

# USCIS to Increase Filing Fees

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[Notices]

[Page 56182-56184]

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2352-05]

RIN 1615-ZA23

Adjustment of the Immigration Benefit Application Fee Schedule

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

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SUMMARY: This Notice announces that the Department of Homeland Security, U.S. Citizenship and Immigration Services, will increase the fees for immigration benefit applications and petitions to account for cost increases due to inflation. The fee increases will apply to applications or petitions filed on or after October 26, 2005. The average fee increase for inflation is approximately \$10 per application or petition. Fees collected from persons filing immigration benefit applications and petitions are deposited into the Immigration Examinations Fee Account and are used to fund the full cost of providing immigration benefits, including the full cost of providing benefits such as asylum and refugee admission for which no fees are assessed.

DATES: This notice is effective October 26, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Director, Office of Budget, U.S. Citizenship and Immigration Services, 20 Massachusetts Ave., NW., Suite 4052, Washington, DC 20529, telephone (202) 272-1930.

## SUPPLEMENTARY INFORMATION:

### Under What Legal Authority Does U.S. Citizenship and Immigration Services Have To Charge Fees?

The Immigration and Nationality Act (INA) provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and other immigrants. 8 U.S.C. 1356(m). The INA also states that the fees may recover administrative costs as well. *Id.* This revenue remains available to provide immigration and naturalization benefits and the collection, safeguarding, and accounting for fees. *Id.* at 1356(n).

U.S. Citizenship and Immigration Services (USCIS) must also conform to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), Public Law 101-576, 104 Stat. 2838 (1990) (codified at 31 U.S.C. 901-903). Section 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." 31 U.S.C. 902(a)(8).

### What Federal Cost Accounting and Fee Setting Standards and Guidelines Were Used in Developing These Fee Changes?

The authority provided by section 286(m) of the INA permits USCIS to recover the full costs of providing all immigration adjudication and naturalization services, including those services provided to individuals other than those paying fees. When developing fees for services, USCIS also looks, to the extent applicable, 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. *Id.* at 36-42. Full 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; and,
- (c) Management and supervisory costs.

Full costs are determined based upon the best available records of the agency.

### How Is the Processing of Immigration Benefit Applications Funded and Supported?

In 1988, Congress established the Immigration Examination Fee Account (IEFA). See 100 Public Law 459, 209, 102 Stat. at 2203. Since 1989, fees deposited into the IEFA have been the primary source of funding for providing immigration and naturalization benefits, and other benefits as directed by Congress. In subsequent legislation, Congress directed that the IEFA fund the cost of asylum processing and other services provided to immigrants at no charge. See 101 Public Law 515, 210(d)(2), 104 Stat. at 2121. Consequently, the immigration benefit application fees were increased to recover these additional costs. The current immigration benefit application fees are based on the review conducted in 1997, adjusted for cost of living increases and other factors; the fees were last changed effective April 30, 2004. 69 FR 20528. The current fees also include a \$5 per immigration benefit application surcharge to recover information technology and quality assurance costs. This surcharge allows USCIS to improve upon the delivery of

[[Page 56183]]

services to its customers such as offering electronic filing for certain immigration benefit applications.

### What Is the Authority of USCIS To Adjust Immigration Benefit Application Fees for Inflation by Federal Register Notice?

The authority for adjusting immigration benefit application fees for inflation by Federal Register Notice is contained in 8 CFR 103.7(b)(3):

The fees prescribed in paragraph (b)(1) of this section shall be adjusted annually on or after October 1, 2005, by publication of an inflation adjustment. The inflation adjustment will be announced by notice in the Federal Register, and the adjustment shall be a composite of the Federal civilian pay raise assumption and non-pay inflation factor for that fiscal year issued by the Office of Management and Budget for agency use in implementing OMB Circular A- 76, weighted by pay and non-pay proportions of total funding for that fiscal year. If Congress enacts a different Federal civilian pay raise percentage than the percentage issued by OMB for Circular A-76, the Department of Homeland Security may adjust the fees, during the current year or a following year to reflect the enacted level. The prescribed fee or charge shall be the amount prescribed in paragraph (b)(1) of this section, plus the latest inflation adjustment, rounded to the nearest \$5 increment.

See generally 69 FR 20528 (2004).

Beginning on October 26, 2005, the public should no longer rely on the fee schedule set forth in 8 CFR 103.7(b)(1) as the fees specified in the 103.7(b)(1) schedule do not include the inflation adjustments described in this Notice. The changes to the fees

announced in this Notice will appear on the companion instructions to the application/ petition forms. In addition, this information will be available to the public on the USCIS Web site at <http://www.uscis.gov>, via an agency information brochure accompanying hard copies of the forms, and by contacting the National Customer Information Center using the toll free number at 1-800-375-5283.

