Form I-129)” and adding in its place “the form prescribed by USCIS”;
- q. In paragraph (l)(2)(i), by removing “Form I-129, Petition for Nonimmigrant Worker” and adding in its place “the form prescribed by USCIS” in its place;
- r. In paragraphs (l)(2)(ii), (l)(3) introductory text, and (l)(4)(iv) introductory text by removing “Form I-129” and adding in its place “the form prescribed by USCIS”;
- s. In paragraph (l)(5)(ii)(F), by removing “Form I-129, Petition for Nonimmigrant Worker” and adding in its place “the form prescribed by USCIS” in its place;
- t. In paragraph (l)(14)(ii) introductory text, by removing “Form I-129” and adding in its place “application or petition” wherever it appears;
- u. In paragraph (l)(17)(i), by removing “Form I-129” and adding in its place “the form prescribed by USCIS” wherever it occurs;
- v. By revising paragraph (m)(14)(ii) introductory text;
- w. In paragraph (o)(2)(i), by removing “Form I-129, Petition for Nonimmigrant Worker” and adding in its place “the form prescribed by USCIS” in its place;
- x. In paragraph (o)(2)(iv)(D), by removing “Form I-129” and adding in its place “the form prescribed by USCIS”;
- y. By revising paragraph (o)(2)(iv)(F);

- z. In paragraph (o)(2)(iv)(G), by removing “Form I-129” and adding in its place “application or petition” wherever it appears;
- aa. In paragraph (o)(11), by removing “Form I-129, Petition for Nonimmigrant Worker” and adding in its place “the form prescribed by USCIS” in its place;
- bb. In paragraph (o)(12)(i), by removing “Form I-129” and adding in its place “an application or petition” in the first sentence;
- cc. In paragraph (p)(2)(i), by removing “Form I-129, Petition for Nonimmigrant Worker” and adding in its place “the form prescribed by USCIS” in its place;
- dd. In paragraph (p)(2)(iv)(C)(2), by removing “Form I-129” and adding in its place “application or petition” wherever it appears;
- ee. By revising paragraph (p)(2)(iv)(F);
- ff. In paragraph (p)(2)(iv)(H), by removing “Form I-129 petition” and adding in its place “application or petition”;
- gg. In paragraphs (p)(13) and (p)(14)(i), by removing “Form I-129” and adding in its place “the form prescribed by USCIS”;
- hh. In paragraph (q)(3)(i), by removing “Form I-129, Petition for Nonimmigrant Worker” and adding in its place “the form prescribed by USCIS”;
- ii. In the second sentence of paragraph (q)(3)(i) wherever it appears and in paragraph (q)(4)(i), by removing “Form I-129” and adding in its place “application or petition”;
- jj. In paragraph (q)(4)(iii), by removing “Form I-129” and adding in its place “the form prescribed by USCIS”;

kk. In the first sentence of paragraph (q)(5)(i), by removing “Form I-129, Petition for Nonimmigrant Worker” and adding in its place “the form prescribed by USCIS”;

ll. In the second sentence of paragraph (q)(5)(i), by removing “Form I-129” and adding in its place “the form prescribed by USCIS”;

mm. In paragraph (q)(6), by removing “Form I-129” and adding in its place “application or petition”;

nn. By revising paragraph (r)(3) introductory text and the definition of “Petition” in paragraph (r)(3);

oo. By revising paragraph (r)(5);

pp. In paragraph (r)(13), by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”; and

qq. By revising paragraphs (w)(5), (w)(15)(iii), and (w)(16).

The revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(e) * * *

(8) * * *

(iii) *Substantive changes.* Approval of USCIS must be obtained where there will be a substantive change in the terms or conditions of E status. The treaty alien must file a new application in accordance with the instructions on the form prescribed by USCIS requesting extension of stay in the United States, plus evidence of continued eligibility for E classification in the new capacity. Or the alien may obtain a visa reflecting the new terms and conditions and subsequently apply for admission at a port-of-entry. USCIS

will deem there to have been a substantive change necessitating the filing of a new application where there has been a fundamental change in the employing entity's basic characteristics, such as a merger, acquisition, or sale of the division where the alien is employed.

