



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

Small Entity Compliance Guide

Introduction and Purpose

The U.S. Department of Homeland Security (DHS) has prepared this document as the small entity compliance guide required by section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. The guide summarizes and explains rules that DHS adopted, but it is not a substitute for any rule. Only the final rule can provide complete and definitive information regarding its requirements.

Overview

On January 31, 2024, DHS issued a final rule at *89 FR 6194* that adjusts certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS) and establishes a new fee schedule for these immigration benefit requests.

The final rule ensures that USCIS has the resources it needs to provide adequate service to applicants and petitioners. As a result, the Department of Homeland Security (DHS) will adjust its fees, adding new fees for certain immigration benefit requests, codifying use of the Consumer Price Index for All Urban Consumers (CPI-U) as the inflation index for future fee adjustments between comprehensive fee rules, establish multiple fees for nonimmigrant worker petitions, and limit the number of beneficiaries for certain employment-based forms. DHS will also make

changes related to setting, collecting, and administering fees as well as expanding fee exemptions and fee waivers to certain humanitarian groups, updating the filing requirements for nonimmigrant workers, revising the premium processing timeframe, and revising other administrative requirements.

The effective date of the final rule is April 1, 2024. This guidance restates some of the information in the final rule, particularly the information related to small entities. However, this guidance does not replace the final regulations; instead, it is a reference for small entities seeking information concerning the potential impact of the regulations on them. As it relates to this rule specifically, DHS prepared a full Regulatory Impact Assessment (RIA) and Small Entity Analysis (SEA) to accompany the rule that are available in the rule's docket at <https://www.regulations.gov/document/USCIS-2021-0010-8179> and <https://www.regulations.gov/document/USCIS-2021-0010-8182>, respectively.

Summary of the Final Rule Provisions

The final rule adopts, with appropriate changes, the regulatory text in the proposed rule published in the Federal Register on January 4, 2023. *See* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements; Proposed rule, 88 FR 402. DHS made several changes in the final rule based on comments received on the proposed rule or as required by the effects of those changes. The final rule makes the following major revisions as compared to the NPRM:

1. Reduced Costs and Fees

DHS has revised the USCIS budget underlying the final rule. In the proposed rule, USCIS projected that its IEFA non-premium cost projections must increase by 36.4 percent from \$3,776.3 million in FY 2021 to an average of \$5,150.7 million in FY 2022/2023 to fulfill USCIS' operational requirements. *See* 88 FR 402, 428 (Jan. 4, 2023). In the final rule, USCIS revises the FY 2022/2023 cost projection to approximately \$4,424.0 million, a \$726.7 million or

14.1 percent decrease compared to the proposed rule. DHS removed approximately \$726.7 million of average annual estimated costs by making the following changes:

- Transferring costs to Premium Processing revenue;
- Reducing the estimated marginal costs of the Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers Interim Final Rule to be funded;¹ and
- Including efficiency estimates based on improved efficiency measures.

2. Changes in the Asylum Program Fee

In the NPRM, DHS proposed a new Asylum Program fee of \$600 to be paid by employers who file either a Form I-129, Petition for a Nonimmigrant Worker, Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, or Form I-140, Immigrant Petition for Alien Worker. DHS determined that the Asylum Program Fee was an effective way to shift some costs to requests that are generally submitted by petitioners who have more ability to pay, as opposed to shifting those costs to all other fee payers. In the final rule, DHS exercises its discretionary authority to establish fees, balancing the beneficiary-pays and ability-to-pay principles, and to address the negative effects that commenters stated would result, by exempting the Asylum Program Fee for nonprofit petitioners and reducing it by half for small employers. The fee will be \$0 for nonprofits; \$300 for small employers (defined as firms or individuals having 25 or fewer FTE employees); and \$600 for all other filers of Forms I-129, I-129CW, and I-140.

3. Defining Small Employer

DHS will establish new fees to be paid by employers who file either a Form I-129 or Form I-129CW based on the number of full-time workers the entity employs and its nonprofit status. The final rule defines “small employer” as having 25 or fewer full-time equivalent (FTE). The Asylum Program Fee is \$0 for nonprofits, \$300 for employers with 25 or fewer full-time equivalent (FTE) workers, and \$600 for all other Form I-129, I-129CW and I-140 filers. The NPRM proposed that the Asylum Program Fee would be \$600 for all Form I-129 and I-140

¹ 87 FR 18078 (Mar. 29, 2022)

filers. Employers with 25 or fewer FTEs and nonprofits receive a discount on fees for Forms I-129 and I-129CW.

