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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 106

[CIS No. 2861-26; DHS Docket No. USCIS-2026-0298]

RIN 1615-AD20

Fee for Certain H-1B Petitions

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) proposes to establish a $103,265 fee, payable at the time of filing, for all H-1B cap-subject petitions, including those eligible for the advanced degree exemption, which would be imposed in addition to all other applicable fees or payments. This fee would serve as a dedicated revenue mechanism to help recover a portion of the federal government’s costs of administering the lawful immigration system, including activities carried out by DHS, the U.S. Department of Justice (DOJ), the U.S. Department of State (DOS), and the U.S. Department of Labor (DOL).

DATES:

Submission of Public Comments: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The electronic Federal Docket Management System will accept comments before midnight eastern time at the end of that day.

ADDRESSES:

You may submit comments on the entirety of this proposed rulemaking package, identified by DHS Docket No. USCIS-2026-0298, through the

Federal eRulemaking Portal: http://www.regulations.gov. Follow the website instructions for submitting comments.

Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than the one listed above, including e-mails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand-delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using http://www.regulations.gov, please contact the Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721-3000 for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240-721-3000. Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 711.

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Table of Abbreviations

ABC – Activity-Based Costing
BIA – Board of Immigration Appeals
BLS – Bureau of Labor Statistics
CBP – U.S Customs and Border Protection
CEQ – Council on Environmental Quality
CFO – Chief Financial Officer
CFR – Code of Federal Regulations
DHS – U.S. Department of Homeland Security
DOJ – U.S. Department of Justice
DOL – U.S. Department of Labor
DOS – U.S. Department of State
DOW – U.S. Department of War
E.O. – Executive Order
EOIR – Executive Office for Immigration Review
FDNS – Fraud Detection and National Security Directorate
FPDA – Fraud Prevention and Detection Account
FLAG – Foreign Labor Application Gateway
FPS – Federal Protective Service
FR – *Federal Register*
FY – Fiscal Year
HSA – Homeland Security Act
HSI – Homeland Security Investigations
IEFA – Immigration Examinations Fee Account
ICE – Immigration and Customs Enforcement
INA – Immigration and Nationality Act of 1952
IOAA – Independent Offices Appropriations Act
IRFA – Initial Regulatory Flexibility Act
IT – Information Technology
LCA – Labor Condition Application
NAICS – North American Industry Classification System
NEPA – National Environmental Policy Act
OCIJ – Office of the Chief Immigration Judge
OFLC – Office of Foreign Labor Certification
OIRA – Office of Information and Regulatory Affairs
OMB – Office of Management and Budget
OPT – Optional Practical Training
PRA – Paperwork Reduction Act
RAIO – Refugee, Asylum, and International Operations Directorate
RFA – Regulatory Flexibility Act
RIA – Regulatory Impact Analysis
SAM – Staffing Allocation Model
SBA – U.S. Small Business Administration
SCOPS – Service Center Operations Directorate
SEVIS – Student and Exchange Visitor Information System
SEVP – Student and Exchange Visitor Program
UMRA – Unfunded Mandates Reform Act of 1995
USCIS – U.S. Citizenship and Immigration Services
WHD – Wage and Hour Division

I. Public Participation

DHS invites all interested parties to participate in this rulemaking by submitting written data, views, comments and arguments on all aspects of this proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than the one listed above, including e-mails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS.

Instructions: If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS-2026-0298 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at http://www.regulations.gov, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at http://www.regulations.gov.

Docket: For access to the docket and to read background documents,

or comments received, go to http://www.regulations.gov, referencing DHS Docket No. USCIS-2026-0298. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

II. Executive Summary

A. *Purpose of Regulatory Action*

The purpose of this proposed rulemaking is to generate dedicated revenue to support the costs of administering the lawful immigration system. To achieve this result DHS has decided to establish an additional fee on all H-1B cap-subject petitions, payable at the time of filing. The new fee is designed, consistent with section 286(m) of the Immigration and Nationality Act (INA), 8 U.S.C. 1356(m), to recover a portion of the full costs of providing immigration adjudication and naturalization services incurred by multiple Federal agencies in processing, adjudicating, and supporting the lawful immigration system, including U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE) in DHS, Executive Office for Immigration Review (EOIR) in DOJ, DOS, and DOL.

The lawful immigration system is largely funded by user fees.[1] As explained later in this rule, DHS's interagency cost assessments have identified substantial activities that directly relate to the costs of providing immigration adjudication and naturalization services across the federal government, such as adjudications, associated investigations, enforcement and vetting support, information technology modernization and maintenance, records management, and interagency coordination.[2] The proposed H-1B fee is intended to provide a powerful, reliable, and predictable revenue tool to address the costs across multiple agencies that oversee the United States immigration system.

DHS considered whether to propose recovery of the government's lawful immigration-related costs by adding a fee to all immigration benefit requests, or certain

[1] *See, e.g.*, *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, 89 FR 6194 (Jan. 31, 2024) (final rule).
[2] For more information, see section V.A. Cost Basis of this preamble.

requests. We also considered increasing the existing H-1B petition fee in 8 CFR 106.2(a)(3)(i), rather than establishing a separate H-1B fee provision. For the reasons provided in this notice, DHS is proposing to add a fee at 8 CFR 106.2(a)(3)(xii) that would apply only to H-1B cap-subject petitions, including those eligible for the advanced degree exemption (not to all H-1B petitions such as cap-exempt filings).

The proposed fee is specifically to recover the interagency costs described in this rule and having a standalone fee is intended to facilitate tracking, allocation, and reporting of the associated revenue. For these reasons, DHS proposes to implement the $103,265 amount as a separate, additional H-1B fee rather than combining it with the existing H-1B petition fee in 8 CFR 106.2(a)(3)(i).

The proposed fee, when required, would be in addition to any other applicable fees or payments,[3] including any separate payment obligation required under a Presidential Proclamation.[4] Accordingly, to the extent a petitioner is subject both to a proclamation-required payment and to the additional H-1B fee proposed in this rule, the petitioner would be required to pay both amounts.

B. *Legal Authority*

As explained in more detail in Section III.A., DHS issues this proposed rule consistent with its authority under various sections of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101, et seq., and the Homeland Security Act of 2002

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[3] *See* USCIS Form G-1055, Fee Schedule, https://www.uscis.gov/g-1055 (last reviewed/updated June 15, 2026), for a list of applicable H-1B fees and payments; *See also*, Presidential Proclamation 10973, *"Restriction on Entry of Certain Nonimmigrant Workers."* 90 FR 46027 (Sept. 19, 2025). The proposed fee in this NPRM would be an additional fee separate from the $100,000 payment required by Proclamation 10973 and is based on different authority. *See* Section III.A. of this NPRM for a detailed discussion of the authority for this proposed fee. The payment required by the Proclamation as a restriction on entry based on sections 212(f) and 215(a) of the INA, 8 U.S.C. 1182(f) and 1185(a), applied to certain H-1B visa petitions filed on or after September 21, 2025, and before September 21, 2026. On June 8, 2026, the United States District Court for the District of Massachusetts vacated the agency guidance implementing the payment required by Proclamation 10973. *See California et al, v. Mullin*, 25-13829 (D. Mass). On June 11, 2026, the Government filed an appeal with the First Circuit Court of Appeals. The appeal remains pending as of the date of publication of this NPRM. If the order is later lifted, DHS would collect the payment consistent with the terms of the Proclamation and any extension or renewal of the Proclamation.

[4] Presidential Proclamation 10973, unless extended, will expire before the fee proposed in this rule will take effect.

(HSA), Pub. L. 107-296, 116 Stat. 2135 (codified in part at 6 U.S.C. 101 et. seq.). Specifically, the authority for this proposed rule includes sections 286(j) and (m) of the INA, 8 U.S.C. 1356(j) and (m) (authorizing the Secretary to set "fees for providing adjudication and naturalization services . . . at a level that will ensure recovery of the full costs of providing all such services" and to prescribe rules and regulations to carry out the fee provisions of section 286 of the INA, 8 U.S.C. 1356).

C. *Summary of the Provisions of the Regulatory Action*

DHS proposes to include the following changes: a $103,265 additional fee imposed on all H-1B cap-subject petitions filed, including those eligible for the advanced degree exemption under section 214(g)(5)(C) of the INA, 8 U.S.C. 1184(g)(5)(C).[5] The objective of this new fee is revenue generation to support the costs of administering the lawful immigration system across multiple departments and agencies. In particular, the proposed fee is intended to:

- Provide additional resources for USCIS to fund adjudications, systems modernization, fraud detection and national security vetting, records and fee collection operations, and coordination with other DHS components; and
- Directly support activities related to the lawful immigration system carried out by USCIS, CBP, ICE, EOIR, DOS, and DOL, to the extent permitted by statute and appropriations law (for example, Immigration Court proceedings, consular visa processing, labor standards enforcement, and inspection and enforcement activities at and between ports of entry).

[5] The fee is calculated by dividing the total costs to be recovered of $8,777,488,035 by the projected fee paying volume of 85,000 to be $103,264.57. DHS rounds the fee to the nearest $5 increment consistent with how it has in other IEFA fee rules for a final fee of $103,265. *See, e.g.*, *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, 88 FR 402, 451 (Jan. 4, 2023) (proposed rule) (footnote 92).

DHS expects that the additional revenue generated by this proposed fee would be used to reimburse U.S. government immigration adjudication and naturalization costs within the legal immigration system.

III. Background & Purpose

A. *Legal Authority*

The Secretary's authority for these proposed regulatory amendments is found in various sections of the INA, 8 U.S.C. Titles I - V., and the Homeland Security Act of 2002 (HSA), Pub. L. 107-296, 116 Stat. 2135 (codified in part at 6 U.S.C. 101 et. seq.). General authority for issuing this proposed rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws and establish such regulations as the Secretary deems necessary for carrying out such authority, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations.[6] Further authority for these proposed regulatory amendments is found in:

- Section 286(m) of the INA, 8 U.S.C. 1356(m), which authorizes the Secretary to set "fees for providing adjudication and naturalization services . . . at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants;"
- Section 286(n) of the INA, 8 U.S.C. 1356(n), which permits "reimburse[ment of] any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection,

[6] As of March 1, 2003, the former Immigration and Naturalization Service (INS) ceased to exist as an agency within the United States Department of Justice (DOJ) and its functions regarding the applications for immigration benefits and naturalizations were transferred to the United States Citizenship and Immigration Services in the United States Department of Homeland Security. *See* HSA secs. 451(b) and 471, 6 U.S.C. 271(b), 291. Although several provisions of the INA discussed in this proposed rule refer exclusively to the "Attorney General," such provisions are now to be read as referring to the Secretary of Homeland Security by operation of the HSA. *See, e.g.*, INA secs. 103(a)(1), 286, 344, 8 U.S.C. 1103(a)(1), 1356, 1455; *Nielsen v. Preap*, 139 S. Ct. 954, 959 n.2 (2019).

safeguarding and accounting for fees deposited in and funds reimbursed" from the Immigration Examinations Fee Account (IEFA); and

- Section 286(j) of the INA, 8 U.S.C. 1356(j), which provides specific authority for the Secretary to prescribe rules and regulations as may be necessary to carry out the fee provisions of section 286 of the INA, 8 U.S.C. 1356.

B. Immigration Examination Fee Account

With a few exceptions, the fees collected related to adjudication and naturalization services must be deposited in the IEFA under section 286(m) of the INA, 8 U.S.C. 1356(m).

The CFO Act, 31 U.S.C. 901-03, requires USCIS' Chief Financial Officer (CFO), among other things, to review on a biennial basis the fees imposed by the agency for services it provides and to recommend changes to its fees. The CFO Act's biennial review requirement is the minimum frequency required by a fee-funded agency, and DHS may adjust USCIS fees more often than biennially as needed.[7] Furthermore, the CFO Act requires the CFO to direct, manage, and provide policy guidance and oversight of agency financial management, personnel, activities, and operations. *See* 31 U.S.C. 902(a)(5).

USCIS is primarily funded by fees charged to applicants, petitioners, and requestors for immigration and naturalization benefit requests. USCIS manages the following four fee accounts:

- The IEFA, which includes premium processing revenues (INA sec. 286(m), (n), (t), and (u); 8 U.S.C. 1356(m), (n), (t), and (u));
- The Fraud Prevention and Detection Account (INA secs. 214(c)(12) and (13), 286(v); 8 U.S.C. 1184(c)(12) and (13), 1356(v));

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[7] *See* 31 U.S.C. 902(a)(8) ("An Agency Chief Financial Officer shall...review, on a biennial basis, the fees, royalties, rents and other charges imposed by the agency for services and things of value it provides...").

- The H-1B Nonimmigrant Petitioner Account (INA secs. 214(c)(9) and (11), 286(s); 8 U.S.C. 1184(c)(9) and (11), 1356(s)); and
- The EB-5 Integrity Fund (INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J)).

In 1988, Congress established the IEFA in the Treasury of the United States. *See* Pub. L. 100-459, sec. 209, 102 Stat. 2186 (Oct. 1, 1988) (codified as amended at INA sec. 286(m) and (n), 8 U.S.C. 1356(m) and (n)). Fees deposited into the IEFA fund adjudication and naturalization services. In subsequent legislation, Congress directed that the IEFA fund the full costs of providing all such services, including services provided to immigrants at no charge. *See* Pub. L. 101-515, sec. 210(d)(1) and (2), 104 Stat. 2101, 2121 (Nov. 5, 1990). Consequently, the immigration benefit fees were increased to recover these additional costs. *See, Adjustment to the Examinations Fee Schedule,* 59 FR 30516, 30520 (June 14, 1994) (final rule). DHS has continued to adjust USCIS fees to recover the costs of providing adjudication and naturalization services. *See, e.g.*, *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,* 89 FR 6194 (Jan. 31, 2024) (final rule) ("2024 Final Rule").

