

**Regulatory Impact**

**Analysis**

**Setting and Adjusting Patent Fees During Fiscal Year 2025 in Accordance with**

**Section 10 of the Leahy-Smith America Invents Act**

**Proposed Rule**

**United States Department of Commerce**

**United States Patent and Trademark Office**

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# EXECUTIVE SUMMARY

* 1. Purpose

The notice of proposed rulemaking (NPRM), “Setting and Adjusting Patent Fees During Fiscal Year 2025,” proposes to set or adjust patent fees as authorized by section 10 of the Leahy-Smith America Invents Act (AIA) Pub. L. 112-29, 125 Stat. 284, as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act) Pub. L. 115-273, 132 Stat. 4158. The AIA authorizes the Director of the United States Patent and Trademark Office (USPTO) to set or adjust by rule any patent fee established, authorized, or charged under title 35 of the United States Code (U.S.C.) for any services performed, or materials furnished, by the USPTO. The NPRM is economically significant and requires a Regulatory Impact Analysis (RIA) under Executive Order 12866 (Regulatory Planning and Review). See the [fee setting section of the USPTO website](https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting) for additional information on the NPRM, including supporting materials and a link to its full text in the Federal Register.

This RIA reviews the alternatives considered for the patent fee schedule and analyzes their qualitative costs and benefits relative to the current fee schedule that became effective on December 29, 2022. The USPTO followed the guidance set forth in Office of Management and Budget (OMB) [Circular A-4, Regulatory Analysis](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf), in determining which data to provide in this analysis. Consistent with OMB Circular A-4 and guidance from OMB on regulatory impact analysis, the user fees charged by the USPTO for its services are considered transfer payments that do not affect the total resources available to society, and therefore changes to patent fees implemented by this rulemaking are transfers and are not costs of this rulemaking. See OMB Circular A-4 and OMB’s [Regulatory Impact Analysis: A Primer](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/inforeg/inforeg/regpol/circular-a-4_regulatory-impact-analysis-a-primer.pdf) (“Examples of transfer payments include … Fees to government agencies for goods or services provided by the agency”). These transfers are identified below and, consistent with OMB guidance, they are not included in the estimates of the benefits and costs of this rulemaking.

* 1. Summary of Analysis

A U.S. patent is a property right granted by the U.S. government to an inventor to exclude others from making, using, offering for sale, or selling an invention throughout the country or importing the invention into the United States. This limited exclusive right is intended to promote innovation and stimulate inventive activity through facilitating capital financing and incentivizing research and development (R&D), as well as commercialization.

An efficient and effective patent system provides tools to protect new ideas and investments in innovation and creativity, benefitting both inventors and the economy. The public disclosure of information required to obtain a patent helps avoid redundant R&D by others and promotes development of innovations that build on current technology.

Securing a patent is an early step in the sometimes long and often expensive process of transforming an innovation into a consumer product. Patent fees are a proportionately small expense,[[1]](#footnote-2) and the impact of the proposed fee rate changes on consumers of patented products—in the form of higher prices or fewer market choices—is projected to be negligible.

Four alternatives were analyzed for alignment with the USPTO’s rulemaking goals and strategies, which comprise the agency’s fee setting policy factors and strategic priorities (goals, objectives, and key performance indicators) from the [USPTO 2022-2026 Strategic Plan (Strategic Plan)](https://www.uspto.gov/about-us/performance-and-planning/strategy-and-reporting). More information can be found in the NPRM, Part IV: Rulemaking Goals and Strategies. From this conceptual framework, the USPTO assessed each alternative for both absolute and relative qualitative costs and benefits.

* Alternative 1: Proposed Patent Fee Schedule—Setting and Adjusting Patent Fees During Fiscal Year 2025 (Proposed Patent Fee Schedule)—the fee schedule detailed in the NPRM to produce sufficient aggregate revenue to fund the aggregate costs of future budgetary requirements.
* Alternative 2: Unit Cost Recovery—a fee schedule that generally sets fees equal to their individual activity-based unit cost (where that information is available) to produce adequate aggregate revenue to fund the aggregate costs of future budgetary requirements
* Alternative 3: Across-the-Board Adjustment—a fee schedule that generally applies a 12.5% inflationary factor to the Baseline (Alternative 4) to produce adequate aggregate revenue to fund the aggregate costs of future budgetary requirements
* Alternative 4: Baseline—current fee schedule that became effective on December 29, 2022

