

PRESIDENTS' ALLIANCE | ON HIGHER EDUCATION AND IMMIGRATION

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Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

Re: DHS Docket No. USCIS 2021-0010, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

Dear Chief Deshommes,

We write on behalf of the Presidents' Alliance on Higher Education and Immigration (Presidents' Alliance), a higher education organization committed to supporting immigrant and international students and alumni. We submit this comment letter in response to the U.S. Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM or proposed rule), U.S. Citizenship and Immigration Services (USCIS) Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements (Docket No. USCIS 2021-0010).

The nonpartisan, nonprofit [Presidents' Alliance on Higher Education and Immigration](https://www.presidentsalliance.org) brings college and university presidents and chancellors together on the immigration issues that impact higher education, our students, campuses, communities, and nation. We work to advance just, forward-looking immigration policies and practices at the federal, state, and campus levels that are consistent with our heritage as a nation of immigrants and the academic values of equity and openness. The Alliance is composed of over 550 presidents and chancellors of public and private colleges and universities, enrolling over five million students in 43 states, D.C., and Puerto Rico.

The Presidents' Alliance understands the financial strain USCIS contends with and appreciates the agency's efforts to distribute the burden of fee increases as equitably as possible to account for the USCIS budget shortfall. However, even modest fee increases can pose significant financial barriers for some populations, including DACA recipients, international students, refugees, and anyone seeking to apply for naturalization. Ultimately, Congress should provide sufficient funding through annual appropriations, rather than saddling applicants seeking unrelated benefits with the responsibility of funding USCIS. Moreover, forcing unrelated applicants and requestors to pay to subsidize collateral benefits of other populations directly contravenes the mission and principles of USCIS. We include our comments and recommendations regarding certain fee changes below.

I. General comment

A. Changes to biometric fees

We are glad to see that USCIS largely folded biometric fees into the base application fee across application types. We encourage USCIS to consider which applications may benefit from reusing immutable biometrics (such as fingerprints) or biometrics that largely remain the same over decades (such as photos) submitted for some applications rather than requiring resubmission of biometrics at each renewal—especially for highly iterative

applications with shorter grant periods, like those for Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS). There is not a clear rationale for requiring applicants to travel to Application Support Centers (ASCs) to resubmit biometrics (which cannot generally not physically change between applications) with every renewal. USCIS has successfully used existing biometrics for certain forms during ASC closures for COVID-19, again demonstrating that resubmission is not necessary.¹ In addition to financial savings, the reuse of biometrics would also reduce the administrative burden for USCIS officers, who would not have to receive, record, and re-validate biometrics at every renewal. As the proposed rule does fold biometric costs into the base fee, we recommend that renewal applications that do not require additional biometrics processing reflect that fact via a lower fee.

B. Paper vs. online filing

We applaud USCIS' move to bring more applications online. However, the fee schedule proposes a difference in fees between paper and online filing, making paper filing at times significantly more expensive. For example, submitting Form I-765 Application for Employment Authorization on paper is nearly 20% more expensive (\$95) than submitting the online version. While understandable from an efficiency standpoint, this does reduce accessibility to affordable paper applications for those who may need them most—those with a language barrier, less technical literacy, without legal assistance, or without access to a computer or reliable internet. These populations will bear the brunt of increased fees divided in this manner. While not all applications list this fee change, DHS notes that increases in online filing or the number of forms available to be filed online will be considered in future fee reviews. While online filing is a welcome step for efficiency, we urge USCIS to incentivize online filing without punishing those that may need the paper option.

C. Additional efficiencies

We recommend additional efficiency measures to support efforts to reduce the application and adjudication burden on both USCIS personnel and applicants.

1. **Implement a “Known Trusted Employer” Program.** DHS should issue a Notice of Proposed Rulemaking for “Implementing a Known Employer Program for Certain Employment-Based Nonimmigrant and Immigrant Visa Classification” consistent with its Spring 2021 Unified Regulatory Agenda.² Treating well-known and repeat employers who file many petitions each year as if they are filing for the first time with every petition is expensive and inefficient.

