

# Setting and Adjusting Patent Fees during Fiscal Year 2020—Aggregate Revenue Estimating Methodology

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This document provides an explanation of the figures and calculations underlying the fee estimates found in the aggregate revenue tables developed in support of the Final Rule. The estimates are based on assumptions, including implementation dates of fee rate changes, found in the FY 2021 Congressional Justification. The complete set of tables, one for each of the four alternatives considered, is available at <https://www.uspto.gov/FeeSettingAndAdjusting>. This document has five sections:

- I. **Background**
- II. **Final Patent Fee Schedule Alternative**
- III. **Unit Cost Recovery Alternative**
- IV. **Across-the-Board Adjustment Alternative**
- V. **Baseline (Current Fee Schedule) Alternative**

Section I provides background information and additional details on the revenue estimating methodology that the Office uses to develop aggregate fee estimates for the four alternatives considered. Sections II-V explain the approach for calculating the aggregate revenue estimates for each alternative. Questions related to the aggregate revenue estimating methodologies discussed in the narrative are welcome. For further information contact Brendan Hourigan, Office of Planning and Budget, by telephone at (571) 272-8966.

## **SECTION I: BACKGROUND**

The aggregate revenue tables provide current and new fee rates; estimated workloads (requests for services), including any elasticity estimates; and projected fee collections at the individual fee code level for each of the years FY 2020 through FY 2024 for each of the four alternatives considered. For a description of how individual fee rates were determined for each alternative, see Part VIII.B: Regulatory Flexibility Act in the Final Rule. For a description of estimating workloads (requests for services), see Part IV: Fee Setting Methodology in the Final Rule.

## **SECTION II: FINAL PATENT FEE SCHEDULE ALTERNATIVE**

The aggregate revenue table for the Final Patent Fee Schedule alternative presents aggregate fee estimates based on the fee rates established in the Final Rule. Columns A through G are fee rates from FY 2019 to FY 2024 based on the Final Rule. Columns A and B show current fee rates. Column C indicates fee rates to be implemented on July 10, 2020.<sup>1</sup> These fees remain the same through FY 2024 (column G).

Columns H through N are workloads projected for FY 2020 through FY 2024. Each column represents the workloads for each fiscal year, unless it indicates a specific period on top. For example, column H displays workloads from October 1, 2019, through July 09, 2020, to show workloads prior to the fee adjustments.<sup>2</sup> Likewise, column I exhibits the forecasted workloads

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<sup>1</sup>Projections of aggregate revenues are based on point-in-time estimates, and the circumstances surrounding these assumptions can change quickly. For example, the revenue estimates assumed the new fee rates (based on the FY 2021 Congressional Justification) would become effective on July 10, 2020, with the exception of the non-DOCX filing surcharge fee, which had an assumed effective date of January 1, 2021. As stated in this rule, both of those effective dates have changed. Additionally, since the FY 2021 Congressional Justification was published, fee collections have been lower than anticipated, in part due to the COVID-19 outbreak.

<sup>2</sup> See f.n. 1.

after the fee adjustments on July 10, 2020.<sup>3</sup> These two columns, H and I, are then added to calculate the aggregate workloads for FY 2020 in column J. In the case of fees that have a variable fee rate (for example, the fee to collect payment for the costs of certified copies of application files, reflected in fee code 9024), values in columns H through N reflect the anticipated revenue associated with that service in aggregate dollars rather than the number of individual requests for service (compared to how these columns are used for fees with fixed fee rates).

Columns O through U are projected revenues from FY 2020 through FY 2024. Each column denotes the aggregate fee collections for each fiscal year, except for columns O and P, which present partial year collection estimates for FY 2020. Fee collections are calculated by multiplying the fee rate column and workload column for each period noted. For instance, column O, which indicates fees collected between October 1, 2019, and July 09, 2020, is calculated by multiplying columns B and H. Similarly, column P, which shows fees collected after the fee adjustments on July 10, 2020, is calculated by multiplying columns C and I. Columns O and P are then added to get the aggregate fee collections for FY 2020, in column Q. Columns R, S, T, and U are calculated by multiplying columns D and K, E and L, F and M, and G and N, respectively.

### **SECTION III: UNIT COST RECOVERY ALTERNATIVE**

This alternative sets most individual large entity fees at the historical cost of performing the activities related to the particular service in FY 2018. The Office contends that the FY 2018 data is the best unit cost data available to inform this analysis (for consistency, the fee rates were not

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<sup>3</sup> See f.n. 1.

updated from the RIA that accompanied the notice of proposed rulemaking titled “Setting and Adjusting Patent Fees during Fiscal Year 2020 (NPRM)”. This alternative is fully described in the Final Regulatory Flexibility Analysis (FRFA), which is available in the Final Rule (see Part VIII.B). The table calculation methodology for the Unit Cost Recovery table is identical to that described in Section II: Final Patent Fee Schedule Alternative.

#### **SECTION IV: ACROSS-THE-BOARD ADJUSTMENT ALTERNATIVE**

This alternative uses the Office’s AIA section 10 fee setting authority to apply an inflationary adjustment of 10 percent to the Baseline. This alternative is fully described in the FRFA, which is available in the Final Rule (see Part VIII.B). The table calculation methodology for the Across-the-Board Adjustment table is identical to that described in Section II: Final Patent Fee Schedule Alternative.

#### **SECTION V: BASELINE (CURRENT FEE SCHEDULE)**

This alternative uses fee rates in the current patent fee schedule that became effective on January 16, 2018 (last revised on January 1, 2020). The Baseline is fully described in the FRFA, which is available in the Final Rule (see Part VIII.B). The table calculation methodology for the Baseline (Current Fee Schedule) is identical to that described in Section II: Final Patent Fee Schedule Alternative.