In FY 2025, the IEFA accounted for approximately 95 percent of total funding for USCIS, or $7.0 billion out of the $7.4 billion in total USCIS funding. The remaining USCIS funding came from appropriations (approximately 4 percent or $0.3 billion) or other fee accounts (approximately 1 percent or $0.1 billion) in FY 2025.[8] The Fraud

[8] *See* DHS, "Fiscal Year 2027 Budget in Brief" (April 2025), https://www.dhs.gov/sites/default/files/2026-04/26_0422_ocfo_fy27-budget-dhs-budget-in-brief.pdf.

Prevention and Detection Account[9] and H-1B Nonimmigrant Petitioner Account[10] are both funded by fees for which the dollar amount is set by statute. DHS has no authority to adjust the fees for these accounts. The EB-5 Integrity Fund, a new fee account established in FY 2023, uses initial fees set by statute. In 2025, DHS proposed adjusting the EB-5 Integrity Fund by the amount of inflation.[11]

B. *Increasing Fees for Certain H-1B Petitions*

As discussed previously, the INA permits reimbursement of "expenses in providing immigration adjudication and naturalization services." *See* section 286 of the INA, 8 U.S.C. 1356.

DHS considered whether to recover the costs identified in this proposed rule by increasing fees broadly across all fee-paying applicants and petitioners but determined that doing so would place additional costs on individual applicants and petitioners, including requestors whose applications and petitions may be less directly connected to employment-based petitioning and who may have fewer resources available to absorb additional fee increases. After considering the resources of the different communities and populations that submit immigration benefit requests to USCIS, DHS has decided to propose that the costs be recovered by adding a fee to H-1B cap-subject petitions. DHS

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[9] The Fraud Prevention and Detection fees charged to certain employers petitioning for nonimmigrant workers in the H-1B, H-2B, and L-1 visa classifications are set by statute. Revenue is used for activities related to preventing and detecting fraud in immigration benefit requests. *See* INA sec. 286(v)(2)(B), 8 U.S.C. 1356(v)(2)(B). Revenue is shared equally among USCIS, Department of State, and Department of Labor. Effective July 25, 2018, USCIS also collects and retains the $50 Commonwealth of the Northern Mariana Islands fraud fee. *See* 48 U.S.C. 1806(a)(6)(iv). DHS interprets Fraud Prevention and Detection Account authority as providing supplemental funding to cover activities related to fraud prevention and detection and not prescribing that only those funds may be used for that purpose. The USCIS Fraud Detection and National Security Directorate (FDNS) is funded out of both the IEFA and the Fraud Prevention and Detection Account.

[10] Certain H-1B fees are required by other laws. Revenue in the H-1B Nonimmigrant Petitioner Account is shared among USCIS, DOL, and the National Science Foundation. USCIS receives 5 percent of these funds. USCIS uses the H-1B Nonimmigrant Petitioner Account as supplemental funding for the limited H-1B petition and petition for immigrant worker adjudication activities authorized by statute. *See* INA sec. 286(s)(5), 8 U.S.C. 1356(s)(5). The H-1B Nonimmigrant Petitioner Account does not fully fund the H-1B program at USCIS. As such, USCIS also uses IEFA fees to administer the program. IEFA fees are not required for those limited purposes authorized or required by INA sec. 286(s)(5), 8 U.S.C. 1356(s)(5).

[11] See DHS, *Employment-Based Immigrant Visa, Fifth Preference (EB-5) Fee Rule*, 90 FR 48516 (Dec. 22, 2025) (proposed rule).

considered other options but determined that shifting these costs to petitioners for H-1B cap-subject petitions was appropriate considering that they are requests that are generally submitted by petitioners who have more ability to pay, as opposed to shifting those costs to all other fee payers. [12]

DHS acknowledges that the scope of the proposed fee increase in this rule is significant. DHS proposes this cost shifting approach with an emphasis on the ability-to-pay principle for determining user fees.[13] Petitioners for H-1B cap-subject nonimmigrant workers generally are required to have the resources necessary to pay the worker(s) for whom the petition is filed, and DHS does not believe the proposed fee that the employer must pay USCIS is significant compared to the petitioner's wage obligation.[14] DHS further acknowledges that it has historically spread unrecovered costs for free services, fee-waived, and fee exempted requests across other fee-paying requests.[15] While, in appropriate circumstances, DHS has considered the relative ability of different fee-paying populations to bear unrelated costs, we have never directly transferred the costs of one program to another based on a determination that requestors under one program can afford higher fees more than other general or specific requestors.[16] Again, consistent with

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[12] USCIS, G-1055, Fee Schedule https://www.uscis.gov/sites/default/files/document/forms/g-1055.pdf (last updated June 1, 2026), see Appendix A: I-129, Petition for a Nonimmigrant Worker, pages 35-36.
See Regulatory Impact Analysis for DHS USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Information, p181-183, https://www.regulations.gov/document/USCIS-2021-0010-8179 (January 2024)

[13] *See* GAO, "Federal User Fees: A Design Guide" (May 29, 2008), https://www.gao.gov/products/GAO-08-386SP, at 7-12.

[14] *See* INA sec. 212(n)(1)(A), 8 U.S.C. 1182(n)(1)(A) (requiring an H-1B petitioning employer to pay a required wage); USCIS, "*Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2025 Annual Report to Congress, October 1, 2024 – September 30, 2025,*" (Apr. 24, 2026), https://www.uscis.gov/sites/default/files/document/data/fy25_h1b_characteristics_congress_signed_04242026.pdf (last visited July 6, 2026), stating that the median annual compensation for all approved H-1B beneficiaries in FY 2025 was $133,000. That equates to an unadjusted median wage of $798,000 ($133,000 x 6) over the course of the general 6-year period of H-1B admission.

[15] *See, e.g.,* 89 FR 6193-6194, 6241; *see also U.S. Citizenship and Immigration Services Fee Schedule*, 81 FR 26904, 26915 (May 5, 2016) (proposed rule).

[16] *See, e.g., U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,* 85 FR 46788, 46869 (Aug. 20, 2020) (final rule) (stating, "For the fees that DHS does not limit, we use the total cost for each form to reallocate the cost of limited fee increases or workload without fees."); *U.S. Citizenship and Immigration Services Fee Schedule*, 75 FR 58962, 58973 (Sept. 24, 2016) (final rule) (stating, "To the extent not supported by appropriations, the cost

that past approach, DHS considered whether to recover these costs by increasing fees broadly across all fee-paying applicants and petitioners but determined that doing so would place additional costs on individual applicants and petitioners who may have fewer resources available to absorb additional fee increases.[17]

DHS recognizes that H-1B cap-subject petitioners may object to paying a fee that recovers costs far beyond the direct adjudication cost of their individual petition. However, USCIS' fee schedule has long reflected the need to recover costs associated with administering the lawful immigration system as a whole, including costs of requests for which no fee is charged or for which the fee does not recover full cost. And DHS has historically considered ability to pay as one factor in setting immigration fees, particularly when determining how to allocate costs for services that are provided without a fee or at a fee below full cost. For example, in the 2016/2017 fee rule, DHS used its discretion to adjust certain immigration benefit request fees that USCIS believed may be overly burdensome on applicants, petitioners, and requestors if set at the recommended model output levels.[18] In that same rule, DHS specifically excluded the EB-5 program fees from such discretionary reductions in response to comments based at least partially on those requestors' ability to pay.[19]

DHS anticipates this proposed fee would generate the necessary revenue provided filing volumes do not fall short of those projected herein. DHS acknowledges that USCIS may see a reduction in the number of H-1B cap registrations and some employers, including small entities, may file fewer petitions as a result of this proposed rule.

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of providing free or reduced services must be transferred to all other fee-paying applicants.''); *Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule*, 72 FR 29851, 29865 (May 30, 2007) (final rule) (stating, "As with any other waiver, the loss of that fee revenue would necessarily be spread across all other benefit applications and petitions, having the potential to increase those fees.").

[17] *See, e.g.,* 89 FR 6193-6194, 6241; *USCIS Fee Schedule*, 81 FR 73292, 73295-73297 (Oct. 24, 2016)(final rule).

[18] *See*, *U.S. Citizenship and Immigration Services Fee Schedule*, 79 FR 73292, 73297 (final rule (Discussing impacts on low-income individuals; low volume reallocation).

[19] *Id* at 73310.

However, the success of the USCIS fee model and this rulemaking in generating the necessary revenue depends on the filing volumes of cap-subject H-1B petitions not falling short of those projected herein. At the same time, balancing the goals of administering the lawful immigration programs using fee revenue, DHS has made considered judgments about how to receive the needed funds using available and appropriate means. DHS decided to propose this fee after considering recovery of the government's lawful immigration-related costs across agencies and the relative resources of the H-1B Form I–129 filing community.[20] DHS, DOJ, DOS and DOL are charged with administering lawful immigration programs and have decided to use fee revenue to the extent possible. This proposed rule reflects our combined, considered judgments about how to fund immigration using available and appropriate means while balancing the goals of the H-1B program to provide needed workers.

DHS arrived at the amount of the proposed H-1B fee by calculating the amount that would need to be added to the fees for Form I–129, Petition for a Nonimmigrant Worker, to collect the identified annual costs using USCIS' standard costing and fee calculation methodologies. In addition to shifting these costs to H-1B cap-subject petitions for cost recovery, imposing this fee on such petitions aligns with other, related statutory authorities including:

- Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), which authorizes DHS to prescribe, by regulation, the time and conditions of the admission of nonimmigrants;

[20] *See* INA sec. 212(n)(1)(A), 8 U.S.C. 1182(n)(1)(A) (requiring an H-1B petitioning employer to pay a required wage); USCIS, "*Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2025 Annual Report to Congress, October 1, 2024 – September 30, 2025,*" (Apr. 24, 2026), https://www.uscis.gov/sites/default/files/document/data/fy25_h1b_characteristics_congress_signed_04242026.pdf (last visited July 6, 2026), stating that the median annual compensation for all approved H-1B beneficiaries in FY 2025 was $133,000. That equates to an unadjusted median wage of $798,000 ($133,000 x 6) over the course of the general 6-year period of H-1B admission.

- Section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1), which authorizes the Secretary to prescribe how an importing employer may petition for nonimmigrant workers, as well as the form of the petition and the information that an importing employer must provide in the petition;
- Section 402 of the HSA, 6 U.S.C. 202, which charges the Secretary with "[e]stablishing and administering rules[21] . . . governing the granting of visas or other forms of permission . . . to enter the United States" and "[e]stablishing national immigration enforcement policies and priorities"; *see also* HSA sec. 428, 6 U.S.C. 236; and
- Section 451(a)(3) and (b) of the HSA, 6 U.S.C. 271(a)(3) and (b), which transferred to USCIS the authority to adjudicate petitions for nonimmigrant status, establish policies for performing that function, and set national immigration services policies and priorities.

After analyzing the costs required for administering lawful immigration programs, the administration determined that using fee revenue was appropriate. In this proposed rule DHS has explained that after considering how to fund the identified costs, and the authorities available, using a H-1B cap subject petition fee was the most viable and appropriate means.

C. *Background by Department and Agency*

1. <u>USCIS and H-1B Background</u>

USCIS is the DHS component primarily responsible for adjudication of immigration and naturalization benefit requests, including petitions filed under the H-1B

[21] Section 102(e) of the HSA, 6 U.S.C. 112(e), provides that "the issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, except as specifically provided in this chapter, in laws granting regulatory authorities that are transferred by this chapter, and in laws enacted after November 25, 2002."

program.[22] The H-1B program allows U.S. employers to temporarily hire foreign workers to perform services in a specialty occupation, services related to a U.S. Department of War (DOW) cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling. *See* INA sec. 101(a)(15)(H)(i)(b), 8 U.S.C. 1101(a)(15)(H)(i)(b); Immigration Act of 1990, Public Law 101-649, sec. 222(a)(2), 104 Stat. 4978 (Nov. 29, 1990); 8 CFR 214.2(h). A specialty occupation is defined as an occupation that requires the (1) theoretical and practical application of a body of highly specialized knowledge, and (2) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum qualification for entry into the occupation in the United States. *See* INA sec. 214(i)(l), 8 U.S.C. 1184(i)(l).

Congress has established limits on the number of foreign workers who may be granted initial H-1B nonimmigrant visas or status each fiscal year (FY) (commonly known as the "cap"). *See* INA sec. 214(g), 8 U.S.C. 1184(g). The total number of foreign workers who may be granted initial H-1B nonimmigrant status during any fiscal year may not exceed 65,000. *See* INA sec. 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A). Certain petitions are exempt from the 65,000 numerical limitation.[23] *See* INA secs. 214(g)(5) and (7), 8 U.S.C. 1184(g)(5) and (7). The annual exemption from the 65,000 cap for H-1B workers who have earned a qualifying U.S. master's or higher degree may not exceed 20,000 foreign workers. *See* INA sec. 214(g)(5)(C), 8 U.S.C. 1184(g)(5)(C). DHS

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[22] *See* HSA secs. 451(b) and 471, 6 U.S.C. 271(b), 291; 8 CFR 214.2(h)(2)(i)(A) (providing that a United States employer seeking to classify an alien as an H-1B, H-2A, H-2B, or H-3 temporary employee must file a petition on the form prescribed by USCIS in accordance with the form instructions).

[23] Exempt petitions include petitions for (1) employment (or an offer of employment) at an institution of higher education or a related affiliated nonprofit entity, (2) employment (or an offer of employment) at a nonprofit research organization or a government research organization, or (3) H-1B workers who have earned a qualifying U.S. master's degree or higher degree. Also exempt are those petitions for beneficiaries who have previously been counted under the cap, unless eligible for a full 6-years of authorized admission when the petition is filed, and who seek to change jobs or extend their stay during their 6-year period of authorized admission, and those exempt from the 6-year period of authorized admission limitation based on section 104(c) or 106(a) and (b) of the American Competitiveness in the Twenty-First Century Act (AC21), Public Law 106-313, 114 Stat. 1254 (Oct. 17, 2000), as amended by section 11030A of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107-273, 116 Stat. 1758 (2002).

recently revised how USCIS administers the annual H-1B cap selection process and those changes took effect on February 27, 2026, before the FY 2027 cap season.[24]

Under the current regulation, all petitioners seeking to file an H-1B cap-subject petition must first electronically submit a registration for each beneficiary on whose behalf they seek to file an H-1B cap-subject petition, unless USCIS suspends the registration requirement. 8 CFR 214.2(h)(8)(iii)(A)(*1*). USCIS monitors the number of H-1B registrations for unique beneficiaries it receives during the announced registration period. At the conclusion of that period, if more registrations for unique beneficiaries are submitted than projected as needed to reach the numerical allocations, USCIS uses a weighted selection process to select from among unique beneficiaries for whom registrations were properly submitted, the number of unique beneficiaries projected as needed to reach the H-1B numerical allocations. 8 CFR 214.2(h)(8)(iii)(A)(*5*) and (*6*).

