December 30, 2019

Submitted via www.regulations.gov

Ms. Samantha Deshommes, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW
Washington, D.C. 20529

Re: U.S. Citizenship and Immigration Services Fee Schedule, DHS Docket No.
USCIS-2019-0010; RIN 1615-AC18

Dear Chief Deshommes:

On behalf of the International Student and Scholar Services office and the Immigration Response Team at the University of Minnesota, I write to submit a comment in response to U.S. Citizenship and Immigration Services' (USCIS) proposed rule, Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, published on November 14, 2019. We write to express our concern about a number of the fee and policy proposals in the proposed fee schedule, and request that USCIS withdraw the rule. These changes would make immigration benefits less accessible to low-income and vulnerable immigrants, especially current and prospective students and their families, and would require customers to pay increased fees for decreased services.

The University of Minnesota has 5 campuses throughout the state of Minnesota. The flagship University of Minnesota Twin Cities is the state’s land-grant university and one of the most prestigious public research universities in the nation. The University of Minnesota Twin Cities enrolls more than 47,000 students, and the University of Minnesota system employs 27,000 faculty and staff, and has an annual budget of approximately 3.7 billion.

In 2017, the University of Minnesota established an Immigration Response Team, which works to help the institution’s large immigrant and international student, staff and faculty populations understand and navigate the complex immigration system and its frequent changes to policies and procedures. The Immigration Response Team also supports the University as an institution that strives to implement policies and deliver a stellar academic experience to the non-U.S. citizens who are a part of our community. Another essential component of the work of the Immigration Response Team is collaboration with the International Student and Scholar Services (ISSS) office, working together to support the international students, scholars and staff that are an integral population at our institution.
The state of Minnesota is home to a diverse group of non-U.S. citizens from all parts of the world, and the University of Minnesota represents that diversity, enrolling students from more than 130 countries, hosting international scholars from around the world, and employing international staff who put their knowledge and training to work for the benefit of the University and the state of Minnesota. The University of Minnesota also educates and employs individuals who came to the U.S. as refugees and asylees, individuals who are undocumented or have DACA, and many people who are U.S. citizens but have immigrant family members. According to research by the American Immigration Council, in 2016, 357,652 people in Minnesota (6.6 percent of the state's population) were native-born Americans who had at least one immigrant parent, and nearly half of all immigrants in Minnesota were naturalized U.S. citizens.

The proposed USCIS fee schedule disproportionately increases fees and eliminates fee waivers for benefit categories most commonly used by low-income and vulnerable immigrants, especially students and their families, leaving essential immigration benefits accessible primarily to the affluent. These unwarranted changes would result in financial hardship for immigrant and mixed-status families, immigrants delaying or losing immigration status due to financial considerations, and increased dependence on debt to finance applications.

The proposed changes would also decrease involvement of qualified legal assistance (e.g. as immigrants would have to choose to spend their limited funds on filing fees instead of representation) resulting in difficult and inefficient USCIS processing and adjudication, among other problems. These increases do not reflect the costs that applicants must endure when securing and compensating legal counsel to assist in preparing time consuming and complicated immigration petitions. Immigration fees can range from $250 to upwards of $10,000, with many petitions hovering around $1,000. Thus, the proposed increases exacerbate the already high cost of applying for an immigration benefit, from beginning to end.

Further, since 2010, USCIS increased filing fees by weighted averages of 10 percent and then another 21 percent but did not achieve any associated improvement in processing times, backlogs, or customer service. During that same period, USCIS' backlog increased by more than 6,000 percent; the overall average case processing time increased 91 percent between 2014 and 2018.

International students report to us that the process of submitting applications (such as the I-765 for authorization for Optional Practical Training) is confusing and lacks transparency. They report frustration with rules that prevent them from submitting the applications more than 90 days before their date of degree completion, while processing times regularly take more than 4 months. USCIS currently reports the average processing time for the I-765 as being 4.5 months (though we know from student data that it regularly takes longer than this). The application is expensive, information about the process is not readily available (neither the online case status system nor the USCIS Contact Center provide reliable or accessible information) and the
processing times are unpredictable. This is stressful and inefficient both for the students, and the U.S. businesses and other employers who wish to offer them training placements.

