



PRACTICE ALERT: TEMPORARY CHANGES TO U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) IN RESPONSE TO COVID-19

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** This document will be updated as further changes occur **

Quick Summary of Updates

- Planned furlough of 13,400 USCIS employees temporarily halted, again - **page 1**
- Field offices have started reopening and resuming some interviews and other in-person services with social distancing and other health & safety precautions – **page 2**
- Starting September 23, 2020 until at least March 22, 2021, the Asylum Office will require applicants use USCIS-provided telephonic interpreters, unless they require a language not available through the government-provided interpreter service – **page 3**
- Throughout closures, Service Centers and lockboxes have continued to accept applications – **page 3**
- During office closure USCIS was re-using some biometrics but as Application Support Centers (ASCs) reopen, USCIS will stop doing this – **page 3**
- Copies of signatures accepted in place of original, “wet ink” signatures – **page 3**
- USCIS has extended its allowance for extra time to respond to Requests for Evidence (RFEs), Notices of Intent to Deny (NOIDs), and other responses – **page 3**
- COVID-19 and public charge: as of September 22, 2020, USCIS republished Form I-944 and intends to apply the new public charge rule nationwide now that the COVID-related injunction is stayed – **page 4**
- Contacting USCIS during the pandemic – **page 5**
- USCIS should do more to ameliorate negative effects of USCIS office closures – **page 5**

USCIS Plan to Furlough 13,400 Employees on August 30, 2020 Postponed

USCIS, which is primarily funded by application fees submitted by immigrants, their families, and employers, announced in June 2020 that the pandemic suppressed its intake of applications to such an extent that it caused a budget shortfall of 1.2 billion dollars.¹ As a result, USCIS planned to temporarily lay off more than 70% of their staff nationwide and reduce services unless they received emergency funding from Congress. USCIS notified employees of the upcoming furloughs, which were scheduled to begin on August 3. By late July, after Congressional scrutiny, the agency stated that application fee receipts had improved. Despite that increase in revenue and a surplus of funds, the agency stated on July 22 that it was proceeding with furloughs, only to reverse course two days later and announce on July 24 its plan to postpone the furloughs at least for a month.² Then USCIS issued a second round of furlough notices to take effect on August 30, 2020.³ These

furloughs were also postponed, on August 25, 2020, but the agency asserts it may need to re-establish them during the next fiscal year, which begins October 1, 2020.⁴ Even if furloughs are finally avoided, USCIS's erratic management of employees and the agency's budget has damaged morale and efficiency.⁵

USCIS' financial crisis is a mess of the agency's own making and has been building for far longer than the last several months that this country has been grappling with COVID-19. The agency has been mismanaged in recent years, while also implementing policy changes under this administration that are hostile to immigrants, discouraging many from submitting applications and hindering efficient processing. Advocates are asking that any money from Congress be conditioned upon reversal of policies and actions that led to USCIS' current deficit.⁶

On June 4, 2020 USCIS Started Resuming Some Interviews, Other In-Person Services

After suspending all USCIS in-person services on March 18, 2020,⁷ meaning all scheduled adjustment, naturalization, affirmative asylum, and other interviews, Infopass appointments, biometrics appointments at Application Support Centers (ASCs), and all naturalization oath ceremonies, USCIS has started reopening its offices to the public and gradually resuming in-person services. The initial closure, originally intended to last until April 7, 2020, was extended through May 3, 2020,⁸ then through June 3, 2020.⁹ Beginning June 4, 2020, USCIS started resuming some in-person services, including naturalization oath ceremonies.¹⁰ Each USCIS office has its own, individualized reopening plan but in general USCIS offices will take social distancing and other safety precautions as they reopen, including the following:

- Appointments in general:
 - USCIS will automatically reschedule cancelled ASC appointments, asylum and other interviews, and naturalization ceremonies, but applicants will have to re-schedule their own Infopass appointments with the USCIS Contact Center;
 - ASCs started reopening in July;
 - Applicants are directed to reschedule upcoming appointments if they are feeling sick;
 - Appointment notices will have information on safety precautions all visitors to USCIS offices must take, such as wearing a face covering and limited entry until a specified amount of time before the appointment;
 - In general, visitors will be limited to applicant(s), one legal representative, and one individual providing disability accommodations. Interpreters should join by phone. But see naturalization ceremonies and asylum interviews, below.
- Naturalization:
 - Naturalization ceremonies will be much shorter, and applicants will be given a flyer with links to videos online that are traditionally shown during the naturalization ceremony;
 - Unless the naturalization applicant has a disability and needs another person to provide assistance, no other individuals will be allowed at the naturalization ceremony besides the applicant.
- Asylum office:
 - Asylum interviews will be conducted by video at the asylum office, with applicants in one room and the interviewing officer in another;
 - Legal representatives and interpreters* must appear in-person (*see next section on interpreters);

- For non-detained credible and reasonable fear interviews, legal representatives will be encouraged, but not required, to join telephonically.