A prospective petitioner that properly registered for a beneficiary who is selected is notified of the selection and instructed that the petitioner is eligible to file an H-1B cap-subject petition for the beneficiary named in the selected registration within a filing period that is at least 90 days in duration. 8 CFR 214.2(h)(8)(iii)(D)(*3*). When registration is required, a petitioner seeking to file an H-1B cap-subject petition is not eligible to file the petition unless the petition is based on a valid, selected registration for the beneficiary named in the petition.[25] 8 CFR 214.2(h)(8)(iii)(D)(*1*).

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[24] *See* DHS, *Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions*, 90 FR 60864 (Dec. 29, 2025). *See also* USCIS, H-1B Specialty Occupations, https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations (last reviewed/updated March 31, 2026).

[25] During the initial filing period, if USCIS does not receive enough petitions projected to reach the numerical allocations, USCIS will select additional unique beneficiaries, or reopen the registration process, as applicable, to receive registrations for the number of unique beneficiaries projected as needed to reach the numerical allocations. *See* 8 CFR 214.2(h)(8)(iii)(A)(*7*).

2. <u>ICE Background</u>

ICE is the principal investigative arm of DHS.[26] In addition to its other duties, ICE manages the Student and Exchange Visitor Program (SEVP).[27] SEVP collects, maintains, analyzes and provides information so only legitimate foreign students or exchange visitors gain entry to the United States.[28] SEVP also ensures that the institutions accepting nonimmigrant students are certified and follow the federal rules and regulations that govern them.[29] SEVP works closely with its government partners involved in the foreign student process, including USCIS and the U.S. Department of State.[30] For example, USCIS and ICE each have roles in the extension of post completion Optional Practical Training and F-1 status for eligible students under the H-1B cap-gap regulations.[31] Working with partner law enforcement agencies, SEVP administratively enforces federal rules and regulations governing schools certified to enroll F and M nonimmigrant students.[32] Homeland Security Investigations (HSI) is the principal criminal investigative directorate of ICE.[33] HSI plays a role in vetting certain categories of applicants for admission, like SEVP.[34]

3. <u>CBP Background</u>

CBP manages many programs within DHS to safeguard U.S. borders and enhance the nation's security. For example, all persons arriving at a port-of-entry to the United

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[26] *See*, DHS, ICE, Mission, https://www.ice.gov/mission (Updated: Mar 7, 2025).
[27] *See*, DHS, ICE, Student and Exchange Visitor Program, https://www.ice.gov/sevis (Updated Jul. 14, 2025).
[28] *Id*.
[29] *Id*.
[30] *Id*.
[31] *See* USCIS, Extension of Post Completion Optional Practical Training (OPT) and F-1 Status for Eligible Students under the H-1B Cap-Gap Regulations, https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations/extension-of-post-completion-optional-practical-training-opt-and-f-1-status-for-eligible-students (last reviewed/updated Jan. 17, 2025).
[32] *DHS, ICE, Student and Exchange Visitor Program, https://www.ice.gov/sevis (Updated Jul. 14, 2025).*
[33] DHS, ICE, Homeland Security Investigations, https://www.ice.gov/hsi (Updated Mar. 11, 2026).
[34] DHS, ICE, HSI, Our Offices, Headquarters Offices, Visa Security Program, https://www.ice.gov/hsi/our-offices/hq/vsp (Updated Feb 20, 2026).

States are subject to inspection by CBP officers.[35] CBP is in the process of expanding contactless inspection processes using biometric facial comparison technology to process travelers.[36]

4. EOIR Background

Within DOJ, EOIR adjudicates matters brought under various immigration statutes.[37] EOIR interprets and administers federal immigration laws by conducting Immigration Court proceedings, appellate reviews, and administrative hearings.[38] For example, Immigration Judges within EOIR conduct section 240 removal proceedings and, in turn, the Board of Immigration Appeals (BIA) hears appeals from Immigration Judge decisions. The BIA also hears appeals from certain decisions of DHS, including petitions to classify the status of alien relatives for the issuance of preference immigrant visas and fines imposed for the violation of immigration laws.[39]

5. DOS and Bureau of Consular Affairs Background

DOS advises the President in the formulation and execution of foreign policy and promotes the long-range security and well-being of the United States.[40] DOS determines and analyzes the facts relating to American overseas interests, makes recommendations on policy and future action, and takes the necessary steps to carry out established policy.[41]

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[35] *See*, *e.g.*, CBP, About CBP, https://www.cbp.gov/about (last modified Jun. 1, 2026). *See also* CBP, Restriction on Entry of Certain Non-immigrant Workers [H-1B] Memo, https://www.cbp.gov/sites/default/files/2025-09/2025_09_20_-_memo_-_h1b_restriction_on_entry_1_redacted.pdf (Sep. 20, 2025).
[36] *See* CBP, Biometrics: Enhanced Passenger Processing, https://www.cbp.gov/travel/biometrics/enhanced-passenger-processing (last modified May 8, 2026).
[37] *See* EOIR, About the Office, https://www.justice.gov/eoir/about-office (updated May 25, 2025).
[38] *Id*.
[39] *See* 8 CFR 1003.1(b).
[40] The Department of State was established by act of July 27, 1789, as the Department of Foreign Affairs and was renamed Department of State by Act of September 15, 1789 (22 U.S.C. 2651 note); see also, DOS, Duties of the Secretary of State, https://www.state.gov/duties-of-the-secretary-of-state/ (last visited Jul. 5, 2026). *See also* Federal Register, State Department, https://www.federalregister.gov/agencies/state-department (last visited July 6, 2026).
[41] *Id*.

A citizen of a foreign country who seeks to travel to the United States generally must first obtain a U.S. visa.[42] The Bureau of Consular Affairs is the agency within the DOS that issues visas to qualified travelers in addition to other duties, such as issuing passports to U.S. citizens overseas.[43] Other bureaus and offices within DOS are also involved in immigration. For example, the Bureau of Population, Refugees, and Migration (PRM) conducts diplomacy aimed at ending mass and illegal migration.[44]

6. <u>DOL Background</u>

The DOL, Wage and Hour Division (WHD), is responsible for administering various provisions of the INA that extend protections to different types of nonimmigrant workers including the following:

- D-1 — The temporary employment of alien crewmembers to perform longshore activities at U.S. ports
- E-3 — The temporary employment of foreign nationals from Australia in specialty occupations
- H-1B — The temporary employment of foreign workers in the United States in specialty occupations or as fashion models
- H-1B1 — The temporary employment of foreign nationals from Chile and Singapore in specialty occupations
- H-2A — Temporary employment of foreign workers in agriculture
- H-2B — The temporary employment of foreign workers for seasonal skills in areas other than agriculture.

[42] See DOS, Visa Resources, https://www.state.gov/visas/ (last visited Jul. 5, 2026).
[43] *See* DOS, Temporary Worker Visas, https://travel.state.gov/content/travel/en/us-visas/employment/temporary-worker-visas.html (last visited May 29, 2026).
[44] See DOS, Bureau of Population, Refugees, and Migration, https://www.state.gov/bureaus-offices/under-secretary-for-foreign-assistance-humanitarian-affairs-and-religious-freedom/bureau-of-population-refugees-and-migration (last visited July 1, 2026).

DOL, Office of the Foreign Labor Certification (OFLC), is charged with ensuring that the employment of prospective foreign workers in the United States by an employer on a permanent or temporary basis will not adversely affect the job opportunities, wages, and working conditions of U.S. workers similarly employed.[45] Certain visa categories generally require an employer to obtain a prevailing wage and labor certification from the OFLC.[46] For example, before filing an H-1B petition with USCIS for a nonimmigrant worker in a specialty occupation, employers must submit a Labor Condition Application (LCA) to the OFLC attesting compliance with the requirements of the program.[47] LCAs are submitted before the beginning date of the period of authorized employment and adjudicated electronically with the OFLC through the Foreign Labor Application Gateway (FLAG) system.[48]

D. *Full Cost Recovery*

USCIS receives millions of immigration benefits requests[49] each year. USCIS is primarily funded by the fees charged to applicants and petitioners for filing these immigration benefit requests.[50] DHS is authorized to charge fees that ensure the full recovery of the costs associated with providing immigration and naturalization services, either for select immigration benefits,[51] or the general costs associated with providing all adjudication and naturalization services. As explained more fully below, USCIS is

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[45] *See, e.g.*, INA sec. 212(n), 8 U.S.C. 1182(n); *see also* DOL, Program and FLAG Resources, https://www.dol.gov/agencies/eta/foreign-labor/programs (last visited May 29, 2026).
[46] *See* DOL, H-1B, H-1B1 and E-3 Specialty (Professional) Workers, https://www.dol.gov/agencies/eta/foreign-labor/programs/h-1b (last visited May 29, 2026).
[47] *Id*.
[48] *See* Foreign Labor Application Gateway, https://flag.dol.gov/ (last visited May 29, 2026).
[49] Benefit request means any application, petition, motion, appeal, or other request relating to an immigration or naturalization benefit, whether such benefit is filed on paper form or submitted in an electronic format, provided such request is submitted in a manner prescribed by DHS for such purpose. *See* 8 CFR 1.2.
[50] *See, e.g.,* 88 FR 402, 404 (Jan. 4, 2023).
[51] USCIS has in the past set fees on a small or individual basis, instead of comprehensively based on all USCIS services. *See, e.g., Registration Fee Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap Subject Aliens*, 84 FR 46460 (Sept. 4, 2019) (proposed rule); *International Entrepreneur Rule*, 81 FR 60130 (Aug. 31, 2016) (proposed rule); *Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives*, 77 FR 19902 (Apr. 2, 2012) (proposed rule).

primarily fee-funded, so it must also ensure that it maintains a sufficient carryover balance[52] to continue operating. "[F]ull costs" in section 286(m) of the INA, 8 U.S.C. 1356(m), necessarily includes support costs, such as physical overhead, information technology, management and oversight, human resources, national security vetting and investigations, accounting and budgeting, and legal expenses.[53] USCIS revenue carryover provides financial flexibility to manage the unpredictable nature of immigration service demand while maintaining accountability through congressional oversight.[54] Unlike most Federal agencies, USCIS is allowed to retain unspent fee revenue from one fiscal year for use in future years.[55] Additionally, as U.S. Government Accountability Office acknowledges, fee funded agencies like USCIS may need to designate funds as operating reserves to weather periods when revenue collections are lower than costs.[56]

To set fees for immigration benefit requests, DHS has generally relied on OMB Circular A-25,[57] which advises that services provided by a government agency should be self-sustaining, meaning charges for benefits should be at least as great as the costs to the Government of providing them.[58] OMB Circular A-25 also specifies that, when the Government is supplying a special benefit to an identifiable recipient that also provides

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[52] Carryover balance refers to the unobligated or unexpended fee revenue accumulated from previous fiscal years. *See* 88 FR 402, 417.

[53] *Id*.

[54] DHS must submit annual statements of financial condition of the IEFA Account to Congress, including information on carryover balances, revenues, withdrawals, and projections for the ensuing fiscal year. INA sec. 286(o), 8 U.S.C. 1356(o).

[55] *See* 8 U.S.C. 1356(n) (stating, "deposits into the Immigration Examinations Fee Account shall remain available until expended").

[56] *See* U.S. Government Accountability Office, Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability (Sept. 30, 2013), https://www.gao.gov/assets/gao-13-820.pdf.

[57] *See* OMB Circular A-25, "User Charges," 58 FR 38142 (July 15, 1993) (revising Federal policy guidance regarding fees assessed by Federal agencies for Government services).

[58] *See* OMB Circular A-25, section 5(a) and (b). The primary objective of OMB Circular A-25 is to ensure that Federal agencies recover the full cost of providing specific services to users and associated cost. *See* OMB Circular A-25, 58 FR 38142, 38144. Full costs include, but are not limited to: (1) Direct and indirect personnel costs, including salaries and fringe benefits, such as medical insurance and retirement; (2) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, building, and equipment; (3) Management and supervisory costs; and (4) Cost of enforcement, collection, research, and establishment of standards and regulations. *See id.*, section 6, 58 FR 38142, 38145.

an incidental benefit to the public, the agency need not allocate costs to the public and should seek to recover from the recipient the full cost of providing the benefit, as applicable.[59] In addition, DHS adheres to the Statement of Federal Financial Accounting Standards 4 in assessing USCIS' full costs.[60]

IV. Related Rulemakings

As stated elsewhere in this preamble, DHS, EOIR, DOS, and DOL are each engaged in multiple rulemaking actions that are in various stages of development.[61] DHS recognizes that policy and regulatory changes across these departments can affect staffing needs, operational costs, fee revenue, and processing times. DHS has considered each of these other rules for peripheral, overlapping, or interrelated effects on this proposed rule, and has analyzed the potential effects of rules that may substantively overlap with this rulemaking.

To the extent possible, DHS has also considered the effects of intervening or future legislation and policy changes known to USCIS. Immigration policy is subject to frequent change, and new initiatives may arise that are not incorporated into proposed rules due to the time required for rule development and approval. DHS, therefore, cannot assert that it has considered every policy change planned or that may occur at all levels and agencies of the U.S. government that could directly or indirectly affect this proposed

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[59] *See* OMB Circular A-25, section 6(a)(3), 58 FR 38142, 38145. OMB Circular A-25 specifies that market price is to be used in situations when the Government is not acting as sovereign, which is not the case for immigration benefit requests.

