# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 103

**[INS No. 2072–00; AG Order No. 2497–2001]**

**RIN 1115–AF61**

## Adjustment of Certain Fees of the Immigration Examinations Fee Account

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to adjust the fee schedule of the Immigration Examinations Fee Account (IEFA) for certain immigration and naturalization applications and petitions, as well as the fee for the fingerprinting of applicants who apply for certain immigration and naturalization benefits. Fees collected from persons filing these applications and petitions are deposited into the IEFA and used to fund the full cost of processing immigration and naturalization applications and petitions and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. The proposed fees will allow the Service to process applications and petitions that it expects to receive in 2002 and 2003, and provide funding to other programs supported by IEFA.

**DATES:** Written comments must be submitted on or before October 9, 2001.

**ADDRESSES:** Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC, 20536. To ensure proper handling, please reference INS Number 2072–00 on your correspondence. The public may also submit comments electronically at insregs@usdoj.gov. When submitting comments electronically, please include INS No. 2072–00 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Paul Schlesinger, Chief, Immigration Services Branch, Office of Budget, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, telephone (202) 314–3410.

**SUPPLEMENTARY INFORMATION:**

### What Legal Authority Does the Service Have To Charge Fees?

*A. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts of 1989 and 1991*

With reference to the fees for applications and petitions, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989, Pub. L. No. 100–459, Sec. 209, 102 Stat. 2186, 2203 (1988) authorized the Immigration and Naturalization Service (Service) to prescribe and collect fees to recover the cost of providing certain immigration and naturalization benefits. That law also authorized the establishment of the IEFA in the Treasury of the United States. All revenue from fees collected for immigration and naturalization benefits are deposited in the IEFA and remain available to provide immigration and naturalization benefits and the collection, safeguarding and accounting for fees. 8 U.S.C. 1356(n).

In subsequent legislation, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Pub. L. No. 101–515, Sec. 210(d), 104 Stat. 2101, 2121 (1990), Congress further provided 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.'' 8 U.S.C. 1356(m).

The House Conference Report to the bill entitled, ''Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies For the Fiscal Year Ending September 30, 1996, and For Other Purposes,'' H.R. Conf. Rep. No. 104–378, at 82 (1995), directs the Service to fund the cost of the Cuban-Haitian Entrant Program from the IEFA. The Report states, ''(t)he conferees have also agreed that the activities related to the resettlement of Cubans and Haitians should be transferred to the * * * Service and that the costs of these activities should be supported by the [IEFA].'' *Id.*

With reference to the fingerprint fee, the Department of Justice Appropriations Act, 1998, Pub. L. No. 105–119, 111 Stat. 2440, 2448 (1997), required the Service, with limited exceptions, to prepare all fingerprint cards used to conduct FBI criminal background checks on individuals applying for certain benefits under the Immigration and Nationality Act of 1952, as amended (Act). This legislation also authorized the Service to charge a fee for this fingerprinting service. *Id.* The Service deposits this fee into the IEFA established by 8 U.S.C. 1356(m)–(p). On March 29, 1998, the Service began charging $25 for the fingerprinting service.

*B. The Independent Offices Appropriation Act, 1952*

The Service also employs the authority granted by the Independent Offices Appropriation Act, 1952 (IOAA), 31 U.S.C. 9701, commonly referred to as the ''user fee statute,'' to develop its fees. The user fee statute directs Federal agencies to identify services provided to unique segments of the population and to charge fees for those services, rather than supporting such services through general tax revenues. The IOAA states that ''[i]t is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.'' 31 U.S.C. 9701(a).

The IOAA further provides that charges for such services or things of value should be fair and based on ''(A) the costs to the Government; (B) the value of the service or thing to the recipient; (C) the public policy or interest served; and (D) other relevant facts.'' 31 U.S.C. 9701(b).

*C. The Chief Financial Officers Act of 1990*

The Service must also conform to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), Pub. L.

No. 101–576, 104 Stat. 2838 (1980). Subsection 205(a)(8) of the CFO Act requires each agency's Chief Financial Officer to ''review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.'' *Id.* at 2844, 31 U.S.C. 902(a)(8).

