

USCIS Proposes Significant Fee Increases for U.S. Employer Filings

Alert

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On January 4, 2023, the U.S. Department of Homeland Security (DHS) published a proposed rule seeking 60-day comment on proposed changes to the fee schedule for benefit requests before U.S. Citizenship and Immigration Services (USCIS). DHS states that USCIS is a fee-based organization and that fee increases are needed to cover operating costs, improve processing times, and prevent future backlogs. The rule proposes an unprecedented 40% weighted average increase to the USCIS fee schedule. There is no set date by when these new fees could take effect. Following the 60-day comment period, DHS can amend the rule. The soonest the new fees could take effect is 30 days after the publication of a final rule.

The rule proposes fee increases to nearly all benefit requests, however, the most dramatic fee increases are proposed for employment-based filings and will pose a significant cost increase to businesses employing foreign workers.

Highlights of the proposed rule include:

INCREASED FEE FOR H-1B LOTTERY REGISTRATION

The rule proposes an increase in the fee for registration for the H-1B cap lottery. The current registration fee is \$10; the proposed registration fee is \$215, a dramatic 2050% increase. The nominal \$10 fee seemed to have an increase in registrations, thereby increasing the overall volume of applicants and lowering the chances of a selection in the lottery to approximately 30%.

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SEPARATE FEES FOR NONIMMIGRANT CLASSIFICATIONS ON FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The rule proposes discrete fee increases based on nonimmigrant classification requested on Form I-129. Currently, the filing fee for Form I-129 is uniformly \$460, regardless of nonimmigrant classification.

The table at the end of this alert shows the proposed fee schedule for each nonimmigrant classification.

Moreover, DHS proposes to limit the number of beneficiaries that can be requested on a single H-2A/H-2B, H-3, O, P, Q, or R petition to 25 named beneficiaries. For petitions that include more than 25 named beneficiaries, multiple petitions will be required.

ADDITIONAL \$600 ASYLUM PROGRAM FEE

Certain benefit requests require extra fees be paid in addition to the form filing fee. The rule proposes an additional \$600 Asylum Program Fee be paid by employers filing nonimmigrant petitions on Form I-129 or immigrant petitions on Form I-140. DHS indicates that the purpose of this fee is to mitigate fee increases on petitions traditionally submitted by individuals by shifting the cost onto petitions submitted by employers. DHS also indicates that the fee will be used to fund the costs of administering the asylum program.

For example, under the proposed rule, a private employer with more than 25 full-time employees petitioning for an H-1B employee with premium processing service would pay \$5,880, broken down as follows:

- \$780 I-129 filing fee for H-1B classification
- \$500 Fraud Prevention and Detection Fee
- \$1500 American Competitiveness and Workforce Improvement Act Fee
- \$600 Asylum Program Fee
- \$2500 Premium Processing fee (this is an optional fee to obtain a decision in 15 days)

HIGHER FEES FOR PAPER FILING

DHS currently permits some applications to be filed electronically. Where online filing is permitted, the fees are currently equal. As a part of the proposed fee increases, DHS proposes an even greater increase for paper filing where an application can also be filed electronically. For example, the filing fee for Form I-765 (Application for Employment Authorization) is currently \$495. DHS proposes a filing fee of \$555 if filed online, but a filing fee of \$650 if filed on paper.

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SEPARATE FILING FEES FOR INTERIM EMPLOYMENT AND TRAVEL BENEFIT REQUESTS ON THE BASIS OF A PENDING FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS

DHS proposes to require separate filing fees for Form I-765 and Form I-131 (Application for Travel Document) when filed concurrently with Form I-485 (Application to Register Permanent Residence or Adjust Status). Currently, there are no separate filing fees for Form I-765 and Form I-131 filed concurrently with Form I-485 or as standalone interim benefit requests while Form I-485 is still pending. Likewise, there are no filing fees associated with extending employment/travel authorizations as long as Form I-485 remains pending. In addition to increasing the Form I-485 filing fee from \$1,225 (includes interim benefits) to \$1,540, DHS proposes to charge an additional \$650 for Form I-765 and an additional \$630 for Form I-131. As a result, total fees for Form I-485 with interim employment and travel benefit requests will go from \$1,225 to \$2,820, a 130% increase.

