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## USCIS Proposes Rule to Increase Certain Immigration Fees

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**Authors:** [Sari M. Long](#), [Beth E. Carlson](#), [Kiratpreet \(Kirat\) K. Sandhu](#)

Earlier this month, U.S. Citizenship and Immigration Services (USCIS) published a Notice of Proposed Rulemaking, proposing to increase the filing fees for certain immigration and naturalization benefit requests, with employment-based petitions undoubtedly seeing the greatest increase across the board.

USCIS hosted a public engagement session on the proposed fee rule on January 11, in which Director Ur M. Jaddou emphasized that fees have remained unchanged since 2016 and cited several reasons for the fee increases: covering higher costs due to inflation, avoiding any future backlogs, improving the use of technology, improving customer service, and reducing processing time. She further noted that USCIS is making a conscious decision to limit the naturalization application fee increase to less than 5% in an ongoing effort to encourage legal permanent residents to pursue naturalization and that USCIS intends to expand fee waiver categories. The proposed rule would generate an additional \$1.9 billion in fee-based revenue per year for USCIS, with the intended net result of minimally increasing fees for approximately one million filers each year. However, for employers who routinely sponsor nonimmigrant and immigrant workers, the increased fees pose a significant cost.

## New \$600 Asylum Program Fee for all Employment-Based Petitions

At the outset, USCIS is proposing to implement a new \$600 asylum program fee to be paid by all employers sponsoring temporary (nonimmigrant) workers using Form I-129, Petition for a Nonimmigrant Worker or permanent (immigrant) workers using Form I-140, Immigrant Petition for Alien Worker. This new fee is intended to

cover some of the costs associated with asylum processing, which does not currently require a fee. Employers will be responsible for this fee *each* time they file an I-129 petition, including all new, extension, and change of status petitions; this poses a special concern for employers with a large workforce of foreign nationals from visa backlogged countries like China and India who require several extension petitions throughout the duration of their employment, as they await immigrant visa availability.

## H-1B Pre-Registration Fee and Breakdown of Nonimmigrant Worker Classifications

Further, the H-1B Pre-Registration Fee will increase from \$10 to \$215. While employers each year use the H-1B lottery to pursue possible H-1B status for workers who may not have any other options for future work authorization, this increased fee may result in decreased lottery numbers, as smaller companies reevaluate whether they are willing to bear the increased cost of supporting an H-1B visa.

In the greatest departure from the current fee structure, fees for I-129 petitions will change from a baseline \$460 to new fees depending on the visa classification, with the following structure:

- H-1 Classification: \$780
- H-2A (Named Beneficiaries): \$1,090
- H-2A (Unnamed Beneficiaries): \$530
- H-2B (Named Beneficiaries): \$1,080
- H-2B (Unnamed Beneficiaries): \$580
- L Classification: \$1,385
- O Classification: \$1,055
- E, TN, H-3, P, O, and R Classifications: \$1,015

## Further Increases in Supporting Visa Status for Families of Foreign Nationals and USCIS' Push for Online Filing

Employers can also expect to incur increased costs for supporting families of foreign nationals. The fee for Form I-539, Application to Extend/Change Nonimmigrant Status (the application used most commonly to apply for extensions of dependents' status) will increase from \$370 to \$525 for online filings and \$620 for paper filings. While USCIS appears to be incentivizing online filing, practitioners remain wary as the online filing system for

attorney accounts remains prone to glitches and has proven to be inefficient compared to paper filings in the past.

## The Increased Cost of Permanent Residence

At first glance, the cost of initiating an employment-based permanent residence process appears to have changed nominally, with the fee for I-140 petitions increasing just \$15, going from \$700 to \$715. However, USCIS has significantly increased the filing fee for Form I-485, Application to Register Permanent Residence or Adjust Status. The cost of filing an I-485 application, along with Form I-131, Application for Travel Document and Form I-765, Application for Employment Authorization, will increase from \$1,225 with biometrics to \$2,820. As employers regularly evaluate whether to support the permanent residence process for employees on nonimmigrant visas, this increased cost may serve as a deterrent.

## Conclusion

These proposed fee increases will not change until the final rule goes into effect, after the 60-day notice and comment period ends and USCIS finalizes the fee schedule in response to comments received. The public can provide feedback on the proposed rule through the Federal Register (<https://www.regulations.gov/>) until March 6, 2023 at 11:59 p.m. In the USCIS Virtual Listening Session on January 11, USCIS noted the following four topics of interest to help frame comments:

1. Methods used to calculate and propose new fees.
2. Fee waiver availability, requirements, and exemptions.
3. Changes that affect employment-based programs and small entities.
4. Charting a separate fee for Forms I-765 and I-131 when filed with Form I-485.

For more information, please see the [USCIS News Release: USCIS Issues Proposed Rule to Adjust Certain Immigration and Naturalization Fees](#) and [Proposed Fee Rule Frequently Asked Questions](#).

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## MEET THE AUTHORS



Sari M. Long

Partner

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+1 303 607 3637

Denver

sari.long@faegredrinker.com



Beth E. Carlson

Counsel

---

+1 612 766 7652

Minneapolis

beth.carlson@faegredrinker.com



Kiratpreet (Kirat) K. Sandhu

Associate

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+1 317 237 1270

Indianapolis

kiratpreet.sandhu@faegredrinker.com

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