

Regulatory Impact Analysis

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

Final Rule

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

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A. 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)

The fee schedule that went to 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.¹

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 rule has been designated an “economically significant regulatory action” under section

¹ *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.

3(f)(1) of E.O. 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

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 requirements², 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,³ it does not provide for the proposed transfer of any Immigration Examination Fee Account (IEFA) funds collected by USCIS to U.S. Immigration and Customs Enforcement (ICE),⁴ 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,⁵ 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.⁶

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

² 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.

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

⁴ 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.

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

⁶ New 8 CFR 106.2(d)

also makes changes related to setting, collecting, and administering fees. DHS has kept certain fees, such as the fee for 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.⁷ 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 associated with administering the nation's immigration benefits system, safeguarding its integrity, and efficiently and fairly adjudicating immigration benefit requests, while protecting Americans, securing the homeland, and honoring our country's 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.

⁷ 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).

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. Table 1 provides a detailed summary of the provisions of this final rule and their impacts.

Table 1: 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 savings of \$7 per submission and operational efficiencies to both USCIS and filers—benefits that will accrue throughout the immigration lifecycle of the

			<p>individual and with the broader use of online filing and e-processing.</p> <ul style="list-style-type: none"> • USCIS also realizes cost savings from no longer having to send paper-based notices, requests, and other communications to requestors via mail. • 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.
(b) Secure Mail Initiative.	<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 	<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 utilizing 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

		<p>make it to their proper recipient.</p>	<p>pickup at a post office at a date and time that suits them.</p> <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, 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>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

	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.		USCIS losing fewer credit card disputes.
(d) Eliminate \$30 Returned Check Fee.	DHS is removing the \$30 charge for dishonored payments.	Quantitative: Applicants-	Quantitative: Applicants –
		<ul style="list-style-type: none"> • None. 	<ul style="list-style-type: none"> • \$0.17 million annual savings.
		Qualitative: Applicants – <ul style="list-style-type: none"> • None. DHS/USCIS – <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. 	Qualitative: Applicants – <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. DHS/USCIS – <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.
(e) Removal of Fee waivers.	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 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).	Quantitative: Applicants – <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. DHS/USCIS – <ul style="list-style-type: none"> None. 	Quantitative: Applicants – <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. DHS/USCIS – <ul style="list-style-type: none"> None.
		Qualitative: Applicants – <ul style="list-style-type: none"> Limiting fee waivers may adversely affect some applicants' ability to apply for immigration benefits. DHS/USCIS – <ul style="list-style-type: none"> None. 	Qualitative: Applicants – <ul style="list-style-type: none"> None. DHS/USCIS – <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.

(f) Fee Exemptions.	<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.
(g) Changes to Biometric Services Fee.	<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>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>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>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> <p>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>	<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

			<p>concurrently filing Form I-485 allowing USCIS to more accurately assess fee-paying percentages, fee-paying volumes, and fees for all three benefit types.</p> <ul style="list-style-type: none"> • 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> <ul style="list-style-type: none"> • 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>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.	Quantitative: Applicants- <ul style="list-style-type: none"> A transfer of \$10.1 annually to applicants who file Form I-131A from different groups of applicants. 	Quantitative: Applicants- <ul style="list-style-type: none"> None.
		Qualitative: Applicants – <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. DHS/USCIS- <ul style="list-style-type: none"> None. 	Qualitative: Applicants – <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. DHS/USCIS – <ul style="list-style-type: none"> None.
(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.	DHS is separating the Petition for a Nonimmigrant Worker, Form I-129, into several forms with different corresponding fees. DHS also is imposing a limit of 25 named beneficiaries per petition where multiple beneficiaries are permitted.	Quantitative: Applicants – <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. DHS/USCIS – <ul style="list-style-type: none"> Not estimated. 	Quantitative: Applicants – <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. DHS/USCIS – <ul style="list-style-type: none"> None.
		Qualitative: Applicants – <ul style="list-style-type: none"> None. DHS/USCIS – <ul style="list-style-type: none"> None. 	Qualitative: Applicants – <ul style="list-style-type: none"> Separating forms will reduce the need to navigate lengthy instructions that do not apply to their petition. DHS/USCIS –

			<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.
<p>(l) Extend premium processing timeframe from 15 calendar days to 15 business days.</p>	<p>DHS is changing the premium processing timeframe from 15 calendar days to 15 business days.</p>	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> Not estimated. 	<p>Quantitative: Applicants-</p> <ul style="list-style-type: none"> Not estimated
		<p>Qualitative: Petitioners –</p> <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. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> None. 	<p>Qualitative: Petitioners –</p> <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. <p>DHS/USCIS –</p> <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.

<p>(m) Creation of Form I-600A/600 Supplement 3, Request for Action on Approved Form I-600A/I-600 and new fee.</p>	<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 remove inconsistencies between Form I-600A approval periods and validity of the Federal Bureau of Investigation (FBI) background check.</p>	<p>Quantitative: Applicants</p> <ul style="list-style-type: none"> \$0.14 million costs for completing and submitting new Form I-600A/600 Supplement 3. 	<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"> \$0.13 million in costs for processing and reviewing the new Form I-600A/600 Supplement 3. 	<p>Qualitative: Applicants –</p> <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 request an extension of Form I-600A/I-600 and/or another type of approved change to their application/petition. <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

			<p>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>
<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>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"> 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 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>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 response to a Form G-1041 filing. <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.
(o) Remove Reduced Fee for Naturalization Applicants Using Form I-942, Request for Reduced Fee.	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.	Quantitative: Applicants- <ul style="list-style-type: none"> A transfer \$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. 	Qualitative: Applicants- <ul style="list-style-type: none"> None.
		Qualitative: Applicants – <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. DHS/USCIS – <ul style="list-style-type: none"> None. 	Quantitative: Applicants- <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. DHS/USCIS – <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) Charge for an initial Form I-765 while an asylum application is pending.	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	Quantitative: Applicants- <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 	Quantitative: Applicants- <ul style="list-style-type: none"> Other EAD applicants will not be required to subsidize EADs for pending asylum applicants. Qualitative: Applicants – <ul style="list-style-type: none"> None.

	these initial applicants from a fee with pending asylum applications.	employers could have costs in terms of lost productivity. DHS/USCIS- • None.	DHS/USCIS – • None.
(q) Charge a fee for Form I-589, Application for Asylum and for Withholding of Removal.	DHS will require a \$50 fee for Form I-589, Application for Asylum and for Withholding of Removal.	Quantitative: Applicants- • A transfer of \$5.5 million from Asylum applicants filing Form I-589 to different fee-paying applicants.	Quantitative: Applicants- • \$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.
		Qualitative: Applicants – • Some applicants may not be able to afford this fee and will no longer be able to apply for asylum.	Qualitative: Applicants – • None. DHS/USCIS – • None.
(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]).	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 [NACARA]).	Quantitative: Applicants- • 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.	Quantitative: Applicants- • \$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.
		Qualitative: Applicants – • None. DHS/USCIS – • None.	Qualitative: Applicants – • None. DHS/USCIS – • Combining the two IEFA fees into a single fee will streamline the revenue collections and reporting.

			<ul style="list-style-type: none"> A Single Form I-881 fee may help reduce the administrative and adjudication process for USCIS more efficient.
<p>(s) Clarify who must pay a 9-11 Response and Biometric Entry-Exit Fee for H-1B and L-1.</p>	<p>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.</p>	<p>Quantitative: Applicants-</p> <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. <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"> Fee will consistently be applied to all H-1B or L-1 petitions, whether for new employment or extension. <p>DHS/USCIS –</p> <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.

In addition to the impacts summarized here, Table 2 presents the accounting statement as required by Circular A-4.⁸

Table 2. OMB A-4 Accounting Statement (\$, 2019), period of the analysis 2020 - 2029				
Category	Primary Estimate	Minimum Estimate	Maximum Estimate	Source Citation
BENEFITS				
Annualized Monetized Benefits over 10 years	N/A	N/A	N/A	
	N/A	N/A	N/A	

⁸ OMB Circular A-4 is available at www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf.

<p>Annualized quantified, but unmonetized, benefits</p> <p>Unquantified Benefits</p>	<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>			<p>RIA</p>
<p>COSTS</p>				
<p>Annualized monetized costs over 10 years (discount rate in parenthesis)</p>	<p>N/A</p>	<p>(3%) \$7,664,090</p>	<p>(3%) -\$8,689,762</p>	<p>RIA</p>
	<p>N/A</p>	<p>(7%) \$7,664,090</p>	<p>(7%) -\$8,689,762</p>	
<p>Annualized quantified, but unmonetized, costs</p>	<p>N/A</p>			
<p>Qualitative (unquantified) costs</p>	<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 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</p>			

	<p>sensitive to the changes implemented by this rule.⁹ DHS does not know the individual financial circumstances of each applicant/petitioner applying for a particular immigration benefit. 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		
<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>	RIA
<p>Annualized monetized transfers: From whom to whom?</p> <p>Annual transfer payments to Government from Fee-Paying applicants/petitioners</p>	<p>(3%) \$551,842,481</p> <p>(7%) \$551,842,481</p>	RIA
<i>Miscellaneous Analyses/Category</i>	<i>Effects</i>	

⁹ See RIA, Section E: Removal Fee Waivers

Effects on state, local, and/or tribal governments	None	Preamble
Effects on small businesses	<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>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.</p>	FRFA and Small Entity Analysis (SEA)
Effects on wages	None	None
Effects on Growth	None	None

1. Changes to Provisions and Impacts

This rule adjusts current fees to ensure that USCIS is able to recover the full costs of the immigration services it provides and maintain adequate service. In addition to adjusting current fees, USCIS discusses changes that may have some impacts in this section. These amendments are likely to impose costs, transfers, or provide savings to applicants/petitioners. Only provisions that will result in new real resource costs to the economy are characterized as costs. Many of these provisions do not impose new real resource costs, but rather shift who pays for those costs. Because the fee-paying population already is covering the population, certain populations in this

rule will now have to cover the cost of a particular fee. For the purpose of this analysis in this final rule, these costs will be transferred from the federal government. For example, if applicants were previously not required to pay a fee and a fee is now imposed on those applicants, this is a transfer, because the costs of providing the service were previously being paid for by the Federal government and will now be paid for by applicants.

On the contrary, if a provision requires an applicant to file a form and USCIS to review it, this would be a real resource cost to the economy, because it will require labor from both the applicant and USCIS to complete the task. However, sometimes a provision may involve both transfers and costs. It is sometimes difficult to separate out the costs and transfer effects of provisions. 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.¹⁰ 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

¹⁰ 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.

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 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's 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.

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.

a. Reduced Fees for Filing Online

In response to the public comments, to encourage the shift to filing online 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)¹¹.

¹¹ 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.

USCIS does not require that immigration benefit requests be filed online. Filing on paper remains a valid option. However, for forms currently available for online filing, the fee will be \$10 more if filed on paper. The forms listed below are available for the discount of \$10 if filed online:

- 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, Application to Extend/Change Nonimmigrant Status
- Form G-1041, Genealogy Index Search Request¹²
- Form G-1041A, Genealogy Records Request¹³

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 effectively standardized or used for fraud and national security, information sharing, and system

¹² Form G-1041 Genealogy Index Search Request can be filed online. The form is not available for online filing through the USCIS website available at <https://www.uscis.gov/forms>. The Genealogy online filing is through the online portal available at <http://www.usics.gov/gnealogy> (last viewed May 5, 2020).

¹³ Ibid Footnote 10 for G-1041A Genealogy Records Request.

integration purposes. Technological advances have allowed USCIS to develop accessible, digital alternatives to traditional paper methods for handling requests.

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. USCIS will consider expanding the online filing discount to additional applications that are made available for online filing in future fee rules. DHS recognizes that, if presented with optional new technology, people adopt new practices at varying rates.¹⁴ 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.

Table 3 has the final filing fees for the current electronically available forms. The fee increase or decrease is calculated as the average of the new paper and online filing fees for a given form minus the current paper fee.

Table 3. Final Filing Fees for the Current Electronically Available Forms				
Form	Description	Current Fee	Paper Fee	Online Fee
I-90	Application to Replace Permanent Resident Card	\$455	\$415	\$405
N-336	Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)	\$700	\$1,735	\$1,725
N-400	Application for Naturalization	\$640	\$1,170	\$1,160

¹⁴ 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>.

N-565	Application for Replacement Naturalization/Citizenship Document	\$555	\$545	\$535
I-130/130A	Petition for Alien Relative	\$535	\$560	\$550
N-600	Application for Certificate of Citizenship	\$1,170	\$1,000	\$990
N-600K	Application for Citizenship and Issuance of Certificate Under Section 322	\$1,170	\$945	\$935
I-539	Application to Extend/Change Nonimmigrant Status	\$370	\$400	\$390
G-1041	Genealogy Index Search Request*	\$65	\$170	\$160
G-1041A	Genealogy Records Request*	\$65	\$265	\$255
Source: USCIS Analysis				
Note: *G-1041/1041A analysis can be found in Section (M), in this RIA.				

Table 4 shows the total annual volume of forms from fiscal years 2015 – 2019 for paper and online filing, 5-year average volumes, and the percentage of forms filed online. For this final rule analysis, DHS uses the 5-year average volume of online and paper filings and the fees associated with each form.

Table 4: USCIS Total Volume of Electronically Available Forms Filed and Percentage Filed Online for Fiscal Years 2015 – 2019.								
Fiscal Year	2015	2016	2017	2018	2019	Totals (Paper and Online)	5-Year Average	Percentage Filed Online
I-90	767,558	751,357	782,967	701,210	724,553	3,727,645	745,529	

I-90 (online)	<i>354,612</i>	<i>347,127</i>	<i>361,731</i>	<i>323,959</i>	<i>334,743</i>	<i>1,722,172</i>	<i>344,434</i>	<i>46.2%</i>
N-336	4,300	4,851	1,566	10,675	6,118	27,510	5,502	
N-336 (online)	<i>598</i>	<i>674</i>	<i>218</i>	<i>1,484</i>	<i>850</i>	<i>3,824</i>	<i>765</i>	<i>13.9%</i>
N-400	782,975	972,153	986,412	837,423	830,877	4,409,840	881,968	
N-400 (online)	<i>220,799</i>	<i>274,147</i>	<i>278,168</i>	<i>236,153</i>	<i>234,307</i>	<i>1,243,575</i>	<i>248,715</i>	<i>28.2%</i>
N-565	27,612	27,486	27,226	24,170	27,800	134,294	26,859	
N-565 (online)	<i>7,649</i>	<i>7,614</i>	<i>7,542</i>	<i>6,695</i>	<i>7,701</i>	<i>37,199</i>	<i>7,440</i>	<i>27.7%</i>
N-600	59,508	67,303	64,340	49,331	53,087	293,569	58,714	
N-600 (online)	<i>6,248</i>	<i>7,067</i>	<i>6,756</i>	<i>5,180</i>	<i>5,574</i>	<i>30,825</i>	<i>6,165</i>	<i>10.5%</i>
N-600K	3,804	3,932	3,383	3,728	4,254	19,101	3,820	
N-600K (online)	<i>555</i>	<i>574</i>	<i>494</i>	<i>544</i>	<i>621</i>	<i>2,789</i>	<i>558</i>	<i>14.6%</i>
I-130/130A*	768,641	869,292	914,484	835,972	748,664	4,137,053	827,411	N/A
I-539/539A*	199,820	214,785	233,430	230,975	221,566	1,100,576	220,115	N/A
G-1041	4,897	3,164	3,310	3,847	4,498	19,716	4,479*	N/A
G-1041A	2,344	1,534	2,626	2,920	3,358	12,782	3,342*	N/A
Totals**	<i>2,621,459</i>	<i>2,915,858</i>	<i>3,019,732</i>	<i>2,700,251</i>	<i>2,624,775</i>	<i>13,882,075</i>	<i>2,777,739</i>	

Source: USCIS, Office of Policy & Strategy, Policy Research Division (PRD), CLAIMS 3 database, and ELIS Database November 2019.

*USCIS does not has historical data on the online filing, of these fiscal year populations.

**Totals in italics are for online only.

Note: N/A in the total column, DHS did not have historical online data for these particular forms.

DHS will charge an online filing fee of \$10 dollars less than the paper form, for all the currently available forms indicated in Table 4. DHS will use the 5-year average annual number of online filings of Forms I-90, N-336, N-400, N-565, N-600, and N-600K filings, to calculate the estimated impacts of this change.

Table 5: USCIS Total Reduction in Revenues Received from Electronically Available Forms Due to Charging a \$10 Lower Form Fee		
Fiscal Year	Volume of Forms Filed Online	Total Reduction in Online Filing Fees Collected

	2015	2016	2017	2018	2019	Totals (Online Only)	5-Year Average		
I-90 (online)	354,612	347,127	361,731	323,959	334,743	1,722,172	344,434	\$3,444,340	
N-336 (online)	598	674	218	1,484	850	3,824	765	\$7,650	
N-400 (online)	220,799	274,147	278,168	236,153	234,307	1,243,575	248,715	\$2,487,150	
N-565 (online)	7,649	7,614	7,542	6,695	7,701	37,199	7,440	\$74,400	
N-600 (online)	6,248	7,067	6,756	5,180	5,574	30,825	6,165	\$61,650	
N-600K (online)	555	574	494	544	621	2,789	558	\$5,580	
Totals									\$6,080,770
Source: USCIS Analysis.									
*5-Year Average Populations x \$10 = Total Reduction in Online Filing Fees Collected									

The opportunity cost of time for individuals to file these forms will not be changed by this rule. Therefore, DHS estimates this rule will impose an annual average transfer of \$6,080,770¹⁵ from applicants/petitioners who pay \$10 more for those same filings on paper to fee-paying applicants/petitioners filing eligible forms currently available online for a particular immigration benefit or request. DHS is unable to quantify how many more applicants/petitioners will choose to file online as a result of the \$10 less online form fee and as more forms becomes available in the future. DHS does not know the number of applicants/petitioners who will continue to fill online, have computer/internet capability, or prefer online over paper filing for more accurate results.

¹⁵ Calculation: Total Fees: (Form I-90 Costs) \$3,727,645 + (Form N-336) \$27,510 + (Form N-400) \$4,409,840 + (Form N-565) \$134,294 + (Form N-600) \$293,569 + (Form N-600K) \$19,101 = \$13,849,589.

Online filing will have qualitative and quantitative cost-savings for USCIS and filers if individuals change how they file. USCIS intends to make online filing available voluntarily for additional forms as DHS shifts to a more electronic immigration system, for increased efficiency. Applicants/petitioners will benefit from filing online voluntarily by paying the lower fee established by DHS. More specifically, by encouraging online filing, DHS allows requestors to:

- Engage in interactive information collection where the system maximizes the quality and completeness of the request by prompting users to fill in missing data fields and informing them about what data and supporting documents may be necessary, based on the benefit sought. This could reduce the instances of rejection due to filing deficiencies or missing information, reducing the need for requests for evidence or additional clarifying information from USCIS, resulting in saving a requestor's time and resources.
- Decrease the risk of mishandled, misplaced, damaged files or lost paper files because electronic records would not be physically moved around to different adjudication offices.
- Increased access to administrative records. USCIS could easily redistribute electronic files among adjudications offices located in different regions, for better management of workload activities.
- Enhance data integrity, as requestors enter their information directly into the USCIS system, minimizing data entry errors when manually transferring or converting paper requests into electronic format. Avoiding errors saves time and money as delays and other processing interruptions associated with errors are eliminated.

Applicants that file online also provide advantages to USCIS in the following ways:

- 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.
- Reduces 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.

The main savings to USCIS resulting from this change is 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 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 savings from no longer having to send paper-based notices, requests, and other communications to requestors via mail.¹⁶

b. Secure Mail Initiative

USCIS is implementing Signature Confirmation Restricted Delivery (SCRD) a method of delivery of secure documents for USCIS.¹⁷ The final rule provides that 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

¹⁶ See 8 CFR 103.2(b)(19)(ii) (providing for electronic notices for electronically filed requests).

¹⁷ DHS OIG, *Verification Review: Better Safeguards are Needed in USCIS Green Card Issuance* ([Apr. 10, 2018](https://www.oig.dhs.gov/sites/default/files/assets/2018-04/OIG-18-61-Apr18.pdf)), available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-04/OIG-18-61-Apr18.pdf>.

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. New 8 CFR 103.2(b)(19)(iii)(A). The designated agent, or attorney or accredited representative, will be required to provide identification and sign for receipt of the secure document. 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 (PRC), Employment Authorization Document (EAD), and Travel Document Booklets once this final rule is effective. USCIS already uses SCR D when documents are returned by USPS as undeliverable after being sent by Priority Mail with Delivery Confirmation.

DHS has analyzed the costs associated with this service for all USCIS secured documents, based on anticipated mailing volumes and the per unit mailing cost of the service, set by USPS.

Table 6. Secure mail documents that are using the USPS Signature Confirmation Restricted Delivery postal rate, Fiscal Years 2018 – 2019.				
Fiscal Year	Permanent Resident Card	Employment Authorization Documents	Travel Documents	Total
2018	2,333,063	2,018,036	73,960	4,425,059
2019	1,734,406	1,931,116	82,937	3,748,459
Total	4,067,469	3,949,152	156,897	8,173,518
2-year Average	2,033,735	1,974,576	78,449	4,086,759
Source: USCIS, Office of Intake Production (OIDP), April 8, 2020.				
Note: Fiscal Year 2018 volume includes May 2018 to December 2018 only, as phase-in of the SCR D initiative began April 30, 2018.				

The current unit cost is \$8.45¹⁸ to mail the secure identity documents (EADs, PCR, travel booklets, and other secure and important identity documents issued by USCIS) first class to the address of person to whom they rightfully belong. Therefore, DHS estimates the total annual cost to USCIS associated with mailing secure documents to applicants is approximately \$34,533,114.¹⁹

A benefit of implementing SCRDP is that it will ensure secure and important identity documents issued by USCIS are delivered to the address of person to whom they rightfully belong. USPS's SCRDP product requires the addressee to provide proof of identification and sign for delivery of their secure document. SCRDP 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 SCRDP 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. USCIS will save on postal costs by not having to re-send documents when they fail to make it to their proper recipient. Lastly, SCRDP may reduce the likelihood of mis-delivered documents that could be mis-used.

¹⁸ United State Postal Services: Average of the Ensure Secure Delivery – Restricted Delivery Options: \$8.45 (SCRDP retail) Available at <https://www.usps.com/business/prices.htm> (viewed April 8, 2020).

¹⁹ Secure Mail Initiative costs: 4,086,759 (average annual mail volume sent) x \$8.45 (USPS rate for secure mail delivery) = \$34,533,114.

c. Clarify Dishonored Fee Check Re-presentation Requirement, Fee Payment Method, and Non-refundability

In the FY 2016/2017 fee rule, DHS amended the regulations regarding how USCIS treats a benefit request accompanied by fee payment (in the form of check or other financial instrument) that is subsequently returned as not payable. *See* 81 FR 73313-15 (Oct. 24, 2016); 8 CFR 103.2(a)(7)(ii) and 8 CFR 103.7(a)(2). If a financial instrument used to pay a fee is returned as unpayable after one re-presentation, USCIS rejects the filing and imposes a standard \$30 charge. *Id.* In the preamble to the FY 2016/2017 fee rule, DHS stated that, to make sure a payment rejection is the result of insufficient funds and not due to USCIS error or network outages, USCIS (through the U.S. Department of the Treasury (Treasury)) will resubmit rejected payment instruments to the appropriate financial institution one time. *See* 8 CFR 103.2(a)(7)(ii)(D). While DHS's intent was to submit only checks that were dishonored due to insufficient funds, some stakeholders have interpreted the re-presentation as applying to any check DHS has deposited that is returned as unpayable. Although the Treasury check clearance regulations permit an agency to re-deposit a check dishonored due to insufficient funds, they prohibit submitting checks dishonored for other reasons for clearance a second time.

To comply with the Treasury regulations, DHS is changing its provision in this rule to specify that if a check or other financial instrument used to pay a fee is returned as unpayable *because of insufficient funds* (as opposed to a closed account, fraud, or stop payment), USCIS will resubmit the payment to the remitter institution one time. 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. *See* new 8 CFR 103.2(a)(7)(ii)(D).

In addition, DHS may reject a request that is accompanied by a check that is dated more than 365 days before the receipt date. Currently, USCIS policy is to reject a check that is dated more than a year before it is submitted. However, that policy is not codified, and DHS has been sued or threatened with litigation multiple times when a check that was dated more than a year before it was submitted was the basis of a rejection that caused the requestor to miss an important deadline. This codifies DHS current practice. An applicant who submits a check that is over 365 days old will be rejected, and that is not necessarily done every time now. USCIS will be certain of its ability to follow this policy with the force of regulation now.

An individual has an unacceptable form of payment, they might have to reschedule their appointment at certain offices. DHS also may require that certain fees be paid using a certain payment method or that certain fees cannot be paid using a particular method, as stated in the preamble of this rule. *See* new 8 CFR 106.1(b). For example, USCIS may require that a request be submitted by using Pay.gov, a secure portal which transmits an applicant's payment information directly to the U.S. Treasury for processing, or may preclude the use of certain payment types such as cashier's check and money orders for the payment of a particular form or when payments are made at certain offices. Clarifying dishonored fee check re-presentation rules, limiting the age of checks to be presented and limiting payment options will reduce administrative burdens and fee processing errors for USCIS.

DHS is also clarifying that fees are non-refundable regardless of the result of the request or how much time the request requires to be adjudicated. As provided in 8 CFR 103.2(a)(1), USCIS filing fees generally are non-refundable and must be paid when the benefit request is filed.

USCIS allows credit card payments through the secure Pay.gov portal. Payments go to the Department of Treasury account for processing, and the data is from their financial management system. ICE processes the credit card transactions on behalf of USCIS utilizing a different financial system. Due to data limitations and access permissions from the Department of Treasury financial management system, DHS was only able to obtain data for FY 2018 – 2019.

USCIS has recently expanded acceptance of credit cards for the payment of USCIS fees. Only the N-400 permitted a credit card from 2014 to 2018. Table 7 shows the total number credit card transactions accepted for from fees, by USCIS. For fiscal years 2018 and 2019, the annual number of credit card transactions, amount of fees collected, and chargebacks all increased. As a result of the greater number of transactions in fiscal year 2019, USCIS also had a greater number of credit card chargebacks (successful disputes filed with credit card companies challenging the retention of the fee by USCIS).

Table 7. Estimated Number of Credit Card Transactions, for payment of Form fees, for Fiscal Years 2018-2019.				
Fiscal Year	Number of Credit Card Transactions	Amount of Credit Card Payments	Credit Card Chargebacks to Applicant/Petitioner	Amount of Credit Card Chargebacks to Applicant/Petitioner
2018	822,477	\$415,886,222	720	\$392,549
2019	1,122,029	\$613,266,755	898	\$535,749
Total	1,944,506	\$1,029,152,977	1,618	\$928,298
2-year Average	972,253	\$514,576,489	809	\$464,149

Source: Department of Homeland Security, Financial Operations Branch, CIR System October 21, 2019.

Disputes are generally filed by requestors whose request was denied, who have changed their mind about the request, or assert that the service was not provided or unreasonably delayed. USCIS loses many of these disputes and has to return the money back to the applicant/petitioner. Table 7 estimates that \$464,149 is the average amount USCIS is refunding to the applicant's/petitioner's credit card, due to customer disputes, stop payments, or service related matters. Because the credit card companies agree with the cardholder and have determined that USCIS fails to adequately warn the cardholder that the fee is not refundable regardless of the result or time required, DHS is providing in this rule that USCIS fees must be paid when the request is filed or submitted, and they 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.

In the event that the bank that issues the credit card rescinds the payment of the 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.

d. Eliminate \$30 Returned Check Fee

DHS is removing the \$30 charge for dishonored payments because the cost of collecting the \$30 fee outweighs the benefits to the government derived from collecting the fee.²⁰

Currently, USCIS charges a \$30 returned check fee if a check or other financial instrument used to pay a USCIS fee is returned as unpayable and USCIS rejects the associated benefit request as improperly filed.²¹ DHS is eliminating the \$30 charge for dishonored payments. The provision will continue to require USCIS to reject returned payments and associated benefit requests for nonpayment. However, the existing \$30 charge will no longer be imposed for benefit requests rejected for dishonored payments.

DHS estimates that this provision will result in savings for applicants filing forms with USCIS since there will no longer be a \$30 charge for rejected benefit requests due to returned checks.²² Due to the steady decline in applications DHS uses historical data to get a percent change and forecasted out for 5 years in Table 8 to show the total number of returned payments for fiscal years 2014 – 2023. Based on the total number of returned payments, during fiscal years 2014 – 2023, DHS estimates that 5,679 is the forecasted average annual number of returned payments. The forecast predicted the future receipt totals by using a linear regression based on historical data from 2014-2018.

Table 8. Estimated Number of Returned Credit Card or Check Payments, Fiscal Years 2014-2023.

²⁰ See 8 CFR 103.7(a)(2)(i).

²¹ See <https://www.uscis.gov/forms/paying-uscis-fees>.

²² DHS resubmits payments one time after a check or financial instrument is first returned as unpayable to counter the possibility of processing errors from financial institutions. DHS recognizes the number of returned payments may include multiple payments that were submitted by the same applicant. DHS assumes the number of returned payments is a reasonable estimate of the affected population.

Fiscal Year	Number of Returned Payments
2014	15,690
2015	13,399
2016	12,201
2017	13,001
2018	9,632
2019*	7,531
2020*	6,775
2021*	5,591
2022*	4,839
2023*	3,658
Total	28,394
5-year Average*	5,679
Source: Department of Homeland Security, Financial Operations Center, CIR System September 2019.	
Note: 5 year average was calculated based on FY2014-FY2018 receipts.	
*Forecasted numbers using a linear regression based on historical data from 2014-2018	

Using the estimated average annual number of returned payments of 5,679 subject to the \$30 service charge, DHS estimates the current cost to applicants charged for returned checks is \$170,370.²³ Because DHS is removing the \$30 returned payment fee, DHS estimates the total annual savings to these individuals would be \$170,370.

This provision will provide 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

²³ Calculation: 5,679 (Estimated average annual number of returned payments) * \$30 (Returned payment fee) = \$170,370 total annual cost of returned payment fees.

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. DHS recognizes that removing the \$30 charge may increase the number of applicants who file an application with an incorrect fee because the \$30 charge could be a deterrent. However, DHS does not think that this deterrent outweighs the administrative costs to USCIS of charging this fee.

e. Removal of Fee waivers

Currently, USCIS can waive the fee for certain immigration benefit requests when the individual requesting the benefit is unable to pay the fee.²⁴ To request a fee waiver, an individual is required to submit a fee waiver request for permission to have their benefit request processed without payment by filing Form I-912, Request for Fee Waiver, with USCIS or by submitting a letter stating their belief that he or she is unable to pay, with evidence to support the reasons indicated.²⁵ Fee waiver requests are required to be submitted with the benefit request for which the applicant is requesting the fee waived.

An applicant can request a fee waiver, and if approved, the fees would be waived for the entire immigration benefit and the biometric services fee if the applicant met the criteria below:

²⁴ See current 8 CFR 103.7(c) (listing requests for which the fee may be waived).