USCIS has a dedicated webpage for updates and more details on offices reopening in light of COVID-19 at uscis.gov/coronavirus.

Starting September 23, 2020 for at least the next 180 days, asylum applicants must use government-provided telephonic interpreters at their asylum interviews

USCIS published a temporary final rule on September 23, 2020 that requires asylum applicants use DHS-provided telephonic interpreters, rather than bring their own interpreter in person as previously required.¹¹ The interpreter service has contract interpreters for 47 languages;¹² if the applicant needs interpretation in another language, then they must still bring their own interpreter to the interview. If a contract interpreter in one of the 47 languages is not available on the day of the interview, the delay for employment authorization purposes will be attributed to USCIS and the interview will be rescheduled. Should an applicant refuse to proceed with a contract interpreter where one is available in their language, the applicant will be considered to have failed to appear for the interview. See final rule for more details.

USCIS Service Centers and Lockboxes Continue to Accept Applications

Practitioners may continue to submit applications to USCIS.¹³ However, with the continued closure of some Application Support Centers that take fingerprints and biometrics for applicants, and the cancellations of USCIS interviews from March 18, 2020 to June 3, 2020, many immigration benefit applications are stalled. Already large case backlogs will likely grow, and immigrants will be delayed in obtaining lawful permanent residence or U.S. citizenship.

Processing of I-765 Renewals During ASC Closures

The agency has announced it will reuse previously submitted biometrics to process Form I-765 Employment Authorization renewal applications, allowing these applications to continue despite the inability to appear for biometrics appointments at now closed USCIS offices.¹⁴ Currently, this policy only applies to I-765 renewal or extension requests and as ASCs reopen, USCIS has stated biometrics reuse will no longer be justified.

Copies of Signatures Accepted in Place of Original, “Wet” Ink Signatures

On March 20, 2020, USCIS announced that it will accept reproduced, rather than original, signatures for applications filed after March 21, 2020.¹⁵ No end-date to this policy is indicated in this announcement, but presumably this policy will last through the National Emergency announced by the president on March 13, 2020. Practitioners should retain the originally signed documents, in case later asked to provide them.

Extensions for RFEs, NOIDs, and Other Responses

On March 27, 2020, USCIS announced that it will allow an automatic 60-day extension for all Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs), if the RFE or NOID is dated between March 1 and May 1, 2020.¹⁶ A similar announcement on March 30, 2020 clarifies that the automatic 60-day extension also applies to responses to Notices of Intent to Revoke (NOIRs) and Notices of Intent to Terminate (NOITs) regional investment centers. For these responses, the extra 60 days is applied to the *original due date*. For I-290B Notices of Appeal or Motion to the Administrative Appeals Office, issued between March 1 and May 1, 2020,

USCIS will allow for an extra 60 days *from the decision date*.¹⁷ Note that some local USCIS offices may have also extended response deadlines, for example the San Jose and San Francisco Field Offices in California announced a local policy of automatically extending RFE deadlines *for 30 days, for any RFEs due during the office closure* (this would potentially include RFEs dated in February, which fall outside national USCIS policy).¹⁸

Most recently, on September 11, 2020,¹⁹ USCIS announced an extension to their “flexibility for responding to agency requests,” which had already been extended on May 1, 2020²⁰ and again on July 1, 2020.²¹ The latest notice automatically allows an extra 60 days to respond to RFEs, N-14 Continuations to Request Evidence, NOIDs, NOIRs, Notices of Intent to Rescind or NOITs for regional investment centers, and an extra 60 days to file I-290B Notices of Appeal or Motion and N-336 Requests for a Hearing on a Decision in Naturalization Proceedings, as well as Motions to Reopen an N-400 pursuant to 8 C.F.R. § 335.5. As before, the extra 60 days for RFEs etc. is based on the *response deadline*, whereas for I-290B and N-336 appeals, the extra 60 days is based on the *decision date*. This extension applies to any of the above-listed requests, notices, or decisions (for which a person intends to file an I-290B or N-336) **issued between March 1, 2020 and January 1, 2021, inclusive**.²²

Example: Daniel received a Request for Additional Evidence dated June 30, 2020, with a stated due date of September 28, 2020. With the extension, however, he actually has until November 27, 2020 to file a timely response. He does not need to request additional time; the response will not be viewed as late as long as received within 60 calendar days of the original deadline.

