



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 **

USCIS Is Blaming Its Budget Shortfall on COVID-19 and Planning to Furlough 13,400 Employees Beginning August 3, 2020 Unless They Receive a Bailout from Congress¹

USCIS, which is primarily funded by application fees submitted by immigrants, their families, and employers, is claiming that the pandemic has suppressed its intake of applications over the last four months and created a budget shortfall of 1.2 billion dollars. USCIS plans to temporarily lay off more than 60% of their staff nationwide and reduce services unless they get emergency funding from Congress. Even with the emergency funding, they also are seeking authorization for a 10% increase in application fees to pay back the appropriation. However, this financial crisis is a mess of the agency's own making and has been building for far longer than the last four 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.²

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

After suspending all USCIS in-person services on March 18, 2020,³ 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, 2020,⁴ then through June 3, 2020.⁵ Beginning June 4, 2020, USCIS started resuming some in-person services, including naturalization oath ceremonies.⁶ 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 have not yet reopened but plan to reopen 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;
 - 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.

USCIS Service Centers and Lockboxes Continue to Accept Applications

Practitioners may continue to submit applications to USCIS.⁷ However, with the continued closure of 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.⁸ Currently, this policy only applies to I-765 renewal or extension requests.

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, 2020.⁹ 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, 2020.¹⁰ 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*.¹¹ 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).¹²

Most recently, on July 1, 2020,¹³ USCIS announced an extension to their “flexibility for responding to agency requests,” which had already been extended on May 1, 2020.¹⁴ 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 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 and September 11, 2020, inclusive.¹⁵

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 days of the original deadline.

Example: Andie just received by mail a denial of their naturalization application, dated July 1, 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 August 3, 2020. However, with USCIS’ COVID-related extension, the N-336 deadline is actually August 30, 2020, 60 days from the decision date.¹⁶

COVID-19 and Public Charge Adjudications by USCIS

In late March, USCIS added an alert to the public charge page of their website,¹⁷ acknowledging that the recently implemented public charge rule¹⁸ may have chilled individuals from seeking medical treatment for COVID-19. Thus, “to address the possibility that some [noncitizens] impacted by COVID-19 may be hesitant to seek necessary medical treatment or preventive services, USCIS will *neither consider testing, treatment, nor preventative care (including vaccines, if a vaccine becomes available) related to COVID-19 as part of a public charge inadmissibility determination...even if such treatment is provided or paid for by one or more public benefits, as defined in the rule (e.g. federally funded Medicaid).*”¹⁹

In addition, the USCIS alert acknowledges the impact of public health restrictions that have closed schools and all but essential businesses, by stating that, “if [a noncitizen] subject to the public charge ground of inadmissibility lives and works in a jurisdiction where disease prevention methods such as social distancing or quarantine are in place, or where the [noncitizen]’s employer, school or university voluntarily shuts down operations to prevent the spread of COVID-19, the [noncitizen] may submit a statement with his or her application for adjustment of status to explain how such methods or policies have affected the [noncitizen] as relevant to the factors USCIS must consider... For example, if [a noncitizen] is prevented from working or attending school, and must rely on public benefits for the duration of the COVID-19 outbreak and recovery phase, the [noncitizen] can provide an explanation and relevant supporting documentation. To the extent relevant and credible, USCIS will take such evidence into consideration in the totality of the circumstances.”²⁰

Example: Sonia works as a server in a Washington, D.C. restaurant that was ordered closed by the Mayor on March 18, 2020, through at least April 30, 2020. Sonia will have no income for those months. When she is later interviewed for permanent residence, if her income is less than 125% of the Federal Poverty Guidelines for her household this year, she can show documentation of the Mayor’s order and explain that her place of employment was closed. This should be considered by USCIS in the totality of the circumstances, and she should not be penalized for it under public charge admissibility.

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,²¹ 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.²²

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, 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>.
- ³ 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-public-march-18-april-1>.
- ⁴ USCIS, *USCIS Temporary Office Closure Extended Through May 3, 2020* (Apr. 1, 2020), <https://www.uscis.gov/>.
- ⁵ 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.
- ⁶ 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>.
- ⁷ 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.
- ⁸ 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>.
- ⁹ 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>.
- ¹⁰ 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>.
- ¹¹ USCIS, *USCIS Expands Flexibility for Responding to USCIS Requests* (Mar. 30, 2020), <https://www.uscis.gov/news/alerts/uscis-expands-flexibility-responding-uscis-requests>.
- ¹² 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.
- ¹³ USCIS, *USCIS Extends Flexibility for Responding to Agency Requests* (July 1, 2020), <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-responding-agency-requests-0>.
- ¹⁴ USCIS, *USCIS Extends Flexibility for Responding to Agency Requests* (May 1, 2020), <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-responding-agency-requests>.
- ¹⁵ USCIS, *USCIS Extends Flexibility for Responding to Agency Requests* (July 1, 2020), <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-responding-agency-requests-0>.
- ¹⁶ August 30, 2020 happens to be a Sunday, so technically they have until Monday, August 31, 2020.
- ¹⁷ USCIS, *Public Charge, Alert* (Mar. 25, 2020) [hereinafter *COVID-19 Public Charge Alert*], <https://www.uscis.gov/greencard/public-charge>. The Alert states that USCIS encourages all those, including noncitizens, with symptoms that resemble Coronavirus 2019 (COVID-19) (fever, cough, shortness of breath) to seek necessary medical treatment or preventive services. Such treatment or preventive services will not negatively affect any noncitizen as part of a future public charge analysis.
- ¹⁸ DHS, *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41292 (Aug. 14, 2019).
- ¹⁹ *COVID-19 Public Charge Alert* (emphasis added).
- ²⁰ *Id.*
- ²¹ *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>.
- ²² 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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