

December 30, 2019

Samantha Deshommès, Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2019-0010, RIN: 1615-AC18, Comments in Response to Notice of Proposed Rulemaking: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

Dear Ms. Deshommès:

We, the undersigned Members of Congress, submit this comment in opposition to the Department of Homeland Security (DHS) proposed rule, “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” published in the Federal Register on November 14, 2019. As Chairs and Ranking Members of the House and Senate Committees on the Judiciary and Chairs of the House Committee on Appropriations, we are responsible for ensuring that DHS complies with the constitutionally mandated appropriations process and executes its authority to collect fees in a manner consistent with the law. Although U.S. Citizenship and Immigration Services (USCIS) is required to conduct a biennial fee review and may adjust fees to fully recover the cost of immigration benefit processing, we are deeply troubled by significant portions of the proposed rule, which reflect policies that run contrary to congressional intent.¹

Sections 286(m) and 286(n) of the Immigration and Nationality Act (INA), which establish the Immigration Examinations Fee Account (IEFA), generally authorize DHS to set fees “at a level that will ensure the recovery of the full costs of providing [adjudication and naturalization services]” as well as “any costs associated with the administration of the fees collected.”² When DHS seeks to deviate from this direction to “make additional [cost] adjustments to effectuate policy objectives,”³ it must do so consistent with applicable laws and articulate a rational basis for its methodology. Agencies engaged in rulemaking must “examine relevant data and articulate a satisfactory explanation for [the] action including a ‘rational

¹ This comment is 11 pages, with a subsequent enclosure. The enclosure is a copy of a letter from Acting Secretary Chad Wolf to the Chairs and Ranking Members of House and Senate Committees on Homeland Security Appropriations. DHS should consider all citations to supporting evidence and authority and the enclosure as part of the formal administrative record for purposes of the Administrative Procedures Act (APA). Throughout the comments that follow, we have included numerous citations to supporting evidence and authority, including direct links. We direct DHS to each citation and request that the full text of the evidence and authority cited, along with the full text of our comment, be incorporated into and considered part of the formal administrative record for purposes of the APA.

² INA § 286(m), 8 U.S.C. § 1356(m).

³ Notice of Proposed Rulemaking, *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, 84 Fed. Reg. 62280, 62284, 86-87 (Nov. 14, 2019); see also *U.S. Citizenship and Immigration Services Fee Schedule*, 81 Fed. Reg. 73292, 73296 (Oct. 24, 2016).

connection between the facts found and the choice made.”⁴ DHS fails to provide such satisfactory explanations throughout the rule.

For example, although DHS asserts the need to raise fees in part to address funding shortfalls, it fails to provide any explanation for a significant portion—over 50 percent—of its projected \$1.2 billion funding shortfall or account for the impact of any cost savings on the projected shortfall. Because DHS does not provide a reasoned methodology for its calculation, or a satisfactory explanation for its proposed fees, we are unable to assess whether this projected shortfall is due to mismanagement of funds—or was simply created out of thin air.

The proposed rule also calls into question whether DHS is setting fees consistent with applicable laws and congressional intent, including the intent for USCIS to use IEFA funds to provide quality adjudication services. Although DHS proposes to increase fees by a weighted average of 21 percent, it confirms that such fees will not improve the efficiency of USCIS adjudications. DHS also declined, despite congressional requests, to consider the effect of eliminating reduced fees on applicants for naturalization or to maintain fee waivers for such applicants. DHS instead proposes to increase fees and eliminate fee waivers, effectively prohibiting most working-class families and vulnerable immigrants from accessing immigration benefits, including naturalization.

A. DHS Should Exclude Any Transfer of IEFA Funds to ICE From Its Cost Analysis

We are particularly troubled by DHS’s proposal to transfer roughly \$112 million per year in immigration benefits fees to Immigration and Customs Enforcement (ICE). Over the last few years, Congress has denied DHS’s requests to transfer such fees to ICE, and it has continued to fully fund ICE’s operations by direct appropriation of discretionary funds.⁵ The proposed transfer runs contrary to this clear congressional intent, as well as clear congressional intent in separating the Department’s immigration adjudication functions from its enforcement functions.

Fees have been charged for certain immigration services since at least the enactment of the Immigration and Nationality Act in 1952.⁶ Congress established the IEFA in 1988 to allow the former Immigration and Naturalization Service (INS) to retain and use such fees to cover the costs of providing services, rather than to remit fees to the Treasury as is the case with most other federal fees.⁷ Under the Homeland Security Act of 2002, the functions of the former INS

⁴ *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

⁵ In the original Notice of Proposed Rulemaking, which provided approximately 30 days for the public to comment, DHS proposed to transfer \$207 million from the IEFA to ICE. However, on December 9, 2019, DHS extended the comment period by 14 days and decreased the proposed transfer to \$112 million. Notice of Proposed Rulemaking, *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, 84 Fed. Reg. 67243, 67246 (Dec. 9, 2019).

