**EOIR FEE STUDY TEMPLATE COMMENT - INSTRUCTIONS**

Attached is a template to help immigration services organizations draft a public comment in response to the administration’s proposed Executive Office for Immigration Review (EOIR) fee schedule that dramatically increases fees associated with immigration court filings. (Read more about the proposed rule [here](https://cliniclegal.org/issues/eoir-fee-schedule-increases).)

**Why submit a public comment?** When the government proposes a new rule, it is required (by the Administrative Procedures Act) to give the public an opportunity to read the rule and submit comments. The comment you submit will be public record and available for anyone to read. After the comment period closes, the government agency that proposed the rule must read all of the comments submitted, and take them into consideration when drafting the final version of the rule. If a very large number of people submit comments, and/or the comments identify significant problems with the regulation, then it will take longer for the final rule to be published and take effect, or the agency may make amendments to the rule. Furthermore, if the agency disregards substantive comments, the comments can be helpful to later litigation about the process followed in publishing the rule.

**How do I submit a comment?** You can submit comments online at regulations.gov [click [here](https://www.regulations.gov/document?D=EOIR-2020-0001-0001) to go directly to the EOIR fee schedule]. Click on the “comment now” button and either enter your comment in the text box (must be fewer than 5,000 characters) or upload your comment as a PDF. CLINIC also has published step-by-step commenting instructions that are available [here](https://cliniclegal.org/resources/step-step-instructions-how-submit-public-comment). Below are some important tips to keep in mind as you are drafting your comment.

**Write comments in your own words.** The template on the following pages is intended to help guide you and give you an example and ideas, but ***the comment should be edited with your original words***. Feel free to delete whole sections or paragraphs and replace them with your organization’s perspective on the issue. EOIR will bundle any comments that are too similar to each other, and EOIR will consider this bundle as one comment, rather than as individual submissions.

It may be helpful, prior to drafting your comment, to do some research on your own program and practice, the demographics of your clients, and the local community. Consider what aspects of the rule will be particularly troublesome to your organization and your clients. Gather some numbers and statistics that you can use to demonstrate how many of your clients or people in your community will be affected, how and to what extent, and at what financial cost.

**Attach research and supporting documents.** If you cite to statistics or supporting documents in your comments, we recommend including them as an attachment so that they are clearly part of the administrative record. Another option is to include a live link to cited sources. If you include links, specifically request that the agency read the material at these links.

**If you have experience in an issue area, say so.** If you are a subject matter expert and want to offer comments on your area of expertise, explain why you are qualified to offer this perspective. Feel free to explain your educational and professional background, or attach a copy of your CV to your comment. If you are called to work with immigrants by your faith, feel free to talk about your faith in your comment.

**Provide contact information for a representative of the organization.** Organizational comments should be signed by a representative of the organization, and provide the business contact information of the representative for any follow-up questions or concerns. However, keep in mind that this comment will be publicly available, so do not include personal addresses or cell phone numbers.

*Submitted via www.regulations.gov*

[DATE]

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**RE: EOIR Docket No. 18-0101, RIN 1125-AA90; Fee Review**

Dear Assistant Director Reid:

[ORGANIZATION] respectfully submits this comment on the proposed Executive Office for Immigration Review (EOIR) Fee Review, published on February 28, 2020. We are concerned about the proposed fee changes in the published notice, and request that EOIR withdraw these proposals that make appeals, applications, and motions less accessible to respondents.

[INSERT paragraph describing your organization, why this is particularly urgent to your organization, and the expertise that your organization has on the issues raised. If you are a faith-based organization, consider explaining your opposition from a faith perspective.]

[ORGANIZATION] opposes these sudden and dramatic increases in EOIR fees associated with filings for appeals to the Board of Immigration Appeals (BIA), applications for cancellation of removal or suspension of deportation, applications for asylum, and motions to reopen or reconsider before the immigration courts or the BIA. The proposed fee increases for most applications are unconscionably high. The greatest increase is nearly 800 percent, from $110 to $975, to appeal the decision of an immigration judge, placing it outside of the grasp even of families with a moderate income. Likewise, motions to reopen or reconsider before the BIA would rise to $895. The proposed fee levels are unreasonable and disproportionate to comparable fees in Federal courts.

EOIR should ensure that appeals, applications, and motions remain accessible and affordable. These filings are essential to upholding the principles of access to justice and the right to due process. Those who cannot afford these fees may be unable to apply for relief or appeal erroneous decisions. Respondents have only 30 days after an immigration judge decision to file an appeal; this is a very short timeframe to obtain the $975 fee. It is not uncommon for immigration judges to make errors and these changes would significantly hinder the applicant's ability to seek justice to correct them. We suggest that EOIR withdraw the proposal in its entirety, however if EOIR imposes increased fees, it should clarify that if a request for a fee waiver is denied, the 30-day filing deadline will be restarted.