[60] *See* FASAB, Federal Accounting Standards Advisory Board Handbook, Version 24 (09/25), "Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts," SFFAS 4 (July 31, 1995), https://files.fasab.gov/pdffiles/handbook_sffas_4.pdf (generally describing cost accounting concepts and standards, and defining "full cost" to mean the sum of direct and indirect costs that contribute to the output, including the costs of supporting services provided by other segments and entities); *see also id.* at 49-66 (identifying various classifications of costs to be included and recommending various methods of cost assignment).

[61] The Unified Agenda of Regulatory and Deregulatory Actions (Agenda) reports on the actions administrative agencies plan to issue in the near and long term. Released by the Office of Information and Regulatory Affairs, the Agenda provides important public notice and transparency about proposed regulatory and deregulatory actions within the Executive Branch. *See* 2026 Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions, https://www.reginfo.gov/public/do/eAgendaMain (last visited July 9, 2026).

rule. However, DHS believes it has examined and considered all relevant aspects of the issues addressed by this rulemaking and has articulated a reasoned explanation for the proposed changes, without relying on factors outside congressional intent. Specific recent and planned rulemakings and their effects on this rule are as follows:

A. *Naturalization Application Fee Adjustments*

As explained in detail later in this preamble, DHS proposed fee increases for two naturalization forms and changes to fee waivers in a separate rule.[62] In the proposal, these fees would recover a portion of the base cost increases allocated to Form N-400, Application for Naturalization, and Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings, with certain adjustments described later in this preamble. Depending on the timing of the Naturalization Fee Rule and other rulemakings and policies that may affect the revenue and costs that support this fee, their effects, if any, will be incorporated as necessary into the supporting documentation, fee calculations, policies, and regulatory text in the final rule for this proposed rule.

B. *Collection and Use of Biometrics by USCIS*

DHS proposed to amend its regulations governing biometrics use and collection in separate rulemaking. *See Collection and Use of Biometrics by USCIS*, 90 FR 49062 (Nov. 3, 2025) (proposed rule) (Biometrics Rule). DHS proposed that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with a benefit request, other request, or collection of information must submit biometrics, unless DHS otherwise exempts the requirement. *See, e.g.* 90 FR 49062, 49074. In a previous fee rule, DHS eliminated separate biometric fees in most cases and incorporated the costs of the USCIS biometrics system and services into its total costs used to calculate the request fee. *See*, 2024 Final Rule at 6278. The Biometrics Rule would make no adjustments to the USCIS

[62] *See*, Naturalization Fee Rule.

fee schedule, and it is possible that the costs to USCIS or DHS might vary from costs described and quantified in the NPRM, Section V.A.4. *See*, Biometrics Rule. USCIS may consider recovering additional costs due to the increase in volume of requests requiring biometrics that would result if the Biometrics Rule is finalized. In this proposed rule, USCIS used more recent cost and revenue estimates to calculate the costs that the H-1B Fee would recover than were used in the 2024 Final Rule. *See* section V.B.1. USCIS Costs later in this preamble. Depending on whether or when the Biometrics Rule is finalized, and if this proposed rule is published as a final rule, any difference in the costs described and quantified by the requirements in the Biometrics Rule may change the final H-1B fee.

C. *USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill*

DHS issued an interim final rule (IFR) to codify certain immigration fees and other provisions required by the One Big Beautiful Bill Act, Public Law 119–21, 139 Stat. 72 (H.R.1). *See, USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill*, 91 FR 22952 (April 29, 2026) (interim final rule). The rulemaking expanded upon the H.R.1. fees that USCIS already collected. *See, e.g. USCIS Immigration Fees Required by HR-1 Reconciliation Bill*, 90 FR 34511 (July 22, 2025) (notice). This proposed rule incorporates revenue estimates from H.R.1 fees deposited in the IEFA. DHS may revise those H.R.1 revenue estimates if it pursues a final rule adopting the proposed H-1B fee.

D. *CBP 9-11 Response and Biometric Entry-Exit Fee for H-1B and L-1 Visas*

The *CBP 9-11 Response and Biometric Entry-Exit Fee Final Rule*, 91 FR 51360 (August 10, 2026) (CBP 9-11 Biometric Fee Rule), expands the application of the statutory 9-11 Biometric Fee to require covered employers[63] to pay the fee for all H-1B and L-1 extension-of-stay petitions, regardless of whether a Fraud Fee applies or whether there is a change of employer. The CBP 9-11 Biometric Fee Rule is intended to ensure consistent funding for DHS's biometric entry-exit system and to align regulatory practice with congressional intent. *See* 91 FR 51360. The statutory fee, however, will expire on Sept. 30, 2027, unless extended or otherwise reauthorized by Congress.[64] The CBP 9-11 Biometric Fee Rule also clarifies definitions and compliance requirements for covered employers but does not establish changes to reporting or recordkeeping obligations.[65]

The expansion of the 9-11 Biometric Fee introduces additional financial and operational considerations. As DHS evaluates the H-1B proposed rule, we will consider the cumulative impact of multiple fee requirements, the administrative processes for fee collection, the need for coordination among components, and additional biometric submission requirements and related vetting. Depending on the timing of finalization and implementation of these rules, DHS will analyze the costs to be funded by the revenue from the CBP 9-11 Biometric Fee Rule and this rule to ensure the costs to be funded are not duplicated. Both rules are part of a systematic DHS effort to recover the costs of the immigration system and support efficient implementation and fiscal planning as the regulatory environment for employment-based immigration continues to evolve.

E. *EOIR Fees*

The EOIR Fees interim final rule implements statutory fee increases and new fee requirements for filings with EOIR, as mandated by H.R.1.[66] These changes include new fees for applications, appeals, and motions before EOIR, as well as annual adjustments

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[63] "Covered employers" are those employers with more than 50 employees in the United States and where more than 50 percent of the employees in the United States are in H-1B or L-1 nonimmigrant status. Sec. 402(g), Public Law 114-113.
[64] *See* sec. 402(g), Public Law 114-113 (establishing the initial sunset date for the 9-11 Biometric Fee as September 30, 2025), as amended by sec. 30203(b) of the Bipartisan Budget Act of 2018, Public Law 115-123, 132 Stat. 64, 126 (extending this date to September 30, 2027).
[65] *See* 91 FR 51360.
[66] *EOIR Fees,* 91 FR 35369 (June 11, 2026) (interim final rule) (EOIR Fees IFR).

for inflation and expanded electronic payment requirements.[67] Importantly, the EOIR fees established under H.R.1 are required in addition to any other fees authorized by law, including those set by DHS and USCIS for immigration benefit requests.[68]

While the EOIR Fees IFR and this proposed rule are separate regulatory actions, both reflect broader statutory and policy changes affecting immigration-related fees across federal agencies. The implementation of updated EOIR fees may influence overall fee structures, interagency coordination, and revenue projections associated with the H-1B proposed rule. DHS and DOJ have considered the effect and uses of the fees collected by DOJ on the costs and revenue that are the basis of this rule. DHS and its partner agencies have and will continue to consider the evolving landscape of immigration fees to ensure consistency and compliance as new rules are finalized and implemented.

F. *Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States*

DOL's proposed rule, *Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States*, 91 FR 15454 (March 27, 2026) (DOL Proposed Wages Rule), would revise the methodology for determining prevailing wage levels for employment-based immigrant and nonimmigrant visa programs, including H-1B, H-1B1, E-3, and PERM. The DOL Proposed Wages Rule would increase the percentile thresholds used to set prevailing wage levels, with the intent to better align wages for foreign workers with those paid to similarly employed U.S. workers in the same occupation and area of intended employment. *See* 91 FR 15454. The rule also seeks to strengthen program integrity and reduce incentives for employers to use these programs to undercut U.S. wage standards. *Id*.

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[67] *Id* at 35370.
[68] *Id*.

If finalized, the DOL Proposed Wages Rule is expected to result in higher required wage floors for employers seeking to sponsor foreign workers under the affected visa categories. The proposed adjustments are expected to have significant financial and operational implications for employers, including those participating in the H-1B program, and may affect the overall demand for employment-based immigration benefits. The DOL Proposed Wages Rule is only one part of a broader set of regulatory and policy changes aimed at ensuring that the employment of foreign workers does not adversely affect the wages, working conditions, and job opportunities of U.S. workers similarly employed.

This H-1B fee proposed rule accounts for the impact of revised prevailing wage requirements on employer behavior, labor market dynamics, and the administration of employment-based immigration programs. As new rules are developed and implemented, including the DOL Proposed Wages Rule, ongoing coordination between DHS, DOL, and other federal departments and agencies will be necessary to ensure that changes to wage protections are harmonized with other regulatory and policy initiatives and that the cumulative effects on stakeholders are fully evaluated. DHS may adjust the calculations in this rule, should it be finalized, based on our evaluation of the cumulative effects of various concurrent and intervening policy and regulatory changes.

V. Discussion of Proposed Rule

A. *Interagency Cost Recovery Framework*

Historically, USCIS fee regulations have been structured to recover only the costs incurred by USCIS in providing immigration adjudication and naturalization services. However, this proposed rule would recover costs attributable not only to USCIS, but also to other departments and agencies that have statutory responsibilities in administering the lawful immigration system including ICE, CBP, EOIR, DOS, and DOL. Section 286(m) of the INA, 8 U.S.C. 1356(m), authorizes the Secretary to set “fees for providing adjudication and naturalization services…at a level that will ensure recovery of the full costs of providing all such services," including the costs of services provided without charge. In 1988, Congress enacted INA sections 286(m) and 286(n), which modified the basic scheme for funding the costs of administering immigration and naturalization benefits.[69] In lieu of relying on Congressional appropriations as the sole source of funding, Congress directed that the agency's expenses of administering immigration and naturalization benefits be funded with fees collected by the INS for its processing and adjudication of applications.[70] Specifically, pursuant to section 286(m), Congress established the Immigration Examinations Fee Account ("IEFA") and required that "all adjudication fees" "shall be deposited" into the IEFA. *See* 8 U.S.C. 1356(m). According to the conference report accompanying the 1988 legislation, funds in the IEFA were for "enhancing naturalization and adjudication programs."[71]

In 1990, Congress amended section 286(m), by adding a proviso to make clear that fees collected for processing and adjudicating immigration and naturalization applications should fund all costs associated with administering such benefits.[72] The 1990 amendment to section 286(m) provides:

> That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the *full costs* of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

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

As the House Appropriations Committee recognized, the purpose of the 1990 amendment to section 286(m) was to ensure that fees deposited in the IEFA will fund

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[69] *See* Depts. of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act for 1989, Pub. L. No. 100-459, sec. 209, 102 Stat. 2186 (1988).

[70] *See. e.g., U.S. Citizenship and Immigration Services Fee Schedule*, 75 FR 58962, 58966 (Sept. 24, 2010) (final rule) (stating, "In the absence of appropriations, however, USCIS's only funding source is fee revenue.").

[71] *See* H.R. Rep. No. 100-979, at 38 (1988).

[72] *See* Depts. of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act for 1991, Pub. L. No. 101-515, secs. 210, 104 Stat. 2101.

"the entire cost of operating the Adjudications and Naturalization program."[73] In 2003, the Homeland Security Act of 2002 ("HSA") abolished the INS and established DHS.[74] Congress transferred to DHS responsibility for adjudicating immigration and naturalization benefits, which DHS accomplishes primarily through USCIS.[75]

DHS has provided the general public with its interpretation of section 286(m) since at least 2007, setting forth the legal basis for its authority to set and to adjust fees on immigration and naturalization applications. And DHS has interpreted section 286(m)'s plain language as granting it discretion to structure fees to "recover the full cost of operating USCIS."[76] Accordingly, the best reading of the statute is that it authorizes DHS to set fees to recover all of the costs for the lawful immigration program from fee-paying applicants and petitioners.

Section 286(n) of the INA, 8 U.S.C. 1356(n), further authorizes the reimbursement of "any appropriation" for amounts paid from that appropriation for expenses in providing immigration adjudication and naturalization services and for the collection, safeguarding, and accounting of fees deposited in and funds reimbursed from the IEFA. Together, these provisions establish that Congress intended immigration benefit fees deposited into the IEFA to support the full costs of providing adjudication and naturalization services, and to permit reimbursement of other appropriations to the extent those appropriations fund such services.

Consistent with OMB Circular A-25 and Statement of Federal Financial Accounting Standards 4, DHS has long interpreted "full costs" to include both direct and

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73 *See* Depts. of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act for 1991, Hearings Before the Subcommittee of the Committee on Appropriations, 101st Cong. ("1990 Appropriations Committee Hearing"), at 72 (1990).

74 *See* Pub. L. No. 107-296, secs. 101, 102, 441, 451, 471, 1102.

75 *Id* at secs. 451(b), 441, 116 Stat. at 2196, 2192.

76 *Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule*, 72 FR 29851, 29856, 29865, & 29867 (May 30, 2007) (final rule); *U.S. Citizenship and Immigration Services Fee Schedule*, 75 FR 33446, 33448 (June 11, 2010) (proposed rule); *U.S. Citizenship and Immigration Services Fee Schedule*, 75 FR 58962, 58969, & 58973 (Sept. 24, 2016) (final rule); *U.S. Citizenship and Immigration Services Fee Schedule*, 81 FR 26904, 26906 (May 5, 2016) (proposed rule).

indirect costs necessary to provide immigration services, including support services provided by other components and agencies. To date, however, DHS has generally exercised this authority by focusing fee recovery on costs incurred by USCIS, and we have not included costs borne by other departments and agencies.[77] The statutory text of section 286(n) of the INA, 8 U.S.C. 1356(n), states that DHS may "reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services." Therefore, the statute does not limit fee-funded cost recovery to USCIS alone.

