



Questions and Answers

June 9, 2010

U.S. Citizenship and Immigration Services Seeks Public Comment on Proposal to Adjust Fees for Immigration Benefits

Introduction

U.S. Citizenship and Immigration Services (USCIS) is seeking public comment on a proposed federal rule that would adjust fees for immigration benefit applications and petitions. The proposal, posted to the *Federal Register* on June 9, 2010 for public viewing, would increase overall fees by a weighted average of about 10 percent but would not increase the fee for the naturalization application.

Background

USCIS is a fee-based organization with about 90 percent of its budget coming from fees paid by applicants and petitioners to obtain immigration benefits. The law requires USCIS to conduct fee reviews every two years to determine whether it is recovering its costs to administer the nation's immigration laws, process applications, and provide the infrastructure needed to support those activities. The proposed rule results from a comprehensive fee review begun in 2009.

USCIS's fee revenue in fiscal years 2008 and 2009 was much lower than projected, and fee revenue in fiscal year (FY) 2010 remains low. While USCIS did receive appropriations from Congress, budget cuts of approximately \$160 million have not bridged the remaining gap between costs and declining revenue. A fee adjustment, as detailed in the proposed rule, is necessary to address that gap.

Questions & Answers

Q1. Will the proposed fees go into effect right away?

A1. No. The proposed rule provides for a 45-day public comment period. After receipt and analysis of the comments, USCIS will draft a final rule addressing the public input. It is important to note that a proposed rule *does not and cannot* by itself raise any immigration benefit application fees. Publication of the proposed rule is only the beginning of this regulatory process where USCIS announces its proposal to adjust fees and solicits public comments on that proposal.

Q2. What is the overall proposed adjustment?

A2. The weighted average increase for application and petition fees will be approximately 10 percent.

Q3. Why didn't USCIS propose a change in the naturalization application fee?

A3. USCIS has determined that the act of requesting and obtaining U.S. citizenship deserves special consideration given the unique nature of this benefit to the individual applicant, the significant public benefit to the nation, and the nation's proud tradition of welcoming new citizens. USCIS believes this action to retain the naturalization fee at the current level will reinforce these principles, allow more immigrants to fully participate in civic life, and is consistent with other USCIS efforts to promote immigrant integration.

Q4. Why does USCIS charge fees for immigration benefits?

A4. The Immigration and Nationality Act authorizes USCIS to recover the costs of providing most immigration benefits and services with fees. As a fee-based organization, USCIS uses revenue from application fees to pay for the administration of the nation's immigration laws, processing of applications, and the infrastructure needed to support these activities. Fee revenue funds more than 90 percent of the USCIS budget.

Q5. What USCIS programs are Congressionally funded through appropriations?

A5. Under the FY 2010 budget, USCIS did receive appropriations for asylum and refugee programs, military naturalizations, E-Verify, and grants to support immigrant integration. The President's FY 2011 Budget requested funding for these programs and for the cost of the Systematic Alien Verification for Entitlements (SAVE) program. Therefore, the costs of these programs were not factored into the fee amounts included in the proposed rule. USCIS will continue to receive the majority of its funding through fees.

Q6. What prompted this comprehensive fee review?

A6. USCIS is required by law to conduct fee reviews every two years to ensure that the fees accurately reflect its costs for providing the corresponding services. USCIS proposes a new fee rule when a modification is needed to align the organization's fees with its costs. USCIS completed its last comprehensive fee review in FY 2007.

Q7. How does USCIS derive its fees and fee levels?

A7. USCIS uses Activity-Based Costing (ABC) to determine the full cost of immigration benefits and biometric services. This is the same methodology used in the study completed for the FY 2007 Fee Review and the basis for the current fee structure. ABC is a business management tool that assigns resource costs to operational activities and then to products and services. These assignments provide an accurate cost assessment of each work stream involved in producing the individual outputs of USCIS. Proposed fees and fee levels are the result of a combination of the ABC model results, policy and programmatic decisions detailed in the rule and supporting documentation, estimated budgetary costs, and projected levels of applications and petitions for the biennial period.

Q8. Why does USCIS need to adjust fees?

A8. USCIS's fee revenue in fiscal years 2008 and 2009 was much lower than projected, and fee revenue in fiscal year 2010 remains low. USCIS has implemented budget cuts of approximately \$160 million in an effort to minimize the amount of any fee increase. However, these efforts have not bridged the remaining gap between the costs to provide benefits and services and the projected revenue. A fee adjustment, as detailed in the proposed rule, is necessary to ensure USCIS recovers the costs of its operations while also meeting the application processing goals identified in the 2007 fee rule.