As higher education institutions working to support our students, staff, faculty and families, we were also dismayed to see that USCIS struck language from its resources regarding its commitment to customer service.⁴ Due in large part to the lack of helpful service and information from USCIS itself, international students navigating the application process rely heavily on the assistance of the International Student and Scholar Services Office to explain the USCIS process and requirements. USCIS has not utilized previously paid filing fees to improve USCIS’ efficacy and immigrants should not be expected to bear a significant increase in fees without corresponding improvement in processing times, backlogs, and customer service.

We strongly oppose USCIS’ proposal to increase the total fees for Deferred Action for Childhood Arrivals (DACA) to $765, up from $495, a total increase of 55 percent. USCIS proposes increasing the fee to file Form I-765 to $490 from $410; and Form I-821D from $0 to $250. USCIS will maintain the current $85 biometrics fee. We urge USCIS to maintain the current total cost of $495. We oppose this proposed increase as it represents a significant barrier that will reduce the number of DACA recipients who will successfully obtain DACA renewal and participate and complete their higher education, further discussed below.

We describe below how some of these changes will impact our institution, students, and those we serve; and the reasons for our opposition. At a time when immigrants and children of immigrants are projected to be a primary source of future U.S. labor force growth and our nation faces growing skills shortages, the proposed fee increases would be an impediment to immigrant students’ success and detrimental to our national economic prosperity.

1. Proposed Increase in Naturalization Fees and Elimination of Fee Waiver Will Deter Eligible Applicants from Applying

Proposed Fee Schedule will deter low-income immigrant students and family members from applying for naturalization. This will result in reduced social and economic mobility for students and reduced long-term contributions to our communities and economy.

We strongly oppose USCIS’ attempt to significantly increase naturalization fees on low-income immigrant students and families. As educators working with low-income immigrant students, we see first-hand the benefits of social and economic mobility for our students, alumni, and their families. Encouraging and lowering the barriers to those eligible for permanent residency and citizenship is an important element of this integration, which strongly benefits our campuses, communities, and economy in the long-term. Naturalization is a key driver in allowing immigrants to fully integrate into our society and economically contribute to our country. For example, naturalization boosts individual earnings by upwards of 11 percent, leading to upwards of $45 billion in increased cumulative earnings over a decade.⁵
The fee schedule proposes to eliminate filing fee waivers for all categories except those that are statutorily required. We oppose this proposed change. The fee schedule would make essential benefits such as citizenship, obtaining a green card, and employment authorization inaccessible for low-income immigrants, especially students. Fee waivers help families to improve their stability, financially support themselves, and fully integrate into their communities while allowing them to allocate funds for their higher education. Because of the benefits of naturalization—one of the form types most frequently associated with fee waiver requests,[9] Congress called on USCIS to keep the pathway to citizenship affordable and accessible.[7]

For example, CUNY Citizenship Now!, which runs one of the most prominent citizenship and naturalization clinics in New York reports that 54.8 percent of naturalization applicants they assist qualify for fee waivers.[8] That number rises to 75.6 percent for N-600s (e.g. applications for certificates of citizenship for children of U.S. citizens who derive citizenship from their parents).[9] Finally, for I-90s (replacement or renewal permanent resident card) the number is 65.8 percent. We request that DHS conduct a thorough cost-benefit analysis, including the economic costs of raising the barriers to naturalization through long-term reduced economic and social mobility of these immigrant populations.

According to research conducted by the University of Southern California’s Center for the Study of Immigrant Integration, there are approximately 70,000 people eligible for naturalization living in Minnesota. I have personally had conversations with a number of people who study and/or work at the University of Minnesota who are eligible for naturalization, and interested in applying, but are concerned about the current cost of the application fees. If naturalization application fees are raised in accordance with the proposal, then applying for naturalization will simply not be an option for many eligible individuals. USCIS touts the importance of naturalization and putting resources into grants aimed at helping people prepare for naturalization. Raising the fees while simultaneously eliminating fee waivers will block thousands of eligible individuals from U.S. citizenship.