¹ See “USCIS to Continue Processing Applications for Employment Authorization Extension Requests Despite Application Support Center Closures,” U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, last reviewed/updated March 30, 2020, <https://www.uscis.gov/news/alerts/uscis-to-continue-processing-applications-for-employment-authorization-extension-requests-despite>.

² “Implementing a Known Employer Program for Certain Employment-Based Nonimmigrant and Immigrant Visa Classification,” Office of Implementation and Regulatory Affairs, Office of Management and Budget, Executive Office of the President, Spring 2021, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1615-AC35>; Public Comment, “Re: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements; CIS No. 2687-21 DHS Docket No. USCIS2021-0010 Proposed rule; NAFSA comment on the proposed rule,” NAFSA: Association of International Educators, February 21, 2023, <https://www.nafsa.org/sites/default/files/media/document/2023NAFSACommentonUSCISFeeProposal.pdf>.

2. **Issue sequential instead of overlapping grant periods of DACA for renewal requests.** With sequential grants, DACA recipients receive full two-year periods of deferred action rather than one grant “cutting” into the next as they overlap, creating grants of one year and 8–11 months, for example. The Obama administration piloted a program (which the Trump administration ended) making this change, which should be resumed and expanded. This will reduce the administrative burden of adjudicating a higher frequency of applications by spacing them out to their full two years.
3. **Update existing policy regarding expired DACA applications to treat any subsequent application as a renewal.** Currently, USCIS considers DACA renewal applications filed within one year of expiration “renewal requests,” while considering applications filed more than one year after expiration as “initial requests.” We strongly recommend USCIS consider all applications filed after the expiration of a DACA request as “renewal requests” to reduce the burden on requestors who, due to economic or other barriers, are unable to file within one year. This change would also decrease the administrative burden on USCIS adjudicators, as renewals require less information and supporting documentation than initial applications.

D. Withdrawing the 2020 Fee Rule

To ensure USCIS’ considered policy choices are honored, we request that USCIS formally withdraw the proposed 2020 USCIS Fee Schedule and Immigration Benefit Request Requirements (“2020 Fee Schedule”).³ The 2020 Fee Schedule is preliminarily enjoined, with litigation stayed pending the results of the current rulemaking.⁴

USCIS has not yet formally withdrawn the 2020 Fee Schedule. We expect there to be legal challenges to a final rule based on this Proposed Fee Schedule, and should the currently proposed fee schedule be enjoined in whole or in part, the result should not be a return to the 2020 Fee Schedule. By formally withdrawing the 2020 Fee Schedule, USCIS can ensure that any resulting change would be a return 2016 Fee Schedule now in effect, not the 2020 Fee Schedule. In the final rule, USCIS should make clear that the withdrawal is severable.

II. Impact on DACA recipients

A. DACA application cost

We were glad to see that the fee for Form I-821D Consideration of Deferred Action for Childhood Arrivals will not have a proposed increase. However, we are concerned about the sharp increase for the accompanying Form I-765 Application for Employment Authorization, ranging from 31% to 59%, with a significant difference between online and paper filing (\$555 and \$650, respectively). The drastic difference between paper and online submission, while understandable, significantly disadvantages certain vulnerable applicants across the board. As we discuss below, DACA applicants do not have commensurate access to the I-912 fee waiver to assist with such increases.

B. Lack of fee waiver for DACA applicants

The proposed rule does not include fee waiver opportunities for Form I-821D Consideration of Deferred Action for Childhood Arrivals and the accompanying Employment Authorization

³ 85 Fed. Reg. 46,788 (Aug. 3, 2020).

⁴ ILRC v Wolf, Case No. 20-cv-05883-JSW (N.D. Cal., Sept. 29, 2020).

Document (EAD) application for DACA. Similar temporary statuses like TPS do get access to a fee waiver and are included in the codified list in the proposed rule—DACA should be too.