The USPTO intentionally developed and considered each alternative, aside from the Baseline, to recover aggregate patent costs using the assumptions included in the agency’s Fiscal Year (FY) 2025 Congressional Justification (FY 2025 Budget). All four alternatives apply equally to all patent applicants, regardless of the customer’s point of origin, technology, or economic sector. Neither the USPTO’s Proposed Patent Fee Schedule nor the other three alternatives discussed herein are designed to impose different costs on different technologies or sectors of the economy. In applying equally to all applicants and patent applications, all four alternatives are origin-neutral and technology-neutral.

This analysis does not include any monetized costs and benefits because the fees charged under this rule are considered transfer payments (not costs) per guidance to federal agencies in OMB Circular A-4 and direct guidance from the OMB’s Office of Information and Regulatory Affairs (OIRA). Further, the USPTO does not anticipate that the adjustments in user fees under this Proposed Patent Fee Schedule will increase the compliance costs for users to obtain agency services. The analysis in this RIA revolves around two qualitative costs and benefits: (1) fee schedule design; and (2) securing aggregate revenue to recover aggregate costs. All alternatives considered, except the Baseline, result in adequate aggregate revenues to recover aggregate costs.

Discussions of fee schedule design costs and benefits revolve around how well an alternative’s fee schedule—both individual fee amounts and their relationship to other fees in the fee schedule—aligns with the USPTO’s four key fee setting policy factors: (1) promoting innovation strategies; (2) aligning fees with the full cost of products and services; (3) facilitating effective administration of the patent system; and (4) offering processing options to applicants. These four policy factors aim to tie individual fee changes to the agency’s core mission and strategic initiatives. The USPTO’s analysis of the four alternatives revealed that:

* Alternative 1, the Proposed Patent Fee Schedule, incurs minimal fee schedule design costs, as increased fees to file a patent application will likely slightly decrease the number of applications filed and lessen the amount of technical information disclosed, but simultaneously offers significant fee schedule design benefits as the targeted fee changes align with the four key fee setting policy factors while remaining responsive to public feedback, as documented in the Patent Public Advisory Committee (PPAC) report on the initial proposal (see the NPRM, Part IV: Rulemaking Goals and Strategies, Comments, Advice, and Recommendations from the PPAC, for the USPTO’s response to feedback received).
* Alternative 2, the Unit Cost Recovery option, presents significant costs related to fee schedule design because it reverses the longstanding practice of setting some fees below cost to foster innovation. Instead, entry fees, or those initial fees required to access the patent system (e.g., filing, search, and examination fees due on filing of a nonprovisional application), are significantly higher under this alternative, potentially serving as a barrier to entry for some innovators.
* For Alternative 3, the Across-the-Board Adjustment, incurs minimal fee schedule design costs, as increased fees to file a patent application will likely slightly decrease the number of applications filed and lessen the amount of technical information disclosed, while offering no fee schedule design benefits beyond the Baseline because the fee structure remains intact, with changes only to the fee rates.
* Finally, Alternative 4, the Baseline, offers no new fee schedule design benefits or costs.

In summary, while Alternatives 1, 3, and 4 have acceptable fee schedule designs, the fee schedule adjustments in Alternative 1 offer more fee schedule design benefits over Alternatives 3 and 4.

Discussion of the costs and benefits of securing aggregate revenue to recover aggregate costs assesses if, and how well, the USPTO projects an alternative will achieve the minimal level of aggregate revenue needed to recover the aggregate costs of operations, sustain progress toward achieving the core patent-related mission (patent operations), implement strategic priorities, and achieve sufficient operating reserve balances as discussed in both the NPRM and the FY 2025 Budget. See the [budget and financial information section of the USPTO website](https://www.uspto.gov/about-us/performance-and-planning/budget-and-financial-information) for a copy of the budget.