#### What Is the Basis for the Fee Adjustments for Inflation?

The current fees are adjusted for the fiscal year (FY) 2006 and FY 2007 biennial period by pay (Federal employee payroll and benefits) and non-pay (contracts, utilities, rent, etc.) inflation factors issued by the Office of Management and Budget (OMB) used in implementing OMB Circular A-76 (Performance of Commercial Activities). OMB Circular A-76 publishes the inflation factors used in calculating pay and non-pay increases contained in the President's annual budget request. Since Congress enacted a different federal civilian pay raise percentage than the percentage used in calculating the current fees for the FY 2004 and FY 2005 biennial period, the fees are also adjusted to reflect the congressionally-enacted levels. For example, because the fees were adjusted using a 1.7 percent pay raise factor in FY 2005, whereas Congress enacted a 3.65 percent pay raise factor the fees are raised by the difference, 1.95 percent. See 8 CFR 103.7(b)(3). The fees are rounded up or down to the nearest \$5 increment consistent with past fee adjustment practices. *Id.* The average fee increase is \$10, but the amount varies from \$5-\$20 relative to the amount of the application/ petition fee. Even with the inflationary fee adjustments, the fees collected do not exceed the full cost of providing immigration benefits, including the full cost of providing benefits such as asylum and refugee admission for which no fees are assessed.

The methodology basically has two components: one that accounts for the difference between the enacted and projected inflation levels imbedded in the current fees for the FY 2004 and FY 2005 biennial period, and one that accounts for the projected inflation levels for the FY 2006 and FY 2007 biennial period. As an example of the methodology, an inflationary increase of \$6.86 was originally built into the current \$315 fee for the Form I-485 (Application to Register Permanent Residence or to Adjust Status) for the FY 2004 and FY 2005 biennial period. Based on the projected pay inflation factors of 2.3 percent (1.7 percent for three-quarters of the 2004 calendar year; 4.1 percent for one-quarter of the 2004 calendar year) and 1.7 percent (entire 2005 calendar year) versus enacted inflation factors of 4.1 percent (entire 2004 calendar year) and 3.65 percent (3.5 percent for three-quarters of the 2005 calendar year; 4.1 percent for one-quarter of the 2005 calendar year) for fiscal years 2004 and 2005, the inflationary increase should have been 3.13 percent, or \$9.86. The net difference of \$3.00 increases the costs of the Form I-485 from \$313.63 to \$316.63. However, rounding down to the nearest \$5 increment did not change the \$315 current fee for the Form I-485. Based on the projected pay inflation factors of 2.8 percent (2.6 percent for three-quarters of the calendar year; 3.5 percent for one-quarter of the calendar year) and 2.6 percent (entire calendar year) for fiscal years 2006 and 2007, the inflationary increase is \$10.25. This increases the costs of the Form I-485 from \$315 to \$325.25. Rounding down to the nearest \$5 increment raises the fee by \$10, from \$315 to \$325. The total fee increase is \$10.

As stated previously, the size of the fee increase varies relative to the amount of the application/petition fee. However, rounding discrepancies account for exceptions to this general rule. For example, even though the current fee for the Form I-193 (Application for Waiver of Passport and/or Visa) is smaller than the Form I-485 fee, the fee increase is greater. This is because the Form I-193 was rounding up to the nearest \$5 increment and the Form I-485 was rounding down to the nearest \$5 increment. An inflationary increase of \$5.25 was originally built into the current \$250 fee for the Form I-193 for the FY 2004 and 2005 biennial period. Based on the projected pay inflation factors of 2.3 percent (1.7 percent for three-quarters of the calendar year; 4.1 percent for one-quarter of the calendar year) and 1.7 percent (entire calendar year) versus enacted inflation factors of 4.1 percent (entire calendar year) and 3.65 percent (3.5 percent for three-quarters of the calendar year; 4.1 percent for one-quarter of the calendar year) for fiscal years 2004 and 2005, the actual inflationary increase is \$7.54. The net difference of \$2.30 increases the costs of the Form I-193 from \$252.02 to \$254.31. In this case, rounding up to the nearest \$5 increment increased the current fee for the Form I-193 from \$250 to \$255. Based on the projected pay inflation factors of 2.8 percent (2.6 percent for three-quarters of the calendar year; 3.5 percent for one-quarter of the calendar year) and 2.6 percent (entire calendar year) for fiscal years 2006 and 2007, the inflationary increase is \$8.30. This increases the costs of the Form I-193 from \$255 to \$263.30. Rounding up to the nearest \$5 increment raises the fee by \$10, from \$255 to \$265. The total fee increase is \$15.

Besides the normal payroll increases mandated for government employees each year, inflation-based cost increases have appeared in significant non-payroll items such as rent, physical security, investment technology, and contracts. More specifically, USCIS has observed cost increases due to inflation in some of its largest contracts including those for Service Center operations, adjudications clerical support, Application Support Centers, card production facilities, the National Records Center, the National Benefits Center, and the National Customer Service Center.

[[Page 56184]]

What Are the New Application Fees and How Do the New Fees Compare to the Current Fees?

The new immigration benefit application fees and their dollar differences are displayed in Table 1.

Table 1.--Current Versus New Application and Petition Fees

(SEE PDF VERSION FOR TABLE)

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 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 regulatory action. This Notice does not impose

any new reporting or recordkeeping requirements under the Paperwork Reduction Act. Appropriate paperwork will be filed with OMB to reflect the change in the annual public cost for each information collection.

Dated: September 21, 2005.

Robert C. Divine,

Acting Deputy Director, U.S. Citizenship and Immigration Services.

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