CHANGE IN PREMIUM PROCESSING TIMEFRAME CALCULATION

DHS seeks to re-designate the timeframe calculation for benefit requests with premium processing service. Currently, premium processing service guarantees USCIS response within 15 calendar days (or 45 calendar days for certain qualifying I-140 petitions for multinational executives or managers or national interest waiver petitions).

The proposed rule would designate the timeframe as business days, defined as days that the federal government is open for business and excluding weekends, federally observed holidays, or days on which federal government offices are closed.

OPEN COMMENT PERIOD

The 60-day comment period for the proposed rule is currently open and runs until March 6, 2023. Employers, immigration professionals, and interested parties may submit comments to the proposed rule on the [Federal Register website](#).

TABLE OF PROPOSED FEE INCREASES FOR EMPLOYMENT-BASED BENEFIT REQUESTS

Form and Classification

Current Fee

Proposed Fee

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Percentage Increase

Asylum Program Fee

N/A

\$600

N/A

H-1B Lottery Registration Fee

\$10

\$215

2050%

I-129 H-1B Classification

\$460

\$780

70%

I-129 H-2A Classification – Unnamed Beneficiary

\$460

\$530

15%

I-129 H-2A Classification – Named Beneficiary

\$460

\$1,090

137%

I-129 H-2B Classification – Unnamed Beneficiary

\$460

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\$580

26%

I-129 H-2B Classification – Named Beneficiary

\$460

\$1,080

135%

I-129 L Classification

\$460

\$1,385

201%

I-129 O Classification

\$460

\$1,055

129%

I-129 H-3, P, Q, or R Classifications

\$460

\$1,015

121%

I-129 E or TN Classifications

\$460

\$1,015

121%

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I-140 Immigrant Petition for Alien Worker

\$700

\$715

2%

I-526 Immigrant Petition by Standalone Investor

\$3,675

\$11,160

204%

I-526E Immigrant Petition by Regional Center Investor

\$3,675

\$11,160

204%

I-765 Application for Employment Authorization –Online

\$410

\$555

35%

I-765 Application for Employment Authorization –Paper

\$410

\$650

59%

I-765 Application for Employment Authorization –Online (with biometric services)

\$495

\$555

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12%

I-765 Application for Employment Authorization – Paper (with biometric services)

\$495

\$650

31%

I-829 Petition by Investor to Remove Conditions on Permanent Resident Status

\$3,750

\$9,525

154%

I-829 Petition by Investor to Remove Conditions on Permanent Resident Status (with biometric services)

\$3,835

\$9,525

148%

I-907 Request for Premium Processing Service when filed with Form I-129 E-1, E-2, E-3, H-1B, H-3, L (including blanket L-1), O, P, Q, or TN nonimmigrant classification; or Form I-140 requesting EB-1, EB-2, or EB-3 immigrant visa classification

\$2,500

\$2,500

0%

I-907 Request for Premium Processing Service when filing Form I-129 requesting H-2B or R nonimmigrant classification

\$1,500

\$1,500

0%

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I-956 Application for Regional Center Designation

\$17,795

\$47,695

168%

I-485 Application to Register Permanent Residence or Adjust Status

\$1,140

\$1,540

35%

I-485 Application to Register Permanent Residence or Adjust Status (with biometric services)

\$1,225

\$1,540

26%

I-485 Application to Register Permanent Residence or Adjust Status (under the age of 14 in certain conditions)

\$750

\$1,540

105%

I-485 and I-131 with biometric services

\$1,225

\$2,170

77%

I-485 and I-765 (filed on paper) with biometric services

\$1,225

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\$2,190

79%

I-485, I-131, and I-765 (filed on paper) with biometric services

\$1,225

\$2,820

130%

For more information on the USCIS proposed fees, please contact [Olga Andreyeva](#), [Liz Chatham](#), [Brad Sandler](#), [Renee Steinle](#), [Jack Sturtz](#) or the Stinson LLP contact with whom you regularly work.

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