Q9. Where has USCIS made budget cuts?

A9. USCIS has implemented several commonsense plans, including reducing travel, subscriptions and printing, maximizing the use of government space for meetings; and improving utilization of refurbished information technology. USCIS has called for a reduction in centrally-located training that will help reduce associated travel costs.

Q10. The proposed fee rule does not change the naturalization application fee. Are there any other fee changes that should be highlighted?

A10. The proposed rule would establish three new fees for: regional center designation under the Immigrant Investor Pilot Program (EB-5); individuals seeking civil surgeon designation; and recovery of the cost of processing immigrant visas granted by the Department of State.

The rule also proposes to adjust fees for the premium processing service. This would ensure that USCIS can continue to modernize to become a more efficient and effective organization.

Finally, the proposed rule reduces fees for five individual applications and petitions as a result of lower processing costs: Petition for Alien Fiancé (Form I-129F); Application to Extend/Change Nonimmigrant Status (Form I-539); Application to Adjust Status from Temporary to Permanent Resident (Form I-698); Application for Family Unity Benefits (Form I-817); and Application for Replacement Naturalization/Citizenship Document (Form N-565).

Proposed New Fees

Q11. Why isn't there currently a fee for requests for designation as an EB-5 regional center?

A11. Under a pilot immigration program first enacted in 1992 and regularly reauthorized since then, certain EB-5 visas are also set aside for investors in Regional Centers designated by USCIS based on proposals for promoting economic growth. Under the pilot program there was no fee associated with requests for designation as a Regional Center.

Q12. How did USCIS decide what fees to propose for EB-5 processing?

A12. USCIS expends a lot of effort to adjudicate a request for designation as an approved EB-5 regional center. A proposed fee of \$6,230 has been calculated for servicing these applications based on the activities as described in the proposed rule. In addition to providing a vehicle for fee collection, the standardized "Application for Regional Center under the Immigrant Investor Pilot Program," (Form I-924) would:

- Clarify requirements for regional center documents
- Improve the quality of applications
- Better document eligibility for the Pilot Program
- Alleviate content inconsistencies among applicants' submissions
- Support a more efficient process for adjudication of applications

Q13. Where would I remit the payment for the \$165 Immigrant Visa fee?

A13. Details on implementation of this fee will be developed with the Department of State (DOS) and included in the final fee rule.

Q14. If I am currently an approved Civil Surgeon, would I be required to re-apply and pay a fee?

A14. No. If you are currently a designated civil surgeon, you would not have to apply again for civil surgeon designation under the current civil surgeon program.

Q15. How may I provide comments on the proposed fee increases?

A15. To comment on the proposed rule, USCIS requests the public to submit written comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Facsimile: Federal eRulemaking portal at 866-466-5370.
- Mail: Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW, 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2009-0033 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.
- Hand Delivery/Courier: Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW, 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272-8377.

Final Fee Rule Implementation

Q16. What if an applicant/petitioner cannot afford the fee?

A16. USCIS has the ability to waive fees on a case-by-case basis for “inability to pay.” In determining “inability to pay,” USCIS officers consider all factors, circumstances, and evidence supplied by the applicant including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit.

Q17. Would the proposed fee increase be retroactive to applications/petitions which have already mailed, but which haven’t yet been processed with a receipt number?

A17. No. The new fee would be required on the effective date of the final rule adjusting the fee schedule. All applications and petitions received that are postmarked with a date before the effective date of the final rule, and which contain the correct fee as of that date, will be receipted and processed. All applications and petitions received that have a postmark dated on or after the effective date of the final rule must contain the new fee. If not, they will be rejected as improperly filed.

Q18. If I send my application/petition before the fee increase and it is returned for a minor error when the new fee is in effect, will I be able to make the correction and resend the application/petition with the old fee?

A18. Yes. If the application is accepted with the old fee, requests for evidence to correct errors will have no impact on the fee paid. However if the error impacts USCIS’s ability to accept the application as properly filed, the fee paid will be returned with the rejected application. The new fees will apply to any subsequent filing if postmarked on or after the effective date of the new fee.

Q19. If my check is returned by the bank due to insufficient funds (bad check) during the transition to the new fee schedule, will I still be allowed to issue a new check paying the old fee?

A19. Yes. If the correct fee is paid before the new fee final rule’s effective date with a bad check, the law provides that a good check may be sent in to replace the bad check and pay any associated bad check fees within 14 days of the notice of the bad check from USCIS being mailed, and the original receipt date retained. If the fee and charges are not paid within 14 days, the application or petition shall be rejected and the new fees will apply to any subsequent filing.