When determining which employers should be considered small, DHS considered what definition could be administered to provide the relief requested by commenters without adding costs to USCIS, additional burden to petitioners, or causing delays in intake and processing of the submitted requests. The volume of forms submitted to USCIS requires that benefit request intake be automated to the extent possible, including the analysis of whether the correct fee has been paid based on if the petitioner meets the criteria for the fee they have submitted with their request. DHS reviewed INA section 214(c)(9)(B), 8 U.S.C. 1184(c)(9)(B), which provides that the ACWIA fee is reduced by half for any employer with not more than 25 FTE employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer). Because the ACWIA fee and the Asylum Program fee are both applied to the Form I-129, DHS decided that using a consistent definition was preferable. DHS acknowledges that allowing discounts for certain large non-profits, such as universities and hospitals, may seem inconsistent with the ability-to-pay principle. However, DHS notes that this treatment is consistent with their tax-exempt status and believes that the public service performed by these entities further justifies the fee discount.

4. Defining Nonprofit

As noted above, nonprofits will receive a discount on Asylum Program fees and also on fees when filing Form I-129, Form I-129CW and Form I-140. The types of organizations that qualify as a nonprofit generally provide a service to the public. Nonprofit organizations may include religious, educational, or charitable organizations and may not be required to pay federal taxes.² DHS understands that organizations that do not pursue monetary gain or profit must use funds for USCIS fees that they would otherwise use in pursuit of public and private service. Therefore, balancing the need to shift the costs of services, adequately funding USCIS operations, and the

² Nonprofits may be required to pay certain other taxes. *See*, U.S. Department of the Treasury, U.S. Internal Revenue Service, Federal Tax Obligations of Non-Profit Corporations at <https://www.irs.gov/charities-non-profits/federal-tax-obligations-of-non-profit-corporations>. (Page Last Reviewed or Updated: 05-Dec-2023).

beneficiary-pays and ability-to-pay principles, DHS determined that a discount for nonprofits is consistent with the ability-to-pay principle that was articulated in the proposed rule.

5. Changes to EB-5 Volume Forecasts

DHS updated the USCIS volume forecasts for the EB-5 workload based on more recent and reliable information than what was available while drafting the proposed rule. Increasing the fee-paying receipt forecasts for these workloads conversely increased the estimated revenue generated by EB-5 fees. DHS also revised the USCIS budget to reflect these changes.

6. Changes to H-1B Registration Fee Volume Forecasts

DHS revised the USCIS volume forecasts for H-1B registration workload, to 424,400, based on more recent information than was available while drafting the proposed rule, such as the total registrations for the FY 2023 cap year. The proposed rule forecasted 273,990 H-1B registrations. Increasing the fee-paying receipt forecasts for these workloads increases the estimated revenue generated by the H-1B registration fees in the final rule. The H-1B registration fee will remain at \$215 in the final rule.

7. Online Filing Fees

The proposed rule provided lower fees for some online requests based on estimated costs for online and paper filing. The fee differences between paper and online filing ranged from \$10 to \$110. The final rule provides a \$50 discount for forms filed online with USCIS. The discount is not applied in limited circumstances, such as when the form fee is already provided at a substantial discount or USCIS is prohibited by law from charging a full cost recovery level fee.

8. Adjust Fees for Forms Filed by Individuals by Inflation

The final rule holds several fees to the rate of inflation since the previous fee increase in 2016.

DHS determined that from December 2016 (the month FY 2016/2017 fee rule went into effect) to June 2023, the CPI-U increased by 26.37 percent.³ Using the CPI-U as the measure for cost and fee increases is consistent with statutes that authorize DHS to adjust USCIS fees. In the final rule, except for certain employment-based benefit request fees, DHS finalized the fees at either the proposed fee level or the current fee adjusted for inflation, whichever was lower.