This authority is being used more explicitly for several reasons. One key factor is that interagency costs associated with administering the lawful immigration system have grown substantially. Additionally, relying more fully on the existing authority in sections 286(m) and (n) of the INA, 8 U.S.C. 1356(m) and (n), advances Congress's directive that immigration adjudication and naturalization services be funded, to the extent possible, through fees that recover their full costs.[78]

By broadening the costs to be recovered as permitted by the statute, DHS aims to ensure that fees collected for immigration benefit requests more accurately reflect the full range of Federal activities and resources required to support the lawful immigration system.

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[77] Likewise, ICE, CBP, and DOJ have proposed or set fees authorized by section 1356(m) using past rulemaking actions considering only their own costs. *See, e.g., Adjusting Program Fees for the Student and Exchange Visitor Program*, 83 FR 33762 (Jul. 17, 2018) (proposed rule); *Implementation of the Electronic System for Travel Authorization (ESTA) at U.S. Land Borders*, 87 FR 18967 (Apr. 1, 2022) (interim final rule) (setting the ESTA fee); *Executive Office for Immigration Review; Fee Review*, 85 FR 11866 (February 28, 2020) (proposed rule).

[78] *See* Depts. Of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act for 1991, Pub. L. No. 101-515, sec. 210, 104 Stat. 2101. The 1990 amendment to section 286 (m) provides:

> That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the *full costs of providing all such services*, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

Section 286(m) of the INA, 8 U.S.C. 1356(m) (emphasis added).

B. *Cost Basis*

1. USCIS Costs

DHS proposes recovering a portion of USCIS operating costs through the proposed additional H-1B fee.[79] For USCIS, the cost basis for this proposed rule consists of two components:

- Projected unfunded IEFA non-premium costs of approximately $1.8 billion, identified in the FY 2026/2027 IEFA fee review completed in November 2025; and
- A cost transfer from the Premium Processing account of approximately $1.2 billion, based on the FY 2026 USCIS Operating Plan, to shift ongoing, core mission costs off the premium processing funding and onto other fee revenue.[80]

Together, these elements result in a USCIS cost basis of approximately $3.0 billion to be recovered through the revenue generated by the proposed additional H-1B fee. *See* Table 1. For additional information, see the USCIS Costs section of the H-1B Rule Supporting Documentation included in the docket.

Table 1: USCIS Cost Allocation

Cost Type	Amount (in millions)
IEFA Non-Premium Costs	$1,823.6
Premium Processing Cost Transfer	$1,176.4
Total Cost for USCIS	**$3,000.0**

a. IEFA Non-Premium Costs

DHS and USCIS use a biennial fee review process to capture any changes in operating costs and non-premium form fees across the USCIS enterprise. When

[79] Unless otherwise stated, the data used in this rule is based on FY 2026 costs. Adjustments will be made, as needed, should this proposed rule be finalized, to address policy changes and inflation.

[80] *See* section 286(u)(4) of the INA, 8 U.S.C. 1356(u)(4), providing that Premium Processing fee revenue may be used to cover certain costs, including infrastructure improvements and other costs of providing adjudication and naturalization services. The cost basis for this proposed rule transfers certain costs funded by the Premium Processing account, consistent with section 286(u)(4) of the INA, 8 U.S.C. 1356(u)(4), to other fee revenue for accounting purposes.

conducting a fee review to determine whether current immigration and naturalization benefit fees will generate sufficient revenue to fund the anticipated operating costs associated with administering the nation's lawful immigration system, USCIS usually assesses its recent operating environment to determine the appropriate method to assign costs to immigration benefit requests.

USCIS completed its last fee review for the FY 2026/2027 biennial period in November 2025. Based on projected IEFA-funded costs and revenue under the current fee schedule, USCIS identified an anticipated annual need of approximately $1.9 billion. This deficit reflects additional IEFA-funded requirements that are not covered by existing fees.

In developing the biennial cost projection for the fee review, all IEFA non-premium costs were considered, accounting for payroll and non-payroll costs for on-board and new staff, inflation, resource requirements or adjustments, and the removal of costs associated with temporary programs. USCIS started with its general FY 2025 USCIS Operating Plan, which was slightly adjusted for some return to workplace costs estimated for the remainder of the fiscal year. USCIS then made the following adjustments in this review:

- Staffing Increases: Added staffing based on the FY 2026 and FY 2027 Staffing Allocation Model (SAM) enhancements, a non-SAM enhancement request, and a position transfer from the Fraud Prevention and Detection Account (FPDA), for a total of 6,045 new positions across most USCIS offices by the end of FY 2027. The SAM enhancements, which totaled 5,694 positions and an average annual cost of $1.8 billion, incorporate the effect of recent Executive Orders, as well as the most recent agency completion rate estimates. The FDNS non-SAM enhancement of 167 positions in FY 2025 was approved to start ramping up hiring in response to Executive Orders 14157[81] and 14161,[82] with the overall goal to enhance USCIS' vetting and screening capabilities and an average cost of $35.4 million per year. An additional 184 FDNS positions will be transferred from the FPDA to IEFA for an average annual cost of $31.3 million;

- New Facilities and Related Costs: Included costs for construction of new facilities, rent, and Federal Protective Service (FPS) coverage to accommodate additional 6,045 staff. Construction is a one-time cost of approximately $405.7 million in FY 2026 and is removed from net additional costs in FY 2027. Ongoing rent and FPS costs for the added space average $75.3 million per year.
- Pay and Inflation: Applied assumed annual pay and price inflation of 3 percent for FY 2026 and FY 2027, including anticipated promotions and within grade increases, and statutory cost of living adjustments.
- Other Net Additional Costs: Incorporated several major new or expanded initiatives, including: (1) full internalization of lockbox operations over the biennial period ($231.1 million); (2) construction and activation of a new National Records Center ($114.7 million); and (3) development and operation of a new Voter Verification System ($75.3 million).

Table 2 summarizes the transition from the FY 2025 IEFA nonpremium annual Operating Plan to the FY 2026/2027 annual average IEFA nonpremium cost projection. The resulting projected average annual IEFA nonpremium cost for FY 2026/2027 is approximately $6,960 million.

Table 2: FY 2026/2027 IEFA Non-Premium Cost Projection (in Millions)

[81] 90 FR 8439 (Jan. 29, 2025); USCIS will incur additional costs for implementing advanced background checks, fraud detection systems, and coordination with law enforcement and intelligence agencies. These measures will require additional staffing, technology upgrades, and interagency collaboration.
[82] 90 FR 8451 (Jan. 30, 2025); USCIS will incur additional costs for implementing enhanced fraud detection systems, conducting national security checks, and training staff to handle complex cases. These measures will require additional staffing, investments in technology, and interagency coordination.

Total Adjusted FY 2025 IEFA Non-Premium Operating Plan	**$5,037.8**
Plus: Pay and Inflation and Promotions/Within-Grade Increases	$349.9
Plus: Net Additional Costs	$1,604.4
Total FY 2026 Cost Projection	**$6,992.1**
Plus: Pay Inflation and Promotions/Within-Grade Increases	$161.0
Plus: Net Additional Costs	($225.2)
Total FY 2027 Cost Projection	**$6,927.9**
FY 2026/2027 Annual Average Cost Projection	**$6,960.0**

Within the final $1.9 billion annual average increase in the cost projection from the FY 2025 Operating Plan, USCIS is assigning $1.6 billion to be recovered through the proposed additional H-1B fee. USCIS is also adding $174.3 million for new staffing needs identified after the completion of the biennial fee review. These additional staffing positions are necessary to address evolving operational requirements, ensure continuity of critical functions, and support increased workload demands. The new staff would help USCIS improve processing efficiency, maintain service levels, and enhance the integrity of the lawful immigration system, including the H-1B program. These amounts total $1.8 billion of non-premium IEFA costs to be recovered by the proposed additional H-1B fee.

As explained earlier in this preamble, DHS has considered and analyzed other rulemaking projects that are underway for peripheral, overlapping, or interrelated effects on this rule. For example, DHS and USCIS would recover additional revenue in the Naturalization Fee Rule. *See*, *Naturalization Application Fee Adjustments*, 91 FR 37500 (June 23, 2026) (proposed rule) (Naturalization Fee Rule). However, the Naturalization Fee Rule excluded additional facilities costs incorporated in the final fee review budget. DHS leveraged the data available to distribute the increase in costs between both rules and estimated that $272.9 million of the cost increase can be assigned to the Naturalization Fee Rule, while the remainder is assigned to be recovered by the proposed additional H-1B fee in this rule. Table 3 highlights the estimated breakout of the non-premium cost increase assignment for the proposed additional H-1B fee. DHS will incorporate any changes based on the interaction of this and other related rulemakings or policy changes as necessary.

Table 3: IEFA Non-Premium Cost Assignment to Proposed H-1B Fee

IEFA Non-Premium Cost Items	Cost (in millions)
Fee Review Net Cost Increase to Base	$1,649.3
Additional Staffing Needs Identified After Fee Review Completion	$174.3
Total Non-Premium IEFA Costs Assigned to Proposed H-1B Fee	**$1,823.6**

b. Premium Processing Cost Transfer

In the 2024 Final Rule, DHS transferred $129.8 million in costs to premium processing to reduce costs to be recovered by non-premium fees.[83] In this rule, DHS proposes to take a different approach by transferring $1.2 billion in costs from the premium processing account to the non-premium account. This includes $384.8 million in payroll and $791.6 million in non-payroll expenses.

Table 4: Premium Processing Cost Transfer Details

Cost Type	Amount (in millions)
Payroll Transfer	$384.8
General Expenses Transfer	$791.6
Total Premium Costs to be Transferred	**$1,176.4**

Premium processing funds currently support payroll for 1,979 full-time equivalents (FTE) in the Service Center Operations Directorate (SCOPS) and 472 FTE in the Refugee, Asylum, and International Operations Directorate (RAIO). Non-payroll expenses funded by premium processing also support USCIS' information technology (IT) infrastructure and other operational needs related to premium processing activities. Transferring these costs from premium processing to non-premium funding would provide USCIS with greater flexibility to invest in IT and other initiatives that enhance adjudication processing, while ensuring sufficient staffing and support to meet premium processing time requirements. Some examples of operational enhancements that USCIS would fund with premium processing funding include additional personnel to sustain

[83] At pages 6206-6207.

timely vetting and fraud detection amid significant increases in national security cases, fraud referrals and site visits, pre-interview screening assessments that allow USCIS to identify and proactively work high-risk cases, and consolidating and integrating various federal screening and vetting information databases and systems.

2. ICE Costs

ICE bears significant expenses for functions that directly support the administration of the lawful immigration system. These functions include, among others, investigations and referrals related to immigration benefit fraud, worksite and employer-compliance activities tied to nonimmigrant employment categories, data and information-sharing in support of benefit adjudications, and case coordination with USCIS, CBP, DOS, DOL, and EOIR.

The amounts in Table 5 reflect ICE's estimated FY 2026/2027 costs for these immigration-benefit–related activities, inclusive of operational expenditures and associated infrastructure (*e.g.*, personnel, case management systems, and mission support). Funding some of these ICE activities with the proposed new H-1B fee would ensure that a portion of the resources needed to safeguard program integrity and support lawful use of employment-based nonimmigrant visas are funded by fee revenue associated with those programs, rather than relying solely on appropriated funding. The SEVP cost of $50 million in Table 5 is the projected funding deficit for this program in excess of the Student and Exchange Visitor Information System (SEVIS) fee revenue collection forecast.[84] For additional information, see the ICE Costs section of the H-1B Rule Supporting Documentation included in the docket.

Table 5: ICE Cost Allocation

ICE Activity	Cost (in millions)
Vetting of Aliens Pending Adjudication	$900.0

[84] As explained previously, DHS is not setting this fee to be associated with or required for providing a specific service.

Vetting of Applicants for Admission	$100.0
Student and Exchange Visitor Program	$50.0
Total ICE Costs	**$1,050.0**

3. CBP Costs

CBP provides support to the lawful immigration system in various ways. This rule proposes using the new fee to fund the expansion of a middleware solution integrated into the traveler inspection process. This solution provides biometric matching capabilities for travelers entering and exiting the country through the Traveler Verification Service (TVS). The costs assigned in this section reflect only those portions of biometric entry-exit system expenses that are estimated to be attributable to aliens and immigrants (not U.S. citizens) that are not expected to be fully funded by appropriated funds or other fee authorities. DHS will align cost assignments consistent with the analysis described in Section IV.D to avoid duplicative cost recovery, taking into account that the statutory authority for the 9-11 Biometric Fee is currently scheduled to sunset in the next fiscal year. For additional information, see the CBP Costs section of the H-1B Rule Supporting Documentation included in the docket.

Table 6: CBP Cost Allocation

CBP Activity	Cost (in millions)
Traveler Verification Service (TVS)	$76.2
Total CBP Costs	**$76.2**

4. EOIR Costs

As shown in Table 7, DOJ's Executive Office for Immigration Review (EOIR) requires substantial personnel, court operational, and adjudicatory support resources to carry out its immigration court and appellate functions. These resources support EOIR's adjudication of asylum applications, cancellation of removal applications, and associated motions and appeals, as well as related matters before the Immigration Courts and the

BIA. These activities are integral to the functioning of the lawful immigration system and represent ongoing, mandatory adjudicative responsibilities.

DHS proposes to allocate a portion of the proposed additional H-1B fee revenue to support expanded EOIR adjudicatory capacity for FY 2027 and subsequent annualized costs. As reflected in Table 7, the proposed allocation would fund approximately $3.0 billion in EOIR costs, including $1.9 billion for personnel, $748.1 million for court-related non-personnel costs, and $318.8 million for adjudicatory non-personnel costs.

The proposed EOIR personnel costs would support 8,400 additional positions organized around Immigration Judge teams and related operational support. These positions include Immigration Judges, attorneys, Legal Administrative Specialists or Legal Assistants, professional administrative staff, and other law-related support positions. The proposed non-personnel costs would support the facilities, security, information technology, travel, utilities, interpretation, transcription, litigation support, representation-related program costs, Freedom of Information Act (FOIA) support, and other services necessary for EOIR to conduct timely and accurate adjudications.