(iv) * * * Neither prior approval nor a new application is required if there is no substantive, or fundamental, change in the terms or conditions of the alien's employment which would affect the alien's eligibility for E classification. * * *

* * * * *

(B) Request a new approval notice reflecting the non-substantive change by filing an application with a description of the change, or;

* * * * *

(v) *Advice.* To request advice from USCIS as to whether a change is substantive, an alien may file an application with a complete description of the change. In cases involving multiple employees, an alien may request that USCIS determine if a merger or other corporate restructuring requires the filing of separate applications by filing a single application and attaching a list of the related receipt numbers for the employees involved and an explanation of the change or changes.

* * * * *

(23) * * *

(viii) *Information for background checks.* USCIS may require an applicant for E-2 CNMI Investor status, including but not limited to any applicant for derivative status as a spouse or child, to submit biometrics as required under 8 CFR 103.16.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(A) *General.* A United States employer seeking to classify an alien as an H-1B, H-2A, H-2B, or H-3 temporary employee must file a petition on the form prescribed by USCIS in accordance with the form instructions.

* * * * *

(ii) *Multiple beneficiaries.* Up to 25 named beneficiaries may be included in an H-1C, H-2A, H-2B, or H-3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period, and in the same location. If more than 25 named beneficiaries are being petitioned for, an additional petition is required. Petitions for H-2A and H-2B workers from countries not designated in accordance with paragraph (h)(6)(i)(E) of this section must be filed separately.

* * * * *

(5) * * *

(i) * * *

(B) *Multiple beneficiaries.* The total number of beneficiaries of a petition or series of petitions based on the same temporary labor certification may not exceed the number of workers indicated on that document. A single petition can include more than one named beneficiary if the total number is 25 or less and does not exceed the number of positions indicated on the relating temporary labor certification.

* * * * *

(19) * * *

(i) A United States employer (other than an exempt employer defined in paragraph (h)(19)(iii) of this section, or an employer filing a petition described in paragraph (h)(19)(v) of this section) who files a petition or application must include the additional American Competitiveness and Workforce Improvement Act (ACWIA) fee referenced in 8 CFR 106.2, if the petition is filed for any of the following purposes:

* * * * *

(m) * * *

(14) * * *

(ii) *Application.* A M-1 student must apply for permission to accept employment for practical training on Form I-765, with fee as contained in 8 CFR part 106, accompanied by a properly endorsed Form I-20 by the designated school official for practical training. The application must be submitted before the program end date listed on the student's Form I-20 but not more than 90 days before the program end date. The designated school official must certify on Form I-538 that—

* * * * *

(o) * * *

(2) * * *

(iv) * * *

(F) *Multiple beneficiaries.* More than one O-2 accompanying alien may be included on a petition if they are assisting the same O-1 alien for the same events or performances, during the same period, and in the same location. Up to 25 named beneficiaries may be included per petition.

* * * * *

(p) * * *

(2) * * *

(iv) * * *

(F) *Multiple beneficiaries.* More than one beneficiary may be included in a P petition if they are members of a team or group, or if they will provide essential support to P-1, P-2, or P-3 beneficiaries performing in the same location and in the same occupation. Up to 25 named beneficiaries may be included per petition.

* * * * *

(r) * * *

(3) *Definitions.* As used in this section, the term:

* * * * *

Petition means the form or as may be prescribed by USCIS, a supplement containing attestations required by this section, and the supporting evidence required by this part.

* * * * *

(5) *Extension of stay or readmission.* An R-1 alien who is maintaining status or is seeking readmission and who satisfies the eligibility requirements of this section may be granted an extension of R-1 stay or readmission in R-1 status for the validity period of the petition, up to 30 months, provided the total period of time spent in R-1 status does not exceed a maximum of five years. A Petition for a Nonimmigrant Worker to request an extension of R-1 status must be filed by the employer with a supplement prescribed by USCIS containing attestations required by this section, the fee specified in 8 CFR part 106, and the supporting evidence, in accordance with the applicable form instructions.

* * * * *

(w) * * *

(5) *Petition requirements.* An employer who seeks to classify an alien as a CW-1 worker must file a petition with USCIS and pay the requisite petition fee plus the CNMI education funding fee and the fraud prevention and detection fee as prescribed in the form instructions and 8 CFR part 106. If the beneficiary will perform services for more than one employer, each employer must file a separate petition with fees with USCIS.