⁶ Joint Written Testimony of Joseph Moore, Donald Neufeld, and Daniel Renaud, *Hearing on Oversight of U.S. Citizenship and Immigration Services: Ensuring Agency Priorities Comply with the Law*, Senate Committee on the Judiciary, Subcommittee on Immigration and National Interest (Mar. 2015), <https://www.uscis.gov/tools/resources-congress/presentations-and-reports/oversight-us-citizenship-and-immigration-services-ensuring-agency-priorities-comply-law-senate-committee-judiciary-subcommittee-immigration-and-national-interest-march-2015>.

⁷ Pub. L. No. 100-459, § 209, 102 Stat. 2186 (Oct. 1, 1988) (codified as amended at INA §§ 286(m) and (n), 8 U.S.C. §§ 1356(m) and (n)); see also Pub. L. No. 101-515, § 210(d)(1) and (2), 104 Stat. 2101 (Nov. 5, 1990) (further amending INA §§ 286(m) and (n), 8 U.S.C. §§ 1356(m) and (n)).

were transferred to DHS, with responsibility for immigration benefits functions assigned to what eventually became USCIS. The enforcement functions of the former INS were split between U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP).⁸

In separating service functions from enforcement functions, Congress intended to create a component responsible for the efficient and effective provision of immigration benefits.⁹ Consistent with this intent, the Homeland Security Act also separated funding for the agency's service and enforcement functions, maintaining the IEFA account to support the service-related functions of USCIS.¹⁰ In doing so, the Homeland Security Act created a strong presumption against transferring funds between the service and enforcement components of DHS. The Act expressly provides that “[n]o fee may be transferred between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security for purposes not authorized [under IEFA].”¹¹

The U.S. Constitution places the authority to govern the expenditure of public funds squarely with Congress. The Congressional “power of the purse” prohibits expenditures “but in Consequence of Appropriations made by Law.”¹² The Framers envisioned this power of the purse as “the most complete and effectual weapon” to prevent executive overreach.¹³ Courts have confirmed that the Congressional appropriation process is “an integral part of our constitutional checks and balances, insofar as they tie the Executive Branch to the Legislative Branch via purse strings.”¹⁴

Consistent with this power, Congress has chosen to appropriate funds for immigration enforcement purposes to ICE and CBP. Specifically, Congress rejected the use of USCIS fees to offset “[ICE] discretionary funds” as proposed in the FY2019 and 2020 President’s Budget Requests, and instead provided such funding directly to ICE through annual appropriations.¹⁵ Despite this, DHS proposes to increase its cost projections based on the use of \$112 million

⁸ Pub. L. No. 107-296, 116 Stat. 2208 (codified at 6 U.S.C. §§101 *et seq.*). (Nov. 25, 2002).

⁹ *See id.*

¹⁰ *See id.* at § 467.

¹¹ *Id.* at § 467(d).

¹² U.S. CONST., art. I, § 9.

¹³ *The Federalist Papers* No. 58 at 357 (James Madison) (Clinton Rossiter ed., 2003).

¹⁴ *United States House of Representatives v. Burwell*, 185 F. Supp. 3d 165, 170 (D.D.C. May 12, 2016); *see also, e.g., United States v. MacCollom*, 426 U.S. 317, 321 (1976) (“The established rule is that the expenditure of public funds is proper only when authorized by Congress[.]”) (citing *Reeside v. Walker*, 52 U.S. (11 How.) 272, 291 (1850)).

¹⁵ Letter from Acting Secretary of DHS Chad Wolf to Chairs and Ranking Members of Senate and House Committees on Homeland Security Appropriations (Dec. 11, 2019), enclosed; *see also* Dep’t of Homeland Security, *FY 2019 Budget in Brief*, at 10, 78, <https://www.dhs.gov/publication/fy-2019-budget-brief>; Dep’t of Homeland Security, *FY 2020 Budget in Brief*, at 60, <https://www.dhs.gov/publication/fy-2020-budget-brief>; S. REPT. NO. 116-125 (2019) (excluding ICE operations from IEFA funds in FY2020 appropriations report) *and* H.R. REPT. NO. 116-180 at 30 (2019) (“an administrative provision in the bill prohibits the use of IEFA funds for ICE operations”); H.R. REPT. NO. 115-948 (2018) and S. REPT. NO. 115-283 (2018).