Including these in the costs to be reimbursed with the proposed H-1B fee is consistent with INA section 286(m), 8 U.S.C. 1356(m), and OMB Circular A-25, which permit recovery of the full costs of providing adjudication services, including related personnel, support, facilities, technology, and overhead.

Table 7 illustrates how allocating a portion of the proposed H-1B fee revenue to EOIR would provide stable funding for Immigration Court and Board operations that are closely tied to the administration of the lawful immigration system. Reliable fee funding would support timely and accurate adjudications and reduce dependence on appropriations or transfers to meet core adjudicative needs. For additional information, see the EOIR Costs section of the H-1B Rule Supporting Documentation included in the docket.

Table 7: EOIR Cost Allocation

Cost Type	Description	Cost (in millions)
Personnel	8,400 positions: Immigration Judges, Attorneys, Legal Administrative Specialists, Professional Administrative Positions, and Other Law Related Positions	$1,889.9
Non-Personnel – Court Costs	Space and Guard Costs, Travel, Utilities, and IT Costs.	$748.1
Non-Personnel – Adjudicatory Costs	National Qualified Representation Program (NQRP), Interpretation, Transcription, Litigation Support, and FOIA Costs	$318.8
Total EOIR Costs		**$2,956.9**

5. <u>DOS Costs</u>

As shown in Table 8, DOS incurs targeted costs for consular activities that directly support screening, vetting, and fraud prevention for employment-based visa applicants, including H-1B beneficiaries.

DOS costs arise from several areas. The Visa Services Directorate supports the operation of the Fivecast and related systems used for joint DOS/USCIS vetting, plus additional contractor support at the Kentucky Consular Center, to enhance data sharing and risk screening for visa applicants. The Offices of Fraud Prevention Programs identified costs that would support AI-enabled fraud screening and link analysis tools and expanded Diplomatic Security efforts to investigate and address visa fraud and misuse involving nonimmigrant programs. In addition, DOS incurs costs for consular sections at 270 posts around the globe to address enhanced fraud-focused training and additional staff at consular posts to strengthen in-person review and fraud detection for employment-based visa cases. The Bureau of Population, Refugees, and Migration (PRM) incurs costs related to the U.S. Refugee Admissions Program (USRAP), such as expenses for Mission South Africa. The Resettlement Support Center (RSC) is responsible for refugee medical exams and arranging travel to the United States. Other costs cover the International Organization for Migration's (IOM) operation of a second RSC and support for refugee airport transfers worldwide, along with various expenses to maintain case processing infrastructure at DOS. For additional information, see DOS Costs section of the H-1B Rule Supporting Documentation included in the docket.

Funding these DOS costs, that are not already funded by fees, with the proposed additional H-1B fee recognizes that frontend consular vetting and fraud prevention are integral components of the lawful immigration system supported by H-1B petition fees.

Table 8: DOS Cost Allocation

DOS Activity	**Cost (in millions)**
Visa Services Directorate	$321.0
The Offices of Fraud Prevention Programs	$13.5
Consular sections located at 270 posts	$37.5
PRM costs associated with the USRAP	$4.0
RSC costs including medical exams and refugee travel to the U.S.	$66.0
International Organization for Migration (IOM)	$22.0
Other data, systems, and case processing infrastructure	$20.0
Total DOS Costs	**$484.0**

6. DOL Costs

DOL performs labor certification, labor condition, and prevailing wage determination functions that are statutory predicates or delegated components of certain USCIS employment-based adjudications. The amounts reflect DOL's projected FY 2026/2027 costs for these functions that are not already funded by fees.

DOL costs to support this rule come from a variety of areas. The Permanent (PERM) Program supports required prevailing wage and labor certification processing for certain employment-based immigrant petitions (Form I-140, *Immigrant Petition for Alien Worker*), including case review, audit, supervised recruitment, and related program integrity actions and systems that underpin DHS immigrant visa petition adjudications. The H-1B Visa Program funds LCA processing and enforcement activities mandated for

H-1B petitions (*Form I-129, Petition for a Nonimmigrant Worker*), ensuring compliance with wage and working condition requirements tied to USCIS approvals. The Prevailing Wage Programs cover prevailing wage determinations used across employment-based programs (including PERM, H-1B, H-2A, and H-2B). The H-2A Visa Program reflects the cost of H-2A labor certification processing and related activities that are statutorily required for USCIS to adjudicate H-2A petitions. Additional funding for each of these programs will allow them to expand efforts in support of lawful immigration.

Additionally, DOL will use revenue from this fee to support the Wage and Hour Division of the Agency in immigration enforcement activities across relevant visa programs, including investigations, housing inspections, wage and hour compliance, and case development and the Office of the Solicitor to provide legal support and litigation services for the OFLC and WHD enforcement, including regulatory drafting, work before the Office of Administrative Law Judges and Administrative Review Board, federal court defense, and general legal support at both national and regional offices.

DHS proposes to fund the DOL cost items in Table 9 with the proposed additional H-1B fee because these mandatory labor certification and wage functions are integral components of the employment-based immigration system. For additional information, see the DOL Costs section of the H-1B Rule Supporting Documentation included in the docket.

Table 9: DOL Cost Allocation

DOL Activity	Cost (in millions)
Permanent (PERM) Program	$95.5
H-1B Visa Program	$79.2
Prevailing Wage Programs	$70.5
H-2A Visa Program	$136.6
H-2B/CW-1 Visa Programs	$128.6
Wage and Hour Division	$350.0

Office of the Solicitor	$350.0
Total DOL Costs	**$1,210.4**

C. *Fee-Setting and Revenue Projection*

1. Fee-Setting Methodology

DHS proposes a $103,265 fee for each H-1B cap-subject petition filed in addition to other required fees to recover the lawful immigration-related costs attributed to DHS and other federal agencies, as described in this rule. Applying this fee to a projected annual volume of 85,000[85] H-1B cap-subject receipts yields projected annual revenue of approximately $8.8 billion.

DHS has assessed the costs of the lawful immigration system and has determined that an additional fee of $103,265 would provide revenue to cover the costs explained in this rulemaking.[86] Consistent with its broad authority under the INA and HSA, DHS is proposing the additional fee to only apply to H-1B cap-subject petitions and not to all H-1B petitions, or all I-129 petitions.[87] DHS believes that cap-subject H-1B petitioners are willing to pay and can afford an additional $103,265 fee. The addition of this proposed fee to H-1B cap-subject petitions is intended to provide a dedicated source of revenue to

[85] The H-1B annual numerical allocations are 85,000 based on the numerical limitation of 65,000 under section 214(g)(1)(A) of the INA, 8 U.S.C. 1184(g)(1)(A), and the numerical exception of 20,000 under section 214(g)(5)(C) of the INA, 8 U.S.C. 1184(g)(5)(C).
[86] DHS recognizes that the proposed $103,265 fee is close to the $100,000 payment required by Proclamation 10973, "Restriction on Entry of Certain Nonimmigrant Workers" *See* 90 FR 46027 (Sept. 19, 2025). The payment required by the Proclamation as a restriction on entry based on sections 212(f) and 215(a) of the INA, 8 U.S.C. 1182(f) and 1185(a), applied to certain H-1B visa petitions filed on or after September 21, 2025, and, unless the Proclamation is extended, before September 21, 2026. On June 8, 2026, the United States District Court for the District of Massachusetts vacated the agency guidance implementing the payment required by Proclamation 10973. *See California et al, v. Mullin*, 25-13829 (D. Mass). On June 11, 2026, the Government filed an appeal with the First Circuit Court of Appeals. The appeal remains pending as of the date of publication of this NPRM. If the order is later lifted, DHS would collect the payment consistent with the terms of the Proclamation and any extension or renewal of the Proclamation. This NPRM, however, is based on different authority than the payment required by Proclamation 10973. *See* Section III.A. of this NPRM.
[87] *See* INA secs. 214(a)(1) and (c)(1), 8 U.S.C. 1184(a)(1) and (c)(1), and HSA secs. 402 and 451(a)(3) and (b), 6 U.S.C. 202 and 271(a)(3) and (b).

reimburse the federal government for some of the costs of administering the lawful immigration system, including certain costs incurred by other departments and agencies.

DHS is proposing to not require the fee to be paid with a petition for a cap-exempt H-1B nonimmigrant. That is because many cap-exempt H-1B nonimmigrants are employed by nonprofit research organizations, governmental research organizations and educational institutions, and DHS has decided that exempting those organizations is consistent with the application of the asylum program fee on such petitioners. *See* 8 CFR 106.1(f)(2) and 106.2(c)(13)(i); *see also*, 2024 Final Rule at 6206-6207 (discussing why DHS decided to provide certain fee reductions and fee exemptions for nonprofits and educational institutions). DHS considered recovering the costs identified in this rule by applying it to all benefit requests, however, as explained in section III.B, DHS is not proposing to recover the costs by imposing an additional fee on all benefit requestors, or all I-129 petitioners, because DHS believes that H-1B cap-subject petitioners, as compared to other benefit requestors, are most willing and able to pay an additional fee.

DHS recognizes that the other agency costs that are included in this rule and used to establish the fee proposed in this rule are new. DHS also recognizes that DOS and DOL have not independently used the authority in section 286(m) of the INA, 8 U.S.C. 1356(m), to establish fees to cover the costs they incur for administering adjudication services. However, in 2024, for the first time, DHS established a new Asylum Program Fee of $600 to be paid to fund the asylum program by any petitioner filing a *Petition for a Nonimmigrant Worker,* Form I-129, a *Petition for a CNMI-Only Nonimmigrant Transitional Worker,* Form I-129CW, or an *Immigrant Petition for Alien Worker,* Form I-140. *See* 8 CFR 106.2(c)(13); 2024 Final Rule. Before that fee, DHS had never directly transferred the costs of one program to another.[88]

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[88] *See*, *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, 88 FR 402, 453 (Jan. 4, 2023) (proposed rule).

In addition, DHS generally adjusts its fees based on the fee study required by the CFO Act after determining that current fees need to be adjusted because they do not reflect the current burden of adjudication, they are inadequate to fund the total costs of operating USCIS, and we have identified areas of USCIS operations that need enhancements or additional resources. The primary objective of the fee review is to determine whether current immigration and naturalization benefit fees will generate sufficient revenue to fund anticipated operating costs associated with administering USCIS' role in the nation's lawful immigration system.[89] USCIS forecasts costs, revenue, and operational metrics to identify the difference between anticipated costs and revenue to calculate fees.

In addition, DHS has generally adhered to OMB Circulars A-25 and A-11, nonbinding internal executive branch direction for the development of fee schedules and appropriations requests, respectively. *See* 88 FR 402, 415 ; 5 CFR 1310.1. DHS recognizes that they reflect best practices and we have used the activity-based costing (ABC) methodology supported in Circulars A-25 and A-11 to develop past USCIS fee schedules.

Similar to the establishment of the Asylum Program Fee, DHS has never set a fee for a specific immigration sub-population that submits a certain USCIS benefit request to fund general USCIS operating costs, costs that are currently borne by other DHS components, costs that are borne by other executive branch departments, or costs that have been generally funded by a Congressional appropriation. Nevertheless, although it has not historically been fulsomely applied, section 286(m) of the INA, 8 U.S.C. 1356(m), authorizes DHS to set fees to recover the full aggregate costs of providing immigration benefits and services, including costs incurred by other federal agencies that

[89] *Id.* at 426.

are materially involved in the delivery of those services.[90] DHS is not required to determine USCIS immigration benefit request fees using ABC methodology, and is not required to spread costs evenly among fee-paying immigration benefit requests, as long as the methodology used to set a fee or fees is rational and authorized by law. Thus, for the reasons explained in this proposed rule, DHS may charge fees to H-1B petitioners to deposit into the IEFA and use those funds to reimburse other executive branch departments, agencies, or DHS components for expenses incurred in or directly related to providing immigration adjudication and naturalization services.

DHS does not propose this additional H-1B fee without having carefully considered its implications and effects. DHS realizes that some petitioners will object to funding the costs of non-USCIS administered programs to which they have no connection or from which they receive no direct benefit. At the same time, the agencies to be funded from this fee are charged with administering programs related to the administration of immigration adjudication and naturalizations service and DHS has determined that fee revenue should be used to reimburse those programs. In addition, while the purpose of this proposed rule is to generate additional revenue to fund adjudication services, DHS believes the fee would have indirect benefits. DHS believes that U.S. employers, if required to pay an additional $103,265 fee when filing an H-1B cap-subject petition, would be less likely to hire an H-1B worker over a qualified and highly-skilled American worker unless the need is legitimate and they have no alternative for obtaining the specialized skills of the employee. Given that demand for H-1B workers greatly exceeds the statutory cap, this fee could also have the indirect benefit of better protecting the wages and job opportunities of U.S. workers, as the H-1B program is intended to do.

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[90] *See also*, INA sec. 286(n), 8 U.S.C. 1356(n), which permits "reimburse[ment of] any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed" from the IEFA.

2. Volume Assumption

As described above, the total number of foreign workers who may be granted initial H-1B nonimmigrant status during any fiscal year may not exceed 85,000. *See* INA secs. 214(g)(1)(A) and (g)(5)(C), 8 U.S.C. 1184(g)(1)(A) and (g)(5)(C). For purposes of this proposed rule, DHS assumes an annual filing volume of 85,000 H-1B cap-subject petitions, all of which would be subject to the proposed H-1B fee in addition to all other required fees.[91]

3. Revenue Projection and Allocation

The proposed fee of $103,265 and the projected volume of 85,000 yield a total revenue projection of approximately $8.8 billion, as shown in Table 10:

Table 10: H-1B Fee Annual Revenue Projection

Proposed H-1B Fee	$103,265
Projected Cap-Subject Volume	85,000
Revenue Projection	**$8,777,525,000**

USCIS, after retaining the necessary share to recover its associated costs, would allocate the revenue collected from the proposed additional H-1B fee to the five agencies and departments previously identified for actual expenses incurred based on the estimated share of the costs explained in this rule. Table 11 shows the initial proposed distribution for revenue collections:

Table 11: Proposed Allocation of Annual H-1B Fee Revenue by Agency/Department

Agency/ Department	Share	Revenue Allocation (in millions)
USCIS	34.2%	$3,000.0
ICE	11.9%	$1,050.0
CBP	0.9%	$76.2
EOIR	33.7%	$2,956.9
DOS	5.5%	$484.0
DOL	13.8%	$1,210.4
Total Revenue	**100%**	**$8,777.5**

[91] This proposed additional fee would not apply to H-1B petitions that are not subject to the cap, for example, cap-exempt petitions covered by INA secs. 214(g)(5) and (7), 8 U.S.C. 1184(g)(5) and (7).