* * * * *

(15) * * *

(iii) If the eligible spouse and/or minor child(ren) are present in the CNMI, the spouse or child(ren) may apply for CW-2 dependent status on Form I-539 (or such alternative form as USCIS may designate) in accordance with the form instructions. The CW-2 status may not be approved until approval of the CW-1 petition.

(16) *Biometrics and other information.* The beneficiary of a CW-1 petition or the spouse or child applying for a grant or, extension of CW-2 status, or a change of status to CW-2 status, must submit biometric information as requested by USCIS.

* * * * *

§ 214.3 [Amended]

33. Section 214.3 is amended:

a. In paragraph (h)(1)(i), by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”; and

b. In paragraph (h)(2) introductory text, by removing “8 CFR 103.7(b)(1)(ii)(B)” and adding in its place “8 CFR 103.7(d)(2)”.

§ 214.6 [Amended]

34. Section 214.6 is amended in paragraphs (g)(1), (h)(1)(i), (h)(2), and (i)(2) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 214.11 [Amended]

35. Section 214.11 is amended in paragraphs (d)(2)(iii) and (k)(1) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

36. Section 214.14 is amended by revising paragraph (c)(1) introductory text to read as follows:

§ 214.14 Alien victims of certain qualifying criminal activity.

* * * * *

(c) * * *

(1) *Filing a petition.* USCIS has sole jurisdiction over all petitions for U nonimmigrant status. An alien seeking U-1 nonimmigrant status must submit, Form I-918, Petition for U Nonimmigrant Status, and initial evidence to USCIS in accordance with this paragraph and the instructions to Form I-918. A petitioner who received interim relief is not required to submit initial evidence with Form I-918 if he or she wishes to rely on the law enforcement certification and other evidence that was submitted with the request for interim relief.

* * * * *

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

37. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

§ 216.4 [Amended]

38. Section 216.4 is amended in paragraph (a)(1) by removing “§103.7(b) of this chapter” and adding in its place “8 CFR 106.2”.

§ 216.5 [Amended]

39. Section 216.5 is amended in paragraph (b) by removing “§103.7(b) of this Chapter” and adding in its place “8 CFR 106.2”.

§ 216.6 [Amended]

40. Section 216.6 is amended in paragraph (a)(1)(i) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

PART 217—VISA WAIVER PROGRAM

41. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

§ 217.2 [Amended]

42. Section 217.2 is amended in paragraph (c)(2) by removing “§103.7(b)(1) of this chapter” and adding in its place “8 CFR 103.7(d)(4)”.

**PART 223—REENTRY PERMITS, REFUGEE TRAVEL DOCUMENTS, AND
ADVANCE PAROLE DOCUMENTS**

43. The authority citation for part 223 continues to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1186a, 1203, 1225, 1226, 1227, 1251;
Protocol Relating to the Status of Refugees, November 1, 1968, 19 U.S.T. 6223 (TIAS)
6577; 8 CFR part 2.

§ 223.2 [Amended]

44. Section 223.2 is amended in paragraph (a) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

45. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2004 Comp., p.278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731-32; Title VII of Public Law 110-229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458); Pub. L. 112-54.

§235.1 [Amended]

46. Section 235.1 is amended in paragraphs (g)(1)(iii) and (g)(2) by removing “§103.7(b)(1) of this chapter” and adding in its place “8 CFR 103.7(d)(3)”.

§235.7 [Amended]

47. Section 235.7 is amended in paragraph (a)(4)(v) by removing “§103.7(b)(1) of this chapter” and “§103.7(b)(1)” and adding in their place “8 CFR 103.7(d)(7)”.

§235.12 [Amended]

48. Section 235.12 is amended in paragraph (d)(2) by removing “8 CFR 103.7(b)(1)(ii)(M)” and adding in its place “8 CFR 103.7(d)(13)”.

§235.13 [Amended]

49. Section 235.13 is amended in paragraph (c)(5) by removing “8 CFR 103.7(b)(1)(ii)(N)” and adding in its place “8 CFR 103.7(d)(14)”.

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

50. The authority citation for part 236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

§ 236.14 [Amended]

51. Section 236.14 is amended in paragraph (a) by removing “§103.7(b)(1) of this chapter” and adding in its place “8 CFR 106.2”.