9. Fee Exemptions and Fee Waivers

The proposed rule included new fee exemptions and proposed to codify existing fee exemptions. The final rule expands fee exemptions for humanitarian filings and adoptions. Normally, expanding fee waivers or exemptions may increase fees, as explained in the proposed rule. However, in the final rule, DHS revised the USCIS budget to accommodate the revenue generated by the fees and fee-paying receipts. As such, DHS is implementing these additional fee exemptions without increasing fees for other benefit requests.

DHS will provide fee exemptions for SIJs filing Form I-824. DHS will remove the fee exemption for Form I-601, Application for Waiver of Grounds of Inadmissibility, for applicants seeking cancellation of removal under INA 240A(b)(2), 8 U.S.C. 1229b(b)(2), since they cannot use a waiver of inadmissibility to establish eligibility for this type of relief from removal.

DHS will modify the instructions for Form I-912, Request for Fee Waiver, to allow receipt of a means-tested benefit by a child in one's household to serve as evidence of the parent's inability to pay. DHS will continue to allow fee waiver requests via written letter. DHS also codified the fee waiver eligibility requirements previously in guidance, for individuals who are unable to pay.

10. Procedural Changes to Address Effects of Fee Exemptions and Discounts

³ DHS calculated this by subtracting the December 2016 CPI-U (241.432) from the June 2023 CPI-U (305.109), then dividing the result (63.677) by the December 2016 CPI-U (241.432). Calculation: $(305.109 - 241.432) / 241.432 = .2637 \times 100 = 26.37$ percent.

DHS is making procedural changes in the final rule to address issues that it has experienced with fee-exempt and low fee-filings. DHS is making changes to address those concerns by lowering many fees below the amount that was proposed, establishing discounts for small employers and nonprofits, and adding multiple fee exemptions. However, to provide the requested changes, DHS must make some adjustments to codified procedural requirements to mitigate some of the unintended consequences of providing limited discounts and free services and some of the actions for which those changes may provide an incentive.

11. Adjustment of Status (Form I-485) and Family-Based Fees

In the final rule, Form I-485 applicants will pay half of the regular Form I-765 fee for an employment authorization document (EAD) when it is submitted with a Form I-485 for which the fee is paid for as long as the adjustment application is pending. The NPRM proposed paying the full fee for such EADs. Children under 14 filing Form I-485 concurrently with parents, will pay \$950 for Form I-485. The NPRM proposed that such children pay the same fee as adults.

12. Adoption Forms Changes

DHS will provide additional fee exemptions for Supplement 3 for Forms I-600/600A and I-800A for adoptions for second extensions, second changes in country requests, and duplicate approval notices for both the orphan and the Hague process. Forms N-600, Application for Certificate of Citizenship and N-600K, Application for Citizenship and Issuance of Certificate under Section 322, N-600 and N-600K are also fee exempt for certain adoptees.

13. Naturalization and Citizenship Fees

In the final rule, eligible N-400 reduced fee applicants with incomes at or below 400 percent of Federal Poverty Guidelines (FPG) pay half price for their Application for Naturalization. In the proposed rule and consistent with previous fee rules, only applicants with household incomes not more than 200 percent of the Federal Poverty Guidelines (FPG) were eligible for the reduced fee for Form N-400. DHS believes that this change will provide additional relief to longtime

residents who struggle to pay naturalization fees without requiring further fee increases for other forms to offset the cost. As previously mentioned above, the final rule also provides that Forms N-600 and N-600K are fee exempt for certain adoptees.

14. Additional Changes

In the final rule DHS also:

- Increased the Commonwealth of the Northern Mariana Islands (CNMI) education fee by the amount of inflation from \$200 to \$230.
- Codified that USCIS will provide 30-day advance public notification before a currently acceptable payment method will be changed.
- Revised proposed 8 CFR 106.2(d)(2) to provide that all USCIS fees that DHS has the authority to adjust under the INA (those not fixed by statute) may be increased by the rate of inflation by final rule. The change is limited only to clarify that all fees not fixed by statute are increased simultaneously.
- Amends 8 CFR 204.5(p)(4)(ii) by removing the clause “but not to exceed the period of the alien’s authorized admission” so that the provision once again states that “Employment authorization under this paragraph may be granted solely in 1-year increments.”
- Clarified the handling of an approved benefit request if a fee submitted is dishonored to include a fee to request premium processing, and that the benefit request may be subject to rescission, judicial revocation, or cancellation.
- Provided that a duplicate filing of a pending benefit request will be rejected to deter multiple filings of requests that have no or minimal fee, to reduce backlogs, and to improve processing times.
- Deleted proposed 8 CFR 106.3(a)(5), “Fees under the Freedom of Information Act (FOIA),” because it is unnecessary. DHS FOIA regulations at 6 CFR 5.11(k) address the waiver of fees under FOIA and 5 U.S.C. 552(a)(4)(A)(iii).