DHS and USCIS will execute agreements with the other executive branch departments, agencies, or DHS components to reimburse them for expenses incurred in or directly related to providing immigration adjudication and naturalization services as authorized by section 286(n) of the INA, 8 U.S.C. 1356(n) and in compliance with other laws and regulations that govern reimbursable agreements among federal agencies. The details of those agreements, including the process of requesting reimbursement, the timing of requests, required documentation, amounts, and other limitations would be determined before a final rule that codifies the fee proposed in this rule takes effect.

VI. Statutory and Regulatory Requirements

A. *Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14192 ("Unleashing Prosperity Through Deregulation")*

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14192 directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that "any new incremental costs associated with the new regulations shall, to the extent permitted by law be offset by the elimination of existing costs associated with at least 10 prior regulations."

The Office of Management and Budget (OMB) has designated this proposed rule a "significant regulatory action" that is economically significant, as defined under section 3(f)(1) of E.O. 12866 because its annual effects on the economy exceed $100 million in any year of the analysis. Accordingly, the rule has been reviewed by the OMB.

This rule is not an E.O. 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States (as described in section (a)(17) of the INA, 8 U.S.C. 1101(a)(17), or any other function performed by the U.S. Federal Government with respect to aliens. *See* OMB Memorandum M-25-20, "Guidance Implementing Section 3 of Executive Order 14192, titled "Unleashing Prosperity Through Deregulation" (Mar. 26, 2025).

1. Summary

DHS is proposing a fee of $103,265 for all H-1B cap-subject petitions, including small employers or nonprofits. The purpose of this NPRM is to generate additional revenue to support the costs of administering the lawful immigration system. The proposed additional fee, if finalized as proposed, would provide a new targeted revenue mechanism to help recover a portion of the costs incurred by multiple Federal agencies in processing, adjudicating, and supporting the lawful immigration system, including USCIS, CBP, ICE, EOIR, DOS, and DOL. The fee would allow USCIS to further refine its fee model and recover costs.

DHS estimates that this proposed rule would create annual quantified costs of approximately $8.8 billion over the 10-year period of analysis (FY 2027 through FY 2036). To compare costs over time, DHS applies 3 percent and 7 percent discount rates to the total estimated costs of the proposed rule. DHS estimates the 10-year total costs of the proposed rule to be $74.9 billion discounted at 3 percent, and $61.6 billion discounted at 7 percent. Table 12 presents the OMB Circular A-4 accounting statement showing the costs, benefits, and transfers associated with this rule.[92]

Table 12. OMB A-4 Accounting Statement ($ billions, FY 2027) Time Period: 10 years

[92] OMB, "Circular A-4" (Sept. 17, 2003), trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf (last visited Aug. 1, 2025).

Category	Primary Estimate	Minimum Estimate	Maximum Estimate	Source Citation
BENEFITS				
Annualized Monetized Benefits	Not Estimated			Regulatory impact analysis (RIA)
Annualized quantified, but unmonetized, benefits	N/A	N/A	N/A	RIA
Qualitative (unquantified) Benefits	This fee would serve as a dedicated revenue mechanism to help recover a portion of the federal government's costs of administering the lawful immigration system, including activities carried out by USCIS, CBP, ICE, EOIR, DOS, and DOL.			RIA
COSTS				
Annualized monetized costs for 10-year period starting in FY 2027 through FY 2036	(3% and 7%) $8.8			RIA
Annualized quantified, but unmonetized, costs	N/A			RIA
Qualitative (unquantified) costs	N/A			RIA
TRANSFERS				
Annualized monetized transfers: "on budget"	N/A			RIA
From whom to whom?	N/A			RIA
Annualized monetized transfers: "off-budget"	N/A			RIA
From whom to whom?	N/A			RIA
Miscellaneous Analyses/Category	Effects			Source Citation (RIA, preamble, etc.)
Effects on State, local, or tribal governments	N/A			RIA
Effects on small businesses	DHS estimates that the proposed rule would result in a significant economic impact on 11,051 small entities (76 percent of small entities that filed cap-subject petitions in FY 2025) due to additional fees proposed in this rulemaking.			Regulatory Flexibility Act (RFA) analysis
Effects on wages	N/A			RIA
Effects on growth	N/A			RIA

2. Baseline and Population

DHS has decided to make up the funding shortfall identified in this rule by charging a fee for all Form I-129 H-1B cap-subject petitions, payable at the time of filing the petition. The number of aliens who may be issued initial H-1B visas or otherwise provided initial H-1B nonimmigrant status during any fiscal year has been capped at various levels by Congress over time, with the current numerical limit being 65,000 per fiscal year. *See* section 214(g)(1)(A) of the INA, 8 U.S.C. 1184(g)(1)(A). Congress has also provided for various exemptions from this annual numerical limit, including an exemption for 20,000 aliens who have earned a master's or higher degree from a U.S. institution of higher education. *See* sections 214(g)(5) and (7) of the INA, 8 U.S.C. 1184(g)(5) and (7). DHS implemented an electronic H-1B registration process to facilitate the selection of H-1B cap-subject petitions toward the annual numerical allocations.[93] Under current regulations, all petitioners seeking to file an H-1B cap-subject petition must first electronically submit a registration for each beneficiary on whose behalf they seek to file an H-1B cap-subject petition, unless USCIS suspends the registration requirement. 8 CFR 214.2(h)(8)(iii)(A)(*1*). In general, before filing an H-1B petition, the employer is required to obtain a certified LCA from the DOL. *See* 8 CFR 214.2(h)(4)(i)(B)(*1*). The LCA collects information about the employer and the occupation for the H-1B worker(s). The LCA requires certain attestations from the employer, including, among others, that the employer will pay the H-1B worker(s) at least the required wage. *See* 20 CFR 655.731 through 655.735. In addition, DHS also charges a registration fee on H-1B registrations.[94] Additional fees required to file a Form I-129, *Petition for a Nonimmigrant Worker*, are listed on the G-1055 Fee Schedule.[95]

In FY 2020, DHS implemented an electronic registration process for the H-1B cap-subject petitions. Prospective petitioners seeking to file H-1B cap-subject petitions, including for beneficiaries eligible for the advanced degree exemption, first must

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[93] *See*, *Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap-Subject Aliens,* 84 FR 888 (Jan. 31, 2019) (final rule).

[94] Registrants or their representative are required to pay the nonrefundable H-1B registration fee for each beneficiary before being eligible to submit a registration for that beneficiary for the H-1B cap. The fee will not be refunded if the registration is not selected or is withdrawn. *See* 2024 Final Rule. Also, see USCIS, "Frequently Asked Questions on the USCIS Fee Rule," available at https://www.uscis.gov/archive/frequently-asked-questions-on-the-uscis-fee-rule (last updated Apr. 01, 2025).

[95] USCIS, G-1055, Fee Schedule https://www.uscis.gov/sites/default/files/document/forms/g-1055.pdf (last updated June 1, 2026), see Appendix A: I-129, Petition for a Nonimmigrant Worker, pages 35-36.

electronically register and pay the associated H-1B registration fee for each beneficiary.[96] Most recently, DHS implemented a weighted selection process that favors allocating H-1B visas to higher-skilled and higher-paid aliens while maintaining the opportunity for employers to secure H-1B workers at all wage levels.[97]

In Table 13, DHS presents data from receipts of Form I-129 petitions for H-1B classification that employers have filed on behalf of nonimmigrant workers. The following table shows total Form I-129 receipts for H-1B classification and cap-subject H-1B petitions for FY 2021 through FY 2025. DHS estimates that 442,020 is the 2-year average annual number of Form I-129 petitions for H-1B classification filed by employers; the 2-year average of cap-subject receipts is 108,910. DHS is highlighting the 2-year average taking into consideration the impact of the beneficiary centric selection process for H-1B registrations, as well as modernization, and improvement to the efficiency of the H-1B program. Generally, the filing volume of cap-subject H-1B petitions differs from the numerical limits set by Congress as USCIS has historically selected more than 85,000 beneficiaries/registrations in the lottery and received more than 85,000 H-1B cap-subject petitions, to account for denied, rejected, or withdrawn petitions. If this rule were finalized as proposed, DHS anticipates a projected volume of 85,000 would be subject to the proposed additional fee.

Table 13: Receipts Form I-129, Petition for a Nonimmigrant Worker, H-1B for FY 2021 through FY 2025

Fiscal Year	**Total Receipts**	**Cap-Subject Receipts ***
2021	398,281	79,903
2022	474,292	111,269
2023	386,593	74,759
2024	427,314	111,108
2025	456,726	106,711
5-year Total	2,143,206	483,750

[96] USCIS, "H-1B Electronic Registration Process," available at *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process* (last updated Jan. 30, 2026).
[97] DHS, USCIS, *Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H-1B Petitions*, 90 FR 60864 (Dec. 29, 2025) (final rule).

5-year Annual Average	428,641	96,750
FY 2024 through FY 2025 Total	**884,040**	**217,819**
FY 2024 through FY 2025 Annual Average	**442,020**	**108,910**
Source: DHS, USCIS, Office of Performance and Quality (OPQ); ELIS and CLAIMS3 databases, queried Mar. 2026, PAER0020722. * The basis for classification is "new employment" and numerical limitation information is "Cap H-1B Bachelor's Degree" and "Cap H-1B U.S. Master's Degree or Higher". Fiscal year of receipt and the fiscal year of the cap may differ, resulting in year-to-year deviations shown. These deviations are smoothed out by the average estimates.		

3. Impact of Proposed Fee on Demand

As explicitly described in the preamble, the current fee schedule does not generate sufficient government revenue to support the costs of administration of the lawful immigration system. To recover certain costs of USCIS, other DHS components, and other executive branch agencies engaged in administering the lawful immigration system, DHS is proposing to establish an additional fee of $103,265 for cap-subject H-1B nonimmigrant petitions. A recent analysis, Borjas (2026) suggests that H-1B petitioners would be willing to pay a one-time fee ranging from $100,000 to $200,000 to hire a foreign-born worker.[98] This analysis combines two administrative data sources that collect proffered wages and other information on H-1B beneficiaries (DHS's FY 2021 to FY 2024 H-1B beneficiary data merged with DOL's LCA data) and Census Bureau data on U.S. natives (American Community Survey 2023 One-Year sample). The combined data is used to estimate the wage gap between an H-1B worker and a statistically comparable U.S. native worker via standard log wage regression model, controlling for education, age, gender, occupation and geography. The resulting wage gap indicates employers pay H-1B workers 16.1 percent less than the expected wages of a comparable native worker. Given observed H-1B wages and six-year durations, this estimate supports the willingness to pay a one-time fee of $103,265 on cap-subject H-1B receipts. Simulating various scenarios of unobserved productivity gains achieved by H-1B

[98] George J. Borjas, "The H-1B Wage Gap, Visa Fees, and Employer Demand," NBER Working Paper 34793 (Feb. 09, 2026), https://doi.org/10.3386/w34793.

petitioners when they hire foreign-born workers, Borjas (2026) estimated the demand for H-1B visas given alternative values of fees. The simulation exercise showed that the demand for H-1B visas will not go below 85,000 for a fees above $100,000.[99]

4. <u>Fee Elasticity</u>

DHS has analyzed the responses of petitioners to the fee increase implemented from April 1, 2024 and continues to monitor the recent $100,000 proclamation payment data. DHS has analyzed the possible sensitivity of demand for H-1B visa requests to filing fees by estimating a negative binomial regression model and FY 2021 through FY 2025 data to measure unique petitioners' responses to fee changes over this time. Short run fee elasticity estimates were generated from the cross-sectional regression models implemented on each fiscal year while panel regression models implemented on four fiscal years led to long-run fee elasticity estimates. The panel regression analysis estimated the long run fee elasticity of demand for H-1B receipts to be less than one, hence we concluded that fee elasticity of demand for I-129 H-1B receipts is inelastic. In the Regulatory Impact Analysis supporting the 2024 Final Rule, USCIS discussed factors that drive this inelasticity.[100] USCIS also evaluated information on initial H-1B registrations from cap-subject petitioners for cap FY 2027. These analyses are detailed in a separate Technical Appendix published to the proposed rule's docket. While the technical appendix discusses how registrations and consular processing receipts have responded to the $100,000 proclamation payment and prior fee increases, as USCIS has yet to observe the full current fiscal year behavior of H-1B petitioners, DHS continues to analyze FY 2027 cap-subject petitions.

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[99] Ibid., *See* pgs. 22 through 24, Table 6 and Table 7 of Borjas 2026.