**What Federal Cost Accounting and Fee Setting Standards and Guidelines Were Used in Developing the Proposed Fee Changes?**

*A. Office of Management and Budget (OMB) Circular No. A–25, User Charges*

When developing fees for special benefits, the Service adheres to the principles contained in OMB Circular No. A–25, Revised, User Charges (1993). OMB Circular No. A–25 states that as a general policy a ''user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' *Id.* at Sec. 6.

The guidance contained in OMB Circular No. A–25 is applicable to the extent that it is not inconsistent with any Federal statute. For example, specific legislative authority to charge fees for special benefits takes precedence over OMB Circular No. A–25 when the statute expressly designates ''who pays the charge; how much is the charge; where collections are deposited.'' *Id.* at Sec. 4(b). When a statute does not address issues of how to calculate fees or what costs to include in the fee calculation, Federal agencies must follow the principles and guidance contained in OMB Circular No. A–25 to the fullest extent allowable. The guidance directs Federal agencies to charge the ''full cost'' of providing benefits when calculating fees that provide a special benefit to recipients. *Id.* at Sec. 6(a)(2)(a). Subsection 6(d) of OMB Circular No. A–25 defines ''full cost'' as including ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' These costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

(b) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel and rents or imputed rents on land, buildings, and equipment;

(c) Management and supervisory costs; and

(d) The costs of enforcement, collection, research, establishment of standards, and regulation.

Finally, section 6(d)(1)(e) states that ''[f]ull cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.''

*B. Federal Accounting Standards Advisory Board Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government*

When developing fees for services, the Service also adheres to the cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB was established in 1990, and its purpose is to recommend accounting standards for the Federal Government. The FASAB defines ''full cost'' to include ''direct and indirect costs that contribute to the output, regardless of funding sources.'' Federal Accounting Standards Advisory Board, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government 36 (July 31, 1995). To obtain full cost, FASAB identifies various classifications of costs to be included, and recommends various methods of cost assignment, as will be discussed later. *Id.* at 36–42.

**How Are the Adjudication of Immigration and Naturalization Benefits Funded and Supported?**

*A. Background*

In 1988, Congress established the IEFA. See Pub. L. No. 100–459, Sec. 209, 102 Stat. at 2203. In the first year of the IEFA's existence, the Service retained the appropriation that funded the processing of immigration and naturalization applications and petitions. During that year, fees collected for these applications and petitions were used to enhance the Adjudications and Naturalization Program (although Congress did temporarily direct the Service to deposit $50 million of the fee revenue into the General Fund of the Treasury). *Id.* In subsequent years, fees deposited into the IEFA have been the primary source of funding for the Adjudications and Naturalization Program, and other Programs as directed by Congress, and generally have replaced the annual appropriation that the Service received for such services. In subsequent legislation, Congress directed the Service to use revenue in the IEFA to fund the cost of asylum processing and other services provided to immigrants at no charge. *See* Pub. L. No. 101–515, sec. 210(d)(2), 104 Stat. at 2121. Consequently, the Service began to add a ''surcharge'' to the immigration and naturalization fees to recover these additional costs.

*B. Sufficiency of the Current Fee Schedule*

In a fee review of the IEFA for certain immigration and naturalization applications and petitions completed in July 1997, the Service identified a shortfall of revenues to expenses in the IEFA because the fees did not recover the full costs of services provided. This review involved an in-depth analysis of resources, activities, and applications and petitions using an activity-based costing methodology. The majority of current immigration and naturalization application and petition fees are based on this review.

A recent General Accounting Office report entitled ''Immigration Benefits—Several Factors Impede Timeliness of Application Processing'' (May 2001), identified inadequate automation as one of the three factors which has impeded the INS' ability to reduce backlogs, improve processing times, and effectively manage its workload. *Id.* at 2. The report also identified the need for increased quality controls when processing immigration and naturalization benefits. *Id.* at 42. Information technology and quality assurance are included within the definition of ''full cost'' as defined by OMB Circular No. A–25, however these costs are not currently recovered in the fees. Information technology and quality assurance are critical to improving service to applicants and petitioners and ensuring consistent adjudication. Therefore, the Service is including additional resources in its proposed fees that will be dedicated solely to recovering information technology and quality assurance costs.

