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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

[CIS No. 2649–19; DHS Docket No. USCIS–2019–0018]

RIN 1615–ZB81

Adjustment to Premium Processing Fee

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is increasing the premium processing fee charged by U.S. Citizenship and Immigration Services (USCIS). DHS is increasing the fee to reflect the full amount of inflation from the institution of the premium processing fee in June 2001 through August 2019 according to the Consumer Price Index for All Urban Consumers (CPI-U). The adjustment increases the fee from \$1,410 to \$1,440.

DATES: This rule is effective on December 2, 2019. Applications postmarked on or after that date must include the new fee.

FOR FURTHER INFORMATION CONTACT: Kika M. Scott, Chief Financial Officer, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529–2130; or by phone at (202) 272–8377 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR—Code of Federal Regulations
 CPI—Consumer Price Index
 CPI-U—Consumer Price Index for All Urban Consumers
 DHS—Department of Homeland Security
 Form I–129—Petition for a Nonimmigrant Worker
 Form I–140—Immigrant Petition for Alien Worker
 INA—Immigration and Nationality Act

USCIS—U.S. Citizenship and Immigration Services

I. Background and Authority

The Immigration and Nationality Act (INA) permits certain employment-based immigration benefit applicants and petitioners to request, for an additional fee, premium processing. The applicable statute authorizes the Secretary of Homeland Security (Secretary) to charge and collect a premium processing fee for employment-based petitions and applications. The fee must be used to provide certain premium-processing services to business petitioners and to make infrastructure improvements in the adjudications and customer service processes. By statute, the fee, initially set at \$1,000, must be paid in addition to any normal petition/application fee that may be applicable. The statute provides that the Secretary may adjust this fee according to the Consumer Price Index (CPI). See INA section 286(u), 8 U.S.C. 1356(u); Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000).

Premium processing allows filers to request 15-day processing of certain employment-based immigration benefit requests if they pay an extra amount. See 8 CFR 103.7(b)(1)(i)(SS) and (e). The premium processing fee is paid in addition to the base filing fee and any other applicable fees. See 8 CFR 103.7(b)(1)(i)(SS)(1). It cannot be waived. See 8 CFR 103.7(b)(1)(i)(SS)(3). USCIS uses premium processing fee revenue to improve its adjudications and customer service processes, fund the cost of providing premium services, and modernize its information technology systems.

Premium processing is currently authorized for certain petitioners filing a Form I–129, Petition for a Nonimmigrant Worker, or a Form I–140, Immigrant Petition for Alien Worker, and seeking certain employment-based classifications. See 8 CFR 103.7(b)(1)(i)(SS) and (e).¹ DHS first adjusted the premium processing fee to \$1,225 in its 2010 USCIS fee rule. See *USCIS Fee Schedule; Final Rule*, 75 FR 58961, 58978, 58988 (Sept. 24, 2010); 8 CFR 103.7(b)(1)(i)(RR) (effective Nov.

¹ See also USCIS, How Do I Use the Premium Processing Service, <https://www.uscis.gov/forms/how-do-i-use-premium-processing-service> (last reviewed/updated June 20, 2019, last visited Aug. 14, 2019).

23, 2010, codified as amended at 8 CFR 103.7(b)(1)(i)(SS), 81 FR 73292, 73331 (Oct. 24, 2016)). DHS last adjusted the premium processing fee to \$1,410 in October 2018. See *Adjustment to Premium Processing Fee; Final Rule*, 83 FR 44449 (Aug. 31, 2018); 8 CFR 103.7(b)(1)(i)(SS) (effective Oct. 1, 2018).

II. Basis for Adjustment

Consistent with INA section 286(u), 8 U.S.C. 1356(u), DHS has calculated the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) to measure inflation. DHS used the CPI-U as of April 2018 as the end point for the period of inflation to establish the current premium processing fee. See 83 FR 44449. For this adjustment, DHS calculated the total amount of inflation from June 2001, when the premium processing fee was first implemented, through August 2019.² In June 2001 the CPI-U was 178.0, and in August 2019 it was 256.558.³ Therefore, between June 2001 and August 2019, the CPI-U increased by 44.13 percent.⁴ When this percentage increase is applied to the June 2001 premium processing fee of \$1,000, the adjusted premium processing fee is \$1,441.34 (\$1,440 when rounded to the nearest \$5 increment). Thus, under INA section 286(u), 8 U.S.C. 1356(u), the USCIS premium processing fee will be \$1,440. See new 8 CFR 103.7(b)(1)(i)(SS).