2. Proposed Increase for DACA Fees Represents Significant Financial Burden for Renewal Requestors

USCIS’ proposed increase for DACA renewals represents a significant financial barrier that will dramatically lessen DACA renewal applications. I work with University of Minnesota students with DACA who worry about how they will pay their tuition and living costs and also be able to afford to renew their DACA authorization. Research from the Migration Policy Institute (MPI), concludes that even the current renewal fee “remains a barrier to DACA renewal.”[10] Importantly, nearly half of DACA holders received financial assistance from family or others to pay DACA fees.[11] DACA holders have consistently shared that the recurring renewal fee is a “large financial burden,” with over a third of applicants delaying applying for DACA for an average of three months while they saved additional funds.[12] I have seen this to be the case for the students with whom I work. A majority (51 percent) of DACA holders stated that even the
previous $465 filing fee was “a financial hardship on themselves or their families.”[13] Approximately 35 percent of DACA eligible individuals live in families with incomes less than 100 percent of the federal poverty level; and two-thirds live in households with incomes less than 200 percent of the federal poverty level.[14] Moreover, over two-thirds of DACA holders support their families financially, further depleting available funds for renewal of DACA.[15] The above economic and fiscal data demonstrate that the fee increase will depress and discourage renewal application numbers.

3. Proposed Increase for DACA Fees Will Undermine Access to Higher Education and Reduce Career Mobility

The continued financial accessibility of DACA is essential for students to continue and complete their education and establish new careers. Thirty-three percent of DACA recipients indicated they were currently “in school” and pursuing a bachelor’s or higher degree.[16] Of the DACA recipients who indicated they were enrolled in school, 93 percent indicated that because of DACA they pursued educational opportunities that they previously could not.[17] DACA opened up opportunities across various educational settings by facilitating recipients’ completion of certificate and vocational programs, associate’s degrees, bachelor’s degrees, and graduate and professional degrees from master’s programs to law and medical school. DACA recipients “leveraged short-term training opportunities to find entry into new professions. They found paths back to postsecondary education that allowed them to pursue graduate programs and to be competitive in the labor market. Moreover, DACA recipients utilized DACA to move up the mobility ladder, according to findings from the National UnDACAmented Research Project.[18]

The proposed increase in fees, which as stated above will depress the number of DACA renewals and approvals, will reduce the number of DACA recipients who can enter, continue, and complete their higher education. Aside from states where DACA is a prerequisite for in-state or discounted tuition, DACA’s accompanying employment authorization is an invaluable tool for students to generate income to pay for tuition, school expenses, nutrition, and ancillary costs associated with higher education. For example, TheDream.US reports that almost half (43 percent) of their mostly DACA scholars reported food insecurity in the previous year, with 58 percent reporting they would experience food insecurity if they lost DACA.[19] I know that some of our students have experienced food insecurity, and have relied on our campus food shelf to ensure that they have access to food. Put simply, immigrant students who are hungry cannot excel in their studies or learn; students that cannot pay for housing, books, or tuition will not succeed in their pursuit of higher education.

The state of Minnesota has legislation in place which makes most individuals with DACA who graduated from a Minnesota high school eligible for resident tuition rates, and the University of Minnesota’s Immigration Response Team has a privately funded need-based scholarship which is primarily used to help DACA students. In spite of these policies and programs, DACA students still struggle to meet the costs of higher education. Increasing the DACA renewal fee would impose even greater hardship.
4. Proposed Fee Increases Would Severely Impact Low-Income Immigrant Community College Students

According to the National Center for Education Statistics, more than one-third of community college students (37%) have family incomes of less than $20,000 per year. Immigrants and the children of immigrants make up nearly a third of the student population at community colleges. Many face the same struggles as other community college students, attending college part-time while juggling jobs and family responsibilities. However, immigrant-origin students often face unique financial challenges and experience difficulties in marshaling the financial resources to pay college tuition and fees. They are less likely than other students to apply for financial aid, tend to be debt inverse, and cover most of their college costs themselves. The proposed fee increases and elimination of fee waivers will prove especially punishing for hard-working, low-income immigrant students by depriving them of future opportunities to adjust their status, gain citizenship, and apply for DACA renewal.

5. Proposed Increase for DACA Fees Violates Existing Nationwide Preliminary Injunction

Importantly, USCIS is under three district court orders that preliminary enjoin USCIS from rescinding DACA; and require USCIS continue to accept renewal requests and continue to implement DACA in a manner identical to before the rescission date. As the court in Regents ordered, the preliminary injunction directed USCIS to “to maintain the DACA program on a nationwide basis on the same terms and conditions as were in effect before the rescission on September 5, 2017, including allowing DACA enrollees to renew their enrollments...” The court in Batalla similarly stated that USCIS was directed to “maintain the DACA program on the same terms and conditions that existed prior to the promulgation of the DACA Rescission Memo.” A 55 percent increase in fees would likely establish insurmountable economic barriers for applicants seeking to renew their DACA. For these individuals, an unaffordable fee increase would likely represent a constructive denial for their renewal applications, violating the spirit and text of the three preliminary injunctions.