Since fiscal year (FY) 1998, the costs of providing immigration and naturalization benefits have risen as a result of general cost-of-living increases. Therefore, the fees need to be adjusted to recover the full costs associated with the benefits provided.

*C. Programs That Support Immigration and Naturalization Services*

The major Service programs that support immigration and naturalization services are discussed below.

The *Adjudications and Naturalization (A&N) Program* processes, adjudicates, and ultimately grants or denies applications and petitions for benefits provided under the Act. It is responsible for processing applications and petitions for immigration and naturalization benefits, including, but not limited to: applications for permanent resident status; applications for work authorization; petitions for relatives; applications and petitions for immigrant and nonimmigrant workers; applications for travel documents; and applications for extensions of temporary stay by non-immigrants in the United States.

Naturalization processes also include the examination of aliens to determine their qualifications for naturalization, the issuance of citizenship documents, the appearance of Service officials and the conduct of administrative naturalization oaths, and the appearance of Service officials at Federal and State Courts that administer naturalization oaths.

The A&N Program operates in District Offices located throughout the United States, and in four Service Centers located in California, Texas, Nebraska, and Vermont. Applications for immigration, nationality and citizenship benefits, and naturalization are received and adjudicated by a corps of immigration Adjudication Officers and adjudication support personnel. District Officers adjudicate cases that may require personal appearances by applicants and petitioners. Service Center operations concentrate on cases that can be processed without individual appearances, and benefit from the economies generated by large volume, production-oriented processing.

The *Information and Records Management Program* creates, maintains, stores and tracks records; responds to Freedom of Information Act and Privacy Act requests; provides information and application forms to the public (both in person and by telephone) on immigration-related matters; and compiles, analyzes, publishes, and issues the Service's statistical data.

The *Investigations and Intelligence Programs* focus on the detection and deterrence of fraud to protect the integrity of benefits and documents legitimately provided by the Service to authorized persons.

The *International Affairs Program* adjudicates refugee and asylum applications (including FBI fingerprint checks of certain applicants), conducts investigations for preference and relative visa petitions, and conducts other records checks and background investigations as required by overseas Service offices. Officers assigned to this program also provide assistance to citizens and lawful permanent residents abroad regarding foreign adoptions, immigration, or parole of alien spouses and children, and other benefits under the Act. They also review requests to the Attorney General to grant humanitarian parole into the United States for deserving persons. Through grants and cooperative agreements, staff also administer the Resettlement Program and Unaccompanied Minors Program.

The *Training Program* provides the staff and resources necessary to maintain an employee development program that meets the training needs of the Service's asylum, adjudications, and naturalization workforce.

The *Data and Communications Program* develops and operates automated information systems that support immigration and naturalization processes.

The *Legal Proceedings Program* provides support and/or represents the Service in cases involving asylum, rescission, naturalization, visa petition, adjustment of status, registry, sections 212(c) (8 U.S.C. 1182(c)) and 241(f) (8 U.S.C. 1231(f)) of the Act, and other examinations-related cases and matters.

The *Management and Administration Program* supports Service personnel and offices involved in the processing and adjudication of applications and petitions by providing various administrative services including personnel, accounting, budgeting, equal employment opportunity, procurement, property management, fleet management, and security.