²⁵ See 8 CFR 103.7(c)(2).

- Had a household income at or below 150 percent of the Federal Poverty Guidelines (FPG) level;²⁶
- Currently receives a means-tested benefit;²⁷ or
- Is experiencing extreme financial hardship such as unexpected medical bills or emergencies.²⁸

Moreover, whether an applicant submits the request by using Form I-912 or by a written statement²⁹, the applicant must submit additional documentation showing evidence of an inability to pay as provided in the Form I-912 instructions. USCIS adjudicates fee waiver requests based on information submitted in the request and considers each fee waiver request on its own merits. USCIS will reject the fee waiver request and the applicable benefit request if it lacks documentation.

With this final rule, DHS limits fee waivers to aliens specifically identified in the rule including those aliens³⁰ DHS is required by law to permit certain applicants to request a fee

²⁶The Secretary of the Department of Health and Human Services (HHS), Office of the Assistant Secretary for Planning and Evaluation establishes the federal poverty guidelines (FPG) annually. Available at <https://aspe.hhs.gov/poverty-guidelines>. The Federal Register notice for the 2019 Poverty Guidelines was published at 84 FR 1167 (February 1, 2019). Available at <https://www.federalregister.gov/documents/2019/02/01/2019-00621/annual-update-of-the-hhs-poverty-guidelines>.

²⁷ “Means-tested benefits” are benefits funded by government agencies through programs available only to individuals whose income is below a certain level. Examples of means-tested benefit programs include Supplemental Nutrition Assistance Program (SNAP); Medicaid; Supplemental Security Income (SSI); and Temporary Assistance for Needy Families (TANF).

²⁸ This may include, but is not limited to, medical expenses of family members, unemployment, eviction, and homelessness as described on Form I-912 instructions.

²⁹ The proportion of fee waiver requests submitted by letter are very low. It is more efficient for USCIS staff to process forms to ensure they are in better compliance with the form instructions. In fall of 2017, the Office of Intake and Documentation Production (OIDP) collected data on approved waivers over a 6-week period, and the data showed that only 29 requests of the 4,409 surveyed, of all approved waivers, came via letter request (see table 9 in this section).

³⁰ DHS notes that under the previous guidance one fee waiver request could be a fee waiver request for multiple applicants listed on the Form I-912. U.S. Department of Homeland Security, Form I-912 Request for Fee Waiver available at <https://www.uscis.gov/sites/default/files/files/form/i-912.pdf>.

waiver including Violence Against Women Act (VAWA) self-petitioners (INA 245(l)(7), 8 U.S.C. 1255(l)(7)), T Visas - Victims of Severe Form of Trafficking (INA 101(a)(15)(T), U Visas - Victims of Criminal Activity INA 101(a)(15)(U), Battered spouses of A, G, E-3, or H nonimmigrants (INA 106), Battered spouses or children of a lawful permanent resident or U.S. citizen (INA 240A(b)(2)), and Temporary Protected Status - as in effect on March 31, 1997 (INA 244(a)(3)). *See* 8 CFR 106.3. 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. In addition to those applicants from whom USCIS is required by law to accept a request for a fee waiver, in this final rule DHS is providing that USCIS may waive fees for two additional humanitarian-related programs: Special Immigrant Juveniles and Afghan or Iraqi Translators or Interpreters, 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, which are listed in Table 9.³¹ These last two categories are new since the analysis provided in the NPRM of this final rule. The USCIS Director exercises favorable discretion as provided in the regulation, as well as a few other instances.

Fee waiver applicants must have an income at or below 125 percent of the FPG to be eligible for the fee waiver. DHS has clarified in the final rule that these aliens are not subject

³¹ *See* 8 CFR 106.3.

to the proposed limitations of fee waivers for applicants who are subject to the public charge inadmissibility related provision or the affidavit of support related provision. New 8 CFR 106.3(b).

DHS is also requiring that a fee waiver request must be submitted on the form prescribed by USCIS, Form I-912, Request for a Fee Waiver. USCIS will no longer accept letters from applicants. Accordingly, many forms will generally no longer be eligible for a fee waiver,³² except in limited circumstances as provided in the rule. Forms that would generally no longer be eligible for a fee waiver, except for the benefit requests identified in 8 CFR 106.3, include the following (though this is not an exhaustive list):

- Form I-90, Application to Replace Permanent Resident Card;
- Form I-765, Application for Employment Authorization;
- Form I-485, Application to Register Permanent Residence or Adjust Status;³³
- Form I-131, Application for Travel Document, for humanitarian parole;
- Form I-192, Application for Advance Permission to Enter as Nonimmigrant for an applicant who is exempt from the public charge grounds of inadmissibility;
- Form I-193, Application for Waiver for Passport and/or Visa for an applicant who is exempt from the public charge grounds of inadmissibility;
- Form I-601, Application for Waiver of Grounds of Inadmissibility for an applicant who is exempt from the public charge grounds of inadmissibility

³² Fee waivers will still be available at the discretion of the USCIS Director, or as provided by INA 245(l)(7), 8 U.S.C. 1225(l)(7). *See* 8 CFR 106.3.

³³ Certain categories may still be eligible for fee waivers for a Form I-485, as identified in Table 8, as provided by INA 245(l)(7), 8 U.S.C. 1255(l)(7).

- Forms for applicants exempt from the public charge inadmissibility ground;³⁴
- Form I-751, Petition to Remove Conditions on Residence; and
- Naturalization and citizenship-related forms.³⁵

In addition, the rule removes waivers for Commonwealth of the Northern Mariana Islands (CNMI) related petitions and applications;³⁶ This regulation will limit the eligible forms and categories to those listed below in Table 9: Fee Waiver Categories and Associated Forms, which USCIS will continue to accept.

³⁴ For example, Form I-601, Application for Waiver of Grounds of Inadmissibility, Form I-192, Application for Advance Permission to Enter as Nonimmigrant; and Form I-193, Application for Waiver for Passport and/or Visa.

³⁵ Including Form N-400, Application for Naturalization; Form N-470, Application to Preserve Residence for Naturalization Purposes; Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings; Form N-565, Application for Replacement of Naturalization/Citizenship Document; Form N-600, Application for Certification of Citizenship; and Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322.

³⁶ For example, Form I-129CW, Petition for CNMI-Only a Nonimmigrant Transitional Worker, and Form I-539, Application to Extend/Change Nonimmigrant Status.

Table 9. Fee Waiver Categories and Forms Without Fees or Eligible for Fee Waivers		
Category	Main Immigration Benefit Requests³⁷	Associated Forms
Violence Against Women Act (VAWA) self-petitioners and 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 ³⁸	<ul style="list-style-type: none"> • 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-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)) 	<ul style="list-style-type: none"> • Form I-131, Application for Travel Document³⁹ • 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 fee for principals)⁴⁰ • N-400, Application for Naturalization • N-600, Application for Certificate of Citizenship • N-600K, Application for Citizenship and Issuance of Certificate Under Section 322

³⁷ Some immigration benefit requests may not have a fee for the specific category.

³⁸ See INA section 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.

³⁹ 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 implements changes to this policy in this final rule as explained in this preamble. New 8 CFR 106.2(a)(7)(iv).

⁴⁰ 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.

Table 9. Fee Waiver Categories and Forms Without Fees or Eligible for Fee Waivers		
Category	Main Immigration Benefit Requests³⁷	Associated Forms
Victims of Severe Form of Trafficking (T nonimmigrant) ⁴¹	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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 Change/Extend Nonimmigrant Status • Form I-601, Application for Waiver of Grounds of Inadmissibility • Form I-765, Application for Employment Authorization (no initial fee for principals) • N-400, Application for Naturalization • N-600, Application for Certificate of Citizenship • N-600K, Application for Citizenship and Issuance of Certificate Under Section 322
Victims of Criminal Activity (U nonimmigrant) ⁴²	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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) • N-400, Application for Naturalization • N-600, Application for Certificate of Citizenship • 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 ⁴³	<ul style="list-style-type: none"> • Form I-765V, Application for Employment Authorization for Abused Nonimmigrant Spouse (no initial fee) 	<ul style="list-style-type: none"> • None

⁴¹ 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).

⁴² See INA section 101(a)(15)(U), 8 U.S.C. 1101(a)(15)(U) (U nonimmigrant status for victims of certain criminal activity).

⁴³ See INA section 106, 8 U.S.C. 1105a.

Table 9. Fee Waiver Categories and Forms Without Fees or Eligible for Fee Waivers		
Category	Main Immigration Benefit Requests³⁷	Associated Forms
Battered spouses or children of a lawful permanent resident or U.S. citizen and derivatives under INA section 240A(b)(2) ⁴⁴	<ul style="list-style-type: none"> • None with USCIS 	<ul style="list-style-type: none"> • Form I-601, Waiver of Grounds of Inadmissibility • N-400, Application for Naturalization • N-600, Application for Certificate of Citizenship • N-600K, Application for Citizenship and Issuance of Certificate Under Section 322
Temporary Protected Status ⁴⁵	<ul style="list-style-type: none"> • Form I-821, Application for Temporary Protected Status • Biometric Services Fee 	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (no fee) • Form I-485, Application to Register Permanent Residence or Adjust Status 	<ul style="list-style-type: none"> • Form I-131, Application for Travel Document⁴⁶ • 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 • N-400, Application for Naturalization • N-600, Application for Certificate of Citizenship • N-600K, Application for Citizenship and Issuance of Certificate Under Section 322

⁴⁴ See INA section 240A(b)(2), 8 U.S.C. 1229b(b)(2), and INA sec. 245(l)(7), 8 U.S.C. 1255(l)(7).

⁴⁵ See INA section 244, 8 U.S.C. 1254a.

⁴⁶ 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).

Table 9. Fee Waiver Categories and Forms Without Fees or Eligible for Fee Waivers		
Category	Main Immigration Benefit Requests³⁷	Associated Forms
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.	<ul style="list-style-type: none"> • 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) 	<ul style="list-style-type: none"> • 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 • Form I-601, Application for Waiver of Grounds of Inadmissibility • N-400, Application for Naturalization • N-600, Application for Certificate of Citizenship • N-600K, Application for Citizenship and Issuance of Certificate Under Section 322
Source: USCIS analysis.		

The population impacted by this provision includes individuals that can currently submit fee waiver requests.⁴⁷ For the purpose of this analysis, DHS uses total volume of requests received, approvals, and denials of fee waivers to estimate the impact to populations affected by this rule.

Table 9 presents data on annual fee waiver requests, approvals, denials, approvals rates, and forgone revenue for fiscal years 2015 – 2019.⁴⁸ During this period, the number of total

⁴⁷ Under this rule, DHS would continue to permit a request for a fee waiver from those from whom we are required to accept them by statute. See INA section 245(l)(7), 8 U.S.C. 1255(l)(7). DHS is required by law to permit certain applicants to request a fee waiver including Violence Against Women Act (VAWA) self-petitioners (INA 245(l)(7), 8 U.S.C. 1255(l)(7)), T Visas - Victims of Severe Form of Trafficking (INA 101(a)(15)(T), U Visas - Victims of Criminal Activity INA 101(a)(15)(U), Battered spouses of A, G, E-3, or H nonimmigrants (INA 106), Battered spouses or children of a lawful permanent resident or U.S. citizen (INA 240A(b)(2)), and Temporary Protected Status - as in effect on March 31, 1997 (INA 244(a)(3)). In addition, DHS is also allowing fee waiver requests for 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 and 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.

⁴⁸ These figures exclude most waivers of the biometrics fee, which are processed in conjunction with a fee waiver for an underlying form. The biometrics fee waiver is generally not recorded separately.

annual number of fee waiver requests received ranged from a low of 481,068 in fiscal year 2019 to a high of 753,402 in fiscal year 2016. Based on the total number of fee waiver requests received during this period, DHS estimates that annually an average of 618,670 fee waivers are requested using Form I-912. Moreover, DHS estimates there are approximately 521,355 approved fee waiver requests annually. Individuals with approved fee waivers may submit applications to USCIS without providing the corresponding application fee and may receive immigration benefits from USCIS. Additionally, from fiscal years 2015 to 2019, DHS estimates that total forgone revenue was more than \$1.54 billion based on the number of approved fee waivers and the average estimated annual forgone revenue is about \$308.6 million (Table 10). Forgone revenue represents the total fees that fee waived, or fee exempt applicants, petitioners, and requestors would have paid if they were required to pay the fees.

Table 10. Applications Received, Approvals, and Denials for Form I-912, Request for Fee Waiver, for Fiscal Years 2015 – 2019.					
Fiscal Year	Applications Received*	Approvals	Denials	Approval Rate (Percent)**	Forgone Revenue
2015	638,793	518,777	119,935	81	\$283,162,095
2016	753,402	627,959	125,118	83	\$344,293,760
2017	684,675	588,732	95,200	86	\$367,914,465
2018	535,412	460,821	74,616	86	\$293,494,715
2019	481,068	410,485	70,583	85	\$254,200,885
Total	3,093,350	2,606,774	485,452	84	\$1,543,065,920
5-year Average	618,670	521,355	97,090	84	\$308,613,184

Source: USCIS Office of Performance and Quality (OPQ), CLAIMS 3 database; Forgone Revenue Estimate data calculated by DHS Office of the Chief Financial Officer (CFO).

*Note: Not all fee waiver applications are adjudicated in the same fiscal year that they are received. Likewise, not all approvals and denials occur in the same fiscal year in which a fee waiver request is filed. Thus, the number of approvals and denials does not equal fee waiver request receipts.

**Note: Approval Rate percentage is the number of approvals granted in a particular year divided by the number of applications received, in that same year (i.e. FY2015 = 518,777/638,793 = 81% approved).

Although individuals submit fee waiver requests, USCIS permit additional household members to be included on a request and, thus, USCIS can grant waivers for multiple applicants within a single fee waiver request. USCIS OIDP conducted a survey from October 2, 2017 to October 27, 2017 (details of the survey⁴⁹ and additional results are discussed later in this analysis). DHS found that about 90 percent of approved fee waiver requests were applicants requesting a fee waiver for one individual. In addition, DHS found that only about 8 percent of approved fee waiver requests include 2 applicants, and only about 2 percent of approved fee waivers include 3 or more applicants. Using the distributions of the number of applicants listed per fee waiver application from the survey, DHS estimates the distribution of applicants per fee waiver application for the Form I-912 population in Table 11. Of the estimated annual average of 618,670 fee waiver receipts, about 558,040 fee waivers list one applicant per application, approximately 48,875 fee waivers list 2 applicants per application, and about 11,755 fee waivers list 3 or more applicants per application.

Table 11. Distribution of Total Approved Applicants per Fee Waiver Request (Form I-912).		
Number of Applicants Listed per Application	Percent	Estimated Number of Total Receipts of Fee Waivers Applications Based on Applicant Distribution
1	90.2	558,040
2	7.9	48,875
3 or more	1.9	11,755
Total	100	618,670
Source: Office of Intake and Document Production (OIDP) Lockbox facilities survey, October 2017.		

⁴⁹ See Section 3 of this analysis – Appendix USCIS Office of Intake Production (OIDP) Survey Results from October 2, 2017 to October 27, 2017.

As previously discussed, DHS is limiting fee waivers to eligible statutory fee waiver categories and associated forms and 2 other additional immigrant categories, and further limiting fee waivers to individuals who meet certain requirements. To analyze the impact of this provision on fee waiver applicants, DHS analyzed the distribution of immigrant categories allowed a fee waiver with this rule and the impact on the associated forms. USCIS collected data from October 2, 2017 to October 27, 2017 on approved fee waivers. One month of data provided a statistically valid random sample. Using a standard statistical formula based on the average annual fee waiver population, DHS determined that a random sample size of 384 was necessary to yield statistically significant results with a 95 percent confidence level and a 5 percent confidence interval. In the OIDP survey, USCIS obtained data on 4,431 approved fee waiver requests⁵⁰, which exceeded the necessary sample size of 384 for statistical significance. This data from the survey is used in this section of this analysis. From this survey, USCIS obtained data on fee waiver approval criteria, the number of individuals included in the fee waiver requests, forms for which fees were waived, reported income, and the applicant's household size.⁵¹

Table 12 shows the distribution of approved fee waiver requests based on current approval criteria according to the results of the OIDP sample. According to the sample results, 26.9 percent of total approved fee waivers are approved on the basis that household income is at

⁵⁰ See Section 3 of this analysis – Appendix USCIS Office of Intake Production (OIDP) Survey Results from October 2, 2017 to October 27, 2017.

⁵¹ For more details on data that are readily available for U.S. Homeland Security, USCIS Fee Waiver Policies and Data, see Fiscal Year 2017 Report to Congress at <https://www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf>.

or below 150 percent of FPG, 1.2 percent of total approved fee waivers are approved based on demonstrated financial hardship, and 71.9 percent of total approved fee waivers are approved on the basis of the receipt of a means-tested benefit.⁵² Moreover, the OI DP sample results showed that less than 1 percent of approved fee waivers were eligible based on the individual being qualified per statutory requirements.⁵³ However, DHS recognizes that some of these forms are adjudicated at USCIS service centers and not the USCIS OI DP Lockbox. Therefore, fee waivers based on the individual being eligible according to statute could be more than 1 percent of the total. USCIS uses the OI DP sample data as a reasonable proxy for this data.

Approval Criteria	Percent*	Estimated Distribution of Approved Fee Waiver Applications
Household income at or below 150 percent of FPG	26.9	140,245
Means-tested benefit	71.9	374,854
Financial hardship	1.2	6,256
Total	100	521,355
Source: Office of Intake and Document Production (OI DP) Lockbox facilities, October 2017.		

⁵² To qualify for a fee waiver under this criteria, the individual receiving the fee waiver is the recipient of a means-tested benefit with documentation that is not dated more than 1 year from the time of filing; the recipient of the means-tested benefit may also be the individual’s spouse, or the head of the household living with the individual.

⁵³ See USCIS Fee Waiver Policy for details on Humanitarian Fee Waivers: Based on an inability to pay, USCIS may waive any fees associated with the filing of any benefit request by a VAWA self-petitioner or under sections 101(a)(15)(T) (T visas), 101(a)(15)(U) (U visas), 106 (battered spouses of A, G, E-3, or H nonimmigrants), 240A(b)(2) (battered spouse or child of a lawful permanent resident or U.S. citizen), and 244(a)(3) (Temporary Protected Status), of the Act (as in effect on March 31, 1997). This would include filings not otherwise eligible for a fee waiver or eligible only for conditional fee waivers such as Forms I-212, I-485, I-539, and I-601. See https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/March/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf.

DHS applied the distribution of approved fee waiver requests according to current approval criteria as shown in the OI DP sample to the total average annual receipts of fee waiver requests. DHS estimates that of the 521,355 average annual approved fee waiver requests, approximately 140,245 are approved based on the “household income at or below 150 percent of the FPG” approval criterion, about 374,854 are approved based on the “means-tested benefit” approval criterion, and about 6,256 are approved based on the “financial hardship” approval criterion.

As previously noted, DHS is removing fee waiver eligibility for those applicants currently eligible by receiving a means-tested benefit or experiencing financial hardship. In addition, DHS is changing the fee waiver eligibility criteria threshold of having a household income at or below 150 percent of FPG to 125 percent of FPG. In order to estimate the average number of approved fee waiver applicants who will no longer be eligible for a fee waiver, DHS analyzed the reported household incomes of approved fee waiver requests to the FPG guidelines using the results of the OI DP sample.

The population that will no longer be eligible to request and be approved for a fee waiver includes individuals in households with income at or below 150 percent of FPG, but above 125 percent of FPG. As previously shown, about 140,245 (26.9 percent) of total approved fee waiver requests were approved on the basis that household income is at or below 150 percent of FPG. DHS compared the estimated 140,245 number of fee waivers approved based on household income at or below 150 percent of FPG to the estimated number of fee waivers approved based on household income at or below 125 percent of FPG. Based on the OI DP survey results in the appendix of this analysis approximately 16.36 percent of all fee waiver requests 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 applications⁵⁴ 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. Therefore, DHS estimates that the number of approved fee waiver requests based on household income will fall from about 140,245 fee waiver applications having household income at or below 150 percent of FPG to about 117,305 fee waiver requests having household income at or below 125 percent of FPG.⁵⁵ DHS estimates that the change in the FPG eligibility criterion will make the share of previously approved fee waiver requests eligible based on having an income of a 125 percent of the FPG fall from about 26.9 percent to 22.5 percent.⁵⁶

Additionally, those who would have previously applied under the “means-tested benefit” or “financial hardship” criteria may not be able to apply under the same criterion but may be eligible if they meet the requirements under 8 CFR 106.3. As previously shown, DHS estimates about 374,854 fee waiver applications were approved based on the means-tested benefit criterion and about 6,256 fee waiver applications were approved based on the financial hardship criterion. Because means-tested benefits are available only to individuals whose income is below a certain level, a number of fee waivers approved because the applicant received a means-tested benefit may still qualify under the requirement of having household income at or below 125 percent of

⁵⁴ Calculation: (Household income at or below 150 percent of FPG criterion) 140,245 x (Total percentage of Estimated fee waivers ineligible once the FPG is lowered from at or below 150 percent to 125 percent criterion) 16.357 percent = 22,940 fee waiver applicants based on household income at or below 125 percent of FPG criterion.

⁵⁵ Calculation: (Approved fee waiver applications approved based on the current 150 FPG criterion) 140,245 - (Ineligible fee waivers applicants approved based on the 125 FPG criterion from this final rule) 22,940 = 117,305 fee waiver applications having household income at or below 125 percent criterion.

⁵⁶ Calculation: (Household income at or below 125 percent of FPG criterion) 117,305 / (Total Estimated Distribution of Approved Fee Waiver Applications, see Table 7) 521,355 = 22.5 percent.

FPG. However, DHS does not know how many applicants may still qualify under this new criteria as a result of this rule because we are not able to determine the specific circumstances of future fee waiver applicants. In sum, DHS estimates that a maximum of 404,050⁵⁷ fee waiver requestors will no longer be eligible to receive a fee waiver based on the changes made in the final rule. Instead, these applicants will be required to pay the filing fee for the respective forms associated with the immigration benefits they are requesting or submit a Form I-912 with proof that their household income is at or below 125 percent of FPG.

For the USCIS Director's discretion, DHS limits the ability for a future USCIS Director to exercise that discretion to waive fees for applicants who are not subject to the public charge inadmissibility ground or the affidavit of support or are already a sponsored immigrant as provided in the rule.⁵⁸ *See* 8 CFR 106.3(b). DHS also analyzed data on the forms associated with currently approved fee waiver requests (baseline) to see what types of impacts the elimination of fee waivers will have on immigration requests. Table 13 shows the top five forms that accompanied approved fee waiver requests based on 5-year averages for fiscal years 2015 – 2019. The table also presents the distribution of USCIS forms that accompany approved fee waiver requests and the current corresponding fee. The top five forms accompanying approved fee waiver requests compose 88 percent⁵⁹ of the annual total number of approved fee waiver requests.

⁵⁷ Calculation: 374,854 (fee waiver applicants based on means-tested benefit criterion) + 22,940 (fee waiver applicants based on household income at or below 125 percent of FPG criterion) + 6,256 (fee waiver applicants based on the financial hardship criterion) = 404,050.

⁵⁸ USCIS Regulatory Impact Analysis: Inadmissibility on Public Charge Grounds, RIN 1615-AA22 publication date October 15, 2019. The Final Rule will be effective February 24, 2020.

⁵⁹ Calculation: Sum of the top five form percentages in Table 13 (Forms N-400, I-90, I-485, I-765, and N-600 35.7 + 20.2 + 13.3 + 13.9 + 4.6 = 87.7 percent = 88 percent (rounded)).

Table 13. Estimated Average Annual Approved Fee Waiver Requests for Top Five Forms, Fiscal Years 2015 – 2019.

Form	Current Fee	Average Number of Approved Fee Waivers	Percent of Total
N-400, Application for Naturalization	\$640	186,124	35.7
I-90, Application to Replace Permanent Resident Card	\$455	105,314	20.2
I-485, Application to Register Permanent Residence or Adjust Status (AOS)	\$1,140/ \$750 ⁶⁰	69,340	13.3
I-765, Application for Employment Authorization (EAD)	\$410	72,468	13.9
N-600, Application for Certificate of Citizenship	\$1,170	23,982	4.6
All Other Forms ¹	Various	64,127	12.3
Total		521,355	100

Source: USCIS, Office of Performance and Quality (OPQ).

Note:

¹ All Other Forms include forms that will no longer be generally eligible for a fee waiver, including Forms I-192, N-565, I-751, N-336, I-539, I-601, N-600K, I-193, and I-129 in the CNMI unless they are submitted by a recipient of one of the statutory requests. See 8 CFR 106.3. The regulation will limit the eligible forms and categories to those listed in Table 9. Accordingly, most forms will only be eligible for a fee waiver in limited circumstances where the law requires that a waiver be made available.

DHS assumes that these forms will no longer be eligible for a fee waiver for most applicants. DHS also assumes that applicants will find a way to pay the fee and submit these

⁶⁰ The \$750 fee applies 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 old 8 CFR 103.7(b)(1)(i)(U)(2).

immigration benefit requests regardless of not being eligible for a fee waiver. To estimate the impact of this provision, DHS first estimated the distribution of the previously estimated 22,940 fewer fee waiver applications that will be approved based on the criteria that applicants must have household income at or below 125 percent of FPG by form type. Using the results of the ODP sample, DHS estimates the distribution of approved fee waiver requests by accompanying form that will no longer be eligible for a fee waiver under this criterion in Table 14.

Table 14. Estimated Number of Fee Waiver Requests No Longer Eligible Based on Having Household Income at or below 150 percent of FPG, but above 125 percent of FPG by Form Type.		
Form	Estimated Fee Waiver Requests No Longer Eligible Under This Criteria	Distribution of Fee Waiver Requests No Longer Eligible Under This Criteria (Percent)
N-400	13,535	59.0
I-765	5,712	24.9
I-90	413	1.8
I-485	1,170	5.1
N-600	734	3.2
All Other Forms ¹	1,376	6.0
Total	22,940	100
Source: USCIS analysis, Office of Intake and Document Production (OIDP) Lockbox facilities survey.		
Notes:		
¹ All Other Forms include: Forms I-192, N-565, I-751, N-336, I-539, I-601, N-600K, I-193, and I-129 unless the Director exercises favorable discretion as provided in this regulation. See 8 CFR 106.3. This regulation will limit the eligible forms and categories to those listed in Table 9 Statutory Fee Waiver Categories and Associated Forms. Most forms will generally no longer be eligible for a fee waiver, except where the law requires that a waiver be made available.		

In Table 15, DHS estimates the amount USCIS would now collect based on the fee for each form and the estimated number of fee waiver requests that will no longer be eligible for a fee waiver of an accompanying form. Therefore, DHS estimates the annual new transfers of the

provision to limit fee waiver applicants to households with income at or below 125 percent of FPG will be approximately \$22,897,020. These applicants will now be required to pay the filing fees for the associated immigration requests.

Table 15. Estimated Impact to Applicants Whose Fee Waiver Requests Will No Longer Be Eligible Based on Having Household Income at or below 150 percent of FPG, but above 125 of FPG.			
Form	Estimated Fee Waiver Requests that are No Longer Eligible Under This Criteria	New Fee*	Estimated Annual Impact
N-400	9,723	\$1,170	\$11,375,910
	3,811	\$1,160	\$4,421,920
I-765	5,712	\$550	\$3,141,600
I-90	222	\$415	\$92,130
	191	\$405	\$77,355
I-485	1,170	\$1,130	\$1,321,987
N-600	657	\$1,000	\$657,000
	77	\$990	\$76,230
All Other Forms ¹	1,376	\$1,259	\$1,732,888
Total	22,940		\$22,897,020

Source: USCIS analysis, Office of Intake and Document Production (OIDP) Lockbox.

Notes:

¹ All Other Forms include: Forms I-192, N-565, I-751, N-336, I-539, I-601, N-600K, I-193, and I-129. See 8 CFR 106.3. This regulation will limit the eligible forms and categories to those listed in Table 9: Statutory Mandated Fee Waiver Categories and Associated Forms. Most forms will generally no longer be eligible for a fee waiver, except where the law requires that a waiver be made available.

Calculation example: Form N-400 = 9,723 (Estimated Fee Waiver Requests that are No Longer Eligible Under These Criteria) x \$1,170 (New Fee) = \$11,375,910 (Estimated Annual Impact).

Forms N-400, I-90, and N-600 have a paper and online filing options, for this final rule = online \$10 less than paper fee. DHS estimates the percentage filed by paper and online, for the calculations: (N-400) 28.2 percent file online, (I-90) 46.2 percent file online and (N-600) 10.5 percent file online. Percentages of online filing came from Table 4.

Additionally, DHS is limiting eligibility for a fee waiver by eliminating the receipt of a “means-tested benefit” criterion. As previously shown, DHS estimates about 374,854 fee waiver requests were approved based on the means-tested benefit criterion. Table 16 shows the

estimated new impacts of this provision based on the fee for each form and the estimated number of fee waiver requests that will no longer be eligible for a fee waiver of an accompanying form. DHS assumes that the lack of a fee waiver will not affect the number of requests that will be filed because those applicants who would have received a fee waiver will now find a way to pay the fee, by credit card, loan, community group, or family. Therefore, DHS estimates the annual impact of this criterion to no longer allow fee waivers for applicants with a means-tested benefit will be approximately \$339,999,293.

Table 16. Estimated New Impacts to Applicants Whose Fee Waiver Requests Will No Longer Be Eligible Based on A Means-Tested Benefit.			
Form	Estimated Fee Waiver Requests No Longer Eligible	New Fee	Estimated Annual Impact
N-400	121,452	\$1,170	\$142,098,840
	47,232	\$1,160	\$54,789,120
I-765	78,719	\$550	\$43,295,450
I-90	30,467	\$415	\$12,643,805
	25,761	\$405	\$10,433,205
I-485	48,731	\$1,130	\$55,066,030
N-600	16,681	\$1,000	\$16,681,000
	2,062	\$990	\$2,041,380
All Other Forms*	3,749	\$787	\$2,950,463
Total	374,854		\$339,999,293

Source: USCIS analysis, OIDP Lockbox facilities survey.

Note*: All Other Forms include: Forms I-192, N-565, I-751, N-336, I-539, I-601, N-600K, I-193, and I-129 See 8 CFR 106.3. This regulation will limit the eligible forms and categories to those listed in Table 9: Statutory Fee Waiver Categories and Associated Forms. Most forms will generally no longer be eligible for a fee waiver, except where the law requires that a waiver be made available.

DHS estimates the distribution of fee waiver requests no longer eligible: (N-400) 45 percent, (I-765) 21 percent, (I-90) 15 percent, (I-485) 13 percent, (N-600) 5 percent and All other forms 1 percent.