In addition to the above, there are technical adjustments that apply to specific forms, and details can be found in the final rule’s preamble and accompanying RIA, cited above.

Entities Subject to the Rule

The U.S. Small Business Administration (SBA) Size Standards define “small entities” as comprising small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, or governmental jurisdictions with populations of less than 50,000.⁴ Individuals, rather than small entities, submit most of the immigration and naturalization benefit applications and petitions. These individuals do not meet the definition of “entity” under the SBA rules. Entities affected by the final rule are those that file and pay fees for certain immigration benefit requests on behalf of a foreign national. The petitions or applications filed by entities include the following:

- a. Petition for a Nonimmigrant Worker, Form I-129 – authorizes foreign workers for temporary employment, services, or to receive training in the United States.
- b. Immigrant Petition for Alien Worker, Form I-140 – authorizes foreign workers to become permanent residents in the United States.
- c. Application for Civil Surgeon Designation, Form I-910 – authorizes physicians to become designated providers of medical exams for individuals in the United States applying for immigration benefits with DHS.
- d. Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360 – authorizes foreign workers for full time employment by a bona fide nonprofit religious organization in the United States (as defined by 501(c) (3) of the Internal Revenue Service (IRS) Code).
- e. Genealogy Requests, Form G-1041 (Index Search Request) and Form G-1041A (Record Request).
- f. Application for Regional Center Designation Under the Regional Center Pilot Program, Form I- 956 (formerly Form I-924), Application for Approval of an Investment in a Commercial Enterprise, Form I-956F and I-956G (formerly I-924A).

⁴ A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

Extensive details concerning the data and associated sources, documentation, dating, availability, constraints and caveats are detailed thoroughly SEA, as is the methodology, analytical approach, and sampling procedures employed to conduct the analysis. The SEA also provides more detail concerning the results of the analysis and details of the calculations made to inform the results. This section summarizes the findings in the SEA, focusing on the main results as they relate to small entities.

DHS concluded that the increase in fees may have a significant economic impact (greater than 1 percent) on some small entities that file I-129, I-140, I-910, or I-360. For Forms I-956, I-956F and I-956G, DHS does not have sufficient data on the revenue collected through administrative fees by regional centers to definitively determine the economic impact on small entities that may file these forms. For the genealogy forms, DHS also does not have sufficient data on the requestors that file Forms G-1041, Index Search Request and Form G-1041A, Genealogy Records Request, to determine whether such filings were made by entities or individuals. Thus, DHS is unable to determine if the fee increases for genealogy searches are likely to have a significant economic impact on small entities.

a. Form I-129 Small Entities

DHS will have different fees for Form I-129 based on the nonimmigrant classification being requested in the petition, the number of beneficiaries on the petition, and, in some cases, according to whether the petition includes named or unnamed beneficiaries. Using this single form, requestors can file petitions or applications for many different types of nonimmigrant workers. DHS will have separate H-2A and H-2B fees for petitions with named workers and unnamed workers. DHS will limit the number of named beneficiaries that may be included on a single petition for H-2A, H-2B, O, H-3, P, Q and R workers to 25. Limiting the number of named beneficiaries to 25 per petition simplifies and optimizes the adjudication of these petitions, which can lead to reduced average processing times for a petition. DHS will charge Form I-129 petitioners a form fee, registration fee (H-1B only), CNMI Educational Fund fee (I-

129 CW only)⁵ and an Asylum Program Fee. Small entities will pay the associated fee for the visa classification benefit request according to whether it is a: 1) Small entity with greater than 25 FTE employees, 2) Small entity with 25 or fewer FTE employees, or 3) Nonprofit small entity. The SEA results as they relate to Form I-129 are as follows:

- *Form I-129 Small Entities with More than 25 Full-Time Equivalent (FTE) Employees*
 - 302 of the 1,643 matched small entities searched were small entities with more than 25 employees.
 - Among the 302 small entities, 275 (91.0 percent) experienced an economic impact of less than 1 percent and 27 (9.0 percent) experienced an economic impact greater than 1 percent.
 - The small entities with greater than 1 percent impact were mostly H-1B filers (18 of 327) that filed multiple petitions.
 - The greatest economic impact imposed by the fee changes was 7.06 percent and the smallest was 0.002 percent.
 - The average economic impact from the H-1B registration and petition fee increase on all 241 filers was 0.06 percent; the greatest economic impact was 1.35 percent and the smallest was 0.0004 percent.

- *Form I-129 Small Entities with 25 or Fewer Full-Time Equivalent (FTE) Employees*
 - 876 of the 1,643 entities searched, were small entities with 25 or fewer FTE employees.
 - Among the 876 small entities, 781 (89.2 percent) experienced an economic impact of less than 1 percent and 95 (10.8 percent) experienced an economic impact greater than 1 percent.
 - The small entities with greater than 1 percent economic impact were mostly H-1B filers (91 of 95) that mostly filed multiple petitions.
 - The greatest economic impact imposed by the fee changes was 4.21 percent and the smallest was 0.003 percent.

⁵ Employers must pay this fee for every beneficiary that they seek to employ as a CNMI-only transitional worker. The fee is a recurring fee that petitioners must pay every year at the time the petition is filed. USCIS transfers the revenue from the CNMI education funding fee to the treasury of the Commonwealth Government to use for vocational education, apprenticeships, or other training programs for United States workers.

- The average economic impact from the H-1B registration and petition fee increase on all 682 filers was 0.19 percent; the greatest economic impact was 1.79 percent and the smallest was 0.001 percent.
- *Form I-129 Nonprofit Small Entities*
 - 14 of the 1,643 entities searched were nonprofit small entities. All 14 of these nonprofit small entities petitioned for H-1B workers.
 - All 14 nonprofits small entities experienced an economic impact of less than 1 percent.
 - The greatest economic impact imposed by the fee changes was 0.82 percent and the smallest was 0.003 percent.
 - The average economic impact from the registration and petition fee increases on all H-1B filers was 0.13 percent; the greatest economic impact was 0.6 percent and the smallest was 0.003 percent.

b. Form I-140 Small Entities

DHS will increase fees for Form I-140 from \$700 to \$715, an increase of 2 percent (\$15). The total fees for each entity in the analysis will include the I-140 form fee and the relevant Asylum Program Fee. In the final rule, DHS will establish a new Asylum Program Fee of \$600 to be paid by employers who file a Form I-140, Immigrant Petition for Alien Worker. However, if a small entity employs 25 or fewer FTE workers, it will pay a \$300 Asylum Program Fee. Additionally, firms that are approved by the IRS as nonprofit entities and certain educational organizations⁶ will not be required to pay the Asylum Program Fee. With an aggregated total of 299 small entities out of a sample size of 550 entities, DHS inferred that most, or 54.3 percent, of the entities filing Form I-140 petitions were small entities. The SEA results as they relate to Form I-140 are as follows:

- DHS identified 126 small entities with reported revenue data in the sample.

⁶ Includes not-for-profit primary or secondary educational institutions, or institutions of higher education, as defined in section 101(a) of the Higher Education Act of 1965, [20 U.S.C. 1001\(a\)](#)

- Of the 126 small entities, 46 had more than 25 FTE employees and 80 had 25 or fewer FTE employees. There were no nonprofit small entities with reported revenue data in the sample.
- All 46 small entities with more than 25 FTE employees experienced an economic impact of less than 1 percent. The greatest economic impact imposed by the fees was 0.25 percent and the smallest was 0.0001 percent.
- For the 80 small entities with 25 or fewer FTE employees, 79 of them experienced an economic impact of less than 1 percent. The other entity experienced an economic impact of 1.002 percent. The smallest economic impact imposed by the fee increase was 0.002 percent.