§ 236.15 [Amended]

52. Section 236.15 is amended in paragraph (e) by removing “§103.7(b)(1) of this chapter” and adding in its place “8 CFR 106.2”.

PART 240—VOLUNTARY DEPARTURE, SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL

53. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105-100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105-277 (112 Stat. 2681); 8 CFR part 2.

54. Section 240.63 is amended by revising paragraph (a) to read as follows:

§240.63 Application process.

(a) *Form and fees.* Except as provided in paragraph (b) of this section, the application must be made on the form prescribed by USCIS for this program and filed in accordance with the instructions for that form. An applicant who submitted to EOIR a completed Form EOIR-40, Application for Suspension of Deportation, before the effective date of the form prescribed by USCIS may apply with the Service by submitting the completed Form EOIR-40 attached to a completed first page of the application. Each application must be filed with the required fees as provided in 8 CFR 106.2.

* * * * *

**PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF
DESIGNATED STATES**

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

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

§244.6 [Amended]

56. Section 244.6 is revised to read as follows:

§ 244.6 Application.

(a) An application for Temporary Protected Status must be submitted in accordance with the form instructions, the applicable country-specific Federal Register notice that announces the procedures for TPS registration or re-registration and, except as otherwise provided in this section, with the appropriate fees as described in 8 CFR part 106.

(b) An applicant for TPS may also request an employment authorization document pursuant to 8 CFR 274a by filing an Application for Employment Authorization in accordance with the form instructions and in accordance with 8 CFR 106.2 and 106.3.

57. Section 244.17 is amended by revising paragraph (a) to read as follows:

§ 244.17 Periodic registration

(a) Aliens granted Temporary Protected Status must re-register periodically in accordance with USCIS instructions. Such registration applies to nationals of those foreign states designated for more than one year by DHS or where a designation has been extended for a year or more. Applicants for re-registration must apply during the period

provided by USCIS. Re-registration applicants do not need to pay the fee that was required for initial registration except the biometric services fee, unless that fee is waived in the applicable form instructions, and if requesting an employment authorization document, the application fee for an Application for Employment Authorization. By completing the application, applicants attest to their continuing eligibility. Such applicants do not need to submit additional supporting documents unless USCIS requests that they do so.

* * * * *

**PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED
FOR PERMANENT RESIDENCE**

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

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105-100, section 202, 111 Stat. 2160, 2193; Pub. L. 105-277, section 902, 112 Stat. 2681; Pub. L. 110-229, tit. VII, 122 Stat. 754; 8 CFR part 2.

§ 245.7 [Amended]

59. Section 245.7 is amended in paragraph (a) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 245.10 [Amended]

60. Section 245.10 is amended in paragraph (c) introductory text by removing “§ 103.7(b)(1) of this chapter” and adding in its place “8 CFR 106.2”.

§ 245.15 [Amended]

61. Section 245.15 is amended:

- a. In paragraph (c)(2)(iv)(A), by removing “§ 103.7(b)(1) of this chapter” and adding in its place “8 CFR 106.2”;
- b. By removing and reserving paragraph (c)(2)(iv)(B);
- c. In paragraph (g)(1), by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”;
- d. In paragraph (h)(1), by removing “§ 103.7(b)(1) of this chapter” and adding in its place “8 CFR 106.2”;
- e. By removing and reserving paragraph (h)(2); and
- f. In paragraphs (n)(1), (t)(1), and (t)(2)(i), by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 245.18 [Amended]

62. Section 245.18 is amended in paragraphs (d)(1) and (k) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 245.21 [Amended]

63. Section 245.21 is amended:

- a. In paragraph (b), by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2” in the first sentence and removing the second sentence; and
- b. In paragraphs (f), (h), and (i), by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 245.23 [Amended]

64. Section 245.23 is amended in paragraph (e)(1)(ii) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2” and by removing and reserving paragraph (e)(1)(iii).

§ 245.24 [Amended]

65. Section 245.24 is amended:

a. In paragraph (d)(2), by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2” and by removing and reserving paragraph (d)(3); and

b. In paragraphs (h)(1)(ii) and (i)(1)(iii), by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2” and by removing paragraph (i)(1)(iv).