The USPTO’s analysis of aggregate revenue, based on assumptions found in the NPRM and the FY 2025 Budget, reveals that:

* Alternatives 1, 2, and 3 secure adequate aggregate revenue to fund the aggregate costs of patent operations and strategic priorities. Given their similar aggregate revenue projections over the five-year period, none of the three alternatives has an advantage over the others in terms of achieving the optimal operating reserve balance. All three stabilize agency finances and replenish and grow the patent operating reserve toward the optimal level while maintaining the minimum operating reserve. They also enable the USPTO to deliver reliable and predictable service levels without requiring budget reductions, while positioning the agency to undertake initiatives that encourage participation in the innovation ecosystem. The USPTO recognizes this effect as a benefit and a critical aspect to any alternative that would be implemented.
* The Baseline (Alternative 4) does not secure the necessary aggregate revenue to recover aggregate costs as presented in the FY 2025 Budget, nor does it achieve the optimal operating reserve balance in the five-year planning horizon. Under this alternative, absent spending reductions that would impede achievement of the USPTO’s strategic priorities, the operating reserve would incur a negative balance in FY 2027. Therefore, the agency does not consider this alternative to be a viable option.
* There is no demonstrable difference in the benefits associated with Alternatives 1, 2, and 3 for securing aggregate revenue to recover aggregate costs.

In summary, given that Alternatives 1, 2, and 3, when compared to the Baseline (Alternative 4), result in approximately the same aggregate increase in revenue, there is no demonstrable difference in the benefits associated with these alternatives for securing aggregate revenue to cover aggregate costs.

The analysis of these two costs and benefits—fee schedule design and securing aggregate revenue to recover aggregate costs—is informed by activity-based information (ABI) data, aggregate revenue estimates, and aggregate cost estimates for patent operations and strategic initiatives. Where available, this information is used to aid discussions regarding the magnitude of these costs and benefits to better inform discussions of net impacts.

The opportunity cost of customer fees paid to the USPTO, rather than invested in additional R&D, commercialization, or other activities that produce immediate and direct value for patent stakeholders, warrants consideration in this analysis. Monetizing and quantifying certain impacts of patent fees on the economy and rate of innovation are inherently challenging, though, due to the number of variables involved, the difficulty in predicting economic activity, and a lack of available data, especially regarding private-sector behavior. For example, the USPTO collects data only on innovation activity that results in a patent application or other action. Innovative actions that do not result in fees paid to the USPTO for a defined service are not captured in agency databases, thus making it challenging to estimate and forecast the true breadth and depth of the intellectual property (IP) economy for patents. This analysis does not attempt to monetize these costs.

* 1. Conclusion

This RIA concludes that the overall qualitative benefits of Alternative 1, the Proposed Patent Fee Schedule, are significant for society, patent applicants, patent holders, and other stakeholders. This alternative has qualitative benefits related to targeted fee changes reflected in the fee schedule design. Moreover, the Proposed Patent Fee Schedule secures required aggregate revenue while adhering to the fee setting goals described below and in the NPRM, Part IV: Rulemaking Goals and Strategies, while incurring only minimal fee schedule design costs. Patent applicants and holders can expect continued progress toward the USPTO’s strategic goals, as the proposed fees will help stabilize agency finances and grow the patent operating reserve. Overall, the Proposed Patent Fee Schedule will enable the USPTO to deliver reliable and predictable service levels, while positioning the agency to undertake initiatives that encourage participation in the innovation ecosystem.

* 1. Points of Contact

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# GENERAL INFORMATION

* 1. Statement of Need for Action

Per the fee setting authority authorized under section 10 of the AIA, as amended by the SUCCESS Act, the USPTO is issuing an NPRM to set or adjust patent fees to secure sufficient aggregate revenue to support projected aggregate costs (based on assumptions and estimates found in the NPRM and the FY 2025 Budget). The fee schedule in the NPRM will recover the aggregate estimated costs of patent operations while achieving the strategic goals detailed in the Strategic Plan, which defines the USPTO’s mission, vision, and long-term goals and outlines actions the agency will take to realize them. The Proposed Patent Fee Schedule supports the patent-related strategic goal of promoting the efficient delivery of reliable IP rights and will pay for all patent-related costs, including the protection of IP against new and persistent threats, bringing innovation to impact for the public good, and generating impactful employee and customer experiences by maximizing agency operations.

From 1982 until passage of the AIA in 2011, the patent fees that generate most patent revenue (e.g., filing, search, examination, issue, and maintenance fees) were set by statute, and could be adjusted only to reflect changes in the Consumer Price Index for All Urban Consumers (CPI-U), as determined by the Department of Labor. Since these fees were set by statute, the USPTO could not realign or adjust fees to effectively respond to market demand or changes in processing costs, other than for the CPI-U.