annually to reimburse ICE, including for years where such activities were funded by annual appropriations, and to raise fees significantly as a result.¹⁶

DHS’s Cost Estimate for Funds to be Transferred to ICE¹⁷

Fiscal year	ICE Hours to Be Funded by IEFA	Projected Transfer of Funds to ICE
FY 2017	517,531	\$94,771,656
FY 2018	547,774	100,309,835
FY 2019	572,004	104,746,897
FY 2020	601,748	110,193,736
FY 2021 *	601,748	112,287,417

Congressional appropriators have also expressed a clear intent that IEFA funds be used to improve operations at USCIS, not increase ICE discretionary funding or otherwise support DHS enforcement activities.¹⁸ Although DHS may make reasonable adjustments to the USCIS fee schedule, it is unreasonable for the Department to increase fees based on activities contemplated, rejected, *and* made unnecessary by Congressional appropriators.¹⁹ Given this clear expression of Congressional intent, it is equally unreasonable for DHS to presuppose that Congress would authorize such a transfer for FY2021—or increase fees accordingly.

B. DHS Does Not Adequately Explain Its Basis to Increase Fees

Under the Chief Financial Officers Act, DHS must review—on a biennial basis—fees collected for the provision of agency services and recommend changes to “reflect costs incurred

¹⁶ 84 Fed. Reg. at 62287. DHS initially stated that the funding transfer to ICE would make up roughly 28.5 percent of DHS’s 21 percent weighted average fee increase, but since reducing the ICE transfer amount of \$112 million, DHS did not specify how much fees would be reduced. *See id.* at 67246.

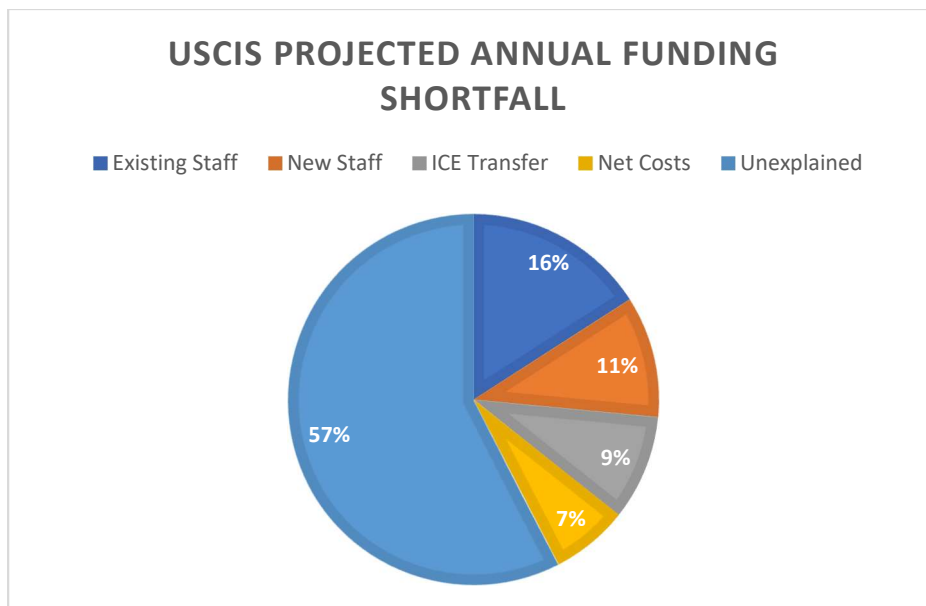
¹⁷ 84 Fed. Reg. at 67243, 67246.

¹⁸ *See, e.g.*, H.R. REPT. NO. 116-180 at 30.

¹⁹ DHS has acknowledged that it lacks the authority to conduct such a transfer absent appropriations. *See* 84 Fed. Reg. at 62327 *and* Letter from Acting Secretary of DHS Chad Wolf to Chairs and Ranking Members of Senate and House Committees on Homeland Security Appropriations (Dec. 11, 2019) (“If a full-year appropriation Act for the Department of Homeland Security were to provide discretionary funding to fully support ICE’s operations related to immigration adjudication and naturalization services for fiscal year 2020, the Department will not move forward with this proposal.”). Although DHS contends that certain ICE activities are allowable costs under sections 286(m) and (n) of the INA, 8 U.S.C. 1356(m) and (n), it is unclear, based on the explanation provided, whether the ICE activities listed constitute “adjudication and naturalization services.” Additional detail from DHS is necessary to determine whether the listed ICE activities constitute such services as described in sections 286(m) and (n) of the INA, 8 U.S.C. 1356(m) and (n), and such question would only be relevant if Congress had not rejected DHS’s transfer request and separately funded such activities through annual appropriations. *See* 84 Fed. Reg. at 67246.

by it in providing those services.”²⁰ Similarly, in establishing the IEFA, Congress expected that DHS would “identify . . . to the Congress collections to and expenses from the Account.”²¹ Because USCIS is primarily fee funded, the biennial review process generally provides the only opportunity for Congress—and members of the public—to view an accounting of costs and operations using IEFA funds.²² Despite the length and complexity of the proposed rule, however, DHS fails to adequately explain the basis for most of USCIS’s projected expenses, or take into consideration cost savings that should result from policy changes.