Forms N-400, I-90, and N-600 have a paper and online filing options, for this final rule = online \$10 less than paper fee. DHS estimates the percent filed by paper and online, for the calculations: (N-400) 28.2 percent file online, (I-90) 46.2 percent file online and (N-600) 10.5 percent file online

Finally, DHS is limiting eligibility for a fee waiver by eliminating the “financial hardship” criteria. As previously shown in Table 14, DHS estimates about 6,256 fee waiver applications were approved based on the financial hardship criterion. Table 17 shows the estimated new impacts of this criterion based on the new fee for each form and the estimated number of fee waiver requests that will no longer be eligible for a fee waiver of an accompanying form (assuming they would not be eligible under other criteria). DHS estimates the annual impact of no longer allowing fee waivers based on financial hardship will be approximately \$5,399,933.

Table 17. Estimated New Impacts to Applicants Whose Fee Waiver Requests Will No Longer Be Eligible Based on Financial Hardship.			
Form	Estimated Fee Waiver Requests No Longer Eligible	New Fee*	Estimated Annual Impact
N-400	500	\$1,170	\$585,000
	195	\$1,160	\$226,200
I-765	1,216	\$550	\$668,800
I-90	845	\$415	\$350,675
	719	\$405	\$291,195
I-485	2,433	\$1,130	\$2,749,290
N-600	77	\$1,000	\$77,000
	10	\$990	\$9,900
All Other Forms	261	\$1,693	\$441,873
Total	6,256		\$5,399,933

Source: USCIS analysis, OIDP Lockbox.

Note*: All Other Forms include: Forms I-192, N-565, I-751, N-336, I-539, I-601, N-600K, I-193, and I-129 unless the Director exercises favorable discretion as provided in the regulation. *See* 8 CFR 106.3. This regulation will limit the eligible forms and categories to those listed in Table 9: Statutory Fee Waiver Categories and Associated Forms. Most forms will generally no longer be eligible for a fee waiver except where the law requires that a waiver be made available.

* Forms N-400, I-90, and N-600 have a paper and online filing options, for this final rule = online \$10 less than paper fee. DHS estimates the % filed by paper and online, for the calculations: (N-400) 28.2 % file online, (I-90) 46.2% file online and (N-600) 10.5% file online. Percentages derive from Section (a) of this analysis – Reduced Fees for Filing Online, Table 4.

In sum, DHS estimates the total impact to applicants from the changes to the eligibility for fee waivers will be a transfer of approximately \$368,296,246 annually.⁶¹ As a result to the impacts of these criterion changes, this means that 404,050 applicants will have to come up with approximately \$368,296,246 in order to apply for an immigration benefit or request. DHS recognizes that limiting the eligibility of fee waivers could cause some applicants to have to find another way to pay for the fees associated with immigration benefit requests. Throughout this analysis, DHS assumes that all of these applicants will apply for immigration benefit requests by finding funds from which to pay their fees including (but not limited to) saving the necessary funds, paying by credit card, borrowing from relatives or others in their social networks, loans, community organizations, etc. DHS also recognizes that if individuals borrow or use a credit card, they're likely also responsible for the filing fee, and any additional interest cost accruing on the loan or credit card. DHS also recognizes that limiting fee waivers may also result in some people delaying or not applying for an immigration benefit request.

At this time, DHS cannot predict how many applicants would no longer be able to file or how that would impact the volumes of the underlying forms. DHS does not know the individual financial circumstances of each applicant/petitioner applying for an immigration benefit.

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

⁶¹ Calculation: \$22,897,020 (Estimated impact to fee waiver applicants based on having household income at or below 150 percent of FPG, but above 125 percent of FPG) + \$339,999,293 (Estimated impact to fee waiver applicants based on having a means-tested benefit) + \$5,399,933 (Estimated impact to fee waiver applicants based on having a financial hardship) = \$368,296,246 estimated total impact of limiting eligibility to request fee waivers according to the provision.

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.

Currently, filing a request for fee waiver on Form I-912 requires no fee. Therefore, requiring a separate Form I-912 for each applicant or petitioner in a household will not 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. However, DHS estimates the time burden for completing Form I-912 will increase to 2 hours and 20 minutes (2.34 hours), including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request. This analysis incorrectly used the current time burden in the NPRM instead of using the proposed time burden of 2 hours and 20 minutes (2.34 hours). For this final rule, USCIS has accounted for the additional 1 hour and 10 minutes (1.17 hours) of time burden placed on applicants as a result of this rule. The cost calculations for the final rule have been updated accordingly.

DHS has no information on the wages, occupations, industries, or businesses of an applicant who may submit a fee waiver request. In some DHS rulemakings, the distributional impacts and time-related opportunity costs using the Federal minimum wage for new entrants to the labor force. This reliance is grounded in the notion that applicants asserting the inability to pay a fee would not be expected to earn relatively high wages. The Federal minimum wage is \$7.25, but for this provision, DHS will rely on a slightly more robust “prevailing” minimum wage of \$8.25, as a reasonable proxy of time valuation to estimate the opportunity cost of time. DHS believes this is an appropriate wage for this population because if an applicant/petitioner is requesting a fee waiver DHS believes, they are not making more than this or do not have enough

money to pay the form fees. As is reported by the Economic Policy Institute (EPI, 2016), many states have their own minimum wage, and, even within states, there are multiple tiers.^{62,63} In order to estimate the fully loaded wage rates, to include benefits such as paid leave, insurance, and retirement using the most recent Bureau of Labor Statistics (BLS) data, USCIS calculated a benefits-to-wage multiplier of 1.43⁶⁴ and multiplied it by the prevailing minimum hourly wage rate. The fully loaded per hour wage rate for someone earning the prevailing minimum wage rate is \$11.80 with an annual salary of \$24,544,⁶⁵ which is 13.8 percent higher than the Federal minimum wage. While DHS does not rule out the possibility that some portion of the population might earn wages at the average level for all occupations, without solid a priori or empirical information we believe that providing a range with the lower bound relying on the prevailing minimum wage is justifiable.

Therefore, using the adjusted federal minimum wage of \$11.80 per hour as the total rate of compensation, including weighted average benefits, DHS estimates the opportunity cost of

⁶² See The Economic Policy Institute report *When it comes to the minimum wage, we cannot just 'leave it to the states'* (November 10, 2016) available at: <https://www.epi.org/publication/when-it-comes-to-the-minimum-wage-we-cannot-just-leave-it-to-the-states-effective-state-minimum-wages-today-and-projected-for-2020/>. There are multiple tiers of minimum wages across many states that apply to size of business (revenue and employment), occupations, working hours, and other criteria. Some of these variations per state are described at: <https://www.minimum-wage.org>.

⁶³ The \$8.25 wage rate and language was used in footnote 106 on page 62407 in the Asylum Application, Interview, and Employment Authorization for Applicants (NPRM) dated November 14, 2019. Available at 84 FR 62374 (November 14, 2019).

⁶⁴ U.S. Department of Labor, Bureau of Labor Statistics (BLS) as follows: $(\$34.72 \text{ Total Employee Compensation per hour}) \div (\$24.36 \text{ Wages and Salaries per hour}) = 1.42528 = 1.43$ (rounded) See Economic News Release, *Employer Cost for Employee Compensation (December 2019)*, U.S. Department of Labor, BLS, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group. Released March 19, 2020, available at <https://www.bls.gov/news.release/pdf/ecec.pdf> (last visited April 14, 2020).

⁶⁵ Calculation: (Federal Minimum Wage Rate) $\$8.25 \times$ (Benefits-to-wage multiplier) $1.43 = \$11.80$ per hour. Calculation: Calculation for annual federal minimum salary: hourly wage of $\$11.80 \times 2,080$ annual work hours = $\$24,544$.

time for completing and submitting Form I-912 will be \$13.81 per fee waiver request.⁶⁶

Therefore, using the estimated average annual number of fee waiver requests using Form I-912 of 618,670, DHS estimates the total opportunity cost of time associated with completing and submitting Form I-912 is approximately \$8,543,833 annually.⁶⁷ In sum, the estimated current cost to file requests for a fee waiver is approximately \$8,543,833 annually.

Currently, the costs for applicants who have their fees waived are covered by those applicants who pay immigration fees to USCIS. Under this regulation, those costs will now be transferred back to those applicants who will now have to pay for their fees instead of having their fees waived. DHS estimates that the benefits-to-wage multiplier is 1.43 and, therefore, was able to estimate the full opportunity cost per petitioner cost of \$28.20 per fee waiver request, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, retirement. The estimated total annual transfers of \$368,296,246 million annually from those applicants who previously received a fee waiver to different groups of fee-paying applicants. These transfers derive from applicable user filing fees.

DHS does not anticipate any additional costs to USCIS operations that will result from the elimination of fee waivers as described in this rule. Eliminating the possibility of receiving a fee for populations receiving non-statutory fee waivers may impact some receipt volumes for USCIS forms.

These changes to fee waiver eligibility will also result in some quantitative savings for the public. Applicants who would have requested a fee waiver for forms made ineligible in this

⁶⁶ Calculation for estimated opportunity cost of time for completing Form I-912: (\$11.80 per hour * 1.17 hours) = \$13.81 (rounded) per applicant.

⁶⁷ Calculation: (Estimated opportunity cost of time for completing Form I-912) * (Estimated annual number of fee waiver requests using Form I-912) = \$13.81 * 618,670 = \$8,543,833 total annual opportunity cost of time for filing Form I-912.

rule will no longer incur the opportunity cost of time associated with completing and filing a fee waiver request. DHS estimates the total number of applicants requesting a fee waiver for forms that will no longer be eligible for a fee waiver will be approximately 404,050, including about 22,940 fee waiver requests from applicants in households with income at or below 150 percent of FPG, but above 125 of FPG, about 374,854 fee waiver applications from the means-tested benefit criterion, and about 6,256 fee waiver applications from the financial hardship criterion. DHS anticipates this rule will produce a qualitative benefit for USCIS by reducing administrative costs to USCIS to adjudicate unique fee waiver requests. It may also reduce the amount of training or guidance necessary to adjudicate unique fee waiver requests.

f. Fee Exemptions

DHS is required to exempt certain requests from USCIS fees as follows:

- Certain Form I-129 petitioners filing for H-1B nonimmigrant workers exempt from the fee imposed by *American Competitiveness and Workforce Improvement Act of 1998* (ACWIA), Pub. L. 105-277, Div. C, Title IV, 112 Stat. 2681 (Oct. 21, 1998), *as amended*.⁶⁸
- Military Naturalization Based on Peacetime Service; Form N-400 (Application for Naturalization). INA section 328, 8 U.S.C. 1439.⁶⁹
- Military Naturalization Based on Service During a Time of Conflict; Form N-400 (Application for Naturalization). INA § 329, 8 U.S.C. 1440.⁷⁰

⁶⁸ The Form I-129 petitioner is exempt from paying the additional ACWIA fee if the employer is: a primary or secondary education institution; an institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); a nonprofit entity related to or affiliated with any such institution; a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution; or a nonprofit research organization, or a governmental research organization. INA §214(c)(9)(A); 8 C.F.R. §214.2(h)(19)(iii). INA §214(c)(9)(A)(i)-(iii); 8 C.F.R. §214.2(h)(19)(v). In addition the ACWIA fee is *not* required when the petition is an amended H-1B petition that does not contain any requests for an extension of stay; or The petition is an H-1B petition filed for the sole purpose of correcting a Service error;⁶⁸ or The petition is the second or subsequent request for an extension of stay filed by the employer regardless of when the first extension of stay was filed or whether the ACWIA fee was paid on the initial petition or the first extension of stay.

⁶⁹ A person who has served honorably at any time in the Armed Forces of the United States for a period or periods aggregating one year, and who, if separated from such service, was never separated except under honorable conditions, may be eligible for naturalization under INA § 328(a). All such persons are exempt from paying application fees (which USCIS interprets to include biometric services fees) associated with filing an application under INA § 328(b)(4) which states: “[N]otwithstanding any other provision of law, no fee shall be charged or collected from the applicant for filing the application, or for the issuance of a certificate of naturalization upon being granted citizenship, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected.”

⁷⁰ A person who has served honorably as a member of the Selected Reserve of the Ready Reserve or in an active-duty status in the military, air, or naval forces of the United States during a period in which the Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who, if separated from such service, was separated under honorable conditions, may be eligible for naturalization under INA § 329(a). All such persons are exempt from paying application fees under INA § 329(b)(4), which states: “[N]otwithstanding any other provision of law, no fee shall be charged or collected from the applicant for filing a petition for naturalization or for the issuance of a certificate of naturalization upon citizenship being granted to the applicant, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected.”

- Special Immigrant Visa (SIV) fee exemptions for certain nationals of Afghanistan and Iraq. Provides that an Afghanistan or Iraqi national who supported the U.S. Armed Forces as a translator; or an Iraqi national who worked for, or on behalf of, the U.S. Government in Iraq may apply for an SIV and that USCIS may collect no fee.⁷¹ *National Defense Authorization Act for Fiscal Year 2006* (NDAA); Pub. L. 109-163, 119 Stat. 3136, as amended by Pub. L. 110-36, 121 Stat. 227, §1059.
- The application (*i.e.*, “registration”) fee for Form I-821; Application for Temporary Protected Status (TPS), is limited by statute to \$50.⁷² INA section 244(c)(1)(B), 8 U.S.C. 1254(c)(1)(B). This amount is charged for an initial TPS application, and thus cannot be charged again for the Form I-821 when it is filed for TPS re-registration. *Id.*
- The \$1,000 “penalty” fee for Form I-485 (Application for Adjustment of Status) filed under INA 245(i) shall not be required of children under age 17 or unmarried children or spouses of certain individuals who obtained temporary or permanent resident status under “legalization” provisions of the *Immigration Reform and Control Act of 1986* (IRCA) and where such individuals also meet the statutory conditions in INA section 245(i)(c)((i)-(iii)).⁷³ INA section 245(i)(C), 8 U.S.C. 1255(i)(C); 8 CFR 245.10(c)(1-3).

⁷¹ Based on the NDAA provision, such Iraqi and Afghan SIV applicants are also exempt from the biometric services fee and the fee for Form I-290B, Notice of Appeal or Motion, when seeking review of the denial of an SIV.

⁷² Other fees are also set or capped by statute and cannot be changed by DHS without legislative action. (*See, e.g.*, INA §245(i)(C)(penalty fee set at \$1,000 for certain I-485 adjustment applications). Statutory fees are generally set by Congress to affect a policy goal and not entirely available for deposit into the Immigration Examination Fee Account for use by USCIS. For example, the \$1,000 INA §245(i)(C) penalty fee is split \$538 for the IEFA and

Other than these provisions, DHS is not required to provide fee exemptions for any immigration filing fees. *See, e.g.*, 81 FR 73295. As these exemptions are required by law, DHS must shift the costs of providing statutory fee exemptions to other fee payers, except for the ACWIA fee which is not deposited into the IEFA, and Form N-400 for military naturalization, for which USCIS receives a Congressional appropriation.⁷⁴ Nevertheless, this final rule codifies several fee exemptions that are not required by law:

- Form I-914, Application for T Nonimmigrant Status
- Form I-918, Petition for U Nonimmigrant Status
- Form I-821D, Consideration of Deferred Action for Childhood Arrivals.
- Form I-90, Application to Replace Permanent Resident Card, No fee is required for an application filed pursuant to 8 CFR 264.1(b)(7) through (9)(involving cards issued but never received; cards when bearer reaches age 14, unless card will expire before 16th birthday, or incorrect data on card due to Service error, (d)(2) or (4) (conditional resident replacement cards issued but never received or required due to USCIS error). 8 CFR 264.5(a).
- Concurrent applications to overcome grounds of inadmissibility. No fee is required for filing an application to overcome the grounds of inadmissibility of the [INA] if filed concurrently with an application for adjustment of status under the provisions of the [INA] of October 28, 1977, and of [8 C.F.R. Part 245]. 8 CFR 245.1(f).

\$462 for the Immigration Detention Account. See INA section 245(i)(3)(B), 8 U.S.C. 1255(i)(3)(B). H.R. Conf. Rep. No. 104-828, 104th Cong., 2nd Sess. (1996); 142 Cong. Rec. H10841-02, H10901 (September 24, 1996).

⁷³ The implementing regulations clarify that the spouse and children of legalized aliens do not pay the additional INA section 245(i) fee when they have properly qualified for and filed Form I-817, *Application for Voluntary Departure Under the Family Unity Program* and meet other requirements. See 8 C.F.R. 245.10(c)(2-3).

⁷⁴ 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).

- Approved Temporary Resident Status applicants receive a “Form I-688” EAD after turning in their previously issued EADs. 8 CFR 274.12a(2), 245a.2(n)(3 and 210.4(b)(3).

In addition, DHS is providing that there is no fee for an initial Employment Authorization Document⁷⁵ for:

- An applicant who filed USCIS Form I-485 on or after July 30, 2007, and before the date of the final rule and paid the Form I-485 fee;
- Refugees and aliens paroled as refugee;
- Aliens granted asylee status;
- Victims of Severe Forms of Trafficking (T-1);
- Nonimmigrant Victim of Criminal Activity (U-1);
- Dependents of certain government and internal organizations or NATO personnel;
- N-8 (Parent of alien classed as SK3) and N-9 (Child of N-8) nonimmigrants;
- Principal VAWA Self-Petitioners who have approved petitions pursuant to section 204(a) of the Act;
- VAWA Self-Petitioners as defined in section 101(a)(51)(D), (E), and (F) of the Act;
- 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
- Request for replacement Employment Authorization Document based on USCIS error: no fee.

⁷⁵ Depending on the category, USCIS may or may not require submission of Form I-765 to provide the EAD.

There is no fee for a renewal or replacement Employment Authorization Document for:

- Any current Adjustment of Status or Registry applicant who filed for adjustment of status on or after July 30, 2007, and before the effective date of the final and paid the appropriate Form I-485 filing fee.
- 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
- Dependent of certain foreign government, international organization, or NATO personnel.

DHS also removes the fee prior exemptions for an initial request for an employment authorization document (Form I-765) for the following classifications:

- Citizen of Micronesia, Marshall Islands, or Palau;
- Granted Withholding of Deportation or Removal;
- 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; and
- Applicant for Asylum and Withholding of Deportation or Removal.

In addition, this final rule provides that the USCIS Director “may authorize the waiver, in whole or in part, of a form fee required by 8 CFR 106.2⁷⁶ 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.” See new

⁷⁶ See Preamble, Section F - Table 4 Fee Exemptions.

106.3(b). Previous USCIS Directors have used this authority to provide fee exemptions for specific categories and groups of immigrants. DHS has further clarified and consolidated the provisions proposed in 8 CFR 106.3(b) and (c) to remove redundancy and incorporated the eligibility requirements under the proposed 106.3(d)(1) and 106.3(d)(2) into the new provision 8 CFR 106.3(b).

Consistent with that authority, and concurrent with this rule in the relevant form instructions and other guidance, DHS is continuing to exempt the following categories that are consistent with the criteria for a Director's exemption:

- Form I-102,⁷⁷ Application for Replacement/Initial Nonimmigrant Arrival/Departure Document: nonimmigrant military members of the U.S. Armed Forces, noncitizen participating in NATO or Partnership for Peace Military Program under the Status of Forces Agreement (SOFA).
- Form I-539,⁷⁸ Application to Extend/Change Nonimmigrant Status: noncitizen with Ambassador, Public Ministry, or Career Diplomatic or Consular Officer and their Immediate Family and Attendant or Servant (A-1, A-2, and A-3), Designated Principal Resident Representative of a Foreign Government and Immediate Family and Attendant or Servant (G-1, G-2, G-3, G-4, and G-5) or NATO nonimmigrants status (NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, NATO-7, and NATO-8).

⁷⁷ Between fiscal years 2013 – 2017 USCIS received approximately 63 Form I-102 filings from the subject categories. Source: USCIS, Office of Policy & Strategy, Policy Research Division (PRD), CLAIMS3 database, August 21, 2019.

⁷⁸ Between fiscal years 2013 – 2017 total annual receipts using Form I-539 for the subject categories was approximately 923 applicants. Source: USCIS, Office of Policy & Strategy, Policy Research Division (PRD), CLAIMS 3 database, August 21, 2019.

- Taiwanese dependents of Taipei Economic and Cultural Representative Office TECRO E-1 employees.

Below, Table 18 shows the total annual receipts for initial requests for employment authorization using Form I-765 for fiscal years 2015 – 2019 filed by individuals applying under the subject classifications, from the bulleted listed above (asylee, refugees, noncitizen paroled as refugees, Special Immigrants under INA 101 (a)(27)(L)(i)(L), Victim of Qualifying Criminal Activity (U-1), Victims of Severe form of Trafficking in Persons (T-1, dependents of Certain foreign national organization and NATO, VAWA Self-Petitioner, Taiwan Dependents (TERCO)). DHS is continuing to exempt these categories from the fee for Form I-765. During this period, the total number of Forms I-765 filed by these classifications was approximately 523,905 where total annual receipts ranged from a high of 134,486 in fiscal year 2016 to a low of 78,229 in fiscal year 2018. Based on those filing volumes, DHS estimates that an average of 104,781 Form I-765 applications annually will not have to pay a fee.

Table 18. Total Fee Exempt Annual Receipts for Initial Requests for Employment Authorization using Form I-765 of Individuals Applying under the Classifications; Refugees; Noncitizen Paroled as Refugees; Asylee; Special Immigrants; U-1; T-1; dependents of Certain Foreign National Org. and NATO; VAWA; and TECRO, for fiscal years 2015 – 2019.

Fiscal Year	Refugees	Noncitizen Paroled as Refugees	Asylee	Special Immigrants under INA 101 (a)(27)(L)(i)(L)	Victim of Qualifying Criminal Activity (U-1)	Victims of Severe form of Trafficking in Persons (T-1)	Dependents of Certain Foreign National Org. and NATO	VAWA Self-Petitioner Principal	Taiwanese dependents (TECRO)	Total
2015	68,652	1,796	35,348	235	4,708	136	2,574	1,870	28	115,347
2016	88,160	2,717	29,871	105	8,962	169	2,438	2,051	13	134,486
2017	54,361	2,135	32,647	78	10,535	130	2,198	2,055	19	104,158
2018	23,015	571	38,743	67	10,872	193	2,277	2,466	25	78,229

2019	30,826	559	47,761	65	8,514	105	2,063	1,744	48	91,685
Total	265,014	7,778	184,370	550	43,591	733	11,550	10,186	133	523,905
5-year Average	53,003	1,556	36,874	110	8,718	147	2,310	2,037	27	104,781

Source: USCIS, Office of Policy & Strategy, Policy Research Division (PRD), CLAIMS 3 database, April 1, 2020.

As stated earlier, DHS is removing the fee exemptions for an initial request for an employment authorization document (Form I-765) for the following classifications:

- Citizen of Micronesia, Marshall Islands, or Palau;
- Granted Withholding of Deportation or Removal
- 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; and
- Applicant for Asylum and Withholding of Deportation or Removal -Deferred Enforced Departure (DED).

Table 19 shows annual Form I-765 filings for fiscal years 2015 – 2019 by individuals applying under these four categories. The distinction between initial filed I-765 was clarified and additional provisions to be exempted were included. The changes for the fee for an initial Form I-765 for individuals with a pending asylum claim are discussed in a later section of this regulatory impact analysis.⁷⁹ During this period, the total Form I-765 filings by these classifications was approximately 35,781 and ranged from a low of 4,452 in fiscal year 2017 to a high of 10,140 in fiscal year 2018. DHS projects that an average annual 7,156 Form I-765 filings will no longer exempted and therefore, will be required to pay the filing fee.

⁷⁹ See Section P of this economic analysis, Charge for an Initial Form I-765, Application for Employment Authorization while an Asylum Claim is Pending (c)(8).

Table 19. Total Form I-765 filings by: Citizen of Micronesia, Marshall Islands, or Palau; Alien Granted Withholding of Deportation; and Temporary Protected Status if filing an initial TPS application and is under 14 years of age or over 65 years of age; Applicant for Asylum and Withholding of Deportation or Removal Deferred Enforced Departure (DED);, for Fiscal Years 2015 – 2019

Fiscal Year	Citizen of Micronesia, Marshall Islands, or Palau	Granted Withholding of Deportation	Temporary Protected Status if Filing an Initial TPS Application and Under 14 Years of Age or Over 65 Years of Age	Applicant for Asylum and Withholding of Deportation or Removal Deferred Enforced Departure (DED)	Total
2015	356	2,401	4,875	122	7,754
2016	259	2,013	6,301	169	8,742
2017	412	1,936	2,096	8	4,452
2018	691	1,742	7,698	9	10,140
2019	1871	2,538	276	8	4,693
Total	3,589	10,630	21,246	316	35,781
5-year Average	718	2,126	4,249	63	7,156

Source: USCIS, Office of Performance and Quality (OPQ), Policy Research Division (PRD), CLAIMS 3 database and System CIS Consolidated Operational Repository database, April 2, 2020.

An initial Form I-765 from one of these categories is fee exempt. DHS estimates the average annual number of Forms I-765 filed for these categories is 7,156.

DHS will now charge a fee of \$550 to file a Form I-765 for which the fee exemptions will be removed. Thus, the annual Form I-765 filings of 7,156. would have an annual transfers of \$3,935,800 in filing fees to the categories listed in the provision that are no longer exempted

as a result of this rule from different groups of fee-paying applicants.⁸⁰ Since this population already files Form I-765, there are no changes in the opportunity costs of time and the cost to provide two passport photos as applicant would incur these costs either way. Therefore, DHS estimates the total transfer to file Form I-765 would be \$3,935,800 annually.

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.

g. Changes to Biometric Services Fee

DHS is incorporating the biometric services cost into most underlying immigration benefit request fees for which biometric services are applicable and eliminates separate payments of the biometric services fee remitted with certain immigration benefit requests.⁸¹ Currently, if USCIS receives a benefit request without the correct biometric services fee, as specified in the form instructions, USCIS rejects the benefit request.

DHS is also establishing a separate biometric services fee for additional requests for which it could not include the costs to USCIS of administering biometrics services in the ABC model used for the NPRM. First, DHS codified revised 8 CFR 208.7(a)(1)(i), which requires

⁸⁰ Calculation: (New Form I-765 filing fee) * (Estimated annual number of initial requests for employment authorization using Form I-765 under classifications no longer fee exempted) = \$550 * 7,156 = \$3,935,800 estimated annual transfer for filing Form I-765.

⁸¹ See the preamble of this rule for more detail on retaining separate biometric services fees for Temporary Protected Status (TPS) and Executive Office for Immigration Review (EOIR), and CNMI Long-Term Residents. Section (G)(2) Comments on Specific Fees – Biometric Services. of the preamble of this rule lists the forms associated with EOIR and TPS applicants. TPS applicants or re-registrants must pay \$30 for biometric services unless exempted in the applicable form instructions. Applicants for the CNMI, the Northern Mariana Islands Long-Term Legal Residents Relief Act [48 U.S.C. 1806(e)(6)] 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. They will also have to pay the \$30 biometrics fee.

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).⁸² 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-765.⁸³ Because the CNMI long-term resident program and fee NPRM were under development simultaneously, DHS was unable to include the cost of biometrics services for CNMI 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

⁸² 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).

⁸³ 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>.

authorization submit a \$30 biometric services fee with their Form I-765. 8 CFR 106.2(a)(32)(i)(A)(B).

The Commonwealth of the Northern Mariana Islands (CNMI) long-term resident status program applicants will now pay also pay the \$30 biometric services fee from the previous \$85 as previously explained. Since the CNMI Long-Term Resident program just began in February of 2020, DHS only uses the most current data available, for this analysis. Therefore, applicants will experience a savings of \$7,920, as a result of the \$55 reduction per service fee.⁸⁴

USCIS retains a separate biometric services fee for TPS. While the TPS registration fee is capped by INA section 244a(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B) at \$50 for initial TPS applicants and \$0 for re-registrants, 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 biometrics services fee, in addition to any applicable fees for Forms I-821 and I-765. Therefore, adjusting the biometrics services fee for TPS applicants and re-registrants to \$30 represents a \$55 reduction per filing in the biometrics services fee that these individuals may pay and does not represent the imposition of a new fee for the population aged 14 years and older.

Similarly, applicants who file certain requests with the Executive Office for Immigration Review (EOIR) will submit a biometric services fee for the reasons stated in the preamble of this rule to recover the costs USCIS incurs from performing biometric services for EOIR. USCIS

⁸⁴ The estimated applicant population is 144 per year. USCIS, Office of Policy & Strategy, Policy Research Division (PRD), CLAIMS 3 database, April 2019.

Calculation: (Average annual receipts for CNMI applicants) x (Reduction in the biometrics service form fee of \$55 per application) = 144 x \$55 = \$7,920.

will charge a biometric services fee of \$30 that will be required for certain forms for which it performs intake and biometrics services on behalf of EOIR. *See* 8 CFR 103.7(a)(2). DHS does not anticipate that applicants or the Federal Government would incur additional costs because of this amendment.

In Table 20 below, DHS used data from the most recent fiscal years 2016 – 2019, for the biometrics service fee receipts, for TPS and EOIR. DHS estimates that 271,739 is the 4-year average of TPS and EOIR applicants who paid the \$85 biometrics fee. DHS in this final anticipates that instead of paying a biometrics services fee of the previous \$85, applicants would now pay \$30, as a result of the \$55 reduction per form fee. These applicants will experience a savings of \$14,945,645 as a result of the \$55 reduction per service fee.⁸⁵

Fiscal Year	TPS	EOIR	Total
2016	304,307	28,796	333,103
2017	61,565	26,394	87,959
2018	314,609	40,370	354,979
2019	255,000	55,916	310,916
Total	935,481	151,476	1,086,957
4-year Average	233,870	37,869	271,739

Source: Office of Performance and Quality (OPQ), C3 Consolidated data, May 2020

As a result, TPS, EOIR, and CNMI applicants will experience a total of \$14,953,565 in reduced fees, from the \$55 reduction in the biometrics form fee.⁸⁶ This represents transfers from

⁸⁵ Calculation: (Average annual 4-year receipts for TPS and EOIR applicants) x (Reduction in biometrics service fee of \$55 per applicant) = 271,739 x \$55 = \$14,945,645.

⁸⁶ Calculation: (TPS, EOIR, and CNMI reduction in biometrics service fee of \$55 per applicant) = \$14,945,645 + \$7,920 = \$14,953,565

the government to the fee payers. DHS does not anticipate that applicants or the Federal Government would incur additional costs because of this amendment.

In Table 21, DHS used data from the most recent fiscal years 2016 – 2019, for the biometrics service fee receipts accompanying Form I-765 for pending asylum applications requesting work authorization. DHS estimates that 412,209 is the 4-year average of asylum applicants who will pay the fee. The table shows a low range of 298,580 in 2016 and high range of 551,226. Currently, these applicants are not paying \$85 for biometric services; however, in this final rule the biometrics service amount will also be \$30 for this population. These applicants will pay an additional total cost of approximately \$12,366,270 as a result of the \$30 fee.⁸⁷

Table 21. Annual Pending Asylum Applications, for Fiscal Years 2016 - 2019	
Fiscal Year	Receipts
2016	298,580
2017	474,037
2018	324,991
2019	551,226
Total	1,648,834
5-year Average	412,209
Source: Office of Performance and Quality (OPQ), C3 Consolidated data, November 2019	

Incorporating the biometric services fee into the underlying benefit request filing fee will simplify the process of remitting payment for applicants. The biometric costs incorporated into the fee will correspond to the services being collected, rather than representing an aggregate

⁸⁷ Calculation: (Average annual 4-year receipts for asylum applicants) 412,209 x (Reduced biometrics service fee of \$30 per applicant) = \$12,366,270.

average cost where applicants filing some forms overpay while others underpay. Moreover, by eliminating the separate payment of the biometric services fee, DHS may decrease the possibility that an applicant would submit an incorrect fee and have their benefit request rejected. USCIS does not have data on which applications were rejected upon receipt due to a missing biometric services fee. However, DHS assumes that some applications would no longer be rejected because the biometrics services fee is no longer a separate requirement.