Section 10 of the AIA changed the fee setting model and authorized the USPTO to set or adjust patent fees within the regulatory process, better equipping the agency to respond to changing circumstances like fluctuations in demand for patent products and services or emerging legal requirements. This fee setting authority was set to expire after seven years, but section 4 of the SUCCESS Act amended section 10 of the AIA by striking “7-year” and inserting “15-year” in reference to the authority’s expiration. This amendment extends the USPTO’s authority to set fees to further organizational goals and improve services through September 16, 2026.

* 1. Scope

The NPRM sets or adjusts patent fees that are established, authorized, or charged under Title 35 of the U.S.C. Using section 10 of the AIA, as amended by the SUCCESS Act, the USPTO is proposing to adjust 455 patent fees and set 73 new fees.

This rule and RIA are focused on providing necessary funding to support the operational plans laid out in the FY 2025 Budget. The RIA analyzes reasonable alternatives to align fee collections with anticipated costs. The USPTO is also currently undertaking a broader-ranging study, as required by the UAIA, to assess whether fees for small and micro entities are inhibiting the filing of patent applications by those entities and if fees for examination should approximately match the costs of examination and what incentives are created by using maintenance fees to cover the costs of examination. The study will also include whether the results of the study counsel in favor of changes to the fee structure of the Office and make recommendations for such administrative and legislative action as may be appropriate.

Consistent with OMB Circular A-4, as discussed further below, the OIRA considers fees charged under the NPRM as transfer payments from one group to another. As such, these fees do not affect total resources available to society and do not trigger a detailed analysis of monetized costs and benefits within the meaning of Executive Order 12866 and related directives. The OIRA also concluded that it is very difficult for agencies to precisely monetize and quantify costs and benefits in a transfer rule like the NPRM. In such cases when monetization of benefits and costs is not easily accomplished, OMB Circular A-4 advises that agencies should “still describe the benefit or cost qualitatively.” Thus, the scope of this RIA outlines transfer payments and assesses the qualitative costs and benefits that accrue to patent applicants, patent holders, and other stakeholders in the United States.