USCIS intends to use the funds generated by the fee increase to provide certain premium processing services to business customers and to make infrastructure improvements in the adjudications and customer service processes. In recent years, premium

² DHS uses June 2001 as its baseline because, although section 286(u), 1356(u) was enacted on December 21, 2000, the fee was not put in place until June 2001. 66 FR 29682. This is consistent with previous premium processing fee adjustments. See 75 FR 33446, 33477 (June 11, 2010). It also produces the same fee that would have been produced by using the methodology in last year's inflation adjustment. DHS plans to use this methodology moving forward.

³ The latest CPI-U data is available at <http://data.bls.gov/cgi-bin/survey/most?bbs>. Select CPI-U 1982–84=100 (Unadjusted)—CUUR0000SA0 and click the Retrieve data button.

⁴ DHS calculated this by subtracting the June 2001 CPI-U (178.0) from the August 2019 CPI-U (256.558), then dividing the result (78.558) by the June 2001 CPI-U (178.0). Calculation: $(256.558 - 178.0) / 178.0 = .4413 \times 100 = 44.13$ percent.

processing has been temporarily suspended on employment-based petitions to permit officers working on premium processing cases to process long-pending non-premium filed petitions, as well as to prevent a lapse in employment authorization for beneficiaries of extension petitions resulting from the high volume of incoming petitions and a significant surge in premium processing requests.⁵ Since DHS last adjusted the premium processing fee in October 2018, USCIS has used the additional resources from the increased fee plus existing resources, to restart premium processing service for all eligible petitions that had been temporarily suspended.⁶ DHS believes that adjusting the fee for inflation will enable USCIS to continue providing the current level of premium processing service without future interruption or suspension; however, the modest fee increase would not eliminate the potential that other changes may be needed to mitigate the risk of processing disruptions.

A request for premium processing postmarked on or after December 2, 2019 must include the new fee. Petitioners must pay the \$1,440 fee in addition to and separate from other filing fees. 8 CFR 103.7(b)(1)(i)(SS)(1). The premium processing fee may not be waived. 8 CFR 103.7(b)(1)(i)(SS)(3).

III. Regulatory Requirements

A. Administrative Procedure Act

DHS is making this fee increase final without notice and comment because it is unnecessary. 5 U.S.C. 553(b)(B). By law, DHS may adjust the premium processing fee for inflation according to the CPI. See INA section 286(u), 8 U.S.C. 1356(m). DHS has previously established by regulation that DHS may adjust the fee annually by notice in the **Federal Register**. 8 CFR 103.7(b)(1)(i)(SS)(2). No comments were

⁵ See USCIS Will Temporarily Suspend Premium Processing for All H-1B Petitions, <https://www.uscis.gov/archive/uscis-will-temporarily-suspend-premium-processing-all-h-1b-petitions> (last reviewed/updated: 03/03/2017); USCIS Will Temporarily Suspend Premium Processing for Fiscal Year 2019 H-1B Cap Petitions, <https://www.uscis.gov/news/alerts/uscis-will-temporarily-suspend-premium-processing-fiscal-year-2019-h-1b-cap-petitions> (last reviewed/updated: 03/20/2018); USCIS Extends and Expands Suspension of Premium Processing for H-1B Petitions to Reduce Delays, <https://www.uscis.gov/news/uscis-extends-and-expands-suspension-premium-processing-h-1b-petitions-reduce-delays> (last reviewed/updated: 08/28/2018).

⁶ See USCIS Resumes Premium Processing for All H-1B Petitions, <https://www.uscis.gov/news/alerts/uscis-resumes-premium-processing-all-h-1b-petitions> (last reviewed/updated: 03/11/2019). Premium processing has not been suspended for any product line since this announcement.

received on the USCIS Fee Schedule; Final Rule regarding USCIS’s authority to adjust the premium processing fee for inflation in the future. See 75 FR 58961–58991. The sole exercise of discretion here relates to the determination whether, as a matter of internal agency management, DHS and USCIS need additional premium processing fee revenue to provide at least the same level of premium services and to make infrastructure improvements for adjudication processes and customer service as authorized by INA 286(u), 8 U.S.C. 1356(u); which months to use for purposes of the adjustment; and whether, as a procedural matter, payment of such increased fee will be a precondition for receiving the premium processing service. Therefore, further delay of this regulation change to solicit public comments is unnecessary.