6. USCIS’ Proposed $50 for Asylum Seekers Runs Counter to Our Obligation to Assist Refugees

The state of Minnesota is home to a large population of individuals who came to the U.S. as refugees and asylum seekers. Many of these individuals and their family members are students and staff of the University of Minnesota. I have spoken with brilliant students who have been admitted to programs at the University of Minnesota, who want to learn and contribute, but face financial difficulties and struggle to afford higher education. The University of Minnesota also has ties to Minnesota’s refugee and asylee communities through the Immigration and Human Rights Clinic at the University of Minnesota Law School, which represents asylum seekers in both affirmative and defensive applications.
USCIS plans to impose a $50 fee for those filing for affirmative asylum. Our nation and higher education campuses have a moral imperative to accept asylum seekers as well as obligations under domestic and international laws. Asylees bring diverse perspectives to our classrooms, both as students and scholars. As a signatory to the 1967 Protocol of the 1951 Convention Relating to the Status of Refugees, our country has an obligation to accept asylum seekers who seek protection.

Refusing asylum applicants for the inability to pay would effectively cause the United States to break its treaty obligations and flies in the face of the basic intent of the 1980 Refugee Act. In fact, the vast majority of countries who are signatories to the 1951 Convention or 1967 Protocol do not charge a fee for an asylum application. The United States has long been a world leader in refugee protection. If the United States imposes a filing fee for asylum, other countries may begin to do the same. This could have disastrous effects on refugee resettlement when the number of refugees and displaced people are at historic highs. We must adhere to our international and domestic obligations and not refuse asylum seekers their chance to seek protection simply for the inability to pay. Asylum is the first step for individuals to be able to normalize and stabilize their life and one day pursue or teach in higher education.

7. USCIS’ Proposed Increases to Employment-Based Visa Petitions Would Harm U.S. Businesses

The rule would harm American businesses as well, making it cost-prohibitive to hire necessary employees by hiking fees by more than 50% for an array of employment-based petition types. For example, the fee for filing an L-1 petition increases by at least 72%, an H-2A named worker petition by at least 82%, and an O-1 petition by at least 50%. At the same time, it would relax USCIS’s premium processing deadline from 15 calendar days to 15 business days—a change that would delay time-sensitive hiring for companies facing critical workforce gaps and generate significant uncertainty for American businesses. The fee rule also seeks to significantly expand the application of the Public Law 114-113 fee for certain H-1B and L-1 petitions every time an employee seeks to extend his or her status, even if it is because the government limited the prior petition approval to just one day. The outrageous application of $4,500/$5,000 fee in such manner is contrary to clear Congressional intent and an effort to deter legal immigration for individuals from certain countries.

Over the past few years, there have been dramatic changes to the way USCIS reviews and adjudicates H-1B petitions. It is widely understood that USCIS has altered the standards for review and approval of H-1B petitions without the promulgation of new regulations, and without Congress passing a new law. We have seen the effects of these changes through markedly slower processing times, shifting standards for approval of petitions, and a steep increase in the issuance of Requests for Evidence (RFE).

In the past few years, the RFE rate for H-1Bs at the University of Minnesota has increased substantially, from an average of 0-1 RFEs per month, to 3-4 RFEs per month. The majority of
H-1B petitions that U of MN submits to USCIS are for teaching or research positions (such as Assistant Professors or Postdoctoral Associates) that all require a minimum of a PhD degree. One of the most common types of RFEs that we receive now is to show "specialty occupation" status. PhD degrees are, by their very nature, highly specialized degrees, and every staff or faculty in a high-level research or teaching position is engaged in highly specialized teaching or research. In our I-129 petitions, it is generally made clear that the position requires an advanced degree in a specialized field. This is the nature of these types of positions within higher education. Furthermore, the University of Minnesota is among the largest and most reputable public research university systems in the country. As such, faculty and researchers are expected to have a very high level of scholarly expertise. It is our experience that in many cases, the issuance of an RFE appears to be at least in part a stalling technique, because information being requested has often already been provided, does not match the type of application that was submitted, or incorrect information is simply copied and pasted into the request. Because of the serious consequences of denial, every RFE must be taken very seriously and often takes many hours to respond to, even when the information being provided is redundant.