USCIS attempts to justify its proposed fee increase by projecting a \$1.2 billion annual funding shortfall, just three years after fees were significantly increased in 2016.²³ DHS explains four of the bases for this shortfall: (a) the proposed transfer of funding to ICE; (b) pay and benefits for on-board staff; (c) costs associated with hiring new staff; and (d) net additional costs and general expenses to sustain current operations.²⁴ Collectively, however, these only account for 40 percent of DHS’s projected funding shortfall. In other words, DHS fails to account for over \$650 million per year, or 57 percent, of its funding shortfall.²⁵



²⁰ 31 U.S.C. § 902(a)(8).

²¹ H.R. REPT. NO. 100-979 at 38 (1988).

²² U.S. Government Accountability Office (GAO), *Immigration Application Fees: Costing Methodology Improvements Would Provide More Reliable Basis for Setting Fees*, GAO-09-70 (Jan. 23, 2009).

²³ 84 Fed. Reg. at 62282, 88. Assuming DHS intends to reduce its overall funding shortfall based on the change in the amount of the proposed IEFA transfer to ICE, the overall funding shortfall would be reduced to approximately \$1.167 billion. DHS did not explain how this adjustment would impact the budget shortfall or fee analysis.

²⁴ 84 Fed. Reg. at 65585

²⁵ *Id.* at 62286-87, 67246. The numbers reflected in the chart are an average of FY 2019 and 2020 cost projections articulated at 84 Fed. Reg. at 62285, adjusted for the reduction in the proposed transfer to ICE. Based on DHS’s initial proposal for FY 2019, the agency’s proffered cost projections add up to roughly 60 percent (\$755 million) of the projected annual \$1.263 billion budget shortfall. Adjusted for a \$112 million transfer to ICE, DHS accounts for even less—roughly 57 percent (\$660 million) of an estimated \$1.167 billion-dollar shortfall. In addition, the cost projections for FY 2020 account for *only* 29 percent (\$337.1 million), leaving approximately 69 percent of the agency’s projected annual shortfall without any clear justification.

DHS also does not account for cost savings resulting from recent and proposed policy changes. For example, in 2016, DHS increased USCIS fees by a weighted average of 21 percent—in large part to offset the cost from an increase in fee waivers.²⁶ DHS estimates that fee waivers cost USCIS an average of 262 million dollars annually.²⁷ Although DHS admits that eliminating existing fee waivers will reduce agency costs, it declines to reduce the agency’s overall cost projections, and does not explain how the expected 262 million dollars in savings will be spent.²⁸ Similarly, just under half of the fee increase in 2016 went towards a one-time surcharge to fund USCIS’s Refugee, Asylum, and International Operations (RAIO) division and the Office of Citizenship.²⁹ USCIS has since drastically reduced refugee admissions, implemented numerous policies barring most new applicants for asylum,³⁰ and announced plans to close 13 international field offices between now and August 2020.³¹ These policy changes logically should lead to costs savings. DHS, however, declines to consider the savings from closing international field offices, and fails to factor in reduced asylum and refugee applications into its cost projections.³² DHS’s failure to provide an accurate and complete account of costs and savings “calls into question whether [USCIS] is adequately meeting its legal mandate to serve the public and whether government funds are being spent with the necessary care.”³³ Without a proper accounting, it is impossible to ensure that USCIS is using its fees in a manner that promotes government efficiency and quality adjudications.

C. The Proposed Fee Increase Will Not Improve Case Processing Delays

In enacting the Homeland Security Act of 2002, Congress expressed its sense that the processing of most immigration benefits applications “should be completed not later than 180 days after the initial filing of the application,” and that petitions for nonimmigrant visas “should be processed not later than 30 days after the filing of the petition.”³⁴ Despite this, USCIS is currently experiencing record high processing delays and case backlogs. Although case backlogs

²⁶ 81 Fed. Reg. at 73308.