## How Was the Proposed Application and Petition Fee Schedule Determined?

### *A. 1999 Fee Review*

The Service conducted a partial review of the current fee levels in FY 1999. This review attempted to build upon the extensive work completed in a 1997 review. In the FY 1999 review, the Service made numerous changes to the underlying methodology of the 1997 review and selected a few forms to conduct further analysis. As a result of the methodology changes, the FY 1999 model produced different fee levels than the 1997 review. However, the Service could not easily explain the programmatic reasons for the changes in fee levels, *i.e.,* application processing had not significantly changed since the 1997 review. For example, the Application for Naturalization (N–400) fee increased by more than 50%, from $225 to $345. This increase of more than 50% would have followed a 137% increase, from $95 to $225, that took place in January 1999. At the time of the fee increase, the Service was able to identify programmatic reasons, such as the Naturalization Quality Procedures program, for the significant increase in the cost of processing naturalization applications. However, the processing of naturalization applications has remained fundamentally unchanged since January 1999. The Service also had concerns that the revised model may have inadvertently included costs associated with the application backlog. As a result, the Service did not have confidence in basing the proposed fee levels on the 1999 review due to questions regarding the revised methodology as well as the limited nature of the review.

### *B. Basis for the Proposed Fee Schedule*

Because of the apparent problems with the FY 1999 review, the Service is relying primarily on the 1997 review, on which the majority of current fees are based, to determine the proposed fees. This is consistent with OMB's statement in Circular No. A–25 that ''full cost shall be determined or estimated from the best available records of the agency.'' Sec. 6(d)(1)(e). The 1997 review was based on an Activity-Based Costing (ABC) methodology to determine the full costs of processing immigration and naturalization applications and petitions. ABC is sanctioned by FASAB as one of the recommended full cost methodologies. In the 1997 review, applying ABC involved an in-depth analysis of resources, resource drivers, activities, activity drivers, and applications/petitions. The Service continues to believe that the current fees accurately represented the costs for adjudicating cases in 1998. However, costs have increased as a result of inflation.

Therefore, the current fees have been adjusted for inflation (per OMB inflationary factors) from 1998 to 2002. The adjusted fee level was then averaged with the 2003 inflationary fee level, as the fee is anticipated to be effective during 2002 and 2003. The Service then applied $5.00 equally to all applications and petitions to recover information technology and quality assurance costs that are not included in the current fee levels. The Service believes that this approach recovers the full costs of processing immigration applications/petitions that it expects to receive over the next two years.

The Service requests comments on whether it should set separate fee schedules for FY 2002 and FY 2003 versus a single, blended schedule that is

effective for both years. Commenters may want to consider whether changing fee schedules would unduly confuse applicants and petitioners.

**Does the Service Plan on Conducting a New Fee Review?**

Yes, the Service plans on conducting a new fee study during the next two years. Based on its experience with the 1999 review, the Service plans on conducting a review of all application forms, as it did in the 1997 review. As with this proposed rule, the Service intends to continue using activity-based costing methodology as the primary basis for the fees.

**How Was the Proposed Fingerprint Fee Determined?**

The Service began to operate its own fingerprint program in 1998. Individuals applying for certain immigration and naturalization benefits that require an FBI criminal background check are fingerprinted by one of four methods. The four methods are as follows:

(1) The Service fingerprints the majority of individuals at 129 Service offices known as Application Support Centers (ASCs);

(2) Designated Law Enforcement Agencies (DLEAs) that have entered into cooperative agreements with the Service fingerprint individuals who do not reside near an ASC;

(3) Service personnel use mobile equipment to fingerprint individuals at remote locations (mobile routes);

(4) United States consular offices or military installations abroad fingerprint individuals residing outside of the United States.

The Service charges a fee to recover the operating costs of its fingerprinting program. Congress directed the Service to implement changes to its fingerprinting process within three months. This short timeframe did not allow for an in-depth analysis of the costs. Accordingly, the Service initially estimated the appropriate fee for fingerprinting at $25 per individual and the fee was established by publication of an interim rule in the **Federal Register**. *See* Establishing a Fee for Fingerprinting by the Service, 63 FR 12,979, 12,986 (interim rule March 17, 1998). The Service began collecting that fee on March 29, 1998. However, the Service soon determined that it was not recovering the full costs of the fingerprint program.