c. Form I-910 Small Entities

USCIS will increase fees for Form I-910 to \$990. This is an increase of 26 percent (\$205) from the current fee of \$785. The SEA results as they relate to Form I-910 are as follows:

- 179 matched entities with reported revenues were considered small entities.
- All 179 small entities experienced an economic impact of less than 1 percent.
- The greatest economic impact of the increased fees on small entities was 0.91 percent and the smallest was 0.001 percent.

d. Form I-360 Small Entities

DHS will increase the fees for entities that file Form I-360 from \$435 to \$515, an increase of \$80 (18.4 percent). The SEA results as they relate to Form I-360 are as follows:

- 174 entities with reported revenues were considered small entities.
- All 174 small entities experienced an economic impact below 1 percent.
- The greatest economic impact of the increased fees on small entities was 0.08 percent and the smallest was 0.001 percent.

e. Genealogy Requests –Form G-1041, Form G-1041A and Form G-1566

In the final rule, DHS increased the fee for the Genealogy Index Search Request, Form G-1041 and Form G-1041A, from \$65 to \$80, an increase of \$15 (23 percent) for those who mail in this request on paper. The fee for requestors who use the online electronic Form G-1041 or G-1041A version decreased from \$65 to \$30, a decrease of \$35 (-54 percent). DHS will also establish a fee of \$330 for individuals submitting a Form G-1566, Request for a Certificate of Non-Existence, once approved by OMB. DHS has previously determined that requests for historical records are usually made by individuals.⁷ If professional genealogists and researchers submitted such requests in the past, they did not identify themselves as commercial requestors and, therefore, DHS could not separate these data from the dataset. Genealogists typically advise clients on how to submit their own requests. For those who submit requests on behalf of clients, DHS does not know the extent to which they can pass along the fee increases to their individual clients. DHS currently does not have sufficient data to definitively assess the impact on small entities for these requests. DHS asked for comment on this in the proposed rule and received no comments or data. DHS recognizes that some small entities may be impacted by the increased fees but cannot determine how many or the exact impact.

f. EB-5 Program - Form I-956 (Formerly Form I-924), Form I-956F (formerly Form I-924 Amendment) and I-956G (formerly Form I-924A)

The fee for Form I-956 and Form I-956F is \$47,695, a \$29,900 or 168-percent increase from the current \$17,795 fee. The fee for Form I-956G is \$4,470, a \$1,435 or 47 percent increase from the current \$3,035 fee. During the 5-year period from FY 2018 through FY 2022, USCIS received a total of 249 annual Form I-956 (formerly Form I-924) regional centers applications and 3,260 Form I-956G (formerly Form I-924A) annual statements, with annual averages 62 and 652 respectively.

Regional centers are difficult to assess because there is a lack of official USCIS data on employment, income, and industry classification for these entities. It is difficult to determine the small entity status of regional centers without such data. Such a determination is also difficult because regional centers can be structured in a variety of different ways, and can involve

⁷ See 73 FR 28026 (May 15, 2008)

multiple business and financial activities, some of which may play a direct or indirect role in linking investor funds to NCEs⁸ and job-creating projects or entities. Regional centers also pose a challenge for analysis as their structure is often complex and can involve many related business and financial activities not directly involved with EB-5 activities. Regional centers can be made up of several layers of business and financial activities that focus on matching foreign investor funds to development projects to capture above-market return differentials.

While DHS attempted to treat regional centers like the other entities in this analysis, DHS was not able to identify most of the entities in any of the public or private online databases.

Furthermore, while regional centers are an integral component of the EB-5 program, DHS does not collect data on the administrative fees the regional centers charge to the foreign investors who are investing in one of their projects. Due to the lack of regional center revenue data, DHS assumes regional centers collect revenue primarily through the administrative fees charged to investors. DHS did consider the information provided by regional center applicants as part of the Forms I-956 (formerly Form I-924), I-956F (formerly Form I-924 Amendment), and I-956G (formerly Form I-924A); however, it does not include adequate data to allow DHS to reliably identify the small entity status of individual applicants.