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

66. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

67. Section 245a.2 is amended by revising paragraph (e)(3) to read as follows:

§245a.2 Application for temporary residence.

* * * * *

(e) * * *

(3) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

* * * * *

68. Section 245a.3 is amended by revising paragraph (d)(3) to read as follows:

§245a.3 Application for adjustment from temporary to permanent resident status.

* * * * *

(d) * * *

(3) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

* * * * *

69. Section 245a.4 is amended by revising paragraph (b)(5)(iii) to read as follows:

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

* * * * *

(b) * * *

(5) * * *

(iii) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

* * * * *

70. Section 245a.12 is amended:

a. In paragraphs (b) introductory text and (c), by removing “Missouri Service Center” and adding in its place “National Benefit Center”;

b. By revising paragraph (d) introductory text;

c. In paragraph (d)(1), by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”; and

d. By removing and reserving paragraphs (d)(2), (4), and (6).

The revision reads as follows:

§245a.12 Filing and applications.

* * * * *

(d) *Application and supporting documentation.* Each applicant for LIFE Legalization adjustment of status must submit the form prescribed by USCIS completed in accordance with the form instructions accompanied by the required evidence.

* * * * *

§ 245a.13 [Amended]

71. Section 245a.13 is amended:

a. In paragraphs (d)(1) and (e)(1), by removing “§ 103.7(b)(1) of this chapter” and adding in its place “8 CFR 106.2”; and

b. In paragraph (e) introductory text and (e)(1), by removing “Missouri Service Center” and adding in its place “National Benefit Center”; and

§ 245a.18 [Amended]

72. Section 245a.18 is amended in paragraph (c)(1) by removing “Missouri Service Center” and adding in its place “National Benefit Center” in paragraph (c)(1).

§ 245a.19 [Amended]

73. Section 245a.19 is amended in paragraph (a) by removing “Missouri Service Center” and adding in its place “National Benefit Center”.

§ 245a.20 [Amended]

74. Section 245a.20 is amended in paragraph (a)(2) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 245a.33 [Amended]

75. Section 245a.33 is amended in paragraph (a) by removing “§ 103.7(b)(1) of this chapter” and adding in its place “8 CFR 106.2” and in paragraphs (a) and (b) by removing “Missouri Service Center” and adding in its place “National Benefit Center”.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

76. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

§248.3 [Amended]

77. Section 248.3 is amended in the introductory text by removing “8 CFR 103.7(b)” and adding in its place “8 CFR 106.2” in its place and in paragraph (h) introductory text by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

78. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303-1305; 8 CFR part 2.

§ 264.2 [Amended]

79. Section 264.2 is amended in paragraphs (c)(1)(i) and (c)(2)(i) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 264.5 [Amended]

80. Section 264.5 is amended in paragraph (a) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 264.6 [Amended]

81. Section 264.6 is amended in paragraph (b) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

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

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 114-74, 129 Stat. 599.

83. Section 274a.12 is amended by revising paragraphs (b)(9), (13), and (14) to read as follows:

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

* * * * *

(b) * * *

(9) A temporary worker or trainee (H-1, H-2A, H-2B, or H-3), pursuant to 8 CFR 214.2(h), or a nonimmigrant specialty occupation worker pursuant to sections 101(a)(15)(H)(i)(b)(1), 101(a)(15)(H)(ii)(a), 101(a)(15)(H)(ii)(b) and INA 101(a)(15)(H)(iii) of the Act. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional H-2B athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization must file a new petition for H-2B classification. If a new petition is not filed within 30 days, employment authorization will cease. If a new petition is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease. In the case of a nonimmigrant with H-1B status, employment authorization will automatically continue upon the filing of a qualifying petition under 8 CFR 214.2(h)(2)(i)(H) until such petition is adjudicated, in accordance with section 214(n) of the Act and 8 CFR 214.2(h)(2)(i)(H);

* * * * *

(13) An alien having extraordinary ability in the sciences, arts, education, business, or athletics (O-1), and an accompanying alien (O-2), pursuant to 8 CFR 214.2(o). An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional O-1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new petition for O nonimmigrant classification. If a new petition is not filed within 30 days, employment authorization will cease. If a new petition is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(14) An athlete, artist, or entertainer (P-1, P-2, or P-3), pursuant to 8 CFR 214.2(p). An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional P-1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new petition for P-1 nonimmigrant classification. If a new petition is not filed within 30 days, employment authorization will cease. If a new petition is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease;

* * * * *

PART 286—IMMIGRATION USER FEE

84. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1356; Title VII of Public Law 110-229; 8 CFR part 2.