To determine the actual cost of fingerprinting individuals applying for certain immigration and naturalization benefits, the Service reviewed the FY 1999 costs of operating the fingerprint program. The applications included in this review were Forms I–360, Petition for Amerasian, Widow(er), or Special Immigrant; I–485, Application to Register Permanent Residence or Adjust Status; I–600/600A, Petition to Classify Orphan as an Immediate Relative/ Application for Advance Processing of Orphan Petition; I–817, Application for Benefits under the Family Unity Program; and N–400, Application for Naturalization. The Service determined the number of individuals fingerprinted by taking an average of the number of prints taken for FY 1998 and FY 1999 in order to allow for variances in available application volumes. To determine the fingerprinting unit cost for individuals seeking certain immigration and naturalization benefits, the Service divided the cost of the fingerprint capture program by the average number of individuals fingerprinted.

The Service assigned the cost of operating and maintaining the ASCs, DLEAs, and mobile routes to the cost of operating and maintaining the fingerprint capture program. The main costs included the fee for contractor services at the ASCs and the Service's labor cost for persons assigned to the fingerprinting program. The FY 1999 cost was adjusted for inflation (per OMB inflationary factors) to FY 2000 and FY 2001, and averaged FY 2002 and FY 2003 costs, as the fee is anticipated to be effective during these latter fiscal years.

**What Are the Proposed Fees and How Do the Proposed Fees Compare to the Current Fees?**

*A. Applications and Petitions*

The proposed fees, current fees, and their dollar differences are displayed in Table 1.

TABLE 1.—CURRENT VERSUS PROPOSED APPLICATION AND PETITION FEES

| Form No. | Description | Proposed fee | Current fee | Change |
|---|---|---|---|---|
| I–17 | Petition for Approval of School Attendance by Non-Immigrant Student | $230 | $200 | $30 |
| I–90 | Application to Replace Alien Registration Card | 130 | 110 | 20 |
| I–102 | Application for Replacement/Initial NonImmigrant Arrival/Departure Document | 100 | 85 | 15 |
| I–129 | Petitions for Nonimmigrant Worker | 130 | 110 | 20 |
| I–129F | Petition to Classify Nonimmigrant as Fiancé | 110 | 95 | 15 |
| I–130 | Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa | 130 | 110 | 20 |
| I–131 | Application for Travel Document | 110 | 95 | 15 |
| I–140 | Immigrant Petition for Alien Worker | 135 | 115 | 20 |
| I–191 | Application for Advance Permission to Return to Unrelinquished Domicile | 195 | 170 | 25 |
| I–192 | Application for Advance Permission to Enter as a Non-Immigrant | 195 | 170 | 25 |
| I–193 | Application for Waiver of Passport and/or Visa | 195 | 170 | 25 |
| I–212 | Application to Reapply for Admission into the U.S. After Deportation | 195 | 170 | 25 |
| I–360 | Petition for Amerasian, Widow(er), or Special Immigrant | 130 | 110 | 20 |
| I–485 | Application to Register Permanent Residence or Adjust Status | 255 | 220 | 35 |
| I–506 | Application for Change of Nonimmigrant Classification | 85 | 70 | 15 |
| I–526 | Immigrant Petition by Alien Entrepreneur | 400 | 350 | 50 |
| I–539 | Application to Extend/Change Nonimmigrant Status | 140 | 120 | 20 |
| I–600/600A | Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition. | 460 | 405 | 55 |
| I–601 | Application for Waiver on Grounds of Excludability | 195 | 170 | 25 |
| I–612 | Application for Waiver of the Foreign Residence Requirement | 195 | 170 | 25 |
| I–751 | Petition to Remove the Conditions on Residence | 145 | 125 | 20 |
| I–765 | Application for Employment Authorization | 120 | 100 | 20 |
| I–817 | Application for Voluntary Departure under the Family Unity Program | 140 | 120 | 20 |
| I–824 | Application for Action on an Approved Application or Petition | 140 | 120 | 20 |
| I–829 | Petition by Entrepreneur to Remove Conditions | 395 | 345 | 50 |
| N–300 | Application to File Declaration of Intention | 60 | 50 | 10 |