This change will provide qualitative benefits to USCIS. Eliminating the separate payment of the biometric services fee will decrease the administrative burdens required to process both a filing fee and biometric services fee for a single benefit request. Furthermore, USCIS will be able to assign biometric services costs to the particular USCIS form or which the biometrics are needed.⁸⁸

h. Discontinue Providing Free Interim Benefits when Forms I-765 and I-131 are Filed Concurrently with Form I-485 or when a Form I-485 is Pending

DHS is requiring a separate filing fee when filing Form I-765, Application for Employment Authorization, and/or Form I-131, Application for Travel Document, are concurrently filed with Form I-485, Application to Register Permanent Residence or Adjust Status, or while a Form I-485 is pending USCIS adjudication. Form I-485 is used to apply for lawful permanent resident status in the United States. Currently, when filing Form I-485, an individual may file Form I-765 to request employment authorization and/or may file Form I-131 to apply for advance parole without paying any additional filing fees.

⁸⁸ Currently, a single biometric service fee includes four separate costs, including: FBI name checks; FBI fingerprints; Application Support Center (ASC) contractual support; and Biometric service management overall, including federal employees at the ASC locations.

Table 22 shows the total receipts for concurrent filing of Forms I-131 and/or I-765 with Form I-485 for fiscal years 2015 – 2019. The population affected by this provision includes individuals that submit Form I-765 and/or Form I-131 concurrently with Form I-485.⁸⁹ DHS uses the number of Forms I-485, I-765 and I-131 that were filed concurrently to estimate the impact to populations affected by this change for this analysis. The total annual receipts of Forms I-765 and I-131 filed concurrently with Form I-485 ranged from a low of 205,377 in fiscal year 2015 to a high of 264,954 in fiscal year 2017. The total annual receipts of only Form I-131 filed concurrently with Form I-485 ranged from a low of 13,244 in fiscal year 2019 to a high of 27,217 in fiscal year 2016, while the total annual receipts of only Form I-765 filed concurrently with Form I-485 ranged from a low of 175,965 in fiscal year 2019 to a high of 220,401 in fiscal year 2017. Moreover, based on the total number of receipts for Forms I-765 and I-131 filed concurrently with Form I-485, DHS estimates that 243,107 is the average annual projected number of applicants who would concurrently file to request employment authorization and advance parole with a request to adjust status to become a lawful permanent resident (LPR). In addition, DHS estimates that an average of 21,733 annual number of applicants who will concurrently file Form I-131 only to apply for advance parole to return to the United States with an adjustment of status request and an average of 199,383 annual number of applicants will concurrently file Form I-765 only to request employment authorization with an adjustment of status request.

⁸⁹ Alternatively, they may also file these forms after USCIS accepts their Form I-485, but while the Form I-485 is still pending. See special instructions on USCIS website at <https://www.uscis.gov/i-485>.

Table 22. Annual receipts when filing Form I-765, Application for Employment Authorization, and/or Form I-131, Application for Travel Document, concurrently with Form I-485, Application to Register Permanent Residence or Adjust Status, or while a Form I-485 application is pending USCIS adjudication, Fiscal Years 2015 – 2019.

Fiscal Year	Form I-485, Filed Concurrently with Forms I-765 and I-131	Form I-485, Filed Concurrently with Form I-131	Form I-485, Concurrently Filed with Form I-765
2015	205,377	20,321	190,819
2016	240,989	27,217	214,932
2017	264,954	26,365	220,401
2018	255,025	21,519	194,800
2019	249,188	13,244	175,965
Total	1,215,533	108,666	996,917
5-year Average	243,107	21,733	199,383

Source: USCIS, Office of Performance and Quality (OPQ), CLAIMS 3 database, March 23, 2020

The current filing fee to apply for adjustment of status to LPR using Form I-485 is \$1,140. DHS estimates the annual number of applicants filing Form I-485 concurrently with Forms I-765 and I-131 is 243,107, with only Form I-131 is 21,733, and with only Form I-765 is 199,383. Therefore, DHS estimates the annual filling fees associated with Form I-485 when applicants file Forms I-765 and I-131 concurrently is approximately \$277,141,980, with Form I-131 only is about \$24,775,620 and with Form I-765 only is approximately \$227,296,620.⁹⁰ In

⁹⁰ Calculation: (Form I-485 filing fee) * (Estimated annual number of applicants concurrently filing Form I-485 with Forms I-765 and I-131) = \$1,140 * 243,107 = \$277,141,980 estimated annual cost for filing Form I-485 concurrently with Forms I-765 and I-131.

Calculation: (Form I-485 filing fee) * (Estimated annual number of applicants concurrently filing Form I-485 with Form I-131 only) = \$1,140 * 21,733 = \$24,775,620 estimated annual cost for filing Form I-485 concurrently with Form I-131 only.

Calculation: (Form I-485 filing fee) * (Estimated annual number of applicants concurrently filing Form I-485 with Form I-765 only) = \$1,140 * 199,383 = \$227,296,620 estimated annual cost for filing Form I-485 concurrently with Form I-765 only.

total, DHS estimates the current annual filing fees associated with filing Form I-765 and/or I-131 concurrently with or while Form I-485 is pending is approximately \$529,214,220.⁹¹

In this rule, DHS is requiring a filing fee for Forms I-765 and I-131 when they are filed with an I-485 or while one is pending. Currently, a fee is not required for these forms when filed concurrently. The costs to applicants from this change are the estimated annual number of the filings multiplied by the new fees for the three forms.⁹² Table 23 shows the current fees for Form I-485 applicants who concurrently file Forms I-765 and/or I-131 as bundled interim benefits and the new fees for Form I-485 applicants who would be required to pay separate filing fees for Forms I-765 and/or I-131. In addition, as previously discussed in this analysis, DHS is eliminating separate payments of biometric services fees. Instead, biometrics services costs will be incorporated into the underlying immigration benefit filing fee. Applicants filing Forms I-485 and I-765 will still be required to submit biometric information at the same rate as currently required.

Immigration Benefit Request	Current Fees	New Fees	Fee Difference	Percentage Difference
I-485 Application to Register Permanent Residence or Adjust Status	\$1,140	\$1,130	-\$10	-1 percent
I-765 Application for Employment Authorization	\$410	\$550	\$140	34 percent
I-131 Application for Travel Document	\$575	\$590	\$15	3 percent

⁹¹ Calculation: \$277,141,980 (estimated annual cost for filing Form I-485 concurrently with Forms I-765 and I-131) + \$24,775,620 (estimated annual cost for filing Form I-485 concurrently with Form I-131 only) + \$227,296,620 (estimated annual cost for filing Form I-485 concurrently with Form I-765 only) = \$529,214,220 estimated annual cost to file Form I-485 concurrently with Form I-765 and/or I-131.

⁹² DHS assumes with this estimate that the number of filings for Forms I-765 and/or I-131 will not increase or decrease as a result of imposing a fee for filing these forms concurrent with Form I-485. DHS assumes that the fee would not lead to fewer applicants not needing an EAD or travel document.

Biometric Services Fee	\$85	N/A ^a	-\$85	-100 percent
Total Fees for Form I-485 and biometric services	\$1,225	\$1,130	-\$95	-8 percent
Total Fees for Forms I-485 and I-765 and biometric services		\$1,680	\$455	37 percent
Total Fees for Forms I-485 and I-131 and biometric services		\$1,720	\$495	40 percent
Total Fees for Form I-485, all interim benefits, and biometric services		\$2,270	\$1,045	85 percent
Notes:				
^a As noted earlier in this analysis, DHS is eliminating the separate \$85 fee in most cases. See preamble section V.E. Changes to Biometric Services Fee of the NPRM or preamble section III.G. of the final rule for more information.				

DHS is changing the filing fee to apply for adjustment of status using Form I-485 from \$1,140 to \$1,130, a decrease of \$10 (approximately 1 percent). DHS estimates the annual filing fee transfer for Form I-485 concurrently with Forms I-765 and I-131 would be approximately \$274,710,910; filing with Form I-131 only would be about \$24,558,290; and filing with Form I-765 only would be approximately \$225,303,790.⁹³ In total, DHS estimates the annual filing fee transfer for Form I-485 concurrently filed with Form I-765 and/or I-131 would be approximately \$524,571,990.⁹⁴

⁹³ Calculation: (Form I-485 filing fee) * (Estimated annual number of applicants concurrently filing Form I-485 with Forms I-765 and I-131) = \$1,130 * 243,107 = \$274,710,910 estimated annual transfer for filing Form I-485 concurrently with Forms I-765 and I-131.

Calculation: (Form I-485 filing fee) * (Estimated annual number of applicants concurrently filing Form I-485 with Form I-131 only) = \$1,130 * 21,733 = \$24,558,290 estimated annual transfer for filing Form I-485 concurrently with Form I-131 only.

Calculation: (Form I-485 filing fee) * (Estimated annual number of applicants concurrently filing Form I-485 with Form I-765 only) = \$1,130 * 199,383 = \$225,302,790 estimated annual transfer for filing Form I-485 concurrently with Form I-765 only.

⁹⁴ Calculation: \$274,710,458 (estimated annual transfer for filing Form I-485 concurrently with Forms I-765 and I-131) + \$24,558,290 (estimated annual transfer for filing Form I-485 concurrently with Form I-131 only) + \$225,302,790 (estimated annual transfer for filing Form I-485 concurrently with Form I-765 only) = \$524,571,990 estimated total annual transfer to file Form I-485 concurrently with Form I-765 and/or I-131.

Because DHS is charging a fee for filing Forms I-765 and/or I-131 when filed concurrently with Form I-485. The fee is \$550 for Form I-765.

Table 24. Annual receipts for Form I-765 (c)(8) and (c)(9P) Application for Employment Authorization filed for Free with a pending I-485 (not concurrently with an I-485), for Fiscal Years 2015 – 2019.			
Fiscal Year	Form I-765 Applicant for Asylum with Pending Asylum Application (C)(8)	Form I-765 Applicant for Adjustment/ Advanced Parole (C)(9P)	Form I-765 Totals
2015	180,196	218,159	398,355
2016	300,855	255,821	556,676
2017	478,721	283,071	761,792
2018	332,320	260,098	592,418
2019	556,996	188,397	745,393
Total	1,849,088	1,205,546	3,054,634
5-year Average	369,818	241,109	610,927
Source: U.S. Citizenship and Immigration Services, Office of Performance and Quality, C3 Consolidated via SAS, queried November 2019.			

Table 24 above shows the estimated total receipts for Form I-765 Application for Employment Authorization, split into two categories Asylum applicants with pending asylum application (c)(8) and Applicant for Adjustment/ Advanced Parole (c)(9P) for fiscal years 2015 – 2019. The total annual receipts of Forms I-765 Applicant for Asylum with Pending Asylum Application (C08) ranged from a low of 180,196 in fiscal year 2015 to a high of 556,996 in fiscal year 2019. The total annual receipts of Forms I-765 Applicant for Adjustment/Advanced Parole (C09P) ranged from a low of 188,397 in fiscal year 2019 to a high of 283,071 in fiscal year 2017.

DHS estimates the annual number of applicants filing Form I-765 is 367,820⁹⁵. DHS estimates the annual transfer to file Form I-765 will be approximately \$202,301,000⁹⁶.

DHS estimates the annual transfer to file Form I-765 when filing Form I-485 concurrently with Forms I-765 and I-131 will be approximately \$133,708,850.⁹⁷ In addition, DHS estimates the annual transfer to file Form I-765 when filing Form I-485 concurrently with only Form I-765 will be about \$109,660,650.⁹⁸ In sum, DHS estimates the filing fee transfer for Form I-765 when filing concurrently with or while a Form I-485 is pending will be approximately \$243,369,500 annually.⁹⁹

DHS is charging a separate fee of \$590 to file Form I-131 when filing concurrently with Form I-485. DHS estimates the annual transfer to file Form I-131 when filing Form I-485 concurrently with Forms I-765 and I-131 will be approximately \$143,433,130.¹⁰⁰ In addition, DHS estimates the annual transfer to file Form I-131 when filing Form I-485 concurrently with

⁹⁵ Calculation: (Estimated annual receipts for Asylum applicants with pending asylum application & Applicant for Adjustment/ Advanced Parole Filing Form I-765 (C08 & C09P) filed for Free with a pending I-485 (not concurrently with an I-485)) – (Estimated annual number of applicants concurrently filing Form I-485 with Forms I-765 and I-131, see table 19) = Total estimated annual Form, I-765 receipts. 610,927- 243,107 = 367,820.

⁹⁶ Calculation: Estimated annual receipts for Asylum applicants with pending asylum application & Applicant for Adjustment/ Advanced Parole Filing Form I-765 (C08 & C09P) * (Form I-765 filing fee) = 367,820 * \$550 = \$202,301,000 estimated annual transfer to File Form I-765.

⁹⁷ Calculation: (Form I-765 filing fee) * (Estimated annual number of applicants concurrently filing Form I-485 with Forms I-765 and I-131) = \$550 * 243,107 = \$133,708,850 estimated annual transfer to file Form I-765 when filing Form I-485 concurrently with Forms I-765 and I-131.

⁹⁸ Calculation: (Form I-765 filing fee) * (Estimated annual number of applicants concurrently filing Form I-485 with Form I-765 only) = \$550 * 199,383 = \$109,660,650 estimated total annual transfer to file Form I-765 when filing Form I-485 concurrently with Form I-765 only.

⁹⁹ Calculation: \$133,708,850 (estimated annual cost to file Form I-765 when filing Form I-485 concurrently with Forms I-765 and I-131) + \$109,660,650 (estimated annual transfer to file Form I-765 when filing Form I-485 concurrently with Form I-765 only) = \$243,369,500 estimated total annual transfer to file Form I-765 when filing concurrently with Form I-485.

¹⁰⁰ Calculation: (Form I-131 filing fee) * (Estimated annual number of applicants concurrently filing Form I-485 with Forms I-765 and I-131) = \$590 * 243,107 = \$143,433,130 estimated annual transfer to file Form I-131 when filing Form I-485 concurrently with Forms I-765 and I-131.

only Form I-131 will be about \$12,822,470.¹⁰¹ In sum, DHS estimates the filing fee transfer for Form I-131 when filing concurrently with Form I-485 or while a Form I-485 is pending will be approximately \$156,255,600 annually.¹⁰²

The opportunity cost of time for filing Forms I-485, I-765, and I-131 will not be changed by this rule. The time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application; the opportunity cost of time for biometrics processing and travel to a biometrics services appointment at a designated USCIS Application Support Center (ASC); travel costs associated with biometrics processing; and the cost of passport-style photos will not be changed and remain the same. Therefore, those costs forms are not included in this analysis.

DHS estimates the total transfer for filing Forms I-765 and/or I-131 concurrently with Form I-485 or while it is pending is \$1,126,498,090 annually.¹⁰³

The estimated transfer of this change will be the difference between the total annual transfer for filing Forms I-765 and/or I-131 concurrently with Form I-485 or while it is pending and the estimated annual transfer of the change to require separate fees. In sum, total annual transfers will now be transferred between different groups of fee-paying applicants to those

¹⁰¹ Calculation: (Form I-131 filing fee) * (Estimated annual number of applicants concurrently filing Form I-485 with Form I-131 only) = \$590 * 21,733 = \$12,822,470 estimated annual transfer to file Form I-131 when filing Form I-485 concurrently with Form I-131 only.

¹⁰² Calculation: \$143,433,130 (estimated annual transfer to file Form I-131 when filing Form I-485 concurrently with Forms I-765 and I-131) + \$12,822,470 (estimated annual transfer to file Form I-131 when filing Form I-485 concurrently with Form I-131 only) = \$156,255,600 estimated total annual transfer to file Form I-131 when filing concurrently with Form I-485.

¹⁰³ Calculation: \$524,571,990 (filing fee for Form I-485) + \$202,301,000 (filing fee for Form I-765 (c)(8) and (c)(9)P) + \$243,369,500 (filing fee for Form I-765) + 156,255,600 (filing fee for Form I-131) = \$1,126,498,090 total estimated annual transfer to file Form I-485 concurrently with Forms I-765 and/or I-131.

applicants who file for Forms I-765 and/or I-131 concurrently filed with Form I-485 or while it is pending. As a result, DHS estimates the change will impose new annual transfers of \$597,283,870.¹⁰⁴

This provision will produce some qualitative benefits. One benefit of the provision is that stand-alone interim benefit applicants will be isolated 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. In addition, the change will allow new applicants to only pay for the immigration benefits they wish to receive. The new provisions will make it 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. Finally, 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

Currently, if a child is under the age of 14 and filing Form I-485 concurrently with at least one parent, the form fee is \$750, which is less than the current full fee for Form I-485 of \$1,140.¹⁰⁵ In this rule, DHS adjusts the fee for all Form I-485 applications, except those filed by refugees, to \$1,130. This fee is for applicants regardless of age, including children under the age

¹⁰⁴ Calculation: \$1,126,498,090 (total estimated annual transfer for filing Form I-485 concurrently with Form I-765 and/or I-131) - \$529,214,220 (total current estimated annual transfer for filing Form I-485 concurrently with Form I-765 and/or I-131) = \$597,283,870 estimated transfers for filing Form I-485 concurrently with Form I-765 and/or I-131.

¹⁰⁵ The current fee for an adult is \$1,140, and the fee for a child under the age of 14 concurrently filing with a parent is \$750. See <https://www.uscis.gov/i-485>.

of 14 years concurrently filing Form I-485 with a parent.¹⁰⁶ Additionally, this final rule will provide a single \$50 reduction in the fee for Form I-485 filed by principal asylum applicants who pay the \$50 fee for Form I-589 and are subsequently granted asylum.¹⁰⁷

Table 25 shows the estimated total receipts, approvals, and denials for applicants under the age of 14 years who filed Form I-485 concurrently with a parent in fiscal years 2015 to 2019. During this period, total annual receipts of Form I-485 from such children ranged from a low of 25,195 in fiscal year 2015 to a high of 34,134 in fiscal year 2017. DHS estimates that an average of 29,921 applicants under the age of 14 years file Form I-485 concurrently with a parent annually.

Table 25. Receipts, Approvals & Denials for Form I-485 Applicants Who Are Under the Age of 14 Years and Filing Concurrently with a Parent, Fiscal Years 2015 - 2019.			
Fiscal Year	Receipts	Approval*	Denials*
2015	25,195	23,588	1,416
2016	31,509	29,253	1,822
2017	34,134	29,841	2,349
2018	32,524	24,438	1,986
2019	26,241	14,286	1161
Total	149,603	121,406	8,734
5-year Average	29,921	24,281	1,747

¹⁰⁶ The parent may be seeking classification as an immediate relative of a U.S. citizen, a family-sponsored preference immigrant, or a family member accompanying or following to join a spouse or parent under sections 201(b)(2)(A)(i), 203(a)(2)(A), or 203(d) of the INA, 8 U.S.C. 1151(b)(2)(A)(i), 1153(a)(2)(A), or 1153(d).

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.” 8 CFR 103.7(b)(1)(i)(U)(2)., as explained in the NPRM at 84 FR 62305. . With this rule, DHS removes the reduced child fee , resulting in a single I-485 fee. *See* section III.G.11.b. Form I-485 Child Fee.

¹⁰⁷ The fee for the first Form I-485 filed by individuals who have paid the \$50 fee for Form I-589 and are subsequently granted asylum will be \$1,080.

Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS 3 database, March 31, 2020.

*Note: Approvals and Denials do not equal the total number of receipts, due to a difference in dates for the data was requested. The report reflects the most up-to-date data available at the time the report was generated. Duplicate cases due to service center transfers and rejected cases have been removed. Also, age is calculated on the basis of **date of birth** and **received date** on which the final decision was granted (approved or denied).

DHS estimates the current annual fee for applicants under the age of 14 years filing for LPR status concurrently with a parent is \$22,440,750.¹⁰⁸ DHS is now requiring full payment of the fee for all applicants—adults and children of any age—and would thereby increase the fee to file Form I-485 for applicants under 14 years of age filing concurrently with a parent from \$750 to \$1,130, an increase of \$380 (50.7 percent). Using the estimated average annual number of applicants under 14 years of age filing Form I-485 concurrently with a parent of 29,921, DHS estimates the annual filing fee transfer for Form I-485 for applicants under 14 years of age filing concurrently with a parent will be about \$33,810,730.¹⁰⁹

The opportunity cost of time for Form I-485 filings from children under the age of 14 years, would not be changed by this rule. The time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application; the opportunity cost of time for biometrics processing and travel to a biometrics services appointment at a designated USCIS Application Support Center (ASC); travel costs associated with biometrics processing; and the

¹⁰⁸ Calculation: (Form I-485 filing fee for applicants under the age of 14 years filing concurrently with a parent) * (Estimated annual number of applicants under the age of 14 years filing for LPR status concurrently with a parent using Form I-485) = \$750 * 29,921 = \$22,440,750 annual estimated transfer for filing Form I-485 for applicants under the age of 14 years filing for LPR status concurrently with a parent.

¹⁰⁹ Calculation: (Form I-485 filing fee for applicants under the age of 14 years filing concurrently with a parent) * (Estimated annual number of applicants under the age of 14 years filing for LPR status concurrently with a parent using Form I-485) = \$1,130 * 29,921 = \$33,810,730.

cost of passport-style photos would not be changed and remain the same. Therefore, those transfers associated with filing are not included in this analysis.

The transfer of this change is the difference between the current filing fee for Form I-485 for applicants under 14 years of age filing concurrently with a parent and the new fee established in this rulemaking. DHS estimates this rule will impose an annual transfer of \$11,369,980¹¹⁰ from the applicants who concurrently file a Form I-485 with a child under the age of 14 to different groups of fee-paying applicants.

A qualitative benefit is that a single fee for Form I-485 will reduce the burden of administering separate fees for USCIS.

j. Allow Individuals with Advance Parole to Use Form I-131A, Application for Travel Document (Carrier Documentation), and Expand the Population Eligible to File Form I-131A

DHS is separating the fee for Form I-131A, Application for Travel Document (Carrier Documentation), from other travel document fees and expanding the population eligible to file Form I-131A.¹¹¹ Many functions currently performed at international offices will be handled domestically or by USCIS domestic staff on temporary assignments abroad. As part of this shift, the Department of State (DOS) will assume responsibility for certain in-person services that USCIS currently provides at international field offices. In addition to issuing visas to foreign

¹¹⁰ Calculation: \$33,810,730 (total new estimated annual transfer for filing Form I-485 for applicants under 14 years of age filing concurrently with a parent) - \$22,440,750 (total current estimated annual transfer for filing Form I-485 for applicants under 14 years of age filing concurrently with a parent) = \$11,369,980 estimated new transfer for filing Form I-485 for applicants under 14 years of age filing concurrently with a parent.

¹¹¹ See 8 CFR 103.7(b)(1)(i)(M)(3); New 8 CFR 106.2(a)(8). See *USCIS Will Adjust International Footprint to Seven Locations* at <https://www.uscis.gov/news/news-releases/uscis-will-adjust-international-footprint-seven-locations> (last reviewed/updated Aug. 9, 2019). The volume and cost projections used in this rule were generated prior to planning for the adjustment to the international footprint of USCIS and do not incorporate cost changes associated with the adjustment. DHS will incorporate resulting cost changes in future fee rules.

nationals who are abroad, DOS already performs many of these service functions where USCIS does not have an office. USCIS is working closely with DOS to minimize interruptions in immigration services to affected applicants and petitioners. The current filing fee for Form I-131A is \$575 per applicant. There is no biometrics services fee, and an applicant may pay the fee from anywhere in the world. If an individual is not in possession of a valid, unexpired Permanent Resident Card (PRC) or Reentry Permit (for example, the card or permit was lost, stolen, destroyed, or mutilated), he or she may have difficulty attempting to return to the United States. Form I-131A allows a lawful permanent resident (LPR) or conditional permanent resident to apply for a travel document (carrier documentation) that allows an airline or other transportation carrier to board them without the airline or transportation carrier being penalized.¹¹² In order to be eligible for carrier documentation, an LPR who was traveling on a PRC must have been outside the United States for less than one year, and an LPR who was traveling on a reentry permit must have been outside the United States for less than two years. Form I-131A is not an application for a replacement PRC or reentry permit.

In 2016, USCIS began using Form I-131A, Application for Carrier Documentation.¹¹³ As a result, data on Form I-131A receipts are only available for fiscal year 2017 to 2019. Table 26 shows the estimated total receipts for Form I-131A for fiscal years 2017 to 2019. During this period, total annual receipts of Form I-131A ranged from a low of 9,281 in fiscal year 2017 to a high of 10,408 in fiscal year 2018. Therefore, DHS estimates that an average of 9,973 individuals who would file Form I-131A annually.

¹¹² See section 273 of the INA, 8 U.S.C. 1323 (providing for a fine of \$3,000 for each alien without proper documentation).

¹¹³ See 80 FR 59805.

Table 26. Individuals Filing Form I-131A, Application for Travel Document (Carrier Documentation) in fiscal years 2017 to 2019.	
Fiscal Year	Receipts
2017	9,281
2018	10,408
2019	10,229
Total	29,918
3-year Average	9,973
Source: USCIS, Office of Policy and Strategy (OP&S), Office of performance and quality (OPQ), April 2020.	

DHS is increasing the fee to apply for a travel document (carrier documentation) using Form I-131A from \$575 to \$1,010, an increase of \$435 (76 percent). DHS is expanding the population that is eligible to use Form I-131A by allowing individuals whose advance parole documents or combination employment authorization and advance parole cards (combo cards) are lost, stolen, or destroyed to use Form I-131A to apply for a carrier document while abroad. Currently, there is no clear process for individuals who lose advance parole documents while they are abroad to replace those documents. DHS is permitting those individuals to file Form I-131A to request carrier documentation, which would allow them to board a return flight to the United States despite their advance parole document having been lost, stolen or destroyed. At this time, USCIS cannot estimate the number of additional Form I-131A requests that may be filed for advance parole document replacement as a result of this change. However, DHS does know that currently the average annual number of individuals who would file Form I-131A is 9,973 which serves as a baseline for comparison of the impact of the fee.¹¹⁴ The opportunity cost

¹¹⁴ See footnote 148. Section V.H of the preamble of the NPRM of this rule describes in detail why the population of Form I-131A applicants may increase. DHS is allowing individuals whose advance parole documents or combination employment authorization and advance parole cards (combo cards) that are lost, stolen, or destroyed to use Form I-131A to apply for a carrier document while abroad.

of time for Form I-131A filings, would not change in this rule. Therefore, those new costs associated with filing are not included in this analysis. DHS estimates the new annual fee transfer to file Form I-131A is \$10,072,730.¹¹⁵

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 is 55 minutes (0.92 hours) per response, including the time for reviewing instructions, gathering the required documentation and information, completing the application, attaching necessary documentation, and submitting the application. Using the federal minimum wage, including weighted average benefits, of \$11.80 per hour as the total rate of compensation, DHS estimates the opportunity cost of time for completing and submitting Form I-131A would be \$10.86 per application.¹¹⁶ In addition, applicants who file Form I-131A are required to submit one passport-sized photo with the application. The estimated cost of one passport-sized photo is \$10.00 per application, based on Department of State estimates,¹¹⁷ for a total of \$32.66 per unit application cost.

Applicants will experience qualitative benefits from this change through the creation of a process for individuals to replace advance parole cards while abroad.

¹¹⁵ Calculation: (New Form I-131A filing fee) * (Estimated annual number of applicants filing Form I-131A) = \$1,010 * 9,973 = \$10,072,730 annual estimated transfer for filing Form I-131A.

¹¹⁶ Calculation for estimated opportunity cost of time for completing Form I-131A: (\$11.80 per hour * 0.92 hours) = \$10.86 (rounded) per applicant.

¹¹⁷ The Department of State estimates that the average cost of one passport-sized photo is \$10.00 according to the Paperwork Reduction Act (PRA) Supporting Statement under OMB control number 1450-0004. The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201607-1405-002.

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

DHS is separating Form I-129, Petition for a Nonimmigrant Worker, into several forms with different corresponding fees. These new forms will incorporate information from the various supplemental forms for specific types of workers or nonimmigrant classifications. The new fees are calculated to better reflect the costs associated with processing the benefit requests for the various nonimmigrant worker classifications. DHS also is limiting the number of named beneficiaries to 25 that may be included on a single petition for H-2A, H-2B, O¹¹⁸, H-3, P, Q, R, E, and TN workers. As previously discussed in section I of the preamble of the NPRM of this rule, 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.

Currently, employers may use Form I-129 to petition USCIS for a nonimmigrant worker to come to the United States temporarily to perform services or labor, or to receive training. Employers may use Form I-129 to petition for nonimmigrant workers under the following visa

¹¹⁸ 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).

classifications: 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, R-1, or TN. See Table 27 for a description of each of these visa classifications.

Table 27. Description of Visa Classifications for Nonimmigrant Workers Who May Have a Form I-129 Petition Filed on Their Behalf by an Employer.	
Visa Classification	Description of Visa Classification
CW-1	CNMI-Only transitional worker
E-1	Treaty Traders and qualified employers; for citizens of countries with which the United States maintains treaties of commerce and navigation. The applicant must be coming to the United States to engage in substantial trade principally between the United States and the treaty country
E-2	Treaty Investor and qualified employers; for citizens of countries with which the United States maintains treaties of commerce and navigation. To develop and direct the operations of an enterprise in which the applicant has invested or is in the process of investing a substantial amount of capital
E-2C	CNMI-Only transitional worker; is a noncitizen who seeks to enter or remain in the Commonwealth of the Northern Mariana Islands (CNMI) in order to maintain an investment in the CNMI that was approved by the CNMI government before November 28, 2009
E-3	Certain "specialty occupation" professionals from Australia.
H-1B	Specialty occupation worker; an alien coming to perform services of an exceptional nature that relate to a U.S. Department of Defense-administered project; or a fashion model of distinguished merit and ability.
H-2A	Temporary agricultural worker.
H-2B	Temporary non-agricultural worker
H-3	Trainees other than medical or academic.
L-1	Intracompany transferees in managerial or executive positions, in positions utilizing specialized knowledge.
O-1	Persons with extraordinary ability in sciences, arts, education, business, or athletics and motion picture or TV production.
O-2	Persons accompanying an O-1 nonimmigrant artist or athlete solely to assist in the artistic or athletic performance.
P-1	Internationally recognized athletes, entertainers, or members of internationally recognized entertainment groups.
P-1S	Essential support personnel for a P-1 nonimmigrant.