[If you have any particular case stories or data/information about how your own practice operates that would shed light on how these increases would affect your practice and/or your clients, add that information here.]

While the proposed rulemaking states that current EOIR fee waiver policies would remain available, it does not acknowledge that with fees rising as much as 800%, the number of fee waiver requests will also increase dramatically. Respondents’ increased reliance on fee waivers under this proposal would heighten the burden on judges to adjudicate fee waiver requests. The increasing number of fee waiver requests would divert valuable judicial resources to adjudicating fee waivers rather than substantive claims at a time when the court already has a backlog of more than a million cases. Keeping EOIR fees at a level that most respondents can afford ensures that fee waivers do not become necessary for nearly all filings, and do not become a source of increasing backlogs.

[If you have any client stories or data/information from your practice about how needing to apply for more EOIR waivers would affect your practice or your clients, add it here.]

EOIR also plans to charge a $50 fee for asylum applications for the first time ever; DHS recently proposed the same fee for affirmative asylum applications. The United States has a moral imperative to accept asylum seekers as well as obligations under domestic and international laws. As a signatory to the 1967 Protocol of the 1951 Convention Relating to the Status of Refugees, the United States has an obligation to accept asylum seekers who seek protection. The administration appears to acknowledge that sending those facing persecution into harm’s way because they cannot pay a fee would run afoul of international law by allowing respondents to submit an I-589 without a fee if they seek only withholding of removal or protection under the Convention against Torture (CAT), but not asylum. These lesser forms of relief are in no way comparable to asylum, however, because they do not have a path to lawful permanent residence or citizenship. Furthermore a respondent who wins withholding or CAT protection will likely face permanent separation from family members because there is no provision for them to apply for family members as derivatives.

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 that are signatories to the 1951 Convention or 1967 Protocol do not charge a fee for an asylum application.[[1]](#footnote-1) First-time asylum seekers are ineligible for a work permit, so charging them $50 to simply access asylum protections may force them to depend on charity or choose between feeding their families and paying this fee. This uncertainty may result in asylum seekers renouncing this protection altogether. 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. The United States should adhere to its international and domestic obligations and not refuse asylum seekers their chance to seek protection simply for the inability to pay.

[Include organizational data or a story that demonstrates why your organization or your clients are concerned about this issue]

We are also concerned that such significant changes are being proposed with only a 30-day comment period, rather than the traditional 60 days.[[2]](#footnote-2) EOIR acknowledges that it has not conducted a fee study in 33 years. Since EOIR has not changed its fees in over three decades, it is imperative that the public be granted sufficient time to understand the reasons and methodology EOIR used to arrive at such substantial increases, and how EOIR plans to ensure that vulnerable, low-income noncitizens will be able to assert their rights in immigration court and before the BIA.

[ORGANIZATION] urges EOIR to withdraw its proposed fee increases and maintain its current fee levels for appeals, applications, and motions. EOIR has historically drawn the majority of its funding from congressional appropriations.[[3]](#footnote-3) Unlike USCIS, EOIR is not a fee-funded agency. The rulemaking never explains why EOIR needs this additional money, nor does it state that it cannot cover its operating costs through congressional appropriations, or that it must be self-sustaining and why. Any increased funding that EOIR needs should be requested through the appropriations process as it has done in previous years.

Thank you for the opportunity to submit comments on the proposed fee schedule. Please do not hesitate to contact [Insert contact information] to provide further information.

Name

Title

Organization

1. *See* Zolan Kanno-Youngs and Miriam Jordan, *New Trump Administration Proposal Would Charge Asylum Seekers an Application Fee*, N.Y. Times, Nov. 8, 2019, <https://www.nytimes.com/2019/11/08/us/politics/immigration-fees-trump.html> (noting that the United States would be only the fourth country in the world to charge a fee for asylum). [↑](#footnote-ref-1)
2. *See, e.g.*, Executive Order 12866 (Sept. 30, 1993) (stating that agencies should allow “not less than 60 days” for public comment in most cases, in order to “afford the public a meaningful opportunity to comment on any proposed regulation”); *see also* Executive Order 13563 (January 18, 2011) (stating that “[t]o the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days”). [↑](#footnote-ref-2)
3. *See, e.g.,* Executive Office for Immigration Review, Department of Justice, *FY 2020 Budget Request*, www.justice.gov/jmd/page/file/1142486/download. [↑](#footnote-ref-3)