²⁷ See Dep’t of Homeland Security, *Regulatory Impact Analysis, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements* at 34 (Oct. 30, 2019), <https://www.regulations.gov/document?D=USCIS-2019-0010-0559> (hereinafter “Regulatory Impact Analysis”). DHS states that without the elimination of fee waivers, fees would increase by a weighted average of 31 percent; or absent such elimination, USCIS would have a \$1.6 billion shortfall. DHS does not account for this increased shortfall.

²⁸ 84 Fed. Reg. at 62288, 94-95. The proposed rule states that “DHS believes that reducing the projected costs to equal the projected revenue would risk degrading USCIS operations funded by IEFA,” and does not appear to address any reductions in costs based on policy changes. See Regulatory Impact Analysis at 7, 52; 84 Fed. Reg. at 62298.

²⁹ 84 Fed. Reg. at 73308

³⁰ See, e.g., Interim Final Rule, *Asylum Eligibility and Procedural Modifications*, 84 Fed. Reg. 33829 (July 16, 2019); Executive Office of the President, *Presidential Executive Order on Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities* (Oct. 24, 2019) (reducing refugee admissions to 18,000 for FY 2020).

³¹ U.S. Citizenship and Immigration Services, *International Immigration Offices*, <https://www.uscis.gov/about-us/find-uscis-office/international-immigration-offices>.

³² See 84 Fed. Reg. at 62288, and n. 114 (“The volume and cost projections used in this rule were generated before planning to adjust the international footprint of USCIS and do not incorporate cost changes associated with the adjustment. DHS will incorporate resulting cost changes in future fee rules.”).

³³ *Hearing on the Implementation of the Immigration Act of 1990*, House Committee on the Judiciary, Subcommittee on International Law, Immigration, and Refugees, Washington: GPO 1991 at 18 (May 15, 1991).

³⁴ Pub. L. No. 107-296 § 451; Pub. L. No. 106-313, 114 Stat. 1262 § 202 (Oct. 17, 2000).

and processing delays have ebbed and flowed since the creation of USCIS, the current net backlog is disturbingly high at more than 2.4 million cases.³⁵ As illustrated below, this represents a 344 percent increase from the net backlog of 543,859 cases in FY 2014, and is the largest net backlog since 2003, when adjudications ground to a halt in the aftermath of the 9/11 terrorist attacks.³⁶

Congress has repeatedly expressed serious concerns with current backlogs and processing delays at USCIS. Bipartisan letters of inquiry have been sent to USCIS by leaders in both the House and the Senate, and on May 31, 2019, the Government Accountability Office (GAO) accepted a request from more than 80 Members of Congress to initiate an inquiry into current USCIS backlogs.³⁷ On July 16, 2019, the Subcommittee on Immigration and Citizenship held a hearing to examine the causes and effects of USCIS case processing delays, and the impact of such delays on individuals and U.S. entities.³⁸ As noted previously, Congress rejected DHS's request to transfer IEFA funds to ICE, in part "due to concerns with the impact to [USCIS] operations and the growing backlog in applications for immigration benefits."³⁹

As recently as May 2019, USCIS has informed Members of Congress that the implementation of a new fee schedule would provide the necessary funding to improve processing by 2021.⁴⁰ However, although DHS proposes to increase immigration fees by a weighted average of 21 percent, such fees increase are *not* expected to reduce backlogs or improve processing times.⁴¹ Instead, DHS admits that the new fees will fund—in part—the costs of policy changes that have increased backlogs and processing delays.⁴² For example, in explaining the proposed fee increase for adjustment of status applications, DHS cites to a recent policy change to expand in-person interviews for such applications.⁴³ The policy change requires interviews for applicants who have previously been screened and are already in the United States—often for years, or even decades.⁴⁴ Prior to this, USCIS officers could require an

³⁵ See, e.g., Joint Written Testimony of Donald Neufeld, Michael Hoefler, and Michael Valverde, *Hearing on Policy Changes and Processing Delays at U.S. Citizenship and Immigration Services*, House Committee on the Judiciary, Subcommittee on Immigration and Citizenship (July 16, 2019), <https://judiciary.house.gov/legislation/hearings/policy-changes-and-processing-delays-us-citizenship-and-immigration-services> (hereinafter "2019 Hearing on Policy Changes and Processing Delays").

³⁶ See Letter from USCIS to 86 Members of Congress (Apr. 5, 2019) https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Representative_Garcia.pdf (hereinafter "April 5, 2019 USCIS Letter").

³⁷ See *id.* and Bipartisan Letter from USCIS to 32 Senators, https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Senator_Tillis.pdf (hereinafter "May 23, 2019 USCIS Letter"); May 31, 2019 Letter from Government Accountability Office, <https://chc.house.gov/media-center/press-releases/following-chc-request-gao-agrees-to-open-investigation-into-record>.