P-2	Individual performer or part of a group entering to perform under a reciprocal exchange program.
P-2S	Essential support personnel for a P-2 nonimmigrant.
P-3	Artists or entertainers, either an individual or group, to perform, teach, or coach under a program that is culturally unique.
P-3S	Essential support personnel for a P-3 nonimmigrant.
Q-1	Persons participating in an international cultural exchange program to provide practical training or employment, and to share the history, culture, and traditions of the nonimmigrant's home country.
R-1	Religious workers.
TN	Created to implement part of a trilateral North American Free Trade Agreement (NAFTA) between Canada, Mexico, and the United States. In accordance with the NAFTA, a citizen of Canada or Mexico who seeks temporary entry as a business person to engage in business activities at a professional level may be admitted to the United States
Source: USCIS, available at https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers (accessed Jan. 25, 2019).	

DHS uses data from receipts of Form I-129 petitions that employers have filed on behalf of nonimmigrant workers. These receipts are categorized by worker type to estimate the affected population of this rule. Table 28 shows total receipts of Form I-129 by visa classification for fiscal years 2015 – 2019. During this period, the overall total annual receipts of Form I-129 have increased each year and ranged from a low of 487,221 in fiscal year 2015 to a high of 552,910 in fiscal year 2019. Based on the total overall annual receipts of Form I-129 during this period, DHS estimates that 529,774 is the average annual number of petitions filed by employers. With this final rule, DHS is separating Form I-129 into several forms with different corresponding fees based on nonimmigrant classifications of specific types of workers. DHS estimates that the 5-year averages shown in the table for each visa classification as the average annual projected number of petitions employers would file using Form I-129.

Table 28. Receipts by Classification for Form I-129, Petition for a Nonimmigrant Worker, Fiscal Years 2015 - 2019.

Fiscal Year	H-1B	H-2A Named Beneficiaries	H-2A – Unnamed Beneficiaries	H-2B Named Beneficiaries	H-2B – Unnamed Beneficiaries
2015	367,795	2,212	6,947	1,831	3,581
2016	398,461	2,551	7,699	2,954	3,573
2017	402,815	2,561	9,044	1,812	4,300
2018	419,722	2,878	10,581	1,721	4,454
2019	421,376	3,484	12,048	3,789	3,685
Total	2,010,169	13,686	46,319	12,107	19,593
5-year Average	402,034	2,737	9,264	2,421	3,919
Percent of Total receipts	75.9%	0.5%	1.7%	0.5%	0.7%
 					
Fiscal Year	O – Named Beneficiaries	O – Unnamed Beneficiaries	L-1A / L-1B / LZ	H-3/P/Q/R – Named Beneficiaries	H-3/P/Q/R – Unnamed Beneficiaries
2015	21,466	23	41,482	22,467	20
2016	23,875	1	43,077	21,970	1
2017	24,294	0	44,184	21,514	0
2018	25,255	1	42,795	22,075	3
2019	26,571	0	42,817	23,268	2
Total	121,461	25	214,355	111,294	26
5-year Average	24,292	5	42,871	22,259	5
Percent of Total receipts	4.6%	0.0%	8.1%	4.2%	0.0%
 					
Fiscal Year	E / TN – Named Beneficiaries	E / TN – Unnamed Beneficiaries	CW*	Total	
2015	12,659	10	6,728	487,221	
2016	12,526	1	11,247	527,936	
2017	13,052	0	6,866	530,442	
2018	13,551	3	7,321	550,360	
2019	11,636	0	4,234	552,910	

Total	63,424	14	36,396	2,648,869	
5-year Average	12,685	3	7,279	529,774	
Percent of Total receipts	2.4%	0.0%	1.4%	100.0%	

Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), March 24, 2020.

For H-2A and H-2B classifications, any petition with at least 1 named beneficiary are classified as "Named." Petitions with no named beneficiaries are classified as "Unnamed."

The current fee to file Form I-129 is \$460, regardless of the number of nonimmigrant workers for whom the employer is submitting a petition, the type of nonimmigrant worker they seek to employ, and whether or not the employer identifies a specific worker.¹¹⁹ See Table 29. As noted above, DHS estimates the average annual number of Form I-129 petitions filed by employers is 529,774. Therefore, DHS estimates the annual transfer associated with filing Form I-129 petitions is approximately \$243,696,040.¹²⁰

Form I-129 Classification	5-year Average Receipts	Current Filing Fee	Total Current Filing Fee
H-1B	402,034	\$460	\$184,935,640
H-2A – Named Beneficiaries	2,737	\$460	\$1,259,020
H-2A – Unnamed Beneficiaries	9,264	\$460	\$4,261,440
H-2B – Named Beneficiaries	2,421	\$460	\$1,113,660
H-2B – Unnamed Beneficiaries	3,919	\$460	\$1,802,740
O - Named Beneficiaries	24,292	\$460	\$11,174,320
O – Unnamed Beneficiaries	5	\$460	\$2,300
L-1A / L-1B / LZ	42,871	\$460	\$19,720,660

¹¹⁹ DHS recognizes there are other fees associated with Form I-129 petitions, such as the ACWIA Fee, the Fraud Fee and Pub. L. 114-113 fee. These fees generally vary depending on the size of the petitioning entity. Therefore, DHS has not specifically included these fees in these calculations though DHS acknowledges these fees are statutorily required. More importantly, these fees are not included in the USCIS IEFA account.

¹²⁰ Calculation: (Current Filing fee for Form I-129) * (Estimated average annual number of Form I-129 petitions) = \$460 * 529,774 = 243,696,040 estimated total annual transfer to file Form I-129 petitions.

H-3/P/Q/R – Named Beneficiaries	22,259	\$460	\$10,239,140
H-3/P/Q/R – Unnamed Beneficiaries	5	\$460	\$2,300
E / TN – Named Beneficiaries	12,685	\$460	\$5,835,100
E / TN – Unnamed Beneficiaries	3	\$460	\$1,380
CW	7,279	\$460	\$3,348,340
Total	529,774		\$243,696,040
Source: USCIS analysis.			

In order to estimate the opportunity costs of time for completing and filing Form I-129, DHS assumes that a petitioner will use a human resources (HR) specialist, an in-house lawyer, or an outsourced lawyer to prepare Form I-129 petitions.¹²¹ DHS uses the mean hourly wage of \$32.58 for HR specialists as the basis for estimating the opportunity cost of the time for preparing and submitting Form I-129.¹²² Additionally, DHS uses the mean hourly wage of \$69.86 for in-house lawyers to estimate the opportunity cost of the time for preparing and submitting Form I-129.¹²³

DHS accounts for worker benefits when estimating the total costs of compensation by calculating a benefits-to-wage multiplier using the Department of Labor, BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.43 and, therefore, is able to estimate the full opportunity cost per petitioner, including employee

¹²¹ USCIS limited its analysis to HR specialists, in-house lawyers, and outsourced lawyers to present estimated costs. However, USCIS understands that not all entities employ individuals with these occupations and, therefore, recognizes equivalent occupations may also prepare and file these petitions.

¹²² See Bureau of Labor Statistics, U.S. Department of Labor, “Occupational Employment Statistics, May 2019, Human Resources Specialist.” Available at <https://www.bls.gov/oes/2019/may/oes131071.htm>. Accessed May 5, 2020.

¹²³ See Bureau of Labor Statistics, U.S. Department of Labor, “Occupational Employment Statistics, May 2019, Lawyers.” Available at <https://www.bls.gov/oes/2019/may/oes231011.htm> Accessed May 5, 2020.

wages and salaries and the full cost of benefits such as paid leave, insurance, retirement, etc.¹²⁴ DHS multiplied the average hourly U.S. wage rate for HR specialists and in-house lawyers by 1.43 to account for the full cost of employee benefits, for a total of \$46.59¹²⁵ per hour for an HR specialist and \$99.90¹²⁶ per hour for an in-house lawyer. DHS recognizes that a firm may choose, but is not required, to outsource the preparation of these petitions and, therefore, has presents two wage rates for lawyers. To determine the full opportunity costs of time if a firm hired an outsourced lawyer, DHS multiplied the average hourly U.S. wage rate for lawyers by 2.5 for a total of \$174.65¹²⁷ to approximate an hourly billing rate for an outsourced lawyer.¹²⁸

The opportunity cost of time for Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative (\$0 filing fee), filed by employers with the H-1B petitions would not change in this final rule. The time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching

¹²⁴ The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) / (Wages and Salaries per hour). *See* Economic News Release, U.S. Dep’t of Labor, Bureau of Labor Statistics, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (March 2019), available at <https://www.bls.gov/news.release/pdf/ecec.pdf> (viewed May 2020). The ECEC measures the average cost to employers for wages and salaries and benefits per employee hour worked.

¹²⁵ Calculation: $\$32.58 * 1.43 = \46.59 total wage rate for HR specialist.

¹²⁶ Calculation: $\$69.86 * 1.43 = \99.90 total wage rate for in-house lawyer.

¹²⁷ Calculation: $\$69.86 * 2.5 = \174.65 total wage rate for an outsourced lawyer.

¹²⁸ The DHS analysis in, “Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program” (May 31, 2018), available at <https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the>, used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages.

Also, the analysis in the DHS ICE rule, “Final Small Entity Impact Analysis: Safe-Harbor Procedures for Employers Who Receive a No-Match Letter” at G-4 (Aug 25, 2008), available at <http://www.regulations.gov/#!documentDetail;D=ICEB-2006-0004-0922> used a multiplier. The methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule, pages 143-144.

necessary documentation, and submitting the application would not be changed and remain the same. Therefore, those costs associated with filing are not included in this analysis.

DHS estimates the base time burden to file a petition using Form I-129 is 2 hours and 20 minutes (2.34 hours), including the time for reviewing instructions, gathering the required documentation and completing and submitting the request. However, this estimate does not include additional time burden estimates for Classification Supplements to Form I-129. Table 30 shows the time burden estimates for Form I-129 and the Classification Supplements to Form I-129.

Table 30. Current Time Burden to Complete Form I-129, Petition for Nonimmigrant Worker, by Classification.		
Form and Classification	Time Burden for Classification Supplements (in Hours)	Total Time Burden Added to a Base Time Burden of 2.34 Hours for Form I-129 (in Hours)
H-1B	2	4.34
H-2A Named and Unnamed Beneficiaries	2	4.34
H-2B Named and Unnamed Beneficiaries	2	4.34
O	0	2.34
L-1A/L-1B / LZ Blanket	1.34	3.68
H-3	2	4.34
P	1	3.34
Q-1	0.34	2.68
R	2.34	4.68
E	0.67	3.01
TN	0.67	3.01
I-129CW	3	3
Source: USCIS Form I-129 Form Instructions. Available https://www.uscis.gov/i-129		

In Table 31, DHS estimates the opportunity cost of time per petition for each Form I-129 filed with a Classification Supplement. For each petition, DHS calculates the estimated opportunity cost of time per petition according to whether an HR specialist, an in-house lawyer, or an outsourced lawyer filed each petition. For example, based on the estimated time burden to

file Form I-129 with an H Classification Supplement¹²⁹ (e.g., H-1B, H-2A, or H-2B) of 4.34 hours, the opportunity cost of time to file per petition is estimated to be \$202.20 if an HR specialist files, \$433.57 if an in-house lawyer files, and \$757.98 if an outsourced lawyer files.

Table 31. Current Estimated Opportunity Costs of Time to Complete Form I-129 per Petition for Nonimmigrant Workers by Classification.				
Form and Classification	Total Time Burden (in Hours)	Human Resources (HR) Specialist (\$46.59/hr.)	In-house Lawyer (\$99.90 /hr.)	Outsourced Lawyer (\$174.65 /hr.)
Form I-129 (base time burden)	2.34	\$109.02	\$233.77	\$408.68
H-1B	4.34	\$202.20	\$433.57	\$757.98
H-2A Named and Unnamed Beneficiaries	4.34	\$202.20	\$433.57	\$757.98
H-2B Named and Unnamed Beneficiaries	4.34	\$202.20	\$433.57	\$757.98
O	2.34	\$109.02	\$233.77	\$408.68
L-1A / L-1B / LZ Blanket	3.68	\$171.45	\$367.63	\$642.71
H-3	4.34	\$202.20	\$433.57	\$757.98
P	3.34	\$155.61	\$333.67	\$583.33
Q	2.68	\$124.86	\$267.73	\$468.06
R	4.68	\$218.04	\$467.53	\$817.36
E	3.01	\$140.24	\$300.70	\$525.70
TN concurrently with a parent who are applying for LPR status using	3.01	\$140.24	\$300.70	\$525.70
I-129CW	3	\$139.77	\$299.70	\$523.95

¹²⁹ See U.S. Department of Homeland Security, Instructions for Petition for Nonimmigrant Worker, Form I-129 form general H-1B requirements instruction pages 8 -11. H-1B Data Collection and Filing Fee Exemption Supplement (required for H-1B and H-1B1 classifications only). All petitioners who seek to classify a beneficiary as an H-1B or H-1B1 free trade nonimmigrant worker must answer every question in Item Number 1. of Section 2. Fee Exemption and/or Determination, and Section 3., Numerical Limitation Information. Forms and Instructions for all I-129 classifications available at <https://www.uscis.gov/i-129>.

Source: USCIS analysis.

Calculation: Time Burden (in hours) of Form and Classification x Occupation Preparer (HR Specialist, In-house or Outsourced Lawyer).

Therefore, in Table 32, DHS estimates the current total opportunity cost of time to complete Form I-129 with a Classification Supplement. DHS multiplied the opportunity cost of time per petition by the 5-year average receipts for each type of Form I-129 filing to calculate the estimated total opportunity cost of time to complete the forms. Note that the 5-year average total receipts for the H-3, P, Q, R, E, and TN visa classifications are presented separately because the time burden for each differ. DHS does not know how many HR specialists, in-house lawyers, or outsourced lawyers file Form I-129 with a Classification Supplement and, therefore, the estimated total opportunity cost of time presented in the table assumes that all of the filings within a type of Form I-129 filing were filed entirely by individuals within one of these occupations. For example, based on the estimated 5-year average receipts for filing Form I-129 with an H Classification Supplement for H-1B petitions, the total opportunity cost of time to file is estimated to be about \$81,291,516 if an HR specialist files all petitions, approximately \$174,308,273 if an in-house lawyer files all petitions, and about \$304,734,133 if an outsourced lawyer files all petitions. DHS notes that it is likely to be some combination of types of filers in these occupations (or similar occupations) that file these petitions and DHS provides these estimates as ranges.

Table 32. Estimated Current Total Opportunity Cost of Time to Complete Form I-129 Petition for Nonimmigrant Workers by Classification, by Classification.

Form I-129 Classification	5-year Average Population	Total Time Burden (in Hours)	Human Resources (HR) Specialist (\$46.59/hr.)	In-house Lawyer (\$99.90 /hr.)	Outsourced Lawyer (\$174.65 /hr.)
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H-1B	402,034	4.34	\$81,291,516	\$174,308,273	\$304,734,133
H-2A – Named and Unnamed Beneficiaries	12,001	4.34	\$2,426,609	\$5,203,226	\$9,096,530
H-2B – Named and Unnamed Beneficiaries	6,340	4.34	\$1,281,952	\$2,748,808	\$4,805,600
O	24,297	2.34	\$2,648,874	\$5,679,813	\$9,929,722
L-1A / L-1B / LZ	42,871	3.68	\$7,350,284	\$15,760,751	\$27,553,706
H-3	1,254	4.34	\$253,560	\$543,692	\$950,508
P	12,307	3.34	\$1,915,100	\$4,106,427	\$7,179,055
Q	184	2.68	\$22,974	\$49,263	\$86,123
R	8,519	4.68	\$1,857,493	\$3,982,905	\$6,963,107
E	5,339	3.01	\$748,719	\$1,605,432	\$2,806,694
TN	7,349	3.01	\$1,030,594	\$2,209,837	\$3,863,344
I-129CW	7,279	3	\$1,017,386	\$2,181,516	\$3,813,832
Total	529,774		\$101,845,061	\$218,379,943	\$381,782,354

Source: USCIS analysis.

Calculation: 5-year Average Population x Total Time Burden X Occupational Preparer Wage (HR Specialist, In-house or Outsourced Lawyer).

DHS estimates the total current annual opportunity cost of time to file Form I-129 with a Classification Supplement ranges from about \$101.8 million if HR specialists file all petitions, approximately \$218.4 million if in-house lawyers file all petitions, and about \$381.8 million if outsourced lawyers file all petitions.

In this rule, DHS is separating Form I-129 into several forms. These forms will include information from the various supplemental forms for specific types of workers. While DHS is increasing the fees for most of the separate Form I-129 forms, DHS is also decreasing the fees for petitioners filing the new Form I-129H2A and Form I-129H2B petitions with only unnamed

beneficiaries. Table 33 shows the newly separated forms and corresponding new fees for Form I-129, as well as the difference in fees compared to the current fee and percent change.

Table 33. Final USCIS Fees for Separated Forms I-129, Petition for Nonimmigrant Workers by Classification, for Fiscal Year 2019/2020				
Immigration Benefit Request	Current Fee	Final Fee	Difference	Percent Change
Form I-129H1B*	\$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-129L	\$460	\$805	\$345	75%
Form I-129MISC**	\$460	\$695	\$235	51%
Form I-129E&TN***	\$460	\$695	\$235	51%
Form I-129CW****	\$460	\$695	\$235	51%
Source: USCIS FY 2019/2020 Fee Schedule (see preamble of this rule).				
Notes:				
* The new Form I-129 includes H-1B and H-1B1 visa classifications.				
** New Form I-129 MISC includes H-3, P, Q, or R visa classifications.				
*** New Form I-129 E&TN includes E and TN visa classifications.				

Additionally, DHS is limiting the number of named beneficiaries per nonimmigrant worker petition to 25 for Forms I-129H2A, I-129H2B, I-129O, I-129MISC, which includes the H-3, P, Q, and R visa classifications, and the Form I-129E&TN. USCIS currently charges a flat fee to file Form I-129 regardless of the number of beneficiaries an employer petitions for as nonimmigrant workers. However, in order to accurately estimate the costs and benefits of the changes, DHS first must estimate the costs of limiting the number of named beneficiaries per petition to 25 for Forms I-129H2A, I-129H2B, I-129O, I-129MISC, and I-129E&TN.

Table 34 presents the average annual receipts for Form I-129 petitions with named beneficiaries for H-2A, H-2B, O, H-3, P, Q, R, E, and TN visa classifications within incremental ranges of 25 beneficiaries per petition during fiscal years 2015– 2019. For example, when considering increments of 25 beneficiaries per petition, DHS estimates the total of average annual number of Form I-129 petitions filed with named beneficiaries for H-2A and H-2B visa classifications was 2,740 and 2,466 petitions, respectively, over this period. Moreover, DHS estimates an average of 2,397 Form I-129 petitions with named beneficiaries under the H-2A classification are filed annually that include 1 to 25 beneficiaries per petition. For petitioners requesting H-2A nonimmigrants in this category, it would be necessary to file only one petition under this change. Additionally, DHS estimates an average of 185 such petitions are filed annually that include 26 to 50 beneficiaries per petition. For petitioners filing on behalf of Form I-129 H-2A beneficiaries in this category, it will be necessary to file two petitions.

Table 34: Average Annual Receipts Forms I-129, Petition for Nonimmigrant Worker, with Named Beneficiaries within Ranges by Visa Classification, Fiscal Year 2015 – 2019.													
(Percent)													
H-2A Named Beneficiaries	01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250+	Total	
		2,397	185	60	41	15	9	8	5	4	4	11	2,739
		87.5	6.8	2.2	1.5	0.6	0.3	0.3	0.2	0.2	0.2	0.4	100.0
H-2B Named Beneficiaries	01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250+	Total	
		2,253	162	31	12	5	3	1	0	0	0	2,467	
		91.3	6.6	1.3	0.5	0.2	0.1	0.0	0.0	0.0	0.0	100.0	
O Named Beneficiaries	01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250+	Total	
		24,261	56	7	2	1	0	0	0	0	0	24,327	
		99.7	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0	

H-3 Named Beneficiaries	01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250+	Total
	1,251	2	0	0	0	0	0	0	0	0	0	1,253
	99.8	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0
P Named Beneficiaries	01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250+	Total
	12,072	162	35	20	14	8	3	2	1	1	1	12,319
	98.0	1.3	0.3	0.2	0.1	0.1	0.0	0.0	0.0	0.0	0.0	100.0
Q Named Beneficiaries	01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250+	Total
	186	9	5	4	0	0	0	0	0	0	0	204
	91.2	4.6	2.3	1.9	0.1	0.0	0.0	0.0	0.0	0.0	0.0	100.0
R Named Beneficiaries	01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250+	Total
	8,529	0	0	0	0	0	0	0	0	0	0	8,529
	100.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0
E Named Beneficiaries	01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250+	Total
	5,359	0	0	0	0	0	0	0	0	0	0	5,359
	100.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0
TN Named Beneficiaries	01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250+	Total
	7,349	0	0	0	0	0	0	0	0	0	0	7,349
	100.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0
Source: USCIS, Office of Policy & Strategy, Policy Research Division (PRD).												

According to the DHS estimates shown in Table 34, the distribution of the number of Form I-129 petitions for each of the listed visa classifications is heavily skewed towards having 75 or fewer named beneficiaries per petition. Most petitioners, therefore, would need to submit three or fewer petitions. For example, about 88 percent of Form I-129 H-2A petitions and about 91 percent of Form I-129 H-2B petitions submitted with named beneficiaries that include 25 or fewer named beneficiaries per petition, which would require submitting only one petition under this rule. In addition, almost 97 percent of Form I-129 H-2A petitions and about 99 percent of Form I-129 H-2B petitions submitted with named beneficiaries that include 75 or fewer named beneficiaries per petition, which would require submitting up to three petitions under this rule. Moreover, about 4 percent of all Form I-129 H-2A petitions submitted with 76 or more named

beneficiaries per petition. Less than 1 percent of Form I-129 H-2B petitions were submitted with named beneficiaries that included 76 or more named beneficiaries per petition. The percentages of Form I-129 petitions submitted with 25 or fewer named beneficiaries for each of the other visa classifications listed are similar or higher than the H-2A and H-2B classifications and the percentages of Form I-129 petitions submitted with 76 or more named beneficiaries per petition is similar.

Table 35 presents the estimated number of Form I-129 petitions with named beneficiaries under each of the visa classifications that employers will be required to file under this rule.

These costs are based on the additional estimated number of Form I-129 petitions employers will be required to file according to the new provision to limit named beneficiaries to 25 per petition under the H-2A, H-2B, O, H-3, P, Q, R, E, and TN visa classifications. For example, employers that file a Form I-129 petition for 26-50 named H-2A or H-2B beneficiaries will be required to file two separate petitions, one for the first 25 named beneficiaries and a second petition for any remaining number of named beneficiaries up to 50. Currently, an employer is only required to file one Form I-129 petition for an unlimited number of named beneficiaries.

Table 35: New Average Annual Receipts of Forms I-129, Petition for Nonimmigrant Worker, with Named Beneficiaries within Ranges by Visa Classifications Required to Be Filed under the provision to limit petitions to 25 beneficiaries, Fiscal Year 2015 – 2019.

H-2A Named Beneficiaries											
01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250 +	Total
2,397	370	180	164	75	54	56	40	36	40	121	3,533
H-2B Named Beneficiaries											
01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250 +	Total
2,253	324	93	48	25	18	7	0	0	0	0	2,768
O Named Beneficiaries											
01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250 +	Total
24,261	112	21	8	5	0	0	0	0	0	0	24,407

H-3 Named Beneficiaries											
01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250 +	Total
1,251	4	0	0	0	0	0	0	0	0	0	1,255
P Named Beneficiaries											
01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250 +	Total
12,072	324	105	80	70	48	21	16	9	10	11	12,766
Q Named Beneficiaries											
01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250 +	Total
186	18	15	16	0	0	0	0	0	0	0	235
R Named Beneficiaries											
01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250 +	Total
8,529	0	0	0	0	0	0	0	0	0	0	8,529
E Named Beneficiaries											
01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250 +	Total
5,359	0	0	0	0	0	0	0	0	0	0	5,359
TN Named Beneficiaries											
01-25	26-50	51-75	76-100	101-125	126-150	151-175	176-200	201-225	226-250	250 +	Total
7,349	0	0	0	0	0	0	0	0	0	0	7,349
Source: USCIS, Office of Policy & Strategy, Policy Research Division (PRD).											

Using the estimated number of Form I-129 petitions with named beneficiaries under the H-2A, H-2B, O, H-3, P, Q, R, E, and TN visa classifications that employers would be required to file under this rule within the specified ranges, DHS estimates the fees to file the new separate Forms I-129H2A, I-129H2B, I-129O, I-129MISC, which includes the H-3, P, Q, and R visa classifications, and I-129E&TN with Named Beneficiaries in Table 36. DHS estimates the total annual fees to file Form I-129H2A and Form I-129H2B petitions with Named Beneficiaries will be approximately \$3,003,050 and \$1,979,120, respectively.¹³⁰ Additionally, DHS estimates the

¹³⁰ Calculation:

Step 1) Calculate the number of Form I-129 petitions with named beneficiaries under each of the visa classifications that employers would be required to file under the rule within each range. For example, Form I-129H2A (named

total annual fees to file Forms I-129O, I-129MISC, and I-129E&TN will be about \$17,206,935; \$15,835,575; and \$8,831,921; respectively. In sum, the estimated total annual fees to file the new Form I-129 petitions with named beneficiaries will be approximately \$46,856,601.

Table 36. New Fees to File Forms I-129, Petition for Nonimmigrant Worker, with Named Beneficiaries, Fiscal Years 2015 – 2019.

New Form	Costs to File Form I-129 Petitions with Named Beneficiaries within Ranges					
	(Number of Named Beneficiaries per Petition)					
Form I-129H2A \$850 filing fee per form	01-25	26-50	51-75	76-100	101-125	126-150
	\$2,037,450	\$314,500	\$153,000	\$139,400	\$63,750	\$45,900
	2,397	370	180	164	75	54
	151-175	176-200	201-225	226-250	250 +	Total
	\$47,600	\$34,000	\$30,600	\$34,000	\$102,850	\$3,003,050
	56	40	36	40	121	3,533
Form I-129H2B \$715 filing fee per form	01-25	26-50	51-75	76-100	101-125	126-150
	\$1,610,895	\$231,660	\$66,495	\$34,320	\$17,875	\$12,870
	2,253	324	93	48	25	18
	151-175	176-200	201-225	226-250	250 +	Total
	\$5,005	\$0	\$0	\$0	\$0	\$1,979,120
	7	0	0	0	0	2,768
Form I-129O \$705 filing fee per form	01-25	26-50	51-75	76-100	101-125	126-150
	\$17,104,005	\$78,960	\$14,805	\$5,640	\$3,525	\$0
	24,261	112	21	8	5	0
	151-175	176-200	201-225	226-250	250 +	Total
	\$0	\$0	\$0	\$0	\$0	\$17,206,935

beneficiaries) = 3,533 (Table 34 total). The same calculation would apply for each visa classification/range with the respective form fee.

Step 2) Multiply the number of petitions of each range that employers will be required to be file under the rule by the fee by classification; 2,397 (01-25 petitions) x \$850 (Table 32 fees for separated forms) = \$2,037,450; 370 (26-50 petitions) x \$850 = \$314,500; 180 (51-75 petitions) x \$850 = \$153,000 each range of classification for a total of 3,533 petitions x \$850 = \$3,003,050

Step 3) Calculate total costs by adding costs for each type of Form I-129 with Named Beneficiaries within each range, using Table 32 separated fee by form respectively.

	0	0	0	0	0	24,407
Form I-129MISC (incl. H-3, P, Q, and R Visa Classifications)	01-25	26-50	51-75	76-100	101-125	126-150
	\$15,316,410	\$240,470	\$83,400	\$66,720	\$48,650	\$33,360
	22,038	346	120	96	70	48
	151-175	176-200	201-225	226-250	250 +	Total
	\$14,595	\$11,120	\$6,255	\$6,950	\$7,645	\$15,835,575
	21	16	9	10	11	22,785
Form I-129E&TN	01-25	26-50	51-75	76-100	100 +	Total
	\$8,831,921	\$0	\$0	\$0	\$0	\$8,831,921
	12,708	0	0	0	0	12,708
Total Form I-129H2A with Named Beneficiaries						\$3,003,050
Total Form I-129H2B with Named Beneficiaries						\$1,979,120
Total Form I-129O with Named Beneficiaries						\$17,206,935
Total Form I-129MISC with Named Beneficiaries						\$15,835,575
Total Form I-129E&TN with Named Beneficiaries						\$8,831,921
Grand Total						\$46,856,601
Source: USCIS, Office of Policy & Strategy, Policy Research Division (PRD).						

Table 37 presents the new time burden estimates to file the separate Forms I-129 with named beneficiaries. Some of the new separate forms require completing additional attachments and are included in the table. For example, Forms I-129H2A and I-129H2B with named beneficiaries require completing a Form I-129 Named Worker Attachment, and Forms I-129O and I-129MISC (including the H-3, P, Q, and R visa classifications) require completing Attachment 1-Additional Beneficiary. This attachment is used if the petition has more than one beneficiary named, per petition.

Table 37. Estimated New Total Time Burden to Complete each Form I-129 Petition for Non-Immigrant Worker, by Classification.

Form and Classification	Time Burden (in Hours)
I-129H2A – H-2A Named Beneficiaries	3
I-129H2A Named Worker Attachment for Form I-129H2A	0.5
I-129H2B – H-2B Named Beneficiaries	3
I-129H2B Named Worker Attachment for Form I-129H2B	0.5
I-129O	3
Attachment 1-Additional Beneficiary for Form I-129O	0.5
I-129MISC (H-3) *	3.25
I-129MISC (P)*	3.5
I-129MISC (Q)*	3.17
I-129MISC (R)*	4
Attachment 1-Additional Beneficiary for Form I-129MISC	0.5
I-129E&TN (E-1, E-2) **	4.45
I-129E&TN (E-3) **	4
I-129E&TN (TN)**	4

Source: USCIS analysis.

Note:

* The estimated time burden for completing Form I-129MISC is 3 hours and there is an additional estimated time burden to complete a form supplement for each associated visa classification, including 15 minutes for H-3 Classification Supplement, 30 minutes for P Classification Supplement, 10 minutes for Q-1 International Cultural Exchange Alien Supplement, and 1 hour for R-1 Classification Supplement, and for the I-129E&TN.

**The estimated time burden for completing Form I-129E&TN is 3 hours. There is an additional estimated time burden to complete supplementary forms for each associated visa classification: 1 hour and 45 minutes for the E1 and E2 Supplement; 1 hour for the E-3 Supplement; and 1 hour for the TN Supplement.

DHS estimates the opportunity cost of time per petition for the separate Forms I-129 with named beneficiaries in Table 38, including the time burden estimates for completing the forms, which account for the time for reviewing instructions, gathering the required documentation, and completing and submitting the requests. For each of the petitions, DHS calculates the estimated opportunity cost of time per petition according to whether an HR specialist, an in-house lawyer, or an outsourced lawyer filed the petition. For example, based on the estimated time burden of 3.5 hours, the estimated opportunity cost of time to file a Form I-129H2A with Named Beneficiaries petition including Form I-129 Named Worker Attachment, will be \$163.07 if an HR specialist files, \$349.65 if an in-house lawyer files, and \$611.28 if an outsourced lawyer files the petition.