The proposal also aims to make changes to premium processing that would have an impact on U.S. employers. At the International Student and Scholar Services office at the University of Minnesota, it was previously quite common for petitioning departments to submit H-1B applications with enough advance notice (4-5 months) for these applications to be approved through USCIS' normal course of business without the need for premium processing. Our recent experience is that applications filed without premium processing take anywhere from 3-8 months - a window that is too varied and unpredictable to meet the business needs of the employer. As such, it is now the common practice to submit premium processing requests with nearly every H-1B petition that we file. Presumably, the longer processing time has to do with the changes USCIS has made to the manner in which petitions are reviewed (such as reviewing each extension as though it were an initial petition, even in cases where nothing about the job or the employee has changed since the previous approval). USCIS practices necessitate the increase in the rate of requests for premium processing, which put more pressure on themselves to adjudicate cases quickly. I believe this has contributed to the increased rate of RFEs, many of which appear to be redundant and unnecessary. USCIS should be responsible for doing their work in a way that does not pass on their inefficiencies to the applicants.

If however, USCIS does make changes to the regulations related to premium processing, including changing the allowed time for premium processing to be 15 business days instead of calendar days, and also increases the filing fee for I-129 petitions, we expect and demand that the issuance of senseless and unnecessary RFEs will not continue. Furthermore, we expect that additional fees are used toward proper staffing to be able to respond to I-129 case loads. Increases in fees should absolutely be accompanied by improvements in service.

8. USCIS' Proposed Transfer of Funds to ICE Defies Congress's mandate that USCIS Function as a Service-Oriented Immigration Benefits Agency
The rule would transfer over $100 million in application and petition fees out of USCIS into ICE. This proposal defies Congress’s mandate that USCIS function as a service-oriented immigration benefits agency, distinct from the immigration enforcement missions of ICE and CBP. Making matters worse, the rule fails to explain why, if USCIS is justifying its fee increases in large part by citing a need for more adjudicators and other staff, over the past year the agency diverted hundreds of its employees to perform enforcement work for ICE and CBP. In fact, according to the information published in the federal register, the funding transfer to ICE accounts for about 6 percentage points (i.e., 28.5 percent) of the 21 percent total weighted average fee increase). In all, the rule illustrates USCIS’s increasing prioritization of immigration enforcement over its own service-oriented statutory mission.

Finally, USCIS fails to provide any meaningful evidence that the changes it proposes would relieve case processing delays or otherwise improve services. USCIS, in announcing the proposed rule, stated that the fee increases aim to “...ensure more applicants cover the true cost of their applications and minimizes subsidies from an already over-extended system.” The USCIS announcement also explains that “...this proposal accounts for our operational needs...” In recent years, USCIS case processing has slowed dramatically, due in significant part to the agency’s own inefficient policies. The proposed rule offers no remedy for this decline in agency performance. To the contrary, it promises more of the same delays, but at heightened cost to customers. Instead, the rule assumes that lengthy delays will persist. Rather than raise fees to support the continued administration of backlog-expanding policies and practices, the agency should end those policies and practices themselves. For all these reasons, I urge you to withdraw this misguided rule.

Thank you for the opportunity to submit comments on the proposed fee schedule. Please do not hesitate to contact me at hill0707@umn.edu or (612) 624-1478.

Sincerely,

Marissa Hill-Dongre, JD
Director, Immigration Response Team
Assistant Director, International Student and Scholar Services
University of Minnesota


[8] Email Interview with Allan Wernick, Director, CUNY Citizenship Now! (Nov. 19, 2019) (on file with author).

[9] Id.


[11] Id. ("Pay for DACA is a family and community expense with just over half (51%) of respondents reporting that they paid for their fees on their own.").

[12] Id.

[13] Id.


[16] Tom K. Wong et al., Center for American Progress et al., DACA Recipients’ Livelihoods, Families, and Sense of Security are at Stake This November, Sept. 19, 2019,
[17] Id.