Unlike many other USCIS application forms, DACA applicants have historically been unable to apply for the usual I-912 fee waiver to assist with the cost of applying.⁵ DACA recipients must meet narrower criteria than the usual fee waiver and receive the exemption *before* they submit their application, adding time to an already delayed process. Almost half of DACA recipients surveyed had to receive financial help from family or other sources to afford application fees, and 36% of applicants reported delaying their application to raise funds.⁶

C. Accessibility of advance parole

We are encouraged to see that the fee for Form I-131 Application for Travel Document (known as advance parole) is slightly reduced (\$660 to \$630)—we do note, however, that DACA recipients can request advance parole only on employment, educational, or humanitarian grounds, despite there being no such statutory or regulatory restriction of advance parole for others,⁷ and are unable to apply for I-912 fee waiver for such an application. We urge USCIS to not only consider broadening the grounds for which DACA recipients can request advance parole to match others on temporary status, but ensure their affordability through an available fee waiver.

D. Concerning increases for forms necessary for Conditional Permanent Residence

We do not recommend USCIS implement the proposed increases for Form I-485 Application to Register Permanent Residence or Adjust Status (up by \$315, or 26%) and I-751 Petition to Remove Conditions on Residence (up by \$515, or 76%). The recently reintroduced Dream Act of 2023 provides a path to lawful status for qualifying Dreamers via “permanent resident status on a conditional basis,” or conditional permanent residence.⁸ Should Congress pass this or a similar bill in response to a court decision striking down DACA, for example, over one million potential applicants⁹ would now be faced with an extra \$830 in fee increases on their journey to citizenship.

III. Impact on international students and their pathway to H-1Bs

A. Dramatic increase in cost for H1-B visa

We are very concerned to see the fee for Form Petition for Nonimmigrant Worker H1-B increased by \$920 (a 200% increase) in the proposed rule. At the same time, the fee for H-1B Registration (the first step for employers to petition for a new H-1B visa for a prospective

⁵ “I-821D, Consideration of Deferred Action for Childhood Arrivals,” U.S. Citizenship & Immigration Services, U.S. Department of Homeland Security, last updated January 10, 2023, <https://www.uscis.gov/i-821d>; “I-912, Request for Fee Waiver,” U.S. Citizenship & Immigration Services, U.S. Department of Homeland Security, last updated December 21, 2022, <https://www.uscis.gov/i-912> (“You may not file Form I-912 if you are requesting consideration of Deferred Action for Childhood Arrivals (DACA). There are no fee waivers for DACA.”).

⁶ Tom K. Wong and Carolina Valdivia, *In Their Own Words: A Nationwide Survey of Undocumented Millennials*, United We Dream 4 (May 20, 2014), available at https://docs.wixstatic.com/ugd/bfd9f2_4ac79f01ab9f4247b580aeb3afd3da95.pdf.

⁷ “I-131, Application for Travel Document,” U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, last updated January 23, 2023, <https://www.uscis.gov/i-131>.

⁸ See U.S. Congress, Senate, *Dream Act of 2021*, S.264, 117th Cong., introduced in Senate February 4, 2021, <https://www.congress.gov/bill/117th-congress/senate-bill/264/>.

⁹ “Deferred Action for Childhood Arrivals (DACA) Data Tools,” Migration Policy Institute, as of September 30, 2022, <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>.

employee) would experience a 2050% increase from \$10 per registration to \$215. This will lead to a total increase of \$1,125 per applicant for a total of \$1,595 from the original \$470, over three times more expensive. Not only will this increase make it harder for colleges and universities to secure the best and brightest faculty, staff, and scholars from around the world, it will make it more difficult for international students to invest their U.S. education in the United States by disincentivizing their hiring. An estimated 100,000 international graduates of U.S. colleges and universities each year desire to stay and work permanently in the United States after completing their studies here.¹⁰ Their presence is a boon to both the U.S. economy and the job market. One year's worth of graduates could add \$233 billion to the U.S. economy over a decade and reduce STEM-related talent shortages by about 25%.¹¹