³⁸ See, e.g., 2019 Hearing on Policy Changes and Processing Delays; May 23, 2019 USCIS Letter.

³⁹ H.R. REPT. NO. 116-180.

⁴⁰ May 23, 2019 USCIS Letter.

⁴¹ 84 Fed. Reg. at 62295

⁴² 84 Fed. Reg. at n. 48;62304-05, n. 106-107

⁴³ *Id.*

⁴⁴ *USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants* (Aug. 28, 2017), <https://www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants>; U.S. Citizenship and Immigration Services, *Adjustment of Status Interview Guidelines and Waiver Criteria*, PA-2018-04 (May 15, 2018),

in-person interview on a case-by-case basis if an application presented fraud, national security, or other concerns. Now all cases that fall under the policy, even those that are clearly approvable, are subject to a mandatory interview.⁴⁵ USCIS has acknowledged that as a result of this new policy, processing times for both application types have increased by approximately 40 percent.⁴⁶

USCIS Historical Average Processing Times (in Months) for Adjustment of Status⁴⁷

Form No.	Form Name	FY 2015 Processing Time	FY 2019 Processing Time
I-485	Application for Adjustment of Status (Employment-Based)	6.5	12.8
I-485	Application for Adjustment of Status (Family-Based)	6.6	11.1

Although USCIS has provided no data to indicate that this change was necessary—or that the change has improved the quality of adjudications—it now proposes a 79 percent fee increase for adjustment of status applications, including ancillary benefits.⁴⁸ In other words, this fee increase would support changes that, by DHS’s own admission, will “impede efficient case processing” and appear to have no positive impact on the quality or effectiveness of USCIS adjudications.⁴⁹ This is contrary to Congress’s express intent to create a service-oriented component of DHS and to promote efficient adjudications of immigration benefits.

D. The Proposed Rule Will Disproportionately Impact Working Class Families

DHS’s proposal to eliminate most fee waivers and exemptions, coupled with dramatic fee hikes for most immigrants is also contrary to Congress’s longstanding commitment to create a fair and accessible immigration system for all—including asylum seekers and working-class individuals and families. Congress enacted the Refugee Act of 1980 “to respond to the needs of refugees and homeless people around the world . . .”⁵⁰ Congress recognized that new asylum-seekers and refugees could face initial challenges to setting up an economic future in the United States, but found that “American ideals” and “fundamental American values” demand a

<https://www.uscis.gov/sites/default/files/policymanual/updates/20180515-AdjustmentInterview.pdf> (removing discretion to waive interview requirement for employment based immigrants and relatives of asylees and refugees).

⁴⁵ April 5, 2019 USCIS Letter.

⁴⁶ *Id.*

⁴⁷ *USCIS Historical National Average Processing Time for All USCIS Offices* (as of Sept. 30, 2019),

<https://egov.uscis.gov/processing-times/historic-pt>.

⁴⁸ 84 Fed. Reg. at 62304-05, n. 106-107 (citing *USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants*, *supra* n. 44).

⁴⁹ *Id.*

⁵⁰ 125 Cong. Rec. 23232 (1979) (floor Statement of Sen. Edward Kennedy introducing Refugee Act in Senate).

compassionate asylum and refugee system.⁵¹ This intent has been solidified over the last two decades, as Congress has expanded immigrants' access to supplemental public benefits such as food stamps and the Children's Health Insurance program.⁵²

In providing such opportunities, Congress has allowed immigrants to improve their standing and, in turn, build a strong economy for all Americans. New immigrants arrive to the United States at the start of their economic journey. While they may initially make less than their U.S.-born peers, over time, immigrants quickly adapt to our country and are upwardly mobile. Studies show that immigrants with less than a college education close the economic gap with their native-born peers within seven years of entry.⁵³ According to a new study conducted by economists at Princeton University, immigrants tend to earn less than their U.S. born counterparts when they first arrive to the United States, but within a generation, their children experience "higher rates of upward mobility than their U.S.-born peers."⁵⁴ Notably, children who grew up in the poorest 25% of the income distribution had rates of economic mobility that significantly exceeded that of U.S. born children.⁵⁵ Moreover, the National Bureau of Economic Research found that refugees pay \$21,000 more in taxes than they receive in benefits over their *first 20 years in the United States*.⁵⁶

Consistent with these findings, Congress authorized USCIS to set fees "at a level that will ensure recovery of the full costs of . . . services provided *without charge to asylum applicants or other immigrants*."⁵⁷ Despite this, DHS proposes to eliminate most fee waivers except where the USCIS is required to grant waivers by statute, or where applicants meet a new, higher standard.⁵⁸ Within that already limited population, DHS further proposes to limit waivers to individuals with annual household incomes below 125% of the federal poverty guidelines.⁵⁹ DHS also proposes to impose an unprecedented \$50 filing fee on asylum seekers and eliminate the fee exemption for an initial employment authorization application.⁶⁰ In proposing these changes, DHS breaks from decades of executive practice and ignores clear congressional intent to create a fair and accessible immigration system.