Table 38. New Estimated Total Time Burden to Complete Forms I-129, Petition for Nonimmigrant Worker, by Classification.				
Form and Classification	Total Time Burden (in Hours)	Human Resources (HR) Specialist (\$46.59/hr.)	In-house Lawyer (\$99.90 /hr.)	Outsourced Lawyer (\$174.65 /hr.)
I-129H2A - H-2A Named Beneficiaries, including I-129 Named Worker Attachment	3.5	\$163.07	\$349.65	\$611.28
I-129H2B - H-2B Named Beneficiaries, including I-129 Named Worker Attachment	3.5	\$163.07	\$349.65	\$611.28
I-129O	3	\$139.77	\$299.70	\$523.95
I-129O, including Attachment 1-Additional Beneficiary for Form I-129O	3.5	\$163.07	\$349.65	\$611.28
I-129MISC (H-3)	3.25	\$151.42	\$324.68	\$567.61
I-129MISC (P)	3.5	\$163.07	\$349.65	\$611.28
I-129MISC (Q)	3.17	\$147.69	\$316.68	\$553.64
I-129MISC (R)	4	\$186.36	\$399.60	\$698.60
I-129MISC (H-3), including Attachment 1-Additional Beneficiary for Form I-129MISC	3.75	\$174.71	\$374.63	\$654.94

I-129MISC (P), including Attachment 1-Additional Beneficiary for Form I-129MISC	4	\$186.36	\$399.60	\$698.60
I-129MISC (Q), including Attachment 1-Additional Beneficiary for Form I-129MISC	3.67	\$170.99	\$366.63	\$640.97
I-129MISC (R), including Attachment 1-Additional Beneficiary for Form I-129MISC	4.5	\$209.66	\$449.55	\$785.93
I-129E&TN (E-1, E-2, and E-3)	4.95	\$230.62	\$494.51	\$864.52
I-129E&TN (TN)	4.95	\$230.62	\$494.51	\$864.52

Source: USCIS analysis.

Calculation: Time Burden (in hours) x Occupational Preparer \$/hr. (of HR Specialist, In-house, Outsourced Lawyer).

Therefore, in Table 39, DHS estimates the total opportunity cost of time to complete the separate Forms I-129 with named beneficiaries. DHS multiplied the estimated opportunity cost of time per petition by the 5-year average receipts for each of the separate Forms I-129 to calculate the estimated total annual opportunity cost of time to complete the separate forms. Since DHS does not know how many HR specialists, in-house lawyers, or outsourced lawyers will file the separate Form I-129 petitions and, therefore, the estimated total annual opportunity cost of time presented in the table assumes that all of the forms will be completed and filed entirely by individuals within one of these occupations. For example, based on the estimated 5-year average receipts for filing Form I-129H2A with Named Beneficiaries, the estimated total annual opportunity cost of time to file would be \$446,798 if an HR specialist files all petitions, \$958,041 if an in-house lawyer files all petitions, and \$1,674,894 if an outsourced lawyer files all petitions.

Table 39. New Estimated Total Opportunity Cost of Time to Complete Separate Forms I-129, Petition for Nonimmigrant Worker, with Named Beneficiaries, by Classification.

Form I-129 Classification	5-year Average Population*	Total Time Burden (in Hours)	Human** Resources (HR) Specialist	In-house Lawyer**	Outsourced Lawyer**
I-129H2A - H-2A Named Beneficiaries, including I-129 Named Worker Attachment	2,740	3.5	\$446,798	\$958,041	\$1,674,894
I-129H2B - H-2B Named Beneficiaries, including I-129 Named Worker Attachment	2,421	3.5	\$394,780	\$846,503	\$1,479,897
I-129O	24,327	3	\$3,400,185	\$7,290,802	\$12,746,132
I-129O, including Attachment 1-Additional Beneficiary for Form I-129O	1,189	3.5	\$193,884	\$415,734	\$726,806
I-129MISC (H-3)	1,254	3.25	\$189,878	\$407,142	\$711,786
I-129MISC (P)	12,320	3.5	\$2,008,961	\$4,307,688	\$7,530,908
I-129MISC (Q)	204	3.17	\$30,129	\$64,603	\$112,943
I-129MISC (R)	8,530	4	\$1,589,651	\$3,408,588	\$5,959,058
I-129MISC (H-3), including Attachment 1-Additional Beneficiary for Form I-129MISC	195	3.75	\$34,069	\$73,052	\$127,713
I-129MISC (P), including Attachment 1-Additional Beneficiary for Form I-129MISC	6,204	4	\$1,156,177	\$2,479,118	\$4,334,114
I-129MISC (Q), including Attachment 1-Additional	91	3.67	\$15,560	\$33,364	\$58,328

Beneficiary for Form I-129MISC					
I-129MISC (R), including Attachment 1-Additional Beneficiary for Form I-129MISC	1	4.5	\$210	\$450	\$786
I-129E&TN (E-1, E-2, and E-3)	5,360	4.95	\$1,236,126	\$2,650,547	\$4,633,814
I-129E&TN (TN)	7,349	4.95	\$1,694,830	\$3,634,117	\$6,353,339
Total	72,185		\$12,391,237	\$26,569,749	\$46,450,517

Source: USCIS analysis.

Note:

* Receipt totals for Form I-129 petitions with named beneficiaries are carried over from the estimates of how many petitions would be required based on number of named beneficiaries per petition.

**Calculations: time burdens from Table 38 x 5-yr average population of each visa classification based on the difference occupational preparer. For example, (I-1292HA named population) 2,740 x (total time burden of form) \$163.07, which is 3.5-hour time burden x \$46.59 = \$446,798

As stated previously, the opportunity cost of time for Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative (\$0 filing fee), filed by employers (see Table 38) with Form I-129 filings would not change in this final rule. The time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application would not be changed and remain the same. Therefore, those costs associated with filing are not included in this analysis.

Table 40 shows the estimated total annual cost to file separate Form I-129 petitions with named beneficiaries. The estimated total cost to file each of the separate Form I-129 petitions will range depending on who files the form. For example, DHS estimates that total annual cost to file a Form I-129H2A petition with named beneficiaries will range from about \$3,449,848 if

HR specialists file all petitions, approximately \$3,961,091 if in-house lawyers file all petitions, and about \$4,677,944 if outsourced lawyers file all petitions. These cost estimates subsequently are incorporated into the estimates of the total costs to file the rest of the new separate Form I-129 petitions.

Table 40. New Estimated Total Annual Cost to File Form I-129, Petition for Nonimmigrant Worker, with Named Beneficiaries.			
Form	Estimated Total Cost - Human Resources (HR) Specialist	Estimated Total Cost - In-house Lawyer	Estimated Total Cost - Outsourced Lawyer
I-129H2A - H-2A Named Beneficiaries*	\$3,449,848	\$3,961,091	\$4,677,944
I-129H2B - H-2B Named Beneficiaries*	\$2,373,900	\$2,825,623	\$3,459,017
I-129O	\$20,607,120	\$24,497,737	\$29,953,067
I-129MISC (H-3) **	\$31,868,962	\$32,230,045	\$33,245,711
I-129MISC (P)**	\$34,691,355	\$38,277,687	\$48,365,417
I-129MISC (Q)**	\$31,598,056	\$31,649,567	\$31,794,457
I-129MISC (R)**	\$33,091,787	\$34,850,237	\$39,796,450
I-129E&TN (E-1, E-2, and E-3)	\$10,068,047	\$11,482,468	\$13,465,735
I-129E&TN (TN)	\$10,526,751	\$12,466,038	\$15,185,260
Source: USCIS analysis.			
Notes:			
* Includes receipts requiring Attachment for Form I-129 Named Worker.			
** Includes receipts requiring Attachment 1-Additional Beneficiary for Form I-129MISC.			
Calculation: Total Cost to File I-129 by classification (Table 36) + Total Opportunity Cost to complete separate I-129 Forms (Table 39). For example, (I—1292HA named population) \$3,003,050 (Total new cost for Form I-129H2A) + \$446,798 (Opportunity cost of time HR specialist) = \$3,449,848.			

Table 41 shows the estimated fees to file all of the Form I-129 petitions, including Forms I-129 with named and unnamed beneficiaries. To calculate the fees to file the separate forms, DHS multiplied the average annual receipts of Form I-129 petitions filed by petitioners within

visa classifications for which DHS is separating Form I-129 forms. In Table 41, DHS estimates that the fees for filing the forms will be approximately \$318,813,905.¹³¹

Table 41. New Estimated Filing Fee for Forms I-129, Petition for Nonimmigrant Worker			
Form and Visa Classification	5-year Average Receipts*	Filing Fee	Total Filing Fee
I-129H1 (H-1B)	402,034	\$555	\$223,128,870
I-129H2A - H-2A Named Beneficiaries**	2,740	\$850	\$2,329,000
I-129H2A - H-2A Unnamed Beneficiaries	9,268	\$415	\$3,846,220
I-129H2B - H-2B Named Beneficiaries**	2,421	\$715	\$1,731,015
I-129H2B - H-2B Unnamed Beneficiaries	3,919	\$385	\$1,508,815
I-129O***	25,516	\$705	\$17,988,780
I-129L (L-1A / L-1B / LZ Blanket)	42,871	\$805	\$34,511,155
Form I-129MISC (incl. H-3, P, Q, and R Visa Classifications) ****	28,799	\$695	\$20,015,305
I-129E&TN (incl. E-1, E-2, E-3, and TN Visa Classifications)	12,709	\$695	\$8,832,755
All Others	7,082	\$695	\$4,921,900
Total	537,359		\$318,813,905
Source: USCIS analysis.			
Note:			
* The estimated 5-year Average Receipts for Form I-129 petitions with named beneficiaries are taken from the estimates developed in the analysis for the provision to limit the number of named beneficiaries for each of these petitions to 25 per petition. Therefore, while the 5-year average receipts projections are based on the number of current receipts, these figures differ to account for the number of petitions employers would be required to file according to the limit on the number of named beneficiaries per petition in this rulemaking.			
** Includes receipts requiring Attachment for Form I-129 Named Worker.			

¹³¹ Calculation: (Filing fee for separate Form I-129) * (Estimated average annual number of Form I-129 petitions) = Estimated total annual cost to file separate Form I-129 petitions. For example, Form I-129H1 (H-1B) * (Filing Fee) = 402,034* \$555 = \$223,128,870. The same calculation would apply for every visa classification x the new filing fee and then be added up to get the total cost for filing the forms.

*** Includes receipts requiring Attachment 1-Additional Beneficiary for Form I-129O.
 **** Includes receipts requiring Attachment 1-Additional Beneficiary for Form I-129MISC.

DHS estimates the opportunity cost of time to complete and file each Form I-129 in Table 42, including the time burden estimates for the separate Form I-129 forms as well as any required supplemental forms. For each petition, DHS calculates the estimated opportunity cost of time per petition according to whether an HR specialist, an in-house lawyer, or an outsourced lawyer filed each petition. For example, based on the estimated time burden of 3.5 hours to file a Form I-129H2A petition with named beneficiaries, the estimated opportunity cost of time to file the form will be \$163.07 if an HR specialist files petitions, \$349.65 if an in-house lawyer files petitions, and \$611.28 if an outsourced lawyer files the petitions.

Table 42. New Estimated Total Opportunity Cost of Time Required to Complete Forms I-129 with Named and Unnamed Beneficiaries.				
Form and Classification	Time Burden (in Hours)	Human Resources (HR) Specialist (\$46.59/hr.)	In-house Lawyer (\$99.90 /hr.)	Outsourced Lawyer (\$174.65 /hr.)
I-129H1 (H-1B)	4	\$186.36	\$399.60	\$698.60
I-129H2A - H-2A Named Beneficiaries, including I-129 Named Worker Attachment	3.5	\$163.07	\$349.65	\$611.28
I-129H2A - H-2A Unnamed Beneficiaries	3	\$139.77	\$299.70	\$523.95
I-129H2B - H-2B Named Beneficiaries, including I-129 Named Worker Attachment	3.5	\$163.07	\$349.65	\$611.28
I-129H2B - H-2B Unnamed Beneficiaries	3	\$139.77	\$299.70	\$523.95

I-129O	3	\$139.77	\$299.70	\$523.95
I-129O, including Attachment 1-Additional Beneficiary for Form I-129O	3.5	\$163.07	\$349.65	\$611.28
I-129L (L-1A / L-1B / LZ Blanket)	3	\$139.77	\$299.70	\$523.95
I-129MISC (H-3)	3.25	\$151.42	\$324.68	\$567.61
I-129MISC (P)	3.5	\$163.07	\$349.65	\$611.28
I-129MISC (Q)	3.17	\$147.69	\$316.68	\$553.64
I-129MISC (R)	4	\$186.36	\$399.60	\$698.60
I-129MISC (H-3), including Attachment 1-Additional Beneficiary for Form I-129MISC	3.75	\$174.71	\$374.63	\$654.94
I-129MISC (P), including Attachment 1-Additional Beneficiary for Form I-129MISC	4	\$186.36	\$399.60	\$698.60
I-129MISC (Q), including Attachment 1-Additional Beneficiary for Form I-129MISC	3.67	\$170.99	\$366.63	\$640.97
I-129MISC (R), including Attachment 1-Additional Beneficiary for Form I-129MISC	4.5	\$209.66	\$449.55	\$785.93
I-129E&TN (E-1, E-2, and E-3)	4.95	\$230.62	\$494.51	\$864.52
I-129E&TN (TN)	4.95	\$230.62	\$494.51	\$864.52
I-129 CW	2.26	\$105.29	\$225.77	\$394.71
Source: USCIS analysis.				
Calculation: Time Burden (in hours) x Occupational Preparer \$/hr. (of HR Specialist, In-house, Outsourced Lawyer). For example (Form I-129H1B time burden hours) x (HR Specialist wage rate/hour) = 4 x \$46.59 = \$186.36				

Therefore, in Table 43, DHS estimates the total opportunity cost of time to complete the Forms I-129. DHS multiplied the estimated time per petition from Table 42 above by the 5-year average receipts for each of the new Forms I-129 from Table 41 to estimate the total annual opportunity cost of time to complete the separate forms. For example, based on the estimated 5-

year average receipts for filing a Form I-129H2A petition with named beneficiaries, the estimated total annual opportunity cost of time to file will be \$446,812 if an HR specialist files all petitions, \$958,041 if an in-house lawyer files all petitions, and \$1,674,907 if an outsourced lawyer files all petitions. Additionally, the estimated total annual opportunity cost of time to file a Form I-129H2A petition with unnamed beneficiaries will be \$1,295,388 if an HR specialist files all petitions, \$2,777,620 if an in-house lawyer files all petitions, and \$4,855,969 if an outsourced lawyer files all petitions.

Table 43. New Estimated Cost of Time to Complete Forms I-129, Petition for Nonimmigrant Worker, with Named Beneficiaries, by Classification.					
Form and Visa Classification		5-year Average Receipts*	Human Resources (HR) Specialist	In-house Lawyer	Outsourced Lawyer
Form I-129H1	H-1B	402,034	\$74,923,056	\$160,652,786	\$280,860,952
Form I-129H2A	H-2A Named Beneficiaries, including I-129 Named Worker Attachment	2,740	\$446,812	\$958,041	\$1,674,907
	H-2A Unnamed Beneficiaries	9,268	\$1,295,388	\$2,777,620	\$4,855,969
Form I-129H2B	H-2B Named Beneficiaries, including I-129 Named Worker Attachment	2,421	\$394,792	\$846,503	\$1,479,909
	H-2B Unnamed Beneficiaries	3,919	\$547,759	\$1,174,524	\$2,053,360
Form I-129O	O-1 / O-2	24,327	\$3,400,241	\$7,290,922	\$12,746,341
	O-1 / O-2, including Attachment 1-Additional Beneficiary for Form I-129O	1,189	\$193,825	\$415,594	\$726,567
Form I-129L	L-1A / L-1B / LZ Blanket	42,871	\$5,992,080	\$12,848,439	\$22,462,260

Form I-129MISC	H-3	1,254	\$189,881	\$407,149	\$711,783
	P	12,320	\$2,009,022	\$4,307,688	\$7,530,970
	Q	204	\$30,129	\$64,603	\$112,943
	R	8,530	\$1,589,651	\$3,408,588	\$5,959,058
	H-3, including Attachment 1-Additional Beneficiary for Form I-129MISC	195	\$34,034	\$72,978	\$127,582
	P, including Attachment 1-Additional Beneficiary for Form I-129MISC	6,204	\$1,156,252	\$2,479,278	\$4,334,394
	Q, including Attachment 1-Additional Beneficiary for Form I-129MISC	91	\$15,560	\$33,363	\$58,328
	R, including Attachment 1-Additional Beneficiary for Form I-129MISC	1	\$252	\$539	\$943
Form I-129E&TN	E-1, E-2, and E-3	5,360	\$1,236,123	\$2,650,574	\$4,633,827
	TN	7,349	\$1,694,826	\$3,634,154	\$6,353,357
All Others		7,082	\$745,664	\$1,598,903	\$2,795,336
Total		537,359	\$95,895,347	\$205,622,246	\$359,478,788

Source: USCIS analysis.

Note:

* The estimated 5-year Average Receipts for Form I-129 petitions with named beneficiaries are taken from the estimates developed in the analysis for the provision to limit the number of named beneficiaries for each of these petitions to 25 per petition. Therefore, while the 5-year average receipts projections are based on the number of current receipts, these figures differ to account for the number of petitions employers would be required to file according to the limit on the number of named beneficiaries per petition in this rulemaking.

Calculation: (5-year Average Population per Visa Classification) x Occupational Preparer rate (of HR Specialist, In-house, Outsourced Lawyer). For example: Form I-129 H-1B population x HR Specialist = 402,034 x \$186.36 (4 time burden hours x \$46.59) = \$74,923,056. The same calculation would be used for each occupational preparer.

DHS estimates the total annual opportunity cost of time to file the new separate Forms I-129 ranges from about \$95.9 million if HR specialists file all petitions, approximately \$205.6 million if in-house lawyers file all petitions, and about \$359.5 million if outsourced lawyers file all petitions.

Using the estimates presented in this analysis, DHS estimates the total transfers and cost savings of this provision. DHS estimates the transfer payments would be the difference between the current estimated total annual fees to file Form I-129 petitions with the required classification supplements (baseline) and the estimated total annual fees to file the new separate Forms I-129 for all beneficiaries. As a result, DHS estimates that the new fees for the separate Forms I-129 would impose a transfer of approximately \$75,117,865 annually from petitioners using the specific new Form I-129 classification forms to different groups of fee-paying petitioners (estimated total annual fees to file separate visa classification Form I-129 petitions under this rule is \$318,813,905, from Table 41, minus the current estimated total annual fees to file Form I-129 petitions is \$243,696,040, from Table 29). Because the provision shifts who pays for the adjudication of affected forms and because the change in filing fees do not result in new economic activity, DHS presents the change in total fees due to the rule as a transfer. There are no additional processing costs to DHS due to these changes in the filing fees of each specific nonimmigrant classification.

DHS estimates the additional costs of filing resulting from the limitation of 25 named beneficiaries per form and the estimated decrease in time burdens related to the new separate Forms I-129 will collectively result in the provision producing a net cost savings to petitioners. DHS estimates a total net savings of \$5.9 million annually for petitions filed by an HR specialist,

\$12.8 million for petitions filed by an in-house lawyer, and \$22.3 million for petitions filed by an outsourced lawyer completing the relevant Forms I-129 for their respective visa classification.¹³²

Currently, Form I-129 covers multiple uses and 30 pages of instructions. A benefit of the separation of Form I-129 into multiple forms is that it will allow applicants to focus on each form's use and will reduce the need to navigate lengthy instructions that do not apply to their petition. Another benefit of the separation of Form I-129 into several forms and fees is that it will allow USCIS to further refine its fee model. For example, future fees will be imposed on the separate forms so that the costs of adjudication are borne by those who apply for a specific benefit request, rather than being covered by other petitioners filing for other nonimmigrant classifications which also use that form. Splitting the form and fees will allow USCIS to better reflect the cost to adjudicate each specific nonimmigrant classification.

1. Adjustments to Premium Processing

DHS is changing the premium processing timeframe for 15-day processing from 15 calendar days to 15 business days. DHS is amending its regulations so that it can notify the public of future premium processing fee inflationary increases through changes to Form I-907 instructions (following the requirements of 5 CFR part 1320) and the USCIS website, <http://www.uscis.gov>. See 8 CFR 106.2(a)(43), 106.4(c) and 106.4(e)(ii). By law, DHS may

¹³² The following calculation uses the total respective values from Table 32 – Table 43

HR specialists: \$101,845,061 (Current estimated opportunity cost of time for Form I-129 petition) - \$95,895,347 (New estimated opportunity cost of time for Form I-129 petition) = \$5,949,714 total estimated annual savings to file Form I-129 of HR specialists file all petitions.

In-house lawyers: \$218,379,943 (Current estimated opportunity cost of time for Form I-129 petition) - \$205,622,246 (New estimated opportunity cost of time for Form I-129 petition) = \$12,757,697 total estimated annual savings to file Form I-129 of in-house lawyers file all petitions.

Outsourced lawyers: \$381,782,354 (Current estimated opportunity cost of time for Form I-129 petition) - \$359,478,788 (New estimated opportunity cost of time for Form I-129 petition) = \$22,303,566 total estimated annual savings to file Form I-129 of outsourced lawyers file all petitions.

adjust the premium processing fee for inflation according to CPI; therefore, the amount of the fee increase is straightforward and need not be codified. Employers may use Form I-907, Request for Premium Processing Service, to request faster processing of certain employment-based petitions and applications. USCIS offers premium processing¹³³ to employers filing Forms I-129 and Form I-140 for certain visa classifications. The current filing fee to request premium processing is \$1,440. USCIS currently guarantees 15 calendar day processing to those petitioners or applicants who choose to use the premium processing service. USCIS refunds the premium processing service fee if the agency does not take action on the related case within 15 calendar days of receiving a properly filed Form I-907. Otherwise, the filing fee is not refundable, regardless of any action USCIS takes on a request.

Currently, the 15 calendar day period begins when USCIS receives a properly filed Form I-907 at the correct filing address. USCIS then issues an approval notice, a request for evidence (where appropriate), a notice of intent to deny, a denial notice, or opens an investigation for suspected fraud or misrepresentation on the related petition or application.

USCIS considers the processing time met if the agency issues an approval, a request for evidence, notice of intent to deny, or a denial notice within 15 calendar days of receipt or if the case is referred for investigation of suspected fraud or misrepresentation. Once USCIS receives

¹³³ U.S. Citizenship and Immigration Services Announces immediate and Temporary Suspension of Premium Processing Service for All I-129 and I-140 Petitions until further notice Due to the Coronavirus 2019 (COVID-19) Pandemic. Effective today, March 20, 2020, USCIS will not accept any new requests for premium processing. Available at <https://www.uscis.gov/working-united-states/temporary-workers/uscis-announces-temporary-suspension-premium-processing-all-i-129-and-i-140-petitions-due-coronavirus-pandemic> (last reviewed/updated: 03/27/2020).

a response to the request for evidence or notice of intent to deny, USCIS will guarantee a new 15 calendar day processing period from the date the response was received.

Table 44 shows the estimated total receipts received and refunds issued by USCIS for inaction on behalf of USCIS within 15 days for requests for Premium Processing Service (Form I-907) for fiscal years 2015 – 2019. During this period, total annual receipts for Form I-907 ranged from a low of 258,029 in fiscal year 2015 to a high of 410,349 in fiscal year 2019. Based on a 5-year average, DHS estimates a total of 348,901 Form I-907 receipts are submitted annually. In addition, the total number of refunds issued for Form I-907 increased from 5 in fiscal year 2015 to high of 1,035 in fiscal year 2017, with a 5-year an annual average of 335 Form I-907 issued refunds.

Table 44. Form I-907, Request for Premium Processing Service, Receipts and Refunds Issued, Fiscal Years 2015 – 2019.						
Fiscal Year	Form I-907 Receipts			Form I-907 Refunds		
	Form I-129	Form I-140	Total	Form I-129	Form I-140	Total
2015	215,972	42,057	258,029	3	2	5
2016	316,193	69,545	385,738	91	30	121
2017**	224,181	70,340	294,521	956	79	1,035
2018	315,074	80,796	395,870	123	91	214
2019	330,272	80,077	410,349	210	88	298
Total	1,401,692	342,815	1,744,507	1,383	290	1,673
Average	280,338	68,563	348,901	277	58	335

Source: USCIS, Office of Policy & Strategy, Policy Research Division (PRD), CLAIMS 3 database, March 31, 2020

Notes:
 * Any duplicate case information has been removed.
 ** The receipts were lower, and the refunds were higher in 2017 because, Starting April 3, 2017, USCIS temporarily suspended premium processing for all H-1B petitions. While premium processing was suspended, any Form I-907 filed with an H-1B petition was rejected. If the petitioner submitted one combined check for both the Form I-907 and Form I-129 H-1B fees, both forms were rejected.¹³⁴

¹³⁴ See USCIS Will Temporarily Suspend Premium Processing for All H-1B Petitions (March 3, 2017) available at <https://www.uscis.gov/archive/uscis-will-temporarily-suspend-premium-processing-all-h-1b-petitions>

Due to the unique needs of employers requesting premium processing, DHS is not able to estimate the quantitative costs to petitioners that would result from extending the premium processing timeframe from 15 *calendar* days to 15 *business* days. By extending the processing time from calendar to business days, the processing timeframe will essentially be extended 4 days (potentially more if there is a federal holiday). The additional days might reduce some of the refunds issued by USCIS, for allowing more days to adjudicate.

DHS acknowledges that the 4-day increase in processing time may cause work or productivity delays for a certain number of petitioners. Petitioners for numerically limited annual petitions would not submit a petition with an employee waiting to start the job as soon as the petition is approved by USCIS and the foreign worker is not waiting while USCIS processes their petition for instructions to report for duty. Such petitions for the upcoming fiscal year needs are filed weeks before the worker is to start working. Thus 4 processing days will not cost the employer and the employee anything. In H-1B change of employer cases, the worker may work upon the filing of the petition (H-1B portability) but the employer might request premium processing for quick adjudication and certainty, but they lose no productivity from the additional 4 days.

In other cases, however, such as a Form I-539 filed for a change of status, the employee could be waiting for authorization from USCIS to work. Nevertheless, while extending the timeframe could increase the costs in some cases (e.g. where the beneficiary is unable to work for the petitioner until the petition is approved), such costs would at most equal to four days of lost productivity/wages, depending on other factors. However, USCIS could still act on the petition in less than 15 business days. Plus, the change in the regulations requires adjudicating the petition requires 15 days, not approval. In many cases evidence may be insufficient such that

the petition may require additional evidence or may be denied. The change will have no impact on those petitioners.

The benefits of this change are that 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 Form I-600A/I-600 and new fee

DHS is creating a new form, Form I-600A/I-600 Supplement 3, Request for Action on Approved Form I-600A/I-600, to align the processes for adoptions from countries that are party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) with the process for adoptions from countries that are not party to the Hague Adoption Convention. This form and fee will help the adoption process in 4 key areas: (1) suitability & eligibility extensions; (2) new approval notices; (3) change of country; and (4) duplicate approval notices. When the Hague Adoption Convention enters into force for a country, cases that meet certain criteria are generally permitted by the new Convention country to proceed as “transition cases” under the non-Hague Adoption Convention process (Form I-600A and Form I-600 process). Currently, USCIS uses Forms I-800, I-800A, and I-800A Supplement 3 for Hague Adoption Convention processing and Forms I-600 and I-600A for orphans or non-Hague Adoption Convention processing. Further, an individual must submit Form I-800A, Supplement 3 to request 1) an extension of an approved Form I-800A; 2) a new approval notice based on changes in circumstances since a Form I-800A was approved; 3) a

change in a Hague Adoption Convention country; and/or 4) a duplicate approval notice.

Similarly, an individual would be required to submit Form I-600A/I-600 Supplement 3 to request the following: 1) an extension of an approved Form I-600A; 2) a new approval notice based on a significant change or change in circumstances and updated home study of the child or children intended for adoption since a Form I-600A was approved; 3) a change in the non-Hague Adoption Convention country; and/or 4) a duplicate approval notice.

Due to the steady decline in applications DHS uses historical data to get a percent change and forecasted out for 5 years in Table 45 to show the estimated total receipts. Since Form I-600A/I-600 Supplement 3 will be a new form and therefore historical data does not exist, DHS used the total number of Form I-600A filings for the analysis. The population that might file Form I-600A/I-600 Supplement 3 could be the number of total receipts for Form I-600A and therefore provides an upper bound estimate for Form I-600A/I-600. Table 45 shows the total receipts of Form I-600A for fiscal years 2015 to 2019. Based on the total number of receipts of Form I-600A during 2015 -2019, DHS estimates that 326 is the forecasted average annual number of applicants for Advance Processing of an Orphan Petitions using Form I-600A. The forecast predicted the future receipt totals by using a linear regression based on historical data from 2015-2019.

Table 45. Form I-600A, Application for Advance Processing of an Orphan Petition, Receipts, FY2015 - FY2019	
Fiscal Year	I-600A Total Receipts*
2015	1,422
2016	1,361
2017	1,076
2018	950

2019	827
2020*	647
2021*	469
2022*	339
2023*	172
2024*	5
Total	1,632
5-yr Average*	326*
Source: USCIS, Office of Policy & Strategy, Policy Research Division (PRD), PAS-SQL Dashboard, March 30, 2020. Note: 5 year average was calculated based on FY2015-FY2019 receipts. *Forecasted numbers using a linear regression based on historical data from 2015-2019.	

The filing fee for new Form I-600A/I-600 Supplement 3 is \$400.¹³⁵ Therefore, using 326 average annual filings for Form I-600A/I-600 Supplement 3, DHS estimates the total filing fee cost is \$130,400 annually.¹³⁶

In addition, DHS estimates the time burden to complete Form I-600A/I-600 Supplement 3 would be 60 minutes (1 hour) per applicant. DHS uses the unweighted mean hourly wage of \$24.36 per hour¹³⁷ for all occupations to estimate the opportunity cost of time for this population in this analysis, instead of the federal minimum wage because studies show that adoptive parents of international orphans have higher than average incomes.¹³⁸ DHS calculates the total rate of

¹³⁵ See New 8 CFR 106.2(b)(23).

¹³⁶ Calculation: (Form I-600A/I-600 Supplement 3 filing fee) * (Estimated total population filing form) = \$400 * 326 = \$130,400 total annual cost to file Form I-600A/I-600 Supplement 3.

¹³⁷ The national mean hourly wage across all occupations is \$24.36. See Occupational Employment and Wage Estimates United States. Department of Labor, BLS, Occupational Employment Statistics (May 2019); available at https://www.bls.gov/oes/2019/may/oes_nat.htm.