B. Exemption from New Asylum Surcharge

The proposed fee schedule imposes a \$600 surcharge for asylum processing “paid by any employers who file either a Form I-129, Petition for a Nonimmigrant Worker, or Form I-140, Immigrant Petition for Alien Worker.” First, we urge Congress to fund any shortfall in funding resulting from processing humanitarian assistance rather than applying the surcharge to colleges and university employers. Second, if there is a surcharge, it should only apply to initial applications rather than renewal—the way the current language is worded, the surcharge may be interpreted to be applied to either. Applying this surcharge to this group of employers cross-purposes with statutory and regulatory provisions treating these types of employers separately in recognition of the public benefit they provide. For example, Congress recognized this principle when it exempted them from the American Competitiveness and Workforce Improvement Act (ACWIA) training fee.¹² Additionally, it is why colleges and universities have a separate wage pool for purposes of prevailing wage determinations for labor condition applications and permanent labor certification programs. Similarly, colleges and universities should not be subject to the asylum processing surcharge, as those costs will ultimately have to be passed to students.

C. Harm to OPT and STEM OPT applicants

Under the proposed rule, application fees for Form I-539 increase from \$455 to \$620 (36%) for paper and to \$525 (15%) online. USCIS estimates that the “vast majority” of the workload for this form be attributed to optional practical training (OPT) and science, technology, engineering, and mathematics optional practical training (STEM OPT) extensions based on Student and Exchange Visitor Information System data, indicating that the fee increase will largely affect student applicants of those programs. OPT and STEM OPT positions are not required to be paid so long as they relate to a student's major and course of study,¹³ and many F-1 students take unpaid positions to gain relevant experience in their field. Applicants must also apply for an EAD, which is also experiencing steep fee increases.¹⁴ International students have very limited options for experiential learning opportunities in their field of study, and for many, programs like OPT and STEM OPT will be their only avenues. OPT

¹⁰ Phillip Connor, *Retaining U.S. International Student Graduates Could Help the U.S. Win the Global Talent Race*, FWD.us, February 2, 2022, <https://www.fwd.us/news/us-international-students/>.

¹¹ *Id.*

¹² “H and L Filing Fees for Form I-129, Petition for a Nonimmigrant Worker,” U.S. Citizenship & Immigration Services, U.S. Department of Homeland Security, last updated February 20, 2018, <https://www.uscis.gov/forms/all-forms/h-and-l-filing-fees-for-form-i-129-petition-for-a-nonimmigrant-worker>.

¹³ “Student and Exchange Visitor Program: Practical Training,” U.S. Immigration Customs & Border Enforcement, U.S. Department of Homeland Security, last updated November 14, 2022, <https://www.ice.gov/sevis/practical-training>.

¹⁴ *Id.*

offers an experiential learning opportunity that serves as a key feature of the U.S. higher education experience. Any changes to the program should enhance, not deter, prospective international students from choosing the United States for their degrees.

IV. Impact on those seeking to adjust status

A. Positive changes to naturalization

We were encouraged to see that the proposed fees for Form N-400 Application for Naturalization were raised a reasonable amount (\$35 for the regular fee) and decreased by \$25 for the reduced fee. Additionally, any applicant under 200% of the federal poverty level can request the reduced fee, instead of only those between 150% and 200% of the federal poverty level. However, while for most applicants the Reduced Fee for Form N-400 would decrease, it would increase from \$320 to \$380 for elderly applicants who do not need to provide biometrics.

B. Refugee and asylum applications

We are very glad to see the proposed fee exemptions available for refugee and asylee applicants, including for EAD renewal and replacement and Form I-131 Application for Travel Document. Forms I-589 and I-590 to apply for refugee or asylum status continue to be free.

V. Conclusion

Thank you for your time in reading this comment. If you have any questions, please contact Diego Sánchez, Director of Policy and Communications at the Presidents' Alliance for Higher Education and Immigration, at diego@presidentsalliance.org.