⁵¹ *Id.*

⁵² *See e.g.* Pub. L. No. 105-185, 112 Stat. 523 (June 23, 1998) (extending SNAP eligibility to immigrant children residing in the United States before 1996); Pub. L. No. 107-171, 116 Stat. 134 (May 13, 2002) (expanding SNAP to immigrant children, immigrants receiving disability benefits, and immigrant adults living in the United States in a qualified immigrant status for more than five years); Pub. L. No. 111-3, 123 Stat. 8 (Feb. 4, 2009) (reauthorizing the Children's Health Insurance Program).

⁵³ Leighton Ku and Drishti Pillai, *The Economic Mobility of Immigrants: Public Charge Rule Could Foreclose Future Opportunities*, Social Science Review Network (Dec. 10, 2018).

⁵⁴ Ran Abramitzky & Leah Boustan, *Just like the Children of European Immigrants 100 Years Ago, the Kids of Recent Immigrants are Moving Up the Ladder, Too*, Princeton University Department of Economics (Oct. 10, 2019).

⁵⁵ *Id.*

⁵⁶ William N. Evans and Daniel Fitzgerald, *The Economic and Social Outcomes of Refugees in the United States: Evidence from the ACS*, National Bureau of Economic Research, Working Paper 23498 (June 2017).

⁵⁷ INA § 286(m), 8 U.S.C. § 1356(m) (emphasis added).

⁵⁸ *Compare* 84 Fed. Reg. at 62297 *with* 8 C.F.R. § 103.7(c)(3) (list of USCIS fees that may currently be waived).

⁵⁹ 84 Fed. Reg. at 62299.

⁶⁰ *Id.* at 62319 (\$50 fee to file a Form I-589, not waivable) *and* 62301 (eliminating fee exemption for Form I-765 for individuals with pending asylum claims).

E. The Proposed Fee Rule Will Prevent Many Eligible Applicants from Naturalizing

DHS also proposes to significantly increase fees associated with applications for naturalization, and simultaneously eliminate reduced fee options and most fee waivers for aspiring citizens.⁶¹ These changes run contrary to longstanding congressional intent to promote naturalization and immigrant integration. The facilitation of naturalization is a matter of national interest. Becoming a citizen is the ultimate representation of an individual's commitment to our nation, and naturalized citizens demonstrate this commitment through high levels of civic participation and patriotism to the United States.⁶² In addition to making our country stronger and more dynamic, studies show that immigrants earn more in wages *after* naturalization and thus contribute to economic growth through increased consumer spending.⁶³

While naturalization-related filing fees increased modestly in 2016, such fees were capped “at an amount less than [their] estimated costs . . . to promote naturalization and immigrant integration.”⁶⁴ DHS also introduced a reduced fee option for applicants with family incomes between 150 percent and 200 percent of the federal poverty guidelines.⁶⁵ Studies in 2016 suggested that the reduced fee option would make naturalization accessible for roughly one million aspiring citizens.⁶⁶ Studies have also cautioned that increasing naturalization fees will reduce the number of naturalization filings.⁶⁷ These studies have proven to be sound—USCIS has received historically high levels of applications for naturalization since the implementation of the 2016 fee schedule.⁶⁸

DHS's proposal to increase naturalization fees by 83 percent—and to eliminate reduced fees and fee waivers in most cases—makes naturalization prohibitively expensive for many, and therefore, runs contrary to such congressional intent to promote naturalization.⁶⁹ Congress recently affirmed that “USCIS is expected to continue the use of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee,” and also encouraged USCIS “to consider whether the current naturalization fee is a barrier to naturalization for those earning between 150 percent and 200 percent of the federal poverty guidelines, who are not currently eligible for a fee waiver.”⁷⁰

Ignoring the extensive empirical data cited above, DHS attempts to justify the changes to naturalization fees by claiming that fee waivers or reduced fees are not “in accordance with the principal of self-sufficiency.” DHS then appears to incentivize aspiring citizens to accumulate

⁶¹ *Id.* at 62397.

⁶² Alex Nowrasteh and Andrew C. Forrester, *Immigrants Recognize American Greatness: Immigrants and Their Descendants Are Patriotic and Trust America's Governing Institutions*, The Cato Institute (Feb. 4, 2019).