* 1. Assumptions and Constraints
     1. Assumptions
* The time horizon for this analysis is FY 2025–FY 2029.
* The USPTO bases its projections of aggregate revenues on point-in-time estimates, and the circumstances surrounding these assumptions may change quickly.
* As shown in the FY 2025 Budget, the patent operating reserve balance at the end of FY 2024 is expected to be $793 million.
* The budgetary requirements contained in the FY 2025 Budget, along with operating reserve deposits to achieve target operating reserve levels, represent aggregate costs over the stated time horizon.
* The USPTO estimated aggregate revenue generated by the Proposed Patent Fee Schedule using the estimated fee workloads displayed in the “Setting and Adjusting Patent Fees During Fiscal Year 2025—Aggregate Revenue Tables” available on the [fee setting section of the USPTO website](https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting). These workloads reflect assumptions about future economic conditions, service demand, and productivity as described in the FY 2025 Budget.
* Totals shown in the tables of this document may differ due to rounding.
* Applying the guidance in OMB Circular A-4 and from the OIRA, the USPTO concluded that the payment of fees included in the NPRM are transfer payments from one group to another that do not affect total resources available to society. Therefore, all analyses of costs and benefits discussed in this RIA are qualitative (rather than monetized).
* Although this analysis is qualitative, the USPTO estimates the amount of transfer payments from patent applicants and patent holders (see Tables 3-6, 3-7, and 3-8). The USPTO also follows the guidance in OMB Circular A-4 as a methodology for discounting transfers, including selecting appropriate discount rates. As found in the FY 2025 Budget, the USPTO projects the average annual growth of serialized patent application filings at 1.1% over the period from FY 2025 through FY 2029. The agency estimated this growth in application filings using a regression model with real gross domestic product (RGDP) controls derived from [budget and economic data from the Congressional Budget Office (CBO)](https://www.cbo.gov/about/products/budget_economic_data), based on the CBO’s July 2023 estimates, analysis of historical data, and subject matter expertise. See Appendix IV - Multiyear Planning by Business Line in the FY 2025 Budget for more information on developing workload and fee collection estimates.All dollar values in this document are in nominal terms, except those specifically identified otherwise (see Tables 3-6, 3-7, and 3-8). To calculate constant year (real) estimates for FY 2025 through FY 2029 (Base Year 2024), the USPTO used the [CBO’s “10-Year Economic Projections” (February 2023)](https://www.cbo.gov/about/products/budget_economic_data#4) for the CPI-U.
* The NPRM does not impose different costs or burdens on applicants and patent holders based on technology type or their country of residence (i.e., United States or foreign). Based on FY 2022 data, the USPTO estimates that 43.7% of patent filings are domestic, and 56.3% are foreign. This data is available in the [USPTO’s FY 2023 Workload Tables](https://www.uspto.gov/sites/default/files/documents/USPTOFY23WorkloadTables.xlsx).
* The USPTO used the Patent Pendency Model (PPM) to estimate patent production, workload, changes in backlog and pendency, and associated staffing levels for each alternative. A description of the PPM, including a simulation tool, is available for review on the [Patent Pendency Model section of the USPTO website](http://www.uspto.gov/learning-and-resources/statistics/patent-pendency-model).
* The USPTO acknowledges that there may be some changes in applicant behavior due to the fee changes in Alternatives 1, 2, and 3. The agency used a previous economic analysis of the change in demand for services as a result of changes to fee rates to adjust workloads across scenarios for price elasticity. See [Setting and Adjusting Patent Fees during Fiscal Year 2020— Description of Elasticity Estimates](https://www.uspto.gov/sites/default/files/documents/Elasticity_Appendix.docx).[[2]](#footnote-3)
* The USPTO assumes there will be no change in the likelihood of an entity falsely asserting entitlement to a fee reduction. The USPTO has been addressing this problem by reaching out to applicants with questionable entity certifications, and requiring additional information from them. If a questionable certification is erroneous, the applicant must provide an itemization of the total deficiency payment and pay the deficiency owed, or else the application will go abandoned.
* The USPTO conducts a rigorous budget formulation process annually that entails revalidating the next year’s budgetary requirement estimates, formulating the budget year, and projecting outyear budgetary requirements based on the PPM and Patent Trial and Appeal Board (PTAB) production model, as well as business cases for new initiatives. The agency also bases the process on a framework of continuous and comprehensive budget reviews of all operational and administrative cost estimates and projections. The USPTO mitigates risk by retaining operating reserve balances and, when necessary, reallocates funds to higher priority and effective programs (primarily core mission activities).
* The USPTO assumes that, over the five-year horizon analyzed, the relative similarity of aggregate revenue totals for three of the four alternatives does not produce variation in the PPM estimates. Therefore, all alternatives rely on a single PPM, which explains why estimates for backlog, pendency, and patents granted are identical across these alternatives.
  + 1. Constraints
* Monetizing and quantifying certain impacts of patent fees on the economy and rate of innovation are inherently challenging due to the number of variables involved, the difficulty in predicting economic activity, and a lack of available data, especially regarding private-sector behavior. For example, the USPTO collects data only on innovation activity that results in a patent application or other action. Innovative actions that do not result in fees paid to the USPTO for a defined service are not captured in agency databases, thus making it challenging to estimate and forecast the true breadth and depth of the IP economy for patents.
* The USPTO used RGDP as a general proxy for the health of the domestic economy.
* Estimates appearing in this RIA should not be considered as the USPTO calculations of specific monetized costs or benefits for purposes of economic impacts. Rather, some dollar values appearing in this RIA are necessary to comply with the AIA section 10 requirement that aggregate revenue recovers aggregate costs for purposes of setting or adjusting fees for patent services.
  1. Patent System Overview

An analysis of the qualitative costs and benefits associated with the Proposed Patent Fee Schedule requires a basic understanding of the overall patent system. The USPTO website contains a [detailed description of the patent process](http://www.uspto.gov/patents/process/index.jsp).

A U.S. patent is a property right granted to an applicant (e.g., an inventor or an assignee of the inventor) by the U.S. government, and excludes others from making, using, offering for sale, or selling an invention within the country or importing the invention into the United States. This exclusive right is granted only for a limited time in exchange for public disclosure of the invention. This limited exclusive right is intended to promote innovation and stimulate inventive activity in multiple ways. First, the exclusivity made possible by a patent incentivizes inventors to undertake R&D and inventive labor. Second, an exclusive patent right incentivizes