Example: Ash received by mail a denial of their naturalization application, dated August 26, 2020. They want to file an N-336 appeal of the naturalization decision. Because the decision was sent by mail, ordinarily they have 33 days to file the N-336: here, that would be September 28, 2020. However, with USCIS’ COVID-related extension, the N-336 deadline is actually October 25, 2020, 60 days from the decision date.²³

USCIS No Longer Blocked from Applying New Public Charge Rule During COVID-19 Health Crisis, Issued Updated Information on September 22, 2020

After a federal court blocked the Department of Homeland Security from applying and implementing its new public charge rule during the national health emergency in response to COVID-19, on August 12, 2020 the Second Circuit Court of Appeals considerably narrowed the scope of the injunction to just states within the Second Circuit,²⁴ and then on September 11, 2020, a Second Circuit panel stayed the injunction nationwide, allowing USCIS to resume implementation of the new rule everywhere.²⁵

Previously, on July 29, 2020, Judge George B. Daniels of the U.S. District Court for the Southern District of New York (SDNY) issued two separate injunctions.²⁶ Together, the injunctions prevented the federal government from implementing the new public charge rules for adjustment applications decided by USCIS in the United States as well as all cases decided at U.S. consulates and embassies abroad. While the injunction that applies to cases decided by USCIS has been lifted, the nationwide injunction that applies to consular cases continues in effect.

On September 22, 2020, USCIS updated its website to indicate that it intends to apply the new public charge rule to *all* applications postmarked on or after February 24, 2020,²⁷ meaning even those filed between July

29, 2020 and August 12 or September 11, 2020. In recognition that during the uncertainty surrounding the litigation summarized above some applicants subject to public charge may have filed adjustment applications without Form I-944, USCIS' new public charge form, USCIS will issue RFEs for the missing forms and evidence for cases received before October 13, 2020. After October 13, 2020, any adjustment application lacking Form I-944 where required will be rejected. USCIS has republished Form I-944, at <https://www.uscis.gov/i-944>.

USCIS has also published an alert to the public charge page of their website acknowledging that the recently implemented public charge rule²⁸ may have chilled individuals from seeking medical treatment for COVID-19. The alert states that USCIS will not consider testing, treatment, or preventive care related to COVID-19 as part of the public charge inadmissibility determination, and also that it will consider explanations of COVID-related effects like job loss necessitating use of other public benefits. After briefly removing this alert from its website in late July, USCIS re-posted it on August 21, 2020.²⁹

Contacting USCIS During Office Closures and Gradual Reopening

USCIS' Contact Center, reachable online at <https://egov.uscis.gov/e-request/Intro.do> and by phone (800-375-5283), is supposed to be available for emergency requests for service, including requests to schedule Infopass appointments in time-sensitive, urgent situations, for instance emergency advance parole.

USCIS Should Take Further Steps to Ameliorate Negative Impacts on Applicants Due to USCIS Office Closures

Advocates have pressed USCIS for further measures to lessen the impact of these changes on immigrants,³⁰ including that USCIS cease enforcement of its new public charge rule to help minimize immigrants' fears to seek medical assistance needed to control COVID-19, and hold remote interviews and oath ceremonies to allow adjudications of naturalization and permanent residence applications to move ahead. Further broad extensions on filing deadlines would ensure that immigrants are not penalized for a situation that is beyond their control. The suspension of the accrual of unlawful presence for purposes of the three- and ten-year bars during the national emergency is also recommended.