TABLE 1.—CURRENT VERSUS PROPOSED APPLICATION AND PETITION FEES—Continued

| Form No. | Description | Proposed fee | Current fee | Change |
|---|---|---|---|---|
| N–336 | Request for Hearing on a Decision in Naturalization Procedures | 195 | 170 | 25 |
| N–400 | Application for Naturalization | 260 | 225 | 35 |
| N–470 | Application to Preserve Residence for Naturalization Purposes | 95 | 80 | 15 |
| N–565 | Application for Replacement of Naturalization/Citizenship Document | 155 | 135 | 20 |
| N–600 | Application for Certification of Citizenship | 185 | 160 | 25 |
| N–643 | Application for Certification of Citizenship in Behalf of an Adopted Child | 145 | 125 | 20 |

*B. Fingerprint Fee*

Based on its review of costs, the Service is proposing to increase the fingerprint fee to $50. The proposed fee has been rounded up to the nearest whole $5 in accordance with the Service's standard practice.

TABLE 2.—CURRENT VERSUS PROPOSED FINGERPRINT FEE

| Description | Proposed fee | Current fee | Change |
|---|---|---|---|
| Fingerprinting by the Service | $50 | $25 | $25 |

**Why Is the Fee for LIFE Act Adjustment of Status Applications (I–485) Different Than the Fee Proposed in This Rule?**

In an interim final rule published June 1, 2001, Adjustment of Status Under Legal Immigration Family Equity (LIFE) Act and Legalization Provisions and LIFE Act Amendments Family Unity Provisions, 66 FR 29,661, 29,672 (June 1, 2001), the Service established a $330 fee for filing legalization applications under section 1004 of the Legal Immigration Family Unity Equity Act (LIFE Act) and the LIFE Act Amendments. In establishing the fee, the Service first identified the adjustment of status application (Form I–485) process as most similar to the new legalization application process. *Id.* at 29,667. The Service then referred to the 1999 review, which identified an estimated full cost of the Form I–485 to be $330. *Id.* at 29,668.

The Service now questions the methodology and limited nature of this review and is proposing that the Form I–485 fee be $255. However, the Service also recognizes that there are start-up costs associated with processing legalization applications that were not accounted for in the 1999 review and, therefore, will not be recovered with the proposed Form I–485 fee. As a result, the Service is currently reviewing the $330 fee established for filing legalization applications. In light of these developments, the Service intends to publish a separate **Federal Register** document to extend or reopen, as appropriate, the comment period on the $330 fee. Moreover if the Service determines that the current full cost of a legalization application is not $330, it will undertake a separate rulemaking to adjust the fee and take whatever actions are appropriate to ensure equity.

**Does the Service Have the Authority To Waive Fees on a Case-by-Case Basis?**

Yes, the Service has the authority to waive fees on a case-by-case basis pursuant to 8 CFR 103.7(c).

**How Does This Proposal Fit With the President's Backlog Initiative?**

The Administration is committed to building and maintaining an immigration services system that ensures integrity, provides services accurately and in a timely manner, and emphasizes a culture of respect. The President proposed a universal six-month processing standard for all immigration applications. To support this standard, the 2002 Budget proposed $100 million—the first installment in a five-year, $500 million initiative to address the backlog problem.

In contrast to the budget, which requests appropriated resources to eliminate the application backlog, this proposed rule addresses the costs of processing cases that will be filed over the next two years. If the Service does not adjust the current fees to reflect the costs of processing applications and petitions, the backlog will likely increase.

**Regulatory Flexibility Act**

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The majority of applications and petitions are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

The Service acknowledges, however, that a number of small entities, particularly those filing business-related applications and petitions, such as Forms I–140, Immigrant Petition for Alien Worker; I–526, Immigrant Petition by Alien Entrepreneur; and I–829, Petition by Entrepreneur to Remove Conditions may be affected by this rule. For FY 2001, the Service projects approximately 130,000 Forms I–140, 400 Forms I–526, and 400 Forms I–829 will be filed. However, this volume represents petitions filed by a variety of businesses, ranging from large multi-national corporations to small domestic businesses. The Service does not collect data on the size of the businesses filing petitions, and therefore does not know the number of small businesses that may be affected by this rule. Even if all of the employers applying for benefits met the definition of small businesses, however, the resulting degree of economic impact would not require a Regulatory Flexibility Analysis to be performed.