⁶³ Bernt Bratsberg, James F. Ragan Jr., and Zafar M. Nasir, *The Effect of Naturalization on Wage Growth: A Panel Study of Young Male Immigrants*, *Journal of Labor Economics*, 20:3, 568-97 (Jul. 2002); and Madeleine Sumption and Sarah Flamm, *The Economic Value of Citizenship for Immigrants in the United States*, Migration Policy Institute (Sept. 2012).

⁶⁴ 84 Fed. Reg. at 62317.

⁶⁵ 8 CFR § 103.7(b)(1)(i)(BBB)(1).

⁶⁶ Manuel Pastor and Jared Sanchez, *Promoting Citizenship: Assessing the Impacts of the Partial Fee Waiver*, Center for the Study of Immigrant Immigration (May 2016).

⁶⁷ Cong. Research Serv., R43366, *U.S. Naturalization Policy* at 19 (2014).

⁶⁸ *See, e.g.*, May 23, 2019 USCIS Letter.

⁶⁹ 84 Fed. Reg. at 62317, 62324 (Table 19).

⁷⁰ H.R. REPT. NO. 116-9 at 498 (2019); *and* H.R. REPT. NO. 115-948 at 61 (2018).

debt in pursuit of citizenship, predicting that such individuals will use “credit cards or personal loans to pay the half of the N-400 fee that will no longer be discounted for such applicants.”⁷¹ Immigrants who are eligible to naturalize should not be prohibited from applying—and from increasing their earnings potential—due to cost. Promoting naturalization and immigrant integration through the assessment of reasonable fees is consistent with congressional intent and a matter of national interest.

F. Conclusion

As noted above, DHS has failed to account for a significant portion of its projected budget shortfall and includes an improper transfer of funds to ICE in its assessment. For this reason alone, before DHS can implement any changes to the current fee schedule, it must provide the public with a complete and accurate assessment of projected costs and revenues for the coming fiscal years along with a revised fee proposal. When viewed as a whole, DHS’s proposed fee increase, coupled with the elimination of most fee waivers, appears to be a pretext to make the U.S. immigration system inaccessible to working class families and children. DHS even recognizes that some applicants may not be able to afford increased fees but claims that the changes are more equitable “by requiring fees for the service to be paid by those who benefit.”⁷²

The increased fee revenue, however, will not be used to improve the level of services provided to the individuals, families, and U.S. businesses who would pay the new fees. By DHS’s own admission, the proposed fee increases will not improve the efficiency and quality of adjudications or reduce backlogs. In sum, DHS’s proposed fee rule is both fundamentally inequitable and contrary to our nation’s values. Immigrants and their children have long played a critical role in building a strong economy for the benefit of all Americans. Rather than erecting insurmountable barriers to legal status and economic self-sufficiency, we must welcome immigrant families and give them a fair opportunity to succeed.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Rep. Jerrold Nadler

Rep. Zoe Lofgren

Rep. Nita M. Lowey

Rep. Lucille Roybal-Allard

Sen. Dianne Feinstein

Sen. Richard J. Durbin

⁷¹ Regulatory Impact Analysis at 121 *and* n.152.

⁷² Regulatory Impact Analysis at 30; 84 Fed. Reg. at 62299

Enclosure:

Letter from Acting Secretary of
DHS Chad Wolf to Chairs and
Ranking Members of Senate and
House Committees on Homeland
Security Appropriations

Dec. 11, 2019



**Homeland
Security**

December 11, 2019

The Honorable Lucille Roybal-Allard
Chairwoman, Subcommittee on Homeland Security
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Roybal-Allard:

The fiscal year 2020 President's Budget Request included a proposal to fund part of U.S. Immigration and Customs Enforcement's (ICE) operations from mandatory U.S. Citizenship and Immigration Services examination fees and included a corresponding offset in discretionary funds.

If a full-year appropriation Act for the Department of Homeland Security were to provide discretionary funding to fully support ICE's operations related to immigration adjudication and naturalization services for fiscal year 2020, the Department will not move forward with this proposal.

Identical letters have been sent to the Ranking Member of the House Subcommittee on Homeland Security Appropriations, as well as the Chairman and Ranking Member of the Senate Subcommittee on Homeland Security Appropriations. Should you have any questions, please contact Stacy Marcott, the Acting Chief Financial Officer, at (202) 447-5751.

Sincerely,

A handwritten signature in black ink that reads "Chad F. Wolf". The signature is written in a cursive style with a large, looped "W" at the end.

Chad F. Wolf
Acting Secretary