So far, USCIS has not taken any measures beyond those addressed in this practice alert. Despite mounting public pressure, USCIS has resisted calls for virtual oath ceremonies, relying upon federal regulations that state the naturalization oath must be in-person, even though the same regulations allow for modifications when special circumstances warrant them, which many advocates argue a global pandemic would justify.³¹

End Notes

¹ See, e.g., Sarah Betancourt, Commonwealth, U.S. Immigration Agency to Furlough Workers (June 30, 2020), <https://commonwealthmagazine.org/immigration/us-immigration-agency-to-furlough-workers/>; Hamed Aleaziz, BuzzFeed, The Immigration System is Set to Come to a Near Halt – and No One is Paying Attention (June 30, 2020), <https://www.buzzfeednews.com/article/hamedaleaziz/immigration-system-budget-cuts>.

² See Nicole Ogrysko, FEDERAL NEWS, *Furlough Notices Arrive for Some 13,400 USCIS Employees* (June 29, 2020), <https://federalnewsnetwork.com/workforce/2020/06/furlough-notices-arrive-for-some-13400-uscis-employees/>; Eric Katz, GOVERNMENT EXECUTIVE, *Homeland Security Moves Forward With 13,000 Furloughs Despite Its Improving Financial Situation* (July 21, 2020) <https://www.govexec.com/workforce/2020/07/homeland-security-moves-forward-13000-furloughs-despite-its-improving-financial-situation/167081/>. See also U.S. Senator Patrick Leahy, *Leahy Announces That USCIS is Postponing Furloughs of 13,000*

- Public Servants, Including 1,109 in Vermont* (July 24, 2020), <https://www.leahy.senate.gov/press/leahy-announces-that-uscis-is-postponing-furloughs-of-13000-public-servants-including-1109-in-vermont>; Alyssa Aquino, *Law 360, USCIS Delays Furlough Plans After Finances Improve* (July 24, 2020) https://www.law360.com/immigration/articles/1295291/uscis-delays-furlough-plans-after-finances-improve?nl_pk=0a5e9b17-6ae3-4be3-b80c-6cf8e8d1d9e9&utm_source=newsletter&utm_medium=email&utm_campaign=immigration.
- ³ Senator Patrick Leahy, Vice Chairman, U.S. Senate Committee on Appropriations, *Letter to DHS Acting Secretary Chad Wolf* (August 18, 2020) <https://www.appropriations.senate.gov/imo/media/doc/LeahyUSCIS81820.pdf>.
- ⁴ Eric Katz, Government Executive, *Immigration Services Agency Cancels Furloughs for 13,000 Employees* (Aug. 25, 2020) <https://www.govexec.com/workforce/2020/08/immigration-services-agency-cancels-furloughs-13000-employees/167963/>.
- ⁵ Eric Katz, Government Executive, *Furlough Notices in Hand Citizenship and Immigration Employees Look for New Jobs*, (June 30, 2020), <https://www.govexec.com/pay-benefits/2020/06/furlough-notices-hand-citizenship-and-immigration-employees-look-new-jobs/166558/>.
- ⁶ See, e.g., ILRC-DHS Watch letter to Congress, signed by over 100 groups, on USCIS' appropriations request (June 4, 2020), available at <https://www.ilrc.org/ilrc-letter-uscis-appropriations>.
- ⁷ USCIS, *USCIS Temporarily Closing Offices to the Public March 18-April 1* (Mar. 17, 2020), <https://www.uscis.gov/news/alerts/uscis-temporarily-closing-offices-to-the-public-march-18-april-1>.
- ⁸ USCIS, *USCIS Temporary Office Closure Extended Through May 3, 2020* (Apr. 1, 2020), <https://www.uscis.gov/news/alerts/uscis-temporary-office-closure-extended-until-at-least-may-3>.
- ⁹ USCIS, *USCIS June 4 Extension of Closure* (Apr. 24, 2020), https://content.govdelivery.com/attachments/USDHSCISINVITE/2020/04/24/file_attachments/1435728/USCIS%20June%204%20Extension%20of%20Closure.pdf.
- ¹⁰ USCIS, *USCIS Preparing to Resume Public Services on June 4* (May 27, 2020), <https://www.uscis.gov/news/alerts/uscis-preparing-resume-public-services-june-4>.
- ¹¹ DHS, *Asylum Interview Interpreter Requirement Modification Due to COVID-19*, 85 Fed. Reg. 59655 (Sept. 23, 2020). See also 8 CFR § 208.9(g).
- ¹² See list at <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/temporary-final-rule-asylum-interview-interpreter-requirement-modification-due-to-covid-19>; see also Table A in the final rule.
- ¹³ See USCIS, *USCIS June 4 Extension of Closure* (Apr. 24, 2020), https://content.govdelivery.com/attachments/USDHSCISINVITE/2020/04/24/file_attachments/1435728/USCIS%20June%204%20Extension%20of%20Closure.pdf.
- ¹⁴ USCIS, *USCIS to Continue Processing Applications for Employment Authorization Extension Requests Despite Application Support Center Closures* (Mar. 30, 2020), <https://www.uscis.gov/news/alerts/uscis-continue-processing-applications-employment-authorization-extension-requests-despite-application-support-center-closures>.
- ¹⁵ USCIS, *USCIS Announces Flexibility in Submitting Required Signatures During COVID-19 National Emergency* (Mar. 20, 2020), <https://www.uscis.gov/news/alerts/uscis-announces-flexibility-submitting-required-signatures-during-covid-19-national-emergency>.
- ¹⁶ USCIS, *USCIS Announces Flexibility for Requests for Evidence, Notices of Intent to Deny* (Mar. 27, 2020), <https://www.uscis.gov/news/alerts/uscis-announces-flexibility-requests-evidence-notices-intent-deny>.
- ¹⁷ USCIS, *USCIS Expands Flexibility for Responding to USCIS Requests* (Mar. 30, 2020), <https://www.uscis.gov/news/alerts/uscis-expands-flexibility-responding-uscis-requests>.
- ¹⁸ To find out about local USCIS field office policy, that may slightly differ from national policy in a way that benefits clients, contact a local field office's Community Relations Officer or a local CIS liaison, such as through AILA.
- ¹⁹ USCIS, *USCIS Extends Flexibility for Responding to Agency Requests* (Sept. 11, 2020), <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1>.
- ²⁰ USCIS, *USCIS Extends Flexibility for Responding to Agency Requests* (May 1, 2020), <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests>.
- ²¹ USCIS, *USCIS Extends Flexibility for Responding to Agency Requests* (July 1, 2020), <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-0>.
- ²² USCIS, *USCIS Extends Flexibility for Responding to Agency Requests* (Sept. 11, 2020), <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1>.
- ²³ October 25, 2020 happens to be a Sunday, so technically they have until Monday, October 26, 2020.
- ²⁴ *State of New York, et al., v. DHS, et al.*, No. 20-2537 (2d Cir. Aug. 12, 2020).
- ²⁵ *State of New York, et al., v. DHS, et al.*, No. 20-2537 (2d Cir. Sept. 11, 2020), https://www.ca2.uscourts.gov/decisions/isysquery/03d9c1cd-16a4-4e88-ad4a-414c0f845930/2/doc/20-2537_opn.pdf#xml.
- ²⁶ *State of New York, et al., v. DHS, et al.*, No. 1:19-cv-07777 (S.D.N.Y. July 29, 2020); *Make the Road New York, et al., v. Pompeo, et al.*, No. 1:19-cv-11633 (S.D.N.Y. July 29, 2020).

