



# Questions and Answers

Sept. 23, 2010

## After Public Comment, U.S. Citizenship and Immigration Services Announces Final Rule Adjusting Fees for Immigration Benefits

### Introduction

U.S. Citizenship and Immigration Services (USCIS) today announced a [final rule](#) adjusting fees for immigration applications and petitions. The final rule follows a period of public comment on a proposed version of the rule, which USCIS published in the [Federal Register](#) on June 11, 2010. After encouraging stakeholders to share their input, USCIS considered all 225 comments received. The final rule will increase overall fees by a weighted average of about 10 percent but will not increase the fee for the naturalization application. The rule will also reduce fees for six individual applications and petitions and will expand the availability of fee waivers to new categories. The final rule will be published in the *Federal Register* September 24, and the adjusted fees will go into effect on November 23, 2010.

USCIS is a primarily fee-based organization with about 90 percent of its budget coming from fees paid by applicants and petitioners for 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. Remaining funds come from appropriations provided annually by Congress. The final fee rule concludes a comprehensive fee review begun in 2009.

### Questions and Answers: Highlights of 2010 Fee Rule

#### **Q. What are some of the major features of the 2010 fee rule?**

The fee rule will increase the average application and petition fees by approximately 10 percent. In addition, the fee rule:

- Contains no increase in the naturalization application fee, in recognition of the unique importance of naturalization.
- Establishes new fees for regional center designation under the Immigrant Investor Pilot Program (EB-5); individuals seeking civil surgeon designation (with an exemption for certain physicians who examine servicemembers, veterans, and their families at U.S. government facilities); and the recovery of the USCIS cost of processing immigrant visas granted by the Department of State.
- Adjusts fees for the premium processing service to ensure that USCIS can continue to modernize as an efficient and effective organization.
- Reduces fees for six individual applications and petitions: 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); Application for Replacement Naturalization/Citizenship Document (Form N-565); and Application for Travel Document (Form I-131), when filed for Refugee Travel Document.
- Eliminates two citizenship-related fees for those servicemembers and veterans of the U.S. armed forces who are eligible to file an Application for Naturalization (Form N-400) with no fee: Request for Hearing on a Decision in Naturalization Proceedings (Form N-336) and Application for Certificate of Citizenship (Form N-600).
- Expands fee-waiver eligibility to certain applicants and petitioners, including individuals seeking to appeal the denial of underlying applications or petitions that required no fee, individuals

applying for humanitarian parole with an Application for Travel Document (Form I-131), and individuals with an Application to Extend/Change Nonimmigrant Status (Form I-539) who are covered under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

**Q. Why didn't USCIS increase the naturalization application fee?**

A. 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 that holding the naturalization fee at the current level will reinforce these principles, allow more immigrants to fully participate in civic life, and complement other USCIS efforts to promote immigrant integration.

**Q. What has changed in the final rule from the proposed rule published in June?**

A. USCIS received and considered 225 public comments on the [proposed fee rule](#). The final rule acknowledges the comments received from the public and includes the following changes from the proposed rule:

- Expands fee-waiver eligibility to certain applicants and petitioners, including individuals seeking to appeal the denial of underlying applications or petitions that required no fee; individuals applying for humanitarian parole with an Application for Travel Document (Form I-131) and individuals with an Application to Extend/Change Nonimmigrant Status (Form I-539) who are covered under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008;
- Reduces the fee that refugees must pay for the Application for Travel Document (Form I-131);
- Eliminates two citizenship-related fees for those servicemembers and veterans of the U.S. armed forces who are eligible to file an Application for Naturalization (Form N-400) with no fee, specifically: the Request for Hearing on a Decision in Naturalization Proceedings (Form N-336) and the Application for Certificate of Citizenship (Form N-600);
- Exempts from the new civil surgeon fee certain physicians who examine servicemembers, veterans, and their families at U.S. government facilities;
- Clarifies that individuals with an Application to Extend/Change Nonimmigrant Status (Form I-539) with "V" nonimmigrant status must submit biometric information and pay the related biometric fee;
- Clarifies that USCIS will continue to offer a reduced fee for children filing an Application to Register Permanent Status or Adjust Status (Form I-485) concurrently with a parent; and
- Clarifies that USCIS will continue to offer fee waivers for the Petition to Remove the Conditions of Residence (Form I-751).

**Q. Why must USCIS adjust the fees for applications and petitions for immigration benefits?**

A. USCIS is a primarily fee-based organization, with about 90 percent of its budget coming from fees paid by applicants and petitioners for 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. USCIS's fee revenue in fiscal years 2008 and 2009 was much lower than projected, and fee revenue in fiscal year 2010 remains low. A fee adjustment, as detailed in the final 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.

**Q. Where has USCIS made budget cuts?**

A. 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 offsite training that will help reduce associated travel costs.

**Q. Why does USCIS charge fees for immigration benefits?**

A. The Immigration and Nationality Act authorizes USCIS to recover the costs of providing most immigration benefits and services through 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.