¹³⁸ Hellerstedt, W.L, et al. (2008). The International Adoption Project: Population-based Surveillance of Minnesota Parents Who adopted Children Internationally. *Maternal Child and Health*, 12: 162-171. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2398719/> (accessed September 11, 2019)

compensation as \$34.72 per hour, where the mean hourly wage is \$24.36 per hour worked and average benefits are \$10.37 per hour.¹³⁹ Using the total rate of compensation of \$34.72 per hour,¹⁴⁰ DHS estimates the opportunity cost of time for completing and submitting Form I-600A/I-600 Supplement 3 would be \$34.72 per applicant.¹⁴¹ Using the total population estimate of 326 average forecasted annual filings for Form I-600A/I-600 Supplement 3, DHS estimates the total opportunity cost of time associated with completing and submitting Form I-600A/I-600 Supplement 3 would be approximately \$11,971 annually.¹⁴² In sum, DHS estimates that the filing fee and the time to complete and submit Form I-600A/I-600 Supplement 3 would cost \$142,371 annually.¹⁴³

DHS is also clarifying the regulations to align them with current practice regarding when prospective adoptive parents are not required to pay the Form I-600 or Form I-800 filing fee for multiple Form I-600 or Form I-800 petitions. DHS is also altering the validity period for a Form I-600A approval in an orphan case from 18 to 15 months. This will make the Form I-600A approval periods consistent with the validity of FBI biometric-related background checks. The

¹³⁹ The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) / (Wages and Salaries per hour). See Economic News Release, U.S. Dep't of Labor, Bureau of Labor Statistics, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (March 2019), available at <https://www.bls.gov/news.release/pdf/ecec.pdf> (viewed May 2020). The ECEC measures the average cost to employers for wages and salaries and benefits per employee hour worked.

¹⁴⁰ The calculation of the weighted mean hourly wage for applicants: \$24.36 per hour * 1.43 benefits-to-wage multiplier = \$36.72 = \$36.72 (rounded) per hour.

¹⁴¹ Calculation for estimated opportunity cost of time for completing Form I-600A/I-600 Supplement 3: \$36.72 per hour * 1.0 hour = \$36.72 per applicant.

¹⁴² Calculation: (Form I-600A/I-600 Supplement 3 opportunity cost of time per applicant) * (Estimated annual population filing Form I-600A/I-600 Supplement 3) = \$36.72 * 326 = \$11,971 (rounded) annual total cost to file Form I-600A/I-600 Supplement 3.

¹⁴³ Calculation: \$130,400 (Estimated total filing fees for Form I-600A/I-600 Supplement 3) + \$11,971 (Estimated total opportunity cost of time to complete Form I-600A/I-600 Supplement 3) = \$142,371 = total estimated cost to complete Form I-600A/I-600 Supplement 3.

uniform 15-month validity period will also alleviate the burden on prospective adoptive parents and adoption service providers to monitor multiple expiration dates.

One benefit of the changes to the adoption regulations is that, if the case does not qualify as a transition case¹⁴⁴, the prospective adoptive parents will generally need to follow the Hague Adoption Convention process with the filing of Form I-800A and Form I-800. With the addition of the new Form I-600A/I-600 Supplement 3, DHS is codifying certain limitations on when the Supplement 3 can be used in the context of transition cases. USCIS decided to accept Form I-800A Supplement 3 extension requests regardless of whether the Form I-800 petition was already filed, rather than requiring prospective adoptive parents to file a new Form I-800A to begin the process anew. By accepting the Form I-800A Supplement 3 extension requests will make subsequent suitability and eligibility adjudication process faster, for prospective adoptive parents seeking an extension of their Form I-800A approval. Because Supplement 3 adjudications are generally prioritized over new Form I-800A filings, allowing for a new decision on the prospective adoptive parents' suitability and eligibility to occur more quickly.

Another benefit of this provision is to clarify the process for applicants who would like to request an extension of Form I-600A/I-600 and/or certain types of updates or changes to their approval.

¹⁴⁴ The Hague Adoption Convention (Convention) entered into force for the United States on April 1, 2008. The Convention governs all adoptions between the United States and other countries party to the Convention. If a prospective adoptive parent began his/her adoption from a Convention country before the Convention entered into force for either the United States or the other Convention country, but the adoption has not been completed, the case may be considered to be a transition case. *Source:* Department of State, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/how-to-adopt/hague-transition-cases.html>

n. Changes to Genealogy Search and Records Requests

DHS is making several changes to the USCIS Genealogy Program and how the agency processes genealogy requests including: expanding the use of electronic genealogy requests; changing the index search request process so that USCIS may provide requesters with digital records, if they exist; and changing the genealogy fees by paper and online as a result of these operational changes as previously discussed in this analysis. The fee for Form G-1041 increases from \$65 to \$170 an increase of \$105 (162 percent) for those who mail in this request. The fee for Form G-1041A increases from \$65 to \$265, an increase of \$200 (308 percent) for those who mail in this request.

An individual uses Form G-1041, Genealogy Index Search Request, to request a search of USCIS historical indices, which are used to determine whether any USCIS records exist on the subject and, if such records exist, to capture the file number and/or other identifier of each record. If an individual would like to obtain copies of USCIS historical records found through an index request, he or she must file Form G-1041A, Genealogy Records Request.

In 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 also changing the search request process so that USCIS may provide requesters with electronic records, if they exist, in response to the initial index request. Ultimately, these changes are intended to allow USCIS to provide genealogy search results and historic records more quickly when pre-existing digital records exist. These changes may reduce the time it takes to request and receive genealogy records, and, in some cases, it would 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

would 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 because DHS does not know how many individuals will have access to a computer and/or internet capability.

In the FY 2016/2017 fee rule, USCIS adopted the first change to the genealogy search and records requests fees since they had been established by adjusting to \$65 fees for both search requests and records requests. *See* 81 FR 73304. At the time, genealogy fees were insufficient to cover the full costs of the genealogy program. USCIS increased the fee to meet the estimated cost of the program and permit USCIS to respond to requests for such historical records and materials based on the number of historical requests.

Table 46 shows the estimated number of genealogy index search requests made to USCIS using Form G-1041 for fiscal years 2015 to 2019. The table also shows the number of genealogy records requests using Form G-1041A in which an individual wanted to obtain copies of USCIS historical records found through a search request for fiscal years 2015 to 2019. During this period, the number of genealogy records search requests using Form G-1041 ranged from a low of 3,164 in fiscal year 2016 to a high of 4,897 in fiscal year 2015. The number of genealogy records requests using Form G-1041A ranged from a low of 1,534 in fiscal year 2016 to a high of 3,358 in fiscal year 2019. Therefore, DHS estimates that 3,943 is the average annual projected number of index search request using Form G-1041 and that 2,556 is the average annual projected number of records requests using Form G-1041A.

Table 46. Receipts of Form G-1041, Genealogy Index Search Request, and Form G-1041A, Genealogy Records Request, for Fiscal Years 2015 – 2019.		
Fiscal Year	Form G-1041	Form G-1041A
2015	4,897	2,344

2016	3,164	1,534
2017	3,310	2,626
2018	3,847	2,920
2019	4,498	3,358
Total	19,716	12,782
5-yr Average	3,943	2,556
Source: USCIS, Immigration Records and Identity Services (IRIS) Directorate, Records Information Systems Branch (RISB).		
Note: USCIS, IRIS tracks the online percentage of index searches and records requests		

In this final rule, DHS establishes the fee for Form G-1041, Genealogy Index Search Request when filed online at \$160 and \$170 when filed by paper. DHS establishes the fee for Form G-1041A, Genealogy Records Request when filed online at \$255 and \$265 when filed by paper. Using the annual average 5- year population data and the filing fees established by this final rule, DHS estimates that the current annual payment associated with filing Form G-1041 is approximately \$670,310 and \$677,340 when filing Form G-1041A. In sum, DHS estimates the new annual costs to file Form G-1041 and Form G-1041A will be \$1,347,650.¹⁴⁵

The opportunity cost of time for Form G-1041 and G-1041A, would not change in this rule. Therefore, those costs associated with filing are not included in this analysis. In addition

¹⁴⁵ Calculation: (Form G-1041 paper fee, as online numbers are not available) * (Estimated total population filing form) = \$170* 3,943 = \$670,310 total annual cost to file Form G-1041. Calculation: (Form G-1041A paper fee, as online numbers are not available) * (Estimated total population filing form) = \$265 * 2,556 = \$664,664 total annual cost to file Form G-1041A.

Calculation: (Form G-1041A fee) + (Form G-1041 fee) = \$670,310 + \$677,340 = \$1,347,650 total annual cost to file Form G-1041 and Form G-1041A.

to the filing fee increase, DHS estimated qualitative per unit cost per index search requests and records request. The opportunity cost of time for completing Form G-1041 is 30 minutes (0.5 hours) per response. Using the most recent federal minimum wage from the Bureau of Labor Statistics (BLS) data, the median wage rate for a historian/researcher to research and analyze an index requests is \$30.62¹⁴⁶ per hour as the total compensation (includes weighted average benefits) rate. DHS estimates the opportunity cost of time for completing and submitting Form G-1041 would be \$15.31 per index search request¹⁴⁷. Likewise, the opportunity cost of time for completing Form G-1041A is also 30 minutes (0.5 hours) per response. DHS will apply the same \$15.31 per records request, for the G-1041A.

One of the benefits of the provisions is that streamlining the genealogy search and records request process increases accuracy. Electronic versions of the requests reduce the administrative burden on USCIS by eliminating the need to manually enter requester data into its systems. In addition, USCIS will save on mailing costs as well as records processing and storage costs because electronic versions of search requests would reduce the administrative costs of handling paper. USCIS would save between \$16 to \$45 per index search service and \$26 to \$55 for each textual file retrieved.¹⁴⁸ However, USCIS may still need to mail some records in cases where requesters who cannot submit the forms electronically may still need to submit paper copies of both forms with the required filing fees. Additionally, when no pre-existing digital records exist, a requester must follow the current process and submit a paper request. DHS does

¹⁴⁶ See U.S. Department of Labor, Bureau of Labor Statistics, Occupational employment Statistics: Occupational Statistics: Occupational Employment Wages – May 2019 (Historians 19-3093). Available at <https://www.bls.gov/oes/2019/may/oes193093.htm> viewed May 13, 2020.

¹⁴⁷ Calculation for estimated opportunity cost of time for completing Form G-1041: (\$30.62 per hour * 0.5 hours) = \$15.31 per index request.

¹⁴⁸ 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>.

not have sufficient data on the requestors for the genealogy forms to determine if entities or individuals submit these requests. The case management tracking system used by DHS for genealogy requests does not allow for requestor data to be readily pulled.

DHS has previously determined that requests for historical records are usually made by individuals¹⁴⁹. If professional genealogists and researchers submitted such requests in the past, they did not identify themselves as commercial requestors and therefore could not be separated 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 assumes genealogists have access to a computer and the Internet. Some index searches and records requestors will receive a reduced fee and savings, by filing online.

o. Remove Reduced Fee for Naturalization Applicants Using Form I-942, Request for Reduced Fee, when filing form N-400, Application for Naturalization

DHS is removing the reduced fee option for naturalization applicants who file Form N-400, Application for Naturalization and discontinue Form I-942, Request for Reduced Fee.¹⁵⁰ Form N-400 is an application to become a naturalized U.S. citizen and an applicant may use Form I-942 to request a reduced fee for the filing fees of Form N-400 if the applicant's documented annual household income is greater than 150 percent and not more than 200 percent of the FPG, based on the applicant's household size. Removing the reduced fee option and Form I-942 has no effects on filing Form N-400 and submitting any required evidence, including

¹⁴⁹See "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>.

¹⁵⁰ This provision is currently codified at 8 CFR 103.7(b)(1)(i)(BBB)(I).

biometrics, except for no longer providing the option of requesting a reduced fee, and requiring those applicants who would have requested a reduced fee to pay the full fee.

The estimated total number of approved reduced fee requests in fiscal years 2017 - 2019 was 3,624; 4,688; and 4,700 respectively¹⁵¹ (See Table 47). In addition, the total number of rejected Forms I-942 was 733 in FY 2017, 1,060 in FY 2018, and 879 in FY 2019. For comparison, the total number of Forms N-400 filed in FY 2017 was 986,412, in FY 2018 was 837,423, and 830,877 in FY 2019. On average, DHS estimates the annual number of requests for a reduced Form N-400 fee that would be filed absent any change is 5,228.

Table 47. Form I-942, Request for Reduced Fee for Form N-400, Application for Naturalization, for Fiscal Year 2017 – 2019.				Form N-400
Fiscal Year	Accepted	Rejected	Total	Accepted Total
2017	3,624	733	4,357	986,412
2018	4,688	1,060	5,748	837,423
2019	4,700	879	5,579	830,877
Total	13,012	2,672	15,684	2,654,712
3-yr Average	4,337	891	5,228	884,904

Source: USCIS, Office of Intake and Document Production (OIDP) Lockbox facilities,

The current fee for Form N-400 is \$640. However, if an applicant believes he or she is eligible for a fee reduction, the applicant may file Form I-942 with their Form N-400. If approved, an applicant currently pays a fee of \$320. Using the average annual number of reduced fee requests of 4,337, DHS estimates the annual filing fee cost for Form N-400 with a reduced fee is approximately \$1,387,840 annually.¹⁵² In addition, an average of 891 reduced fee

¹⁵¹ DHS notes that the reduced fee option was implemented in the FY 2016/2017 fee rule. See 81 FR 73307.

¹⁵² Calculation: (Form N-400 filing fee) * (Estimated annual number reduced Form N-400 fee requests using Form I-942) = \$320 * 4,337 = \$1,387,840 annual estimated cost for filing Form N-400 with form I-942.

requests per year were not granted so they applicant was required to pay the full fee amount of \$640 for the Form N-400. DHS estimates the annual filing fee cost for Form N-400 at the full fee is approximately \$570,240 annually. Therefore, the annual filing cost for all N-400 with Form I-942 is approximately \$1,958,080¹⁵³

In this final rule, DHS is requiring that all naturalization applicants pay the same fee, eliminate the reduced fee option for applicants with annual household income that is greater than 150 percent and not more than 200 percent of the FPG, and eliminate Form I-942. DHS is increasing the fee to file Form N-400 from \$640 to \$1,165 (average of \$1,160 online fee and \$1,170 paper fee), and increase of \$525 (82 percent). However, for applicants who would file Form N-400 with a request for a reduced Form N-400 fee using Form I-942, the proposed fee to file Form N-400 would increase from \$320 to \$1,165, an increase of \$845 (264 percent). Using the estimate annual number of 5,228 individuals filing Form N-400 with a request for a reduced Form N-400 fee using Form I-942, and the online percent of 28.2 percent for Form N-400,¹⁵⁴ DHS estimates the total filing fee transfers to file Form N-400 would be approximately \$5,062,060¹⁵⁵ annually to current fee-paying applicants from applicants who file Form N-400.

¹⁵³ Calculation: (Form N-400 filing fee) * (Estimated annual number denied reduced Form N-400 fee requests using Form I-942) = \$640 * 891 = \$570,240 annual estimated cost for filing Form N-400 with form I-942.; \$1,387,840 + 570,240 = \$1,958,080 annual cost for filing Form N-400 with Form I-942.

¹⁵⁴ See Section A – Reduced Fees for Filing Online, table 4. N-400 filed online equals 28.2%

¹⁵⁵ Calculation: (Form N-400 filing fee average of the online fees) * (Estimated annual number reduced Form N-400 fee requests using Form I-942) = \$1,1660 * 1,223 (28.2 percent of 4,337) = \$1,418,680 annual estimated transfers for filing Form N-400 with form I-942.

Calculation: (Form N-400 filing fee average of the paper fees) * (Estimated annual number reduced Form N-400 fee requests using Form I-942) = \$1,170 * 3,114 (71.8 percent of 4,337) = \$3,643,380 annual estimated transfers for filing Form N-400 with form I-942.

Calculation: (Annual estimated transfers for filing Form N-400 with form I-942 by online) \$1,418,680 + (Annual estimated transfers for filing Form N-400 with form I-942 by paper) \$3,643,380 = \$5,062,060

With this final rule, DHS is incorporating the fee for the biometrics services, currently included in the separate biometric services fee, into the underlying fees for an immigration benefit request for which biometric services are applicable. As a result, payment of separate biometrics services fee would not be required for this form. However, applicants would still be required to submit biometrics information and incur the associated cost. The previously estimated annual opportunity cost of time to submit biometrics services travel costs will remain the same. Therefore, those cost are not included in the analysis.

The new transfers this provision will impose will be the difference between the current estimated total annual transfers to file Form N-400 for individuals with a request for a reduced Form N-400 fee using Form I-942 and the final estimate total annual transfers to file Form N-400 for individuals who will had previously request a reduced Form N-400 fee using Form I-942 due to the changes in this final rule. As, a result, DHS estimates that the final rule will impose total annual transfers of approximately \$3,674,220 for filing Form N-400 for individuals who would have previously requested a reduced Form N-400 fee using Form I-942.¹⁵⁶

In addition to the filing fee, DHS estimated a qualitative per unit application cost for the opportunity cost of time for completing Form N-400 is 9 hours and 17 minutes (9.28 hours) per application, including the time for reviewing instructions, gathering the required documentation and information, completing the application, attaching necessary documentation, and submitting the application. Using the federal minimum wage, including weighted average benefits, of \$11.80 per hour as the total rate of compensation, DHS estimates the opportunity cost of time for

¹⁵⁶ Calculation: \$5,062,060(total new estimated annual transfer to file Form N-400 with a request for a reduced Form N-400 fee using Form I-942) - \$1,387,840 (total current annual transfer to file Form N-400 with a request for a reduced Form N-400 fee using Form I-942) \$1,387,840 = \$3,674,220.

completing and submitting Form N-400 would be \$109.81 per application¹⁵⁷. Applicants will incur travel costs related to biometrics collection. The cost of travel related to biometrics collection is about \$29.00 per trip, based on the 50-mile roundtrip distance to an ASC and the General Services Administration's (GSA) travel rate of \$0.58 per mile¹⁵⁸. DHS assumes that each applicant travels independently to an ASC to submit his or her biometrics, meaning that this rule imposes a travel cost on each of these applicants

Lastly, applicants will also have the In addition to biometrics services fee, the applicant would incur costs to comply with the biometrics submission requirement as well as the opportunity cost of time for revealing to an ASC, the mileage cost of traveling to an ASC, and the opportunity cost of time for submitting his or her biometrics. While travel times and distances vary, DHS estimates that an applicant's average roundtrip distance to an ASC is 50 miles and takes 2.5 hours on average to complete the trip. Furthermore, DHS estimates that an applicant waits an average of 1.17 hours for service and to have his or her biometrics collected at an ASC, adding up to a total biometrics-related time burden of 3.67 hours¹⁵⁹. Using the total rate of compensation of minimum wage of \$11.80 per hour, DHS estimates the opportunity cost of time for completing the biometrics collection requirements for filing Form N-400 is \$43.31 per applicant¹⁶⁰. The total per unit cost for N-400 applicants is \$182.12 with the increased filing fee.

¹⁵⁷ Calculation for estimated opportunity cost of time for completing Form N-400: (\$11.80 per hour * 9.17 hours) = \$109.81 per applicant.

¹⁵⁸ See U.S. General Services Administration website for Privately Owned Vehicle (POV) Mileage Reimbursement Rates, <https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates> (accessed January 9, 2019).

¹⁵⁹ Source for biometric time burden estimate: Paperwork Reduction Act (PRA) Supporting Statement for Form I-485 (OMB control number 1615-0023). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001.

¹⁶⁰ Calculation: 3.67 hours * 11.80 = \$43.31 per applicant.

A quantitative saving to the applicants filing for a N-400 will be in the I-942 opportunity costs of time, to complete the form. Based on the previous estimated annual number of 5,228 requests filed for a reduced Form N-400 fee using Form I-942, DHS estimates the annual savings is approximately \$46,268 annually.¹⁶¹ DHS by eliminating the Form I-942 will reduce the administrative burden on the agency to process the Form I-942. DHS anticipates that applicants who would have received a reduced fee using Form I-942 for naturalization will find some way to come up with the difference, by credit card, community organizations, loan, or would choose to wait to naturalize due to the increased cost.

p. Charge for an Initial Form I-765, Application for Employment Authorization While an Asylum Claim Is Pending

DHS is requiring applicants who have applied for asylum or withholding of removal before EOIR or filed Form I-589, Application for Asylum and for Withholding of Removal with USCIS, to pay a fee for initial filings of Form I-765. Currently, USCIS exempts these initial applicants from the Form I-765 fee if they have a pending asylum application and are filing their first EAD application.¹⁶² Currently, applicants with pending claims of asylum pay the fee for EAD renewal and replacement, per the Form I-765 instructions and 8 CFR 274a.12(c)(8).¹⁶³

¹⁶¹ DHS estimates the time burden for completing Form I-942 is 45 minutes (0.75 hours) per response. Using \$11.80 per hour as the total rate of compensation, DHS estimates the opportunity cost of time for completing and submitting Form I-942 is about \$8.85 per applicant.

Calculation: (Estimated opportunity cost of time for filing Form I-942) * (Estimated average annual number of requests filed for a reduced Form N-400 fee using Form I-942) = \$8.85 * 5,228 = \$46,268 total annual opportunity cost of time for filing Form I-942 to request a reduced Form N-400 fee.

¹⁶² This fee exemption is provided in the Instructions to Form I-765, *Application for Employment Authorization*, by the USCIS Director or Deputy Director under the authority in 8 CFR 103.7(d); *see also* 8 CFR 274a.13(a)(applicants for EADs may be required to apply on a designated form and pay fees in accordance with form instructions).

¹⁶³ Class members subject to the settlement agreement under *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991), will be charged the fee generally applicable to employment authorization applications in this rule. The revised form instructions for Form I-765, *Application for Employment Authorization*, provide that

In January 2018, USCIS announced a shift away from “first in, first out” processing of affirmative asylum cases and a return to “last in, first out” (LIFO) processing. This priority approach, first established by the asylum reforms of 1995 and used for 20 years until 2014, seeks to deter those who might try to exploit the existing backlog as a means to obtain employment authorization while their asylum application was pending. The goal is to quickly identify non-meritorious claims, thereby deterring such claims and helping to slow the growth of the affirmative asylum caseload that disadvantages legitimate asylum seekers. In the first quarter of FY 2019, USCIS had approximately 325,000 affirmative asylum applications pending adjudication.¹⁶⁴ Returning to a LIFO interview schedule has allowed USCIS to identify non-meritorious asylum claims earlier and place those individuals into removal proceedings sooner.¹⁶⁵ Because of this change in policy, DHS is basing the number of asylum applicants who will be affected by this change as the number of applications received in the most recent fiscal year.

Table 48 shows the total of receipts for Form I-765 associated with a pending asylum claim for 2019 was approximately 556,996. DHS estimates that 216,038 Form I-765

class members may request that their fee be waived, as required by that agreement using the authority in New 8 CFR 106.3(d).

¹⁶⁴ U.S. Department of Homeland Security, USCIS, Hearing on "A Review of the FY 2020 Budget Request for U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services" on May 9, 2019 by Acting Deputy Director Tracy Renaud Available at <https://www.uscis.gov/tools/resources/hearing-a-review-fy-2020-budget-request-us-customs-and-border-protection-us-immigration-and-customs-enforcement-and-us-citizenship-and-immigration-services-may-9-2019-acting-deputy-director-tracy-renaud>. View August 22, 2019

¹⁶⁵ Form I-765 applications that were pending asylum in January 2018, typically were processed within 30 days, at 92.4 percent rate. If the processing times of the application was over 30 days but within 60 days, the Form I-765 was completed at a 97.5 percent rate. USCIS, Office of Performance and Quality (OPQ), CLAIMS 3 database, August 2, 2019.

applications were initial applications, 335,188 were renewal applications, and 5,770 were replacement applications for employment authorization.

Table 48. Total Annual Receipts for Pending Asylum Applicants Filing Form I-765, Application for Employment Authorization (EAD), for Fiscal Year 2019.				
Fiscal Year	Total Receipts*	Total Initial Receipts	Total Renewal Receipts	Total Replacement Receipts**
2019	556,996	216,038	335,188	5,770
Source: USCIS, Office of Performance and Quality (OPQ), CLAIMS 3 database, November 2019.				
*Note: These data include receipts received from both affirmative and defensive pending asylum applicants.				

There is currently no filing fee for an initial request for employment authorization by an asylum applicant. DHS is now requiring individuals with a pending asylum application to pay a fee for filing an initial request of employment authorization using Form I-765 with this final rule. The fee for these individuals to file Form I-765 will be \$550 per request. Using the estimated number of asylum applicants filing an initial request for employment authorization using Form I-765 in FY 2019 of 216,038 applications, DHS estimates the annual filing fee to applicants to file an initial Form I-765 with an asylum application pending will be \$118,820,900.¹⁶⁶ DHS estimates a transfer of \$118,820,900 annually to applicants who file an initial Form I-765 with a pending asylum application from different fee-paying applicants.

DHS recognizes that there may be some applicants who may not be able to afford this new fee and will no longer be able to apply for employment authorization while their asylum application is pending. DHS acknowledges that not being able to obtain an EAD may result in lost wages for the workers and require employers to find another worker. These lost wages and

¹⁶⁶ Calculation: (Form I-765 filing fee) * (Estimated annual number of asylum applicants filing an initial request for employment authorization using Form I-765) = \$550 * 216,038 = \$118,820,900 estimated annual cost for filing Form I-765.

productivity can be considered as costs of this rule. DHS does not have relevant data associated with asylum applicants to estimate the costs for these forgone benefits or to estimate the economic effects on those applicants from not being able to obtain lawful employment until a decision is made on their asylum application.

q. Charge a fee for Form I-589, Application for Asylum and for Withholding of Removal

Currently, DHS does not charge a fee to file Form I-589, Application for Asylum and for Withholding of Removal.¹⁶⁷ As described in the preamble of the NPRM of this rule, DHS will now impose a fee of \$50 to file Form I-589, when that form is filed with USCIS (“affirmative asylum applications”), for most applicants.¹⁶⁸ 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. Since the NPRM, DHS has decided to establish a single fee discount of \$50 on Form I-485 for principal asylum applicants who pay the Form I-589 fee of \$50, are granted asylum, and apply for adjustment of status.¹⁶⁹

Table 49 shows the total annual receipts of asylum applications using Form I-589 for fiscal years 2015 - 2019. During this period, the number of total annual receipts of Form I-589 ranged from a low of 84,236 in fiscal year 2015 to a high of 142,760 in fiscal year 2017. Based on the total number of receipts of Form I-589 during this period, DHS estimates that an average

¹⁶⁷ DOJ has 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). That rule does not alter longstanding regulations under which EOIR charges fees for DHS forms established by DHS, including fees that DHS is establishing in this final rule. See 8 CFR 1103.7(b)(4)(ii).

¹⁶⁸ Affirmative asylum applications are distinguished from defensive asylum applications, which are filed in proceedings before an immigration judge. *See, e.g.*, 8 CFR 1240.11(c).

¹⁶⁹ The fee for the first Form I-485, Application to Register Permanent Residence or Adjust Status, filed by principal asylum applicants who have paid the \$50 fee for Form I-589 and are subsequently granted asylum is \$1,080.

of 109,157 asylum applicants who now pay the \$50 fee for Form I-589 will receive a \$50 discount when they file Form I-485. During the same time period, DHS estimates that an average of 14,894 applicants are DHS uses the average instead of forecasting for this analysis because an increasing or decreasing trend in applications due to circumstances beyond this rulemaking could affect this population.

Table 49. Total Annual Receipts for Form I-589, Application for Asylum and for Withholding of Removal, for Fiscal Years 2015 – 2019.			
Fiscal Year	Receipts	Approvals	Denials
2015	84,236	14,344	365
2016	115,888	9,538	131
2017	142,760	13,105	116
2018	106,041	17,537	726
2019	96,861	19,945	630
Total	545,786	74,469	1,968
5-year Average	109,157	14,894	394
Source: USCIS, Office of Performance and Quality (OPQ), National Performance Report (NPR), March 2020 ¹⁷⁰			

DHS will charge a \$50 filing fee for Form I-589 to apply for asylum in the United States when filed with USCIS. Using the average annual number of Form I-589 filings of 109,157, DHS estimates the annual transfer of \$5,457,850 from other fee-paying applicants to applicants filing for asylum in the United States using Form I-589.¹⁷¹

The time burden for completing Form I-589 would remain unchanged at 13 hours, and applicants would still be required to submit biometrics information at a USCIS ASC facility.

¹⁷⁰ It is noted that the volume of approvals and denials relative to receipts is small. The reason is that the majority of asylum filings filed to USCIS “affirmatively” are referred to the Department of Justice’s (DOJ) Executive Office of Immigration Review (EOIR) to be adjudicated by an immigration Judge (IJ).

¹⁷¹ Calculation: (Form I-589 filing fee) * (Estimated annual number of individuals applying for asylum using Form I-589) = \$50 * 109,157 = \$5,457,850 estimated annual transfer fee for filing Form I-589.

Additionally, the requirement to submit one (1) passport-style photo for Form I-589 would remain unchanged. Therefore, the only impacts of this provision are from the transfer of a \$50 application fee for Form I-589 totaling \$5,457,850 a year from asylum applicants to different groups of fee-paying applicants.

DHS recognizes that some applicants may not be able to afford this new fee and will no longer be able to apply for asylum. 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 predict how many applicants would no longer apply for asylum as result of the \$50 fee.

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 fee reduction in this final rule - a reduced fee of \$1,080 for Form I-485 (new fee is \$1,130) when asylum applicant who has been granted asylum after having paid the \$50 fee for Form I-589 as a principal applicant. These reductions in fees represent transfers from the government to asylum applicants. *See* new 8 CFR 106.2(a)(16)(ii). The applicants who apply using Form I-589, pay the \$50 fee, and are approved, will experience a savings, once they submit Form I-485 to adjust status. As indicated in Table 49, the average annual number of approved Forms I-589 by USCIS is 14,894; therefore the savings would be \$744,700 annually.¹⁷² DHS provides that an individual qualifying for the Form I-485 reduced fee may file Form I-485 only once utilizing the

¹⁷² Calculation: (Approved annual Form I-589 receipts by USCIS) * (Estimated annual number of individuals applying for asylum using Form I-589) = 14,894 * \$50 = \$744,700 estimated annual savings for filing Form I-589 applicants, who will receive a \$50 reduction once they apply their Form I-485. The applicants will pay \$1,080 for the I-485, to Adjust Status from \$1,130 because their Form I-589 was approved.

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.

Asylum applicants that are denied (394, Table 49) at the I-589 stage cannot recover (sunk cost) the \$50 application cost because they were not approved. DHS set the fee so that it would not require an alien an unreasonable amount of time to save, may generate some revenue to offset costs, and may deter some filings.

r. Fee Combining 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])

DHS is adjusting the fee for 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 [NACARA]), and combining the current multiple fees charged for an individual or family into a single fee of \$1,810 for each filing of Form I-881 to reduce the administrative burden for USCIS for a small workload.¹⁷³ Form I-881 may be used by any alien who is eligible to apply for suspension of deportation or special rule cancellation of removal under NACARA.