[100] *See* FY 2022-2023 USCIS Fee Rule Regulatory Impact Analysis (RIA), Section 5.B Price Response to Form I-129, Petition for a Nonimmigrant Worker and Form I-140, Immigrant Petition for Alien Workers at https://www.regulations.gov/document/USCIS-2021-0010-0033 (Jan 31, 2024)

5. Total Quantified Costs of Proposed Rule

Table 13 shows that USCIS typically selects more than 85,000 beneficiaries/registrations in the lottery, and receives more than 85,000 H-1B cap-subject petitions, to account for denied, rejected or withdrawn petitions. In any fiscal year, the total number of foreign workers who may be granted initial cap-subject H-1B nonimmigrant status during any fiscal year may not exceed 85,000. The proposed $103,265 fee would result in real costs to cap-subject H-1B petitioners that fund new activities supporting administration of the lawful immigration system across multiple agencies.[101] This fee would be applied uniformly to all H-1B cap-subject petitioners irrespective of their size and nonprofit status and is in addition to the current filing and statutory fees. DHS expects the annual filing volume of cap-subject H-1B receipts under the proposed rulemaking would be 85,000, a reduction from the 5-year average of 96,750 (*see* Table 13). Consequently, DHS expects the fee would result in petitioners properly filing 85,000 cap-subject H-1B petitions requiring the $103,265 fee each year. The additional $8,777,525,000 in aggregate annual costs to cap-subject H-1B petitioners due to the proposed rulemaking is estimated as the difference between the current fees and the proposed additional fee, multiplied by the estimated annual filing volume of cap-subject H-1B petition receipts under the proposed rulemaking.[102]

In table 14, DHS presents the total estimated costs associated with the rule at 3- and 7-percent discount rates per the OMB circular A-4. The 10-year discounted costs based on this proposed rule are approximately $8,777,525,000 annualized,

[101] OMB Circular A-4 generally treats fees as transfer payments when they shift resources between private entities and the government without necessarily changing total social resources. See OMB, Circular A-4, “Regulatory Analysis” (Sept. 17, 2003), section on “The Difference between Costs (or Benefits) and Transfer Payments.” In this proposed rule; however, DHS considers the $103,265 H-1B fee as a real cost to petitioners because it is intended to finance additional immigration-related activities across multiple agencies.

[102] Calculation: 85,000 Annual Filing Volume of Cap-Subject H-1B Petition * $103,265 fee = $8,777,525,000

$74,874,068,655 billion at a 3-percent discount rate and about $61,649,662,565 billion at a 7-percent discount rate.

Table 14: Discounted Costs for the H-1B Fee over a 10-Year Period of Analysis		
Year	**Discounted at 3%**	**Discounted at 7%**
1	$ 8,521,868,932	$8,203,294,393
2	$8,273,659,157	$7,666,630,273
3	$8,032,678,794	$7,165,075,022
4	$7,798,717,275	$6,696,331,796
5	$7,571,570,170	$6,258,254,015
6	$7,351,039,000	$5,848,835,528
7	$7,136,931,068	$5,466,201,428
8	$6,929,059,289	$5,108,599,466
9	$6,727,242,029	$4,774,392,024
10	$6,531,302,940	$4,462,048,620
10-year Total	**$74,874,068,655**	**$61,649,662,565**
Annualized Costs	**$8,777,525,000**	**$8,777,525,000**
Source: USCIS analysis.		

6. <u>Benefits of Proposed Rule</u>

Historically, USCIS fee regulations have been structured to recover only the costs incurred by USCIS in providing immigration adjudication and naturalization services. The proposed rulemaking would better align fees with costs of administering the lawful immigration system across multiple agencies. It would help recover a portion of the federal government costs attributable not only to USCIS, but also to other departments and agencies that have statutory responsibilities in administering the lawful immigration system including activities carried out by CBP, ICE, EOIR, DOS, and DOL.

B. *Regulatory Flexibility Act (RFA)*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121 (Mar. 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, or governmental jurisdictions with populations of less than 50,000.[103] An "individual" is not considered a small entity and therefore a rule's impacts on individuals are not considered for RFA purposes. *See* 5 U.S.C. 601, 632. In addition, the courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates small entities.[104] Consequently, a rule's indirect impacts on a small entity not subject to the rule are not considered for RFA purposes. The Initial Regulatory Flexibility Analysis (IRFA) for this proposed rule focuses on the population of H-1B petitions (Form I-129, Petition for Nonimmigrant Worker) and H-1B registrations. DHS believes that the changes in this proposed rule will have a significant economic impact on a substantial number of small entities that file H-1B initial cap-subject petitions.

1. Initial Regulatory Flexibility Analysis (IRFA)

a. Description of the Reason Why the Action by the Agency Is Being Considered.

DHS is proposing to amend its regulations governing fees for H-1B cap-subject petitions. DHS believes these changes would allow DHS to set fees for H-1B cap-subject filers to cover a portion of the costs of administering the lawful immigration system. In addition, DHS believes the proposed changes could also have the indirect benefit of better protecting the wages of similarly situated and highly skilled U.S. workers.

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[103] A small business is defined as any independently owned and operated business not dominant in its field of operation that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

[104] See Small Business Administration*, A Guide For Government Agencies, How to Comply with the* Regulatory Flexibility Act. https://advocacy.sba.gov/wp-content/uploads/2019/06/How-to-Comply-with-the-RFA.pdf (last visited April 10, 2025)

b. Statement of the Objectives of, and Legal Basis for, the Proposed Rule.

The purpose of this proposed rulemaking is to establish an additional fee on all H-1B cap-subject petitions, payable at the time of filing, to generate dedicated revenue to support the costs of administering the lawful immigration system. The proposed additional fee, if finalized as proposed, would provide a targeted revenue mechanism to help recover a portion of the costs incurred by multiple Federal agencies in processing, adjudicating, and supporting the lawful immigration system, including USCIS, CBP, ICE, EOIR, DOS, and DOL.

c. A Description and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Changes Would Apply.

Table 15 outlines receipts of 28,649 unique petitioners that filed for cap-subject H-1B petitions during FY 2025. Of the 28,649 petitioners, 14,541 were determined to be small entities, 8,758 were determined to be non-small entities, and 5,350 that lacked data to determine entity size.

Table 15: Outline of Form I-129, Petition for a Nonimmigrant Worker, H-1B Statistics, FY 2025

Parameter	Quantity	Proportion	Comments
Population - unique cap- subject entities filing for initial petitions	28,649	100%	Determined by basis for classification and cap status
Small entities	14,541	51%	Entities among the 28,649 cap-subject entities considered small based on revenue or employee data
Non-small entities	8,758	31%	Number of non-small entities out of the 28,649 initial receipts
Missing data	5,350	18%	Entities among the 28,649 initial receipts lacking revenue, employee count, or NAICS data

Source: Source: DHS, USCIS, Office of Performance and Quality (OPQ); ELIS and CLAIMS3 databases, queried Mar. 2026, PAER0020722; USCIS analysis.

Out of the 14,541 entities that were determined to be small entities, there were 11,312 small entities that met the SBA revenue threshold and the remaining 3,229 met the employee threshold.[105, 106] The quantifiable economic impact, represented as a percentage, for each small entity is the total quantified costs of the proposed changes divided by the entity's sales revenue. DHS divides $103,265 by the revenue for each entity then finds that 76 percent of small entities would experience a cost increase that is greater than 1 percent of its revenue. [107] DHS considers an impact greater than 1 percent of a small entity's revenue as significant for purposes of the RFA.[108] As such, DHS estimates that the proposed rule would have a significant impact on 11,051 small entities, or 76 percent of the 14,541 small entities affected by the proposed rule. Based on this analysis, the changes in this proposed rule would have a significant economic impact on a substantial number of small entities that file H-1B cap-subject petitions.

d. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record.

The proposed rulemaking would not lead to any additional reporting, recordkeeping, and other compliance requirements on small entities.

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[105] Source: DHS, USCIS, Office of Performance and Quality (OPQ); ELIS and CLAIMS3 databases, queried Mar. 2026, PAER0020722.; USCIS analysis.
[106] U.S. Small Business Administration (SBA) described in the North American Industry Classification System (NAICS), See SBA size standards by NAICS code dated Mar. 17, 2023 at https://www.sba.gov/document/support-table-size-standards
[107] *Id.*
[108] DHS used a baseline threshold of 1 percent of revenues to determine if the proposed rule will have a significant economic impact on affected small entities. Office of Advocacy, SBA "A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act", Determination of "Significant Impact" p 18 – 21. Available at https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf

e. An Identification of All Relevant Federal Rules, to the Extent Practical, that May Duplicate, Overlap, or Conflict with the Proposed Rule.

DHS is aware of potential overlap with the Department of Labor's Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States Notice of Proposed Rulemaking and CBP's 9-11 Response and Biometric Entry-Exit Fee for H-1B and L-1 Visas Final Rule. However, no conflicts or duplications have been identified.[109] Evidence supporting this assessment is provided in Borjas (2026).[110] DHS invites the public to provide comments and information regarding any such rules.

f. A Description of Any Significant Alternatives to the Proposed Rule that accomplish the Stated Objective of Applicable Statutes and that Minimize Any Significant Impact of the Proposed Rule on Small Entities.

While the proposed changes to the fee schedule for I-129 H-1B cap-subject petitioners would impose a burden on some prospective employers, USCIS found no other alternatives that achieved the stated objectives identified in the preamble's Section III. Background and Purpose with less burden to small entities. Exempting small entities or discounting fees creates a sizable perverse incentive for employers to avoid the fee.

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[109] DOL's, *Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States Proposed Rule*, *See* 91 FR 15454 (Mar. 27, 2026) and *CBP 9-11 Response and Biometric Entry-Exit Fee Final Rule*, *See* 91 FR 51360 (Aug. 10, 2026).

[110] The Borjas analysis estimates a distribution of employers' cost savings from hiring an H-1B worker (Figure 1). A simulation described on p23 uses three scenarios for low, medium and high excess demand for the 85,000 visas. USCIS notes Cap FY26 registrations (343,981) are consistent with the "high" excess demand scenario depicted in Figure 2, suggesting the impacts of the respective rules are complementary, not duplicative or contradictory.

This would lead to shortfall in revenue realization and would fail to meaningfully improve program integrity.

C. *Unfunded Mandates Reform Act of 1995 (UMRA)*

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments.[111] Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, which includes any Federal mandate that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. *See* 2 U.S.C. 1532(a). The inflation adjusted value of $100 million in 1995 is approximately $211 million in 2025 based on the Consumer Price Index for All Urban Consumers (CPI-U).[112]

This proposed rule does not contain such a mandate, because it would not impose any enforceable duty upon any other level of government or private sector entity. Rather, there may be some private-public partnership investment projects and beneficial downstream effects to State or local governments. Any downstream effects on such entities would arise solely due to their voluntary choices, and the voluntary choices of others, and would not be a consequence of an enforceable duty imposed by this rule. Similarly, any costs or transfer effects on State and local governments would not result

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[111] The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(5), (6).

[112] *See* BLS, "Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month," https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202512.xlsx (last visited July 29, 2026). Calculation of inflation: (1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2025); (2) Subtract reference year CPI-U from current year CPI-U; (3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; (4) Multiply by 100=[(Average monthly CPI-U for 2025–Average monthly CPI-U for 1995)÷(Average monthly CPI-U for 1995)]×100=[(321.943 –152.383) ÷152.383]=(169.560/152.383)= 1.113×100=111.3 percent=111 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars×2.11=$211 million in 2025 dollars.

from a Federal mandate as that term is defined under UMRA. The requirements of title II of UMRA; therefore, do not apply, and DHS has not prepared a statement under UMRA.

D. *Executive Order 13132 (Federalism)*

This proposed rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, *Federalism*, 64 FR 43255 (Aug. 4, 1999), this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. *Executive Order 12988 (Civil Justice Reform)*

This proposed rule was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule was written to provide a clear legal standard for affected conduct and was reviewed carefully to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. DHS has determined that this proposed rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

F. *Family Assessment*

DHS has reviewed this proposed rule in line with the requirements of section 654 of the Treasury General Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998). DHS has systematically reviewed the criteria specified in section 654(c)(1), by evaluating whether this regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the agency determines a regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

DHS has no data that indicate that this proposed rule would have any impacts on disposable income or the poverty of certain families and children, including U.S. citizen children. DHS believes that the benefits of the new fees justify the financial impact on the family, if any, and no further actions are required. The proposed additional fee on certain H-1B petitions would be paid by H-1B petitioners and not H-1B beneficiaries; therefore, the proposed additional fee would not have a direct financial impact on the beneficiary or family members of the beneficiary. Therefore, DHS has determined that the implementation of this regulation would not negatively affect family well-being and would not have any impact on the autonomy or integrity of the family as an institution.

G. *Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)*

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

H. *National Environmental Policy Act*

DHS and its components analyze proposed regulatory actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., applies and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 “Implementing the National Environmental Policy Act” (Dir. 023– 01 Rev. 01) and

Instruction Manual 023-01-001-01 Rev. 01 (Instruction Manual) [113] establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions ("categorical exclusions") that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement.[114] The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.[115]

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[116]

This proposed rule is limited to amending DHS regulations to require an additional fee of $103,265 for each H-1B cap-subject petition filed. This proposed rule is strictly administrative and procedural and only proposes to amend existing DHS regulations governing H-1B cap-subject petition fees. DHS has reviewed this proposed rule and finds that no significant impact on the environment, or any change in environmental effect would result if the rule is finalized as proposed.

Accordingly, DHS finds that the proposed amendments to current regulations clearly fits within categorical exclusion A3 established in DHS's NEPA implementing procedures as an administrative change with no change in environmental effect, is not

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[113] The Instruction Manual contains DHS's procedures for implementing NEPA and was issued November 6, 2014, https://www.dhs.gov/ocrso/eed/epb/nepa
[114] *See* 42 U.S.C. 4336(a)(2), 4336e(1).
[115] *See* Instruction Manual, Appendix A, Table 1.
[116] Instruction Manual at V.B(2)(a) through (c).

part of a larger Federal action, and does not present extraordinary circumstances that create the potential for a significant environmental effect.

I. *Paperwork Reduction Act (PRA)*

Under the PRA of 1995, 44 U.S.C. 3501–3512, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule, unless they are exempt. This notice of proposed rulemaking does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 106

Citizenship and naturalization, Fees, Immigration.

Accordingly, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 106 — USCIS FEE SCHEDULE

1. The authority for part 106 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1254a, 1254b, 1304, 1356, 1801—1815; 48 U.S.C. 1806; Pub. L. 107-609, 115 Stat. 1012; Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 101 note).

2. Section 106.2 is revised by adding paragraph (a)(3)(xi) to read as follows:

§ 106.2 Fees.

(a) * * *

(3) * * *

(xii) The following additional fee is required for all H-1B cap-subject petitions, including those eligible for the advanced degree exemption under section 214(g)(5)(C) of the Act: $103,265.

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Markwayne Mullin,
Secretary,
U.S. Department of Homeland Security.

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