**Unfunded Mandates Reform Act of 1995**

This rule will not impose a mandate of enforceable duty on State, local and tribal governments, in the aggregate, or on the private sector, and it will not significantly or uniquely affect small governments. Accordingly, no further actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is a major rule as defined by the Small Business Regulatory

Enforcement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996). Based on the data included in the proposed rule, this rule will result in an annual effect on the economy of $169 million, in order to generate the revenue necessary to fund the increased expenses of processing the Service's immigration and naturalization applications and petitions. The increased fees will be paid by persons who file applications or petitions to obtain immigration benefits.

The projected increase in revenues probably overstates the actual receipt of applications and petitions because it is likely that there will be fewer applications and petitions filed due to the implementation of the higher fees. The decrease in volume due to the higher fees has a real economic effect in that there will be fewer people applying for and receiving services paid for by the Service's user fees.

**Executive Order 12866**

This rule is considered by the Department of Justice to be an economically ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, because it will have an annual effect on the economy of over $100 million. Without the fee adjustments, the Service estimates that it will collect approximately $815 million in fees for immigration and naturalization benefits in FY 2002. If the fee adjustments become effective on January 1, 2002, the Service anticipates collecting approximately $942 million in FY 2002—$127 million in additional revenue.

The projected increase in revenues probably overstates the actual receipt of applications and petitions because it is likely that there will be fewer applications and petitions filed due to the implementation of the higher fees. The decrease in volume due to the higher fees has a real economic effect in that there will be fewer people applying for and receiving services paid for by the Service's user fees.

This increase in revenue will be used to fund the processing of immigration and naturalization applications and petitions. The revenue increase is based on the Service's costs and workload volumes. The volume of applications and petitions filed is projected based on a regression analysis of a 5-year history of actual applications and petitions received by the Service. The regression analysis is adjusted for any anticipated or actual changes in laws, policies, or procedures that may affect future filing patterns. The proposed fees will be paid by an estimated 6.6 million individuals and businesses filing immigration and naturalization applications and petitions. Accordingly, this regulation has been submitted to OMB for review.

**Executive Order 13132**

This rule will 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, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**Executive Order 12988: Civil Justice Reform**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995, Pub. L. No. 104–13, 109 Stat. 163 (1995), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

**List of Subjects in 8 CFR Part 103**

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by revising the entry ''For fingerprinting by the Service'' and by revising the entries for the following forms. The revisions read as follows:

**§ 103.7 Fees.**

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(b) * * *

(1) * * *

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*For fingerprinting by the Service.* A service fee of $50 will be charged by the Service for any individual who is required to be fingerprinted in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), and whose residence is in the United States as defined in section 101(a)(38) of the Act.

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*Form I–17.* For filing an application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof—$230.00.

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*Form I–90.* For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name—$130.00.

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*Form I–102.* For filing a petition for an application (Form I–102) for Arrival/Departure Record (Form I–94) or Crewman's Landing (Form I–95), in lieu of one lost, mutilated, or destroyed—$100.00.

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*Form I–129.* For filing a petition for a nonimmigrant worker, a base fee of $130. For filing an H–1B petition, a base fee of $130 plus an additional $1,000 fee in a single remittance of $1,130. The remittance may be in the form of one or two checks (one in the amount of $1,000 and the other in the amount of $130). Payment of this additional $1,000 fee is not waivable under § 103.7(c)(1). Payment of this additional $1,000 fee is not required if an organization is exempt under § 214.2(h)(19)(iii) of this chapter, and this additional $1,000 fee also does not apply to certain filings by any employer as provided in § 214.2(h)(19)(v) of this chapter.

*Form I–129F.* For filing a petition to classify nonimmigrant as fiancé or fiancé under section 214(d) of the Act—$110.00.

*Form I–130.* For filing a petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—$130.00.