DHS was able to obtain some information under some specific assumptions to analyze the small entity status of regional centers. In the DHS proposed rule “EB-5 Immigrant Investor Program Modernization,” DHS analyzed estimated administrative fees and revenue amounts for regional centers. DHS found both the mean and median for administrative fees to be \$50,000 and the median revenue amount to be \$1,250,000 over the period FY 2017 through FY 2020. While DHS cannot definitively claim there is no significant economic impact to these small entities based on existing information, DHS would assume existing regional centers with revenues equal to or less than \$447,000 per year (some of which DHS assumes would be derived from administrative fees charged to individual investors) could experience a significant economic impact if DHS assumes a fee increase that represents 1 percent of annual revenue is a “significant” economic burden under the RFA

⁸ A “new commercial enterprise” is “any for-profit organization formed in the United States for the ongoing conduct of lawful business . . . that receives, or is established to receive, capital investment from [employment-based immigrant] investors.” INA sec. 203(b)(5)(D)(vi), 8 U.S.C. 1153(b)(5)(D)(vi).

Description of the Projected Reporting, Record-keeping, and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities that Are Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The final rule does not directly impose any new or additional “reporting” or “recordkeeping” requirements on filers of Form I-129, I-140, I-910, I-360, G-1041, G-1041A, I-956 (formerly Form I-924), or I-956G (formerly I-924A). This final rule does not require any new professional skills for reporting.

Resources to Support Compliance Among Small Entities

Without an increase in fees, DHS would not be able to maintain the level of service for immigration and naturalization benefits that it provides. DHS considered the alternative of maintaining fees at the current level with reduced services and increased processing times but determined that this will not be in the interest of applicants and petitioners. Therefore, this alternative was rejected. While most immigration benefit fees apply to individuals, as described above and, more fully, in the accompanying documents referenced above, some also apply to small entities. DHS seeks to minimize the impact on all parties, in particular, small entities.

Another alternative to the increased economic burden of the fee adjustment is to maintain fees at their current level specifically for small entities. The strength of this alternative is that it eliminates new fee-burdens placed on small entities; however, small entities would still experience negative effects due to the service reductions that would result in the absence of the fee adjustments in the rule. Without the fee adjustments provided, significant operational changes to USCIS would be necessary. Given current filing volume considerations, DHS requires additional revenue to prevent immediate and significant cuts in planned spending that would include reductions in areas such as Federal and contract staff, infrastructure spending on information technology and facilities, and workforce training. Depending on the actual level of workload received, these operational changes could result in longer processing times, a degradation in customer service, and reduced efficiency over time. These cuts would ultimately represent an increased cost to small entities by causing delays in benefit processing and reductions in customer service.

The final rule does make changes that will benefit small entities. The major changes made in the final rule that could affect entities are as follows:

- The Asylum Program Fee is \$0 for nonprofits, \$300 for employers with 25 or fewer full-time equivalent (FTE) workers, and \$600 for all other Form I-129, I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, and those filing Form I-140, Immigrant Petition for Alien Workers.
- Employers with 25 or fewer FTE workers and nonprofits receive a discount on fees when filing Form I-129, Petition for Nonimmigrant Worker and Form I-129CW.
- A \$50 reduced fee for forms filed online, except in limited circumstances, such as when the form fee is already provided at a substantial discount or USCIS is prohibited by law from charging a full cost recovery level fee.

Additional Resources

Final Rule

The final rule is published on the Office of the Federal Register web site at:

<https://www.federalregister.gov/documents/2024/01/31/2024-01427/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>.

Final Rule Correction Notice

A correction notice for the final rule is published on the Office of the Federal Register web site

at: <https://www.federalregister.gov/documents/2024/03/21/2024-05935/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>.

Frequently Asked Questions (FAQs)

Frequently Asked Questions on the USCIS Fee Rule are available at:

<https://www.uscis.gov/forms/filing-fees/frequently-asked-questions-on-the-uscis-fee-rule>.

Compliance Assistance

Additional resources for small entities are available at the USCIS website for the Small Business Regulatory Enforcement Fairness Act (SBREFA): <https://www.uscis.gov/legal-resources/small-business-regulatory-enforcement-fairness-act-sbrefa>. USCIS can help small entities with questions about the final rule. Please refer to the above website for additional information and resources for addressing inquiries and resources.