B. Other Regulatory Requirements

Because this action is not subject to the notice-and-comment requirements under the Administrative Procedure Act, a final regulatory flexibility analysis is not required. See 5 U.S.C. 604(a). In addition, this rule is not a “major rule” as defined by the Congressional Review Act, 5 U.S.C. 804(2), and thus is not subject to a 60-day delay in the rule becoming effective. This action is not subject to the written statement requirements of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Orders 13132 or 13175. This rule also does not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). See 40 CFR 1507.3(b)(2)(ii) and 1508.4. This action does not affect the quality of the human environment and fits within Categorical Exclusion number A3(d) in Dir. 023–01 Rev. 01, Appendix A, Table 1, for rules that interpret or amend an existing regulation without changing its environmental effect.

Finally, this action does not require review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563. As previously discussed, DHS has the authority to adjust the premium processing fee according to the CPI–U. DHS is increasing the premium processing fee by \$30 per Form I–907, Request for Premium Processing Service (from a fee of \$1,410 to \$1,440 per Form I–907). Table 1 shows the total number of premium processing Forms I–907 received by USCIS from fiscal year 2014 to 2018. On average, USCIS received 262,301 Forms I–907 annually during this timeframe.

TABLE 1—TOTAL NUMBER OF PREMIUM PROCESSING (FORM I–907) REQUESTS RECEIVED, FISCAL YEARS 2014–2018

Fiscal year	Total Form I–907 receipts received
2014	218,400
2015	234,576
2016	319,517
2017	231,839
2018	307,173
Average	262,301

DHS estimates an additional annual \$7.9 million in revenue to be collected from the increase in premium processing fees due to adjustment of inflation.⁷ As discussed earlier, the premium processing fee revenue will be used to make infrastructure improvements for adjudication processes and customer service as well as to fund the cost of providing premium services.

This rule imposes transfer payments between the public and the government. Thus, this action is exempt from Executive Order 13771.

List of Subjects in 8 CFR Part 103

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

For the reasons stated in the preamble, DHS amends part 103 of chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

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

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1356b, 1372; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54, 125 Stat 550.

§ 103.7 [Amended]

- 2. Section 103.7 is amended in paragraph (b)(1)(i)(SS) introductory text

⁷ Additional revenue collected = 262,301 average number of premium processing Forms I–907 received * \$30 increase in premium processing fees = \$7,869,030.

by removing “\$1,410” and adding in its place “\$1,440”.

Kevin K. McAleenan,
Acting Secretary.

[FR Doc. 2019-23778 Filed 10-30-19; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

RIN 3313-AF00

Public Unit and Nonmember Shares

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending the NCUA’s public unit and nonmember share rule to allow federal credit unions (FCU) to receive public unit and nonmember shares up to 50 percent of the credit union’s net amount of paid-in and unimpaired capital and surplus less any public unit and nonmember shares. This final rule also makes a conforming change to the NCUA’s regulations that apply the public unit and nonmember share limit to all federally insured credit unions (FICUs). The final rule follows publication of a May 30, 2019, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: This final rule is effective January 29, 2020.

FOR FURTHER INFORMATION CONTACT: Ariel Pereira, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314, or by telephone at (703) 548-2778.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. This Final Rule; Changes to Proposed Rule
- III. Legal Authority
- IV. Discussion of Public Comments Received on Proposed Rule
- V. Regulatory Procedures

I. Introduction

A. Background

Section 107(6) of the Federal Credit Union Act (FCU Act) provides that an FCU may receive payment on shares from its members (including public units that are members) and from other credit unions.¹ Section 107(6) also permits an FCU to receive payments on shares from nonmembers under certain circumstances, including payment on shares from nonmember public units

and their political subdivisions.² The term “public unit” generally refers to “the United States, any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, any territory or possession of the United States, any county, municipality, or political subdivision thereof, or any Indian tribe as defined in section 3(c) of the Indian Financing Act of 1974.”³