²⁷ USCIS, *Injunction of the Inadmissibility on Public Charge Grounds Final Rule*, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/injunction-of-the-inadmissibility-on-public-charge-grounds-final-rule>, (last updated Sept. 22, 2020).

²⁸ DHS, *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41292 (Aug. 14, 2019).

²⁹ See <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>.

³⁰ ILRC Letter to USCIS, *Actions Needed During COVID-19 Global Pandemic*, (Apr. 2, 2020), <https://www.ilrc.org/ilrc-letter-uscis-actions-needed-during-covid-19-global-pandemic>; Asista, *Asista Calls On USCIS to Ensure Survivors Have Continued Access to Benefits* (Mar. 24, 2020), <https://asistahelp.org/asista-calls-on-uscis-to-ensure-survivors-have-continued-access-to-immigration-benefits/>; Catholic Legal Immigration Network, *CLINIC Submits Recommendations to USCIS on Responses to COVID-19* (Mar. 19, 2020) <https://cliniclegal.org/resources/clinic-submits-recommendations-uscis-response-covid-19>.

³¹ See, e.g., ILRC, *Remote Naturalization Oaths Are Legally Permissible*, (July 10, 2020), <https://www.ilrc.org/remote-naturalization-oaths-are-legally-permissible>.



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About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC’s mission is to protect and defend the fundamental rights of immigrant families and communities.