*Form I–131.* For filing an application for travel documents—$110.00.

*Form I–140.* For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act—$135.00.

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*Form I–191.* For filing applications for discretionary relief under section 212(c) of the Act—$195.00.

*Form I–192.* For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—$195.00.

*Form I–193.* For filing an application for waiver of passport and/or visa—$195.00.

*Form I–212.* For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation—$195.00.

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*Form I–360.* For filing a petition for an Amerasian, Widow(er), or Special Immigrant—$130.00, except there is no fee for a petition seeking classification as an Amerasian.

*Form I–485.* For filing an application for permanent resident status or creation of a record of lawful permanent residence—$255.00 for an applicant 14 years of age or older; $160.00 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act. All applicants filing for Adjustment of Status under LIFE Act Legalization (Public Law 106–553) must pay $330.00.

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*Form I–506.* For filing an application for change of nonimmigrant classification under Section 248 of the Act—$85.00.

*Form I–526.* For filing a petition for an alien entrepreneur—$400.00.

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*Form I–539.* For filing an application to extend or change nonimmigrant status—$140.00.

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*Form I–600.* For filing a petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$460.00.

*Form I–600A.* For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$460.00.

*Form I–601.* For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)—$195.00.

*Form I–612.* For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—$195.00.

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*Form I–751.* For filing a petition to remove the conditions on residence, based on marriage—$145.00.

*Form I–765.* For filing an application for employment authorization pursuant to 8 CFR 274a.13—$120.00.

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*Form I–817.* For filing an application for voluntary departure under the Family Unity Program—$140.00.

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*Form I–824.* For filing for action on an approved application or petition—$140.00.

*Form I–829.* For filing a petition by entrepreneur to remove conditions—$395.00.

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*Form N–300.* For filing an application for declaration of intention—$60.00.

*Form N–336.* For filing a request for hearing on a decision in naturalization proceedings under section 366 of the Act—$195.00.

*Form N–400.* For filing an application for naturalization—$260.00.

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*Form N–470.* For filing an application for section 316(b) or 317 of the Act benefits—$95.00.

*Form N–565.* For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act—$155.00.

*Form N–600.* For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act—$185.00.

*Form N–643.* For filing an application for a certificate of citizenship on behalf of an adopted child—$145.00.

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Dated: August 3, 2001.

**Larry D. Thompson,**

*Acting Attorney General.*

[FR Doc. 01–19875 Filed 8–3–01; 2:37 pm]

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## FEDERAL HOUSING FINANCE BOARD

## 12 CFR Parts 925, 930, 931, 932, and 933

**[No. 2001–17]**

**RIN 3069–AB06**

## Capital Requirements for Federal Home Loan Banks

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is proposing a small number of modifications to the capital and related regulations that were adopted on December 20, 2000. Many of the changes were identified in response to an advance notice of proposed rulemaking (ANPR) relating to unforeseen issues that were not addressed by the final capital rule. In addition to proposing certain conforming amendments, the Finance Board is proposing to clarify that the Federal Home Loan Banks (Banks) may pay dividends on Class A stock from retained earnings, to provide Banks with discretion to prohibit members from transferring Bank stock, to define the phrase ''charges against the capital of the Bank'', to clarify the off-balance sheet conversion factors for commitments to make advances and commitments to acquire loans, to change the provision governing the membership termination date for members seeking to voluntarily withdraw from the Bank System, and to add a requirement that a Bank make certain disclosures to its members before its capital plan can be implemented. This proposal also addresses other issues arising under the capital rule that, based on the ANPR comments, appear to require additional explanation or clarification, even though no amendments to the regulations are being proposed.

**DATES:** The Finance Board will consider written comments on the proposed rulemaking that are received on or before September 7, 2001.

**ADDRESSES:** Send comments to: Elaine L. Baker, Secretary to the Board, by electronic mail at , or by regular mail to the Board, at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** James L. Bothwell, Managing Director, (202) 408–2821; Scott L. Smith, Acting Director, (202) 408–2991; Ellen