Moreover, an FCU that predominantly serves low-income members may receive payment on shares from any source regardless of membership.⁴ Section 701.34 of the NCUA’s regulations defines a “low-income member” as, among other things, a member “whose family income is 80 [percent] or less than the median family income for the metropolitan area where [the member] live[s] or [the] national metropolitan area, whichever is greater.”⁵ Alternatively, a “low-income member” is a member “who earn[s] 80 [percent] or less than the total median earnings for individuals for the metropolitan area where [the member] live[s] or [the] national metropolitan area, whichever is greater.”⁶

Section 701.32 of the NCUA’s regulations limits the total amount of nonmember shares that an FCU may receive up to 20 percent of the credit union’s total shares, or \$3 million, whichever is greater, unless the shares are U.S. Treasury accounts or matching funds accounts required by the NCUA’s Community Development Revolving Loan Fund Program.⁷ This limit also applies to public unit shares regardless of whether the public unit is a member of the credit union.

B. Regulatory Reform Agenda

Consistent with the spirit of Executive Order 13777, entitled “Enforcing the Regulatory Reform Agenda,”⁸ the Board established a Regulatory Reform Task Force (Task Force) to identify NCUA regulations that the agency should repeal, replace, or modify. The Task Force reviewed the NCUA regulations and submitted its first report to the Board in June 2017. In August 2017, the Board published the substance of the Task Force’s first report in the **Federal Register** for public comment.⁹ After the close of the public comment period, the

Board published the Task Force’s second and final report in the **Federal Register** in December 2018.¹⁰

The Task Force’s final report recommended that the Board increase the public unit and nonmember share limit in § 701.32 of the NCUA’s regulations.¹¹ Specifically, the Task Force recommended raising the nonmember deposit limit from 20 percent to 50 percent. The Task Force stated that public unit and nonmember shares are the functional equivalent of borrowings. The change will parallel the ability of FCUs, as authorized under section 107(9) of the FCU Act,¹² to borrow from any source up to 50 percent of the credit union’s paid-in and unimpaired capital and surplus subject to such rules and regulations as the Board may prescribe.¹³ However, this limitation does not apply to discounts or sales of eligible obligations to any federal intermediate credit bank or loans from the Central Liquidity Facility.¹⁴

C. NCUA’s May 30, 2019, Proposed Rule

On May 30, 2019, the NCUA published a proposed rule to implement the Task Force’s recommendation.¹⁵ Specifically, the Board proposed to amend § 701.32 of the NCUA’s regulations to allow an FCU to receive public unit and nonmember shares up to 50 percent of the credit union’s net amount of paid-in and unimpaired capital and surplus less any public unit and nonmember shares. The Board also proposed making conforming amendments to § 741.204, which applies to all FICUs, to reflect the changes to § 701.32. (Hereinafter, this preamble will refer to FICUs when discussing the applicability of the proposed and final rules, except where the discussion specifically applies to FCUs or federally insured, state-chartered credit unions (FISCU)).

The change in standard from “total shares” to “paid-in and unimpaired capital and surplus less any public unit and nonmember shares” is not only consistent with the treatment of borrowings under the FCU Act, but is also intended to provide FICUs with greater ability to accept public unit and nonmember deposits because undivided earnings are included in the measurement of a FICU’s paid-in and

² *Id.*

³ 12 CFR 745.1(c).

⁴ *Supra* note 1.

⁵ 12 CFR 701.34(a)(2).

⁶ *Id.*

⁷ 12 CFR 701.32(b), (c).

⁸ Executive Order 13777 was issued on February 24, 2017, and subsequently published in the **Federal Register** on March 1, 2017 (82 FR 12285).

⁹ 82 FR 39702 (August 22, 2017).

¹⁰ 83 FR 65926 (December 21, 2018).

¹¹ *Id.* at 65940.

¹² 12 U.S.C. 1757(9).

¹³ The term “paid-in and unimpaired capital and surplus” means shares and undivided earnings, plus net income or minus net loss. See 12 CFR 741.2.

¹⁴ *Supra* note 13. For rules governing loans from the Central Liquidity Facility, see 12 CFR part 725.

¹⁵ 84 FR 35525.

¹ 12 U.S.C. 1757(6).