§ 286.9 [Amended]

85. Section 286.9 is amended in paragraph (a) by removing “§ 103.7(b)(1)” and adding in its place “8 CFR 103.7(d)”.

PART 301—NATIONALS AND CITIZENS OF THE UNITED STATES AT BIRTH

86. The authority citation for part 301 continues to read as follows:

Authority: 8 U.S.C. 1103, 1401; 8 CFR part 2.

§301.1 [Amended]

87. Section 301.1 is amended in paragraph (a)(1) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

PART 319—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SPOUSES OF UNITED STATES CITIZENS

88. The authority citation for part 319 continues to read as follows:

Authority: 8 U.S.C. 1103, 1430, 1443.

§319.11 [Amended]

89. Section 319.11 is amended in paragraph (a) introductory text by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

PART 320—CHILD BORN OUTSIDE THE UNITED STATES AND RESIDING PERMANENTLY IN THE UNITED STATES; REQUIREMENTS FOR AUTOMATIC ACQUISITION OF CITIZENSHIP

90. The authority citation for part 320 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§320.5 [Amended]

91. Section 320.5 is amended in paragraphs (b) and (c) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

PART 322—CHILD BORN OUTSIDE THE UNITED STATES; REQUIREMENTS FOR APPLICATION FOR CERTIFICATE OF CITIZENSHIP

92. The authority citation for part 322 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 322.3 [Amended]

93. Section 322.3 is amended in paragraph (a) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2” and in paragraph (b)(1) introductory text by removing “§ 103.7(b)(1) of this chapter” and adding in its place “8 CFR 106.2”.

§ 322.5 [Amended]

94. Section 322.5 is amended in paragraphs (b) and (c) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

**PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE
NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP
BY MARRIAGE AND FORMER CITIZENS WHOSE NATURALIZATION IS
AUTHORIZED BY PRIVATE LAW**

95. The authority citation for part 324 continues to read as follows:

Authority: 8 U.S.C. 1103, 1435, 1443, 1448, 1101 note.

§324.2 [Amended]

96. Section 324.2 is amended in paragraph (b) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

PART 334—APPLICATION FOR NATURALIZATION

97. The authority citation for part 334 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§334.2 [Amended]

98. Section 334.2 is amended in paragraph (a) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

PART 341—CERTIFICATES OF CITIZENSHIP

99. The authority citation for part 341 continues to read as follows:

Authority: Pub. L. 82-414, 66 Stat. 173, 238, 254, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455; 8 CFR part 2.

§ 341.1 [Amended]

100. Section 341.1 is amended by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

§ 341.5 [Amended]

101. Section 341.5 is amended in paragraph (e) by removing “8 CFR 103.7” and adding in its place “8 CFR 106.2”.

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

102. The authority citation for part 343a continues to read as follows:

Authority: 8 U.S.C. 1101 note, 1103, 1435, 1443, 1454, and 1455.

§343a.1 [Amended]

103. Section 343a.1 is amended in paragraph (a) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR part 106”.

PART 343b—SPECIAL CERTIFICATE OF NATURALIZATION FOR RECOGNITION BY A FOREIGN STATE

104. The authority citation for part 343b continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1454, 1455.

§343b.1 [Amended]

105. Section 343b.1 is amended by removing the term “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2” in the first sentence.

PART 392—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO DIE WHILE SERVING ON ACTIVE DUTY WITH THE UNITED STATES ARMED FORCES DURING CERTAIN PERIODS OF HOSTILITIES

106. The authority citation for part 392 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440 and note, and 1440-1; 8 CFR part 2.

§ 392.4 [Amended]

107. Section 392.4 is amended in paragraph (e) by removing “8 CFR 103.7(b)(1)” and adding in its place “8 CFR 106.2”.

Chad R. Mizelle,
Senior Official Performing the Duties of the General Counsel for DHS
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