**Q. How does USCIS derive its fees and fee levels?**

A. USCIS uses Activity-Based Costing (ABC) to determine the full cost of immigration benefits and biometric services. ABC is a business management tool that assigns resource costs to operational activities and then to products and services. This process provides an accurate assessment of the costs associated with each service USCIS provides. The adjusted fees result from a combination of the ABC model results, estimated budgetary costs, projected levels of applications and petitions for the biennial period and policy and programmatic decisions detailed in the rule and its supporting documentation.

**Q. Where can I obtain more information about the final fee rule?**

A. The final rule and a detailed chart that identifies the adjusted fees for immigration benefit applications and petitions are available on [www.uscis.gov](http://www.uscis.gov).

**Questions and Answers: Public Comment Process**

**Q. How did USCIS seek the public’s input on the proposed fee rule?**

A. USCIS Director Alejandro Mayorkas hosted a national stakeholder engagement focused exclusively on the proposed fee rule. During this engagement, Director Mayorkas provided information about the proposed rule and encouraged the public to submit written comments following the instructions in the proposed rule.

USCIS also disseminated to stakeholders and the media information about the proposed fee rule, including guidance on how to comment. Throughout the public comment period, USCIS senior leadership took advantage of regularly scheduled engagements to discuss the proposed rule and encourage stakeholders to provide comments in writing.

**Q. Where can I obtain detailed information about the comments you received and how you responded?**

A. Discussion of the public comments is featured in the final fee rule, available for review on USCIS’s website at [www.uscis.gov](http://www.uscis.gov) and on the [Federal Register](http://www.federalregister.gov). We have grouped the comments into the following categories:

- General Comments
- Relative Amount of Fees
- Fee Waivers and Exemptions
- Naturalization
- Improve Service and Reduce Inefficiencies
- Premium Processing
- New Fees and Forms
- Methods Used to Determine Fee Amounts
- Authority to Set and Collect Fees
- Other Comments

**Q. Are the public comments still available for viewing?**

A. Yes. The public comments are available on [www.regulations.gov](http://www.regulations.gov) under DHS Docket No. USCIS-2009-0033. A synopsis of those comments and the USCIS response to them is also available in the fee rule itself. We have posted a link to the final fee rule on [www.uscis.gov](http://www.uscis.gov).

## Questions and Answers: Filing Applications and Petitions

### **Q. When will the adjusted fees take effect?**

A. The adjusted fees will take effect on November 23, 2010. Applications or petitions postmarked or filed on or after that date will require the new fees.

### **Q. How do I know whether to pay the adjusted fee or the old fee?**

A. Any application or petition postmarked with a date of November 23, 2010, or later will require the adjusted fee, as established in the final fee rule. Applications and petitions postmarked with a date of November 23, 2010, or later, but that do not contain the adjusted fee, will be rejected as improperly filed.

### **Q. What if I submitted my application package before November 23, 2010, but it was returned as incomplete?**

A. If you submitted an incomplete application or petition package prior to November 23, 2010, you may be subject to the adjusted fee when you re-file. Common filing mistakes include not signing forms and filling out the check improperly. All applicants and petitioners should carefully review their application or petition packages before submitting to ensure that they are complete.

### **Q. If my check is returned by the bank due to insufficient funds (i.e., a bad check) before the adjusted fees take effect, will I be allowed to issue a new check for the amount of the old fee?**

A. Yes. If the correct fee is paid before the final fee rule's effective date (November 23, 2010) with a bad check, a good check will be accepted if received within 14 days of the postmarked date on the USCIS notice. If the fee and associated bad check fees are not paid within 14 days, the application or petition will be rejected, and the adjusted fees will apply to any subsequent filing.

### **Q. If I send my application or petition before the adjusted fees take effect and it is returned for a minor error, will I be able to make the correction and resend the filing with the old fee?**

A. Yes. If the filing is accepted with the old fee, requests for evidence to correct errors will have no impact on the fee paid. But if the error affects USCIS's ability to accept the application as properly filed, the fee paid will be returned with the rejected application. The adjusted fees will apply to any subsequent filing if postmarked on or after the date the final rule takes effect (November 23, 2010).

### **Q. If I am currently an approved civil surgeon, will I be required to re-apply and pay the new civil surgeon fee?**

A. No. If you are currently a designated civil surgeon, you will not have to apply again for civil surgeon designation under the current civil surgeon program. (Note: As described above, the final rule exempts from the new civil surgeon fee certain physicians who examine servicemembers, veterans, and their families at U.S. government facilities.)

### **Q. What if an applicant or petitioner cannot afford a required fee?**

A. In certain circumstances, USCIS can waive fees on a case-by-case basis for "inability to pay." In determining "inability to pay," USCIS officers consider all circumstances documented in the evidence supplied by the applicant, including age, disability, household income and qualification within the past 180 days for a federal means-tested benefit. Fee waiver information is available online at [www.uscis.gov/feewaiver](http://www.uscis.gov/feewaiver).

In close collaboration with stakeholders, USCIS recently published an information collection notice in the *Federal Register* seeking public comments on the first-ever proposed form for fee waivers (Request for Individual Fee Waiver, Form I-912). The new form is intended to improve consistency in the adjudication of fee waivers.