Due to the steady decline in applications DHS uses historical data to get a percent change and forecasted out for 10 years in Table 50 to show the estimated total receipts for Form I-881

¹⁷³ This change does not affect individual or family-based applicants who file the same form with the Department of Justice, Executive Office for Immigration Review (DOJ EOIR). To file this form directly with DOJ EOIR, there is a separate \$165 fee. The number of Forms I-881 filed with DOJ EOIR and the associated costs are not estimated in this regulatory impact analysis.

for fiscal years 2017 to 2029. Based on the total number of receipts of Form I-881 during 2017 - 2019, DHS estimates that 280 is the forecasted average annual number of applicants for suspension of deportation or special rule cancellation of removal under NACARA using Form I-881. The forecast predicted the future receipt totals by using a linear regression based on historical data from 2017-2019.

Table 50. Receipts of Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 [NACARA]), Fiscal Years 2017–2029.	
Fiscal Year	Receipts
2017	560
2018	505
2019	487
2020*	444
2021*	408
2022*	371
2023*	335
2024*	298
2025*	262
2026*	225
2027*	189
2028*	152
2029*	116
Total	2,801
10-year Average	280
Source: USCIS, Office of Policy & Strategy, Policy Research Division (PRD), CLAIMS 3 database, December 12, 2019.	
Note: 5 year average was calculated based on FY2017-FY2021 receipts.	
*Forecasted numbers using a linear regression based on historical data from 2017-2019.	

USCIS data currently does not differentiate between Form I-881 applications filed by individuals and applications filed by families. However, based on the average annual total revenue data for Form I-881 for fiscal years 2015 to 2019, approximately 98 percent of applicants paid the individual filing fee of \$285 for Form I-881 and about 2 percent of applicants paid the family filing fee of \$570.¹⁷⁴ Therefore, based on the 10-year forecasted average presented above, DHS estimates that the average annual number of receipts for individual Form I-881 filings is 274 and the average annual number of receipts for families filing this form is 6, for a total of 280.

The current fees to file Form I-881 with USCIS is \$285 for per individual application submitted and \$570 per family application where all members of a family submit their applications together in a single package. As noted above, DHS estimates the average annual number of Form I-881 applications is 454 for individuals and 9 for families. Therefore, DHS estimates the current total annual cost associated with filing Form I-881 is approximately \$81,510, with \$78,090 for individual applications and \$3,420 for family applications.¹⁷⁵

For this rule, the time burden for completing and submitting Form I-881 and the opportunity cost of time will remain the same. Using the projected 5-year average annual number

¹⁷⁴ See Section T. of the Preamble of the NPRM of this rule. Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA).

¹⁷⁵ Calculation: (Filing fee for Form I-881 individual applications) * (Estimated average annual Form I-881 individual applications) = $\$285 * 274 = \$78,090$ estimated annual cost to file Form I-881 for individuals applications.

Calculation: (Filing fee for Form I-881 family applications) * (Average annual Form I-881 family applications) = $\$570 * 6 = \$3,420$ estimated annual cost to file Form I-881 for family applications.

Calculation: $\$78,090$ estimated annual cost to file Form I-881 for individuals applications + $\$3,420$ estimated annual cost to file Form I-881 for family applications = $\$81,510$ estimated total annual cost to file Form I-881.

of receipts for Form I-881 filings of 280, DHS estimates the annual transfers to file Form I-881 would be approximately \$506,951.¹⁷⁶

The transfers of this provision will be the difference between the current separate Form I-881 fees and the final new fee for all filers. As a result, DHS estimates that there will be transfers of \$425,441 annually from different groups of fee-paying individuals to those who apply for suspension of deportation or special rule cancellation of removal under NACARA using Form I-881.¹⁷⁷

With this final rule, DHS is incorporating the fee for biometrics services currently included in the separate biometric service fee, into the underlying fees for an immigration benefit request for which biometrics services are applicable. As a result, payment of a separate biometrics services fee would not be required for this form. The costs to applicants to comply with the biometrics submission requirement (fingerprints and signature) of Form I-881 include the opportunity cost of time for traveling to a designated USCIS Application Support Center (ASC), the mileage cost of traveling to an ASC, and the opportunity cost of time for submitting biometrics information. While travel times and distances vary, DHS estimates that an applicant's average roundtrip distance to an ASC is 50 miles and takes 2.5 hours on average to complete the trip.¹⁷⁸ Furthermore, DHS estimates that an applicant waits an average of 1.17 hours for service

¹⁷⁶ Calculation: (New Form I-881 filing fee) * (Estimated annual number of Form I-881 applications) = \$1,810 * 280 = \$506,951 estimated new annual cost for filing Form I-881.

¹⁷⁷ Calculation of estimated new costs to apply for suspension of deportation or special rule cancellation of removal under NACARA using Form I-881: \$506,951 (Estimated total annual cost to apply using Form I-881) – \$81,510 (Current estimated total annual cost to apply using Form I-881) = \$425,441 estimated annual transfers of the rule to file Form I-881.

¹⁷⁸ See “Employment Authorization for Certain H-4 Dependent Spouses; Final rule,” 80 FR 10284 (25 Feb. 2015); and “Provisional and Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives; Final Rule,” 78 FR 536, 572 (3 Jan. 2013).

and to have his or her biometrics collected at an ASC, adding up to a total biometrics-related time burden of 3.67 hours.¹⁷⁹ Using the total rate of compensation of minimum wage of \$11.80 per hour, DHS estimates the opportunity cost of time for completing the biometrics collection requirements for Form I-881 is \$43.31 per applicant.¹⁸⁰ Therefore, using the total population estimate of 280 annual filings for Form I-881, DHS estimates the total opportunity cost of time associated with completing the biometrics collection requirements for Form I-881 is approximately \$12,127 annually.¹⁸¹

In addition to the opportunity cost of time for providing biometrics, applicants will incur travel costs related to biometrics collection. The cost of travel related to biometrics collection is about \$29.00 per trip, based on the 50-mile roundtrip distance to an ASC and the General Services Administration's (GSA) travel rate of \$0.58 per mile.¹⁸² DHS assumes that each applicant travels independently to an ASC to submit his or her biometrics, meaning that this rule imposes a travel cost on each of these applicants. Therefore, DHS estimates that the total annual cost associated with travel related to biometrics collection for the estimated average annual

¹⁷⁹ Source for biometric time burden estimate: Paperwork Reduction Act (PRA) Supporting Statement for Form I-485 (OMB control number 1615-0023). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001.

¹⁸⁰ Calculation for opportunity cost of time to comply with biometrics submission for Form I-881: (\$11.80 per hour * 3.67 hours) = \$43.306 = \$43.31 (rounded) per applicant.

¹⁸¹ Calculation: Estimated opportunity cost of time to comply with biometrics submission for Form I-881 (\$43.31) * Estimated annual population filing Form I-881 (280) = \$ = \$12,127 (rounded) annual opportunity cost of time for Form I-881.

¹⁸² See U.S. General Services Administration website for Privately Owned Vehicle (POV) Mileage Reimbursement Rates, <https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates> (accessed January 9, 2019).

population of 280 family/individuals applying for Application for Suspension of Deportation or Special Rule Cancellation of Removal is approximately \$8,120.¹⁸³

In addition, DHS is changing the current requirement to submit four (4) passport-style photos when submitting Form I-881. DHS will require each individual who submits Form I-881 to submit two (2) passport-style photos. The estimated cost of two passport-style photos is \$20.00 per applicant, based on Department of State estimates.¹⁸⁴ Therefore, DHS estimates that the annual savings associated with obtaining passport photos as required for the estimated average annual number of Form I-881 applications for individuals of 280 will be approximately \$5,602.¹⁸⁵ DHS notes that applicants will have some savings of \$25,849¹⁸⁶ as a result of this reduction in photos submitted and by not traveling to ASC facilities, for biometrics collection and submission.

Combining the two IEFA fees into a single form, will provide a qualitative benefit of streamlining the revenue collections and reporting requirements. Also, USCIS charging a single Form I-881 fee may help administrative and adjudication process for USCIS more efficient.

¹⁸³ Calculation: (Biometrics collection travel costs) * (Estimated annual population filing Form I-881) = \$29.00 * 280 = \$8,120 annual travel costs related to biometrics collection for Form I-881.

¹⁸⁴ The Department of State estimates that the average cost of one passport-sized photo is \$10.00 according to the Paperwork Reduction Act (PRA) Supporting Statement under OMB control number 1450-0004. The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201607-1405-002.

¹⁸⁵ Calculation: (Passport-style photo costs) * (Estimated average annual number individuals that are part of Form I-881 applications) = 2 * \$10 = \$20.00 * 280 = \$5,602 estimated annual costs savings for obtaining passport photos for individuals filing Form I-881.

¹⁸⁶ Ibid. Will result in the savings to the applicant of (passport-style photo costs) + (biometrics submission costs) = (biometrics collection travel costs) + (passport-style phot costs) = \$12,127 + \$8,120 + \$5,602 = \$25,849.

s. *Clarify who must pay a 9-11 Response and Biometric Entry-Exit Fee for H-1B and L-1*

In 2010 Congress enacted new fees for certain H-1B or L petitioners. *See* Pub. L. 111-230, sec. 402.¹⁸⁷ The statute was silent regarding petitions for H-1B or L classification requesting a change of status or extension of stay for beneficiaries who were already admitted into the United States. USCIS interpreted the statute’s ambiguity to apply the fees to petitions for H-1B or L-1 (\$4,000 and \$4,500 respectively) classification when the fraud fee was otherwise required because the statutory language referred to these fees as being collected in addition to the already extant filing and fraud prevention and detection fees. USCIS, therefore, implemented these fees as applying only when the fraud fee was otherwise collected, in accordance with section 214(c)(12) of the INA, 8 U.S.C. 1184(c)(12); that is, with respect to petitions for an initial grant of status or requesting a change of employer, but not to extension petitions filed by the same employer on behalf of the same employee.

DHS will apply the 9-11 Response and Biometric Entry-Exit Fee by making the fee applicable to all petitions by employers that meet the statute’s 50 employee/50 percent test, regardless of whether or not the fraud fee also applies.¹⁸⁸ In other words, the fee should apply to all H-1B and L-1 extension petitions in addition to all previously covered H-1B and L-1

¹⁸⁷ Pub. L. 111-230 required the submission of an additional fee of \$2,000 for certain H-1B petitions and \$2,250 for certain L-1A and L-1B petitions. These additional fees, similar to the subsequently enacted fees under Pub. L. 114-113, applied to petitioners who employ 50 or more employees in the United States with more than 50 percent of its employees in the United States in H-1B or L-1 nonimmigrant status.

¹⁸⁸ USCIS counts all full-time and part-time employees when determining whether an employer must pay this fee. H-1B and all L-1 employees are combined in the counting to determine if the 50 percent threshold is met to trigger the fee. *See* <https://www.uscis.gov/working-united-states/temporary-workers/fee-increase-certain-h-1b-and-l-1-petitions-public-law-114-113>. DHS is adding the words “in the aggregate” to New 8 CFR 106.2(c)(8) and (9) to clarify its interpretation and how employees would be counted, consistent with current practice, to determine if this additional fee is required.

petitions. DHS will not change the current statutory fee amounts for certain H-1B or L petitioners (\$4,000 and \$4,500, respectively) because it does not have the authority to change the amount of these fees.¹⁸⁹

Based on a 5-year average from Fiscal Year 2014 – 2018, annually 137,748 H-1B and L petitions on average pay the fraud prevention and detection fee¹⁹⁰ USCIS assumes then that currently these 137,748 petitions also pay the 9-11 Response and Biometric Entry-Exit Fee. In this rule, DHS applies 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), regardless of whether or not the fraud fee also applies.

Table 51 shows the total approved receipts of Form I-129 for those H-1B and L-1 petitions that have 50 or more employees and 50 percent of the employees are in the H-1B or L-1 visa classification for fiscal years 2014 – 2018. During this period, Form I-129 H-1B COS/EOS approvals ranged from a low of 39,098 in fiscal year 2015 to a high of 55,227 in fiscal year 2017. Form I-129 L-1 COS/EOS approvals ranged from a low of 2,558 in fiscal year 2014 to a high of 3,709 in fiscal year 2017.

¹⁸⁹ Certain H-1B petitions may have to pay up to \$6,000 in statutory fees. DHS does not have the authority to adjust the amount of these statutory fees. USCIS does not keep most of the revenue. CBP receives 50 percent of the \$4,000 9-11 Response and Biometric Entry-Exit fee and the remaining 50 percent is deposited into the General Fund of the Treasury. USCIS retains 5 percent of the \$1,500 or \$750 American Competitiveness and Workforce Improvement Act (ACWIA) fee. The remainder goes to the Department of Labor and the National Science Foundation. USCIS keeps one third of the \$500 Fraud Detection and Prevention fee, while the remainder is split between the Department of State and the Department of Labor. These statutory fees are in addition to the current Form I-129 fee of \$460 and optional premium processing fee of \$1,440. *See* USCIS, *H and L Filing Fees for Form I-129, Petition for a Nonimmigrant Worker*, <https://www.uscis.gov/forms/h-and-l-filing-fees-form-i-129-petition-nonimmigrant-worker> (last updated/reviewed Feb. 2, 2018).

¹⁹⁰ Form I-129 H-1B and all Form I-129 L's (L-1/L-2/LZ) approvals for fiscal years 2014 to 2018 that paid fraud fee (\$500). Calculation: FY2014 – 112,473; FY15 – 115,911; FY16 – 147,290; FY17 – 143,519; FY18 – 159,546 = 688,739 = 137,748 5-year average. Source: USCIS, Policy Research Division (PRD), CLAIMS 3 database, April 2019.

Table 51: Approved and New Employment Receipts by Classification for Form I-129, Petition for a Nonimmigrant Worker, Petitioners with 50 or more employees and 50 Percent of employees in H-1B/L-1 Status for Fiscal Years 2014 – 2018.

Fiscal Year	H-1B Change of Status or Extension of Stay (COS/EOS)	L-1 Change of Status or Extension of Stay (COS/EOS)	H-1B New Employment	L-1 New Employment	Total H1-B	Total L-1
2014	41,429	2,558	35,349	1,015	76,778	3,573
2015	39,098	2,703	30,231	1,980	69,329	4,683
2016	53,017	2,667	37,251	2,220	90,268	4,887
2017	55,227	3,709	46,754	1,797	101,981	5,506
2018	43,811	3,010	16,092	1,042	59,903	4,052
Total	232,582	14,647	165,677	8,054	398,259	22,701
5-year Average	46,516	2,929	33,135	1,611	79,652	4,540

Source: USCIS, Office of Policy & Strategy, Policy Research Division (PRD), Claims 3 database, April 2019.

*Note: Form I-129 includes H1-B and H-1B1/H-1B2 included in the totals.

The new employment H-1B and L-1s already pay this statutory fee, and therefore this provision will only impose new transfers to the H-1B and L-1s COS/EOS populations. A total annual average of 46,516 H-1B COS/EOS petitions who will now pay \$4,000 for a total transfer of \$186,064,000. Likewise, a total annual average of 2,929 L-1 COS/EOS petitions will now pay \$4,500 for a total transfer of \$13,180,500. DHS estimates the annual transfers associated with the 9-11 Response and Biometric Entry-Exit Fee will be \$199,244,500 to the government from fee-paying petitioners to the 9-11 Response and Biometric Entry-Exit Fee Account.¹⁹¹

¹⁹¹Calculation of 9-11 Response and Biometric Entry-Exit Fee: (H-1B COS/EOS petitions) 46,516 x (H-1B 9-11 Response and Biometric Entry Statutory Fee) \$4,000 = \$186,064,000.

DHS overestimates the total numbers of H-1B and L-1 petitions affected by the increased application of the 9-11 Response and Biometric Entry-Exit Fee in this rule, because we are unable to determine how many of these petitioners currently pay these fees with the fraud detection and prevention fee. This provision is beneficial because it would ensure that fee collections go to the important purposes of (1) funding the 9-11 Response and Biometric Entry-Exit Fee Account to be used for a biometric entry-exit screening system; and (2) deficit reduction and other public purposes funded by general Treasury revenues.¹⁹² USCIS reiterates that it does not keep these fees.

2. Total Estimated Transfers and Costs or Savings of Regulatory Changes

In this section, DHS presents the total annual costs, transfers, and savings annualized and over a 10-year implementation period resulting from the regulatory changes in the rule. Table 52 shows the total annual costs of the final rule to be \$13,856,291 to applicants/petitioners. DHS estimates the total annual savings of the final rule to be from \$6,192,201 to \$22,546,053 to the applicants/petitioner. In the minimum columns in Table 52, annual net costs are \$7,664,090. In the scenario depicted by the maximum columns, net savings are estimated at \$8,689,762 because the cost savings from outsourced lawyers spending less time to complete Form I-129 would exceed the other maximum costs.

Calculation of 9-11 Response and Biometric Entry-Exit Fee: (L-1 COS/EOS petitions) 2,929 x (L-1 Statutory 9-11 Response and Biometric Entry Fee) \$4,500 = \$13,180,500.

Calculation of 9-11 Response and Biometric Entry-Exit Fee: Total transfer of the 9-11 Response and Biometric Entry Fee = (H-1B COS/EOS petitions) = \$186,064,000 + (L-1 COS/EOS petitions) \$13,180,500 = \$199,244,500 annual transfer amount.

¹⁹² USCIS has no evidence that the 9-11 Response and Biometric Entry-Exit Fee is intended to deter employers from over reliance on foreign workers or to generate revenue based on such over reliance. Congress relied has relied on the estimated fee revenue in its budgetary estimates for funding the entry and exit system.

Table 52. Summary of Estimated Annual Costs and Savings to Applicants/Petitioners in the Rule by Provision/Form				
Cost/Savings Items (Provision)	Total Estimated Annual Cost		Total Estimated Annual Savings	
	(Minimum)	(Maximum)	(Minimum)	(Maximum)
g. Changes to Biometrics Services Fee for Asylum Applicants	\$12,366,270	\$12,366,270		
m. Creation of Form I-600A/600 Supplement 3, Request for Action on Approved Form I-600A/I-600 and new fee	\$142,371	\$142,371		
n. Changes to Genealogy Search and Records Requests	\$1,347,650	\$1,347,650		
Total Annual Costs	\$13,856,291	\$13,856,291		
d. Eliminate \$30 Returned Check Fee, for dishonored payments			\$170,370	\$170,370
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 (Opportunity Cost of Time to File, and Complete Form)			\$5,949,714	\$22,303,566
o. Remove Reduced Fee for Naturalization Applicants Using Form I-942, Request for Reduced Fee by Eliminating Form I-942			\$46,268	\$46,268
r. Fee Combining 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]). ¹⁹³			\$25,849	\$25,849
Total Annual Savings			\$6,192,201	\$22,546,053
Annual Net Costs or Net Savings	\$7,664,090			\$8,689,762

Table 53 displays the annual transfers of the rule from specific form populations to different groups of fee-paying applicants and/or petitioners is \$832,239,426, and the annual transfers to government from petitioners of this final rule to applicants/petitioners is \$551,842,481.

Table 53. Summary of Estimated Annual Transfers from Specific Form Populations to Different Groups of Fee-Paying Applicants/Petitioners in the Rule by Provision/Form	
Transfer Items (Provision)	Transfer

¹⁹³ Ibid. This will result in the savings to the applicant of (passport-style photo costs) + (biometrics submission costs) = (biometrics collection travel costs) + (passport-style phot costs) = \$12,127 + \$8,120 + \$5,602 = \$25,849. In this final rule, DHS is incorporating the fee for biometrics services currently included in the separate biometric service fee, into the underlying fees for an immigration benefit request for which biometrics services are applicable. As a result, payment of a separate biometrics services fee would not be required for this form.

a. Reduced Fees for Filing Online	\$6,080,770
f. Fee Exemptions	\$3,935,800
h. Discontinue Providing Free Interim Benefits when Forms I-765 and I-131 are Filed Concurrently with Form I-485 or when a Form I-485 is Pending.	\$597,283,870
i. Form I-485 Fee for Children Under 14, Filing with Parent	\$11,369,980
j. Allow Individuals with Advance Parole to use Form I-131A, Application for Travel Document (Carrier Documentation)	\$10,072,730
k. Separating Form I-129, Petition for a Nonimmigrant Worker, into Different Forms, and Limit Petitions to 25 Named Beneficiaries per Petition (Change In Filling Fees)	\$75,117,865
o. Remove Reduced Fee for Naturalization Applicants Using Form I-942, Request for Reduced Fee	\$3,674,220
p. Charge for an initial Form I-765 while an asylum claim is pending	\$118,820,900
q. Charge a fee for Form I-589, Application for Asylum and for Withholding of Removal	\$5,457,850
r. Fee Combining 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])	\$425,441
Total transfers from specific form populations to different groups of fee-paying applicants and/or petitioners	\$832,239,426
q. Form I-589, Application for Asylum and for Withholding of Removal applicants applying for Form I-485, with the reduced fee amount ¹⁹⁴	\$744,700
g. Changes to Biometric Services Fee for TPS, EOIR, and CNMI Applicants, of \$55 (these populations will only pay \$30 for biometrics instead of the previous \$85)	\$14,953,565
Total transfers from Government to fee-paying applicants/petitioners	\$15,698,265
e. Removal of Fee waivers	\$368,296,246
s. Clarify who must pay a 9-11 Response and Biometric Entry-Exit Fee for H-1B and L-1	\$199,244,500
Total transfers to Government from applicants/petitioners	\$567,540,746
Net transfers to Government from applicants/petitioners	\$551,842,481
Note: Net Transfers to Government from applicants/petitioners = \$567,540,746 - \$15,698,265 = \$551,842,481	

¹⁹⁴ Calculation: (Approved annual Form I-589 receipts by USCIS) * (Estimated annual number of individuals applying for asylum using Form I-589) = 14,894 * \$50 = \$744,700 estimated annual transfer for filing Form I-589 applicants, who will receive a \$50 reduction once they apply their Form I-485. The applicants will pay \$1,080 for the I-485, to Adjust Status from \$1,130 because their Form I-589 was approved.

In Table 54, DHS presents the net societal costs and savings of the rule, which are estimated to range from costs of \$7,664,090 to savings of \$8,689,762, annualized at either 7-percent or 3-percent discount rates.

Table 54. Total Net Costs and Savings of this Final Rule				
Year	Net Cost (minimum)		Net Savings (maximum)	
	\$7,664,090		\$8,689,762	
	Discounted at 3-percent	Discounted at 7-percent	Discounted at 3-percent	Discounted at 7-percent
1	\$7,440,864	\$7,162,701	\$8,436,662	\$8,121,273
2	\$7,224,140	\$6,694,113	\$8,190,934	\$7,589,975
3	\$7,013,728	\$6,256,180	\$7,952,363	\$7,093,434
4	\$6,809,445	\$5,846,898	\$7,720,741	\$6,629,378
5	\$6,611,111	\$5,464,390	\$7,495,865	\$6,195,680
6	\$6,418,555	\$5,106,907	\$7,277,539	\$5,790,355
7	\$6,231,607	\$4,772,810	\$7,065,572	\$5,411,547
8	\$6,050,103	\$4,460,570	\$6,859,778	\$5,057,521
9	\$5,873,887	\$4,168,757	\$6,659,979	\$4,726,655
10	\$5,702,803	\$3,896,035	\$6,465,999	\$4,417,434
Total	\$65,376,242	\$53,829,361	\$74,125,432	\$61,033,252
Annualized	\$7,664,090	\$7,664,090	\$8,689,762	\$8,689,762

In Table 55, DHS presents the estimated transfers of the rule from Specific Form Populations to Different Groups of Fee-Paying Applicants and/or Petitioners. Over the 10-year implementation period of the rule, DHS estimates the annualized transfers of the rule to be \$832,239,426, annualized at either 3 or 7 percent.

In Table 56, DHS presents the estimated transfers of the rule to Government from applicants/petitioners. Over the 10-year implementation period of the rule, DHS estimates the annualized transfers of the rule to be \$551,842,481, annualized at either 3 or 7 percent.

Table 55. Transfers from Specific Form Populations to Different Groups of Fee-Paying Applicants and/or Petitioners of this Final Rule		
Year	Total Transfers	
	\$832,239,426	
	Discounted at 3-percent	Discounted at 7- percent
1	\$807,999,443	\$777,793,856
2	\$784,465,478	\$726,910,146
3	\$761,616,969	\$679,355,277
4	\$739,433,951	\$634,911,473
5	\$717,897,040	\$593,375,209
6	\$696,987,417	\$554,556,270
7	\$676,686,813	\$518,276,888
8	\$656,977,488	\$484,370,923
9	\$637,842,221	\$452,683,106
10	\$619,264,293	\$423,068,323
Total	\$7,099,171,113	\$5,845,301,470
Annualized	\$832,239,426	\$832,239,426

Table 56. Transfers of this Final Rule to Government from Applicants/Petitioners		
Year	Total Transfers	
	\$551,842,481	
	Discounted at 3-percent	Discounted at 7- percent
1	\$535,769,399	\$515,740,636
2	\$520,164,465	\$482,000,595
3	\$505,014,044	\$450,467,846
4	\$490,304,897	\$420,997,987
5	\$476,024,172	\$393,456,062
6	\$462,159,390	\$367,715,946
7	\$448,698,437	\$343,659,763
8	\$435,629,550	\$321,177,348
9	\$422,941,311	\$300,165,746
10	\$410,622,632	\$280,528,735
Total	\$4,707,328,297	\$3,875,910,663
Annualized	\$551,842,481	\$551,842,481

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.

3. Appendix – Office of Intake and Document Production (OIDP) Lockbox facilities, Fee Waiver Results from October 2, 2017 to October 27, 2017

Appendix 1: OIDP Survey Questions

Q1.	Q2.	Q3.	Q4.	Q5.	Q6.	Q7.	Q8.
Did the applicant use an I-912 to request the fee waiver?	How many applicants were approved?	How many total forms were fee waived?	Which forms were fee waived?	Which criteria was the approval based on?	What was the annual household income upon which the approval was based (if applicable)?	What was the household size upon which the approval was based (if applicable)?	Was the form ineligible for a fee waiver, but the applicant was qualified based on being VAWA, TPS, T or U Visa applicant?

Appendix 2: Use of Form I-912 among Fee Waiver Requests

Use of Form I-912	Percentage	Count
Submitted Form I-912	99%	4,395
Requested without Form I-912	1%	36
Grand Total	100%	4,431¹⁹⁵

Appendix 3: Approval Criteria Rates among Fee Waiver Requests

Approval Criteria	Percentage	Count
Means-tested benefit	72%	3,159
Income at or below 150% of FPG	27%	1,196
Financial hardship	1%	54
Grand Total	100%	4,409

¹⁹⁵ The highest response rate was 4,431 for Question 1, which captured whether or not Form I-912 was used to submit the fee waiver request.

Appendix 4: Use of Form I-912 across Approval Criteria

Approval Criteria	Count
(a) Means-tested benefit	3,159
Submitted Form I-912	3,140
Requested without Form I-912	19
(b) Income at or below 150% of FPG	1,196
Submitted Form I-912	1,186
Requested without Form I-912	10
(c) Financial hardship	54
Submitted Form I-912	54
Requested without Form I-912	0
Grand Total	4,409

All individuals who were approved under the financial hardship criteria used Form I-912.

Appendix 5: Rate of Fee Waiver Requests by Type of Form

Form(s)	Name	Fee	Percentage	Count	Estimated Forgone Revenue
N-400	Application for Naturalization	\$640	52%	2,265	\$1,449,600
I-90	Application to Replace Permanent Resident Card	\$455	24%	1,036	\$471,380
I-765	Application for Employment Authorization (EAD)	\$410	9%	386	\$158,260
I-485	Application to Register Permanent Residence or Adjust Status (AOS)	\$1,140	7%	319	\$363,660
N-600	Application for Certificate of Citizenship	\$1,170	5%	203	\$237,510
I-485, I-765	EAD & Status Adjustment combination	\$1,550	3%	144	\$223,200
N-336	Request for a Hearing on a Decision in Naturalization Proceedings	\$700	0%	16	\$11,200
I-765, I-821	EAD and TPS combination	\$460	0%	10	\$4,600
I-131	Application for Travel Document	\$575	0%	8	\$4,600
I-290B	Notice of Appeal or Motion	\$675	0%	8	\$5,400
I-131, I-485	AOS and Travel Document combination	\$1,715	0%	4	\$6,860
N-600K	Application for Citizenship and Issuance of Certificate Under Section 322	\$1,170	0%	2	\$2,340
I-130	Petition for Alien Relative, AOS, & EAD	\$535	0%	1	\$535
I-290B, I-765	Appeal and EAD combination	\$1,085	0%	1	\$1,085
I-360, I-485, I-765	Petition for Amerasian, Widow(er), or Special Immigrant, AOS, and EAD combination	\$1,985	0%	1	\$1,985
Grand Total			100%	4,404	\$3,009,880

Appendix 6: Reported Incomes on Approved Fee Waiver Requests

Income Range	\$0.01- \$10,000.00	\$10,000.01- \$20,000.00	\$20,000.01- \$30,000.00	\$30,000.01- \$40,000.00	\$40,000.01- \$50,000.00	\$50,000.01- \$60,000.00	Grand Total
Application Count	260	541	293	81	14	4	1,193

Most reported income falls into the \$10,000 - \$20,000 range.

- The lowest reported income is \$0.01 for a household size of 1.
- The highest reported income is \$56,520 for a household size of 9.

Appendix 7: Eligible Fee Waiver Requests by FPG Standard

Eligible?	Eligible at 125%
No	16%
Yes	84%
Grand Total	100%

According to the survey, 17% of fee waiver requests become ineligible by lowering the income criteria from 150% to 125% of the FPG.

Fee Rule – Economic Analysis (RIA) – DO NOT DISSEMINATE

**Appendix 8: Count of Total Individuals Approved per Fee Waiver Request,
Sorted by Approval Criteria**

Approval Criteria	% of Subtotal	Count
(a) Means-tested benefit		3,157
1 individual	90%	2,845
2 individuals	8%	248
3 individuals	1%	41
4 individuals	1%	18
5 individuals	0%	4
6 individuals	0%	1
(b) Income at or below 150% of FPG		1,195
1 individual	90%	1,078
2 individuals	8%	98
3 individuals	1%	12
4 individuals	1%	6
5 individuals	0%	1
(c) Financial hardship		54
1 individual	96%	52
2 individuals	4%	2
Grand Total		4,406

The range of total individuals approved per fee waiver request is highest for those who qualify based on means-tested benefits (1 to 6 individuals) and lowest for those who qualify based on financial hardship (1 to 2 individuals).

Fee Rule – Economic Analysis (RIA) – DO NOT DISSEMINATE

Appendix 9: Household Size Frequency

Income at or below 150% of FPG	Percentage	Count
Household size: 1	27%	312
Household size: 2	26%	299
Household size: 3	18%	202
Household size: 4	18%	202
Household size: 5	7%	83
Household size: 6	3%	39
Household size: 7	1%	10
Household size: 8	0%	3
Household size: 9	0%	2
Household size: 11	0%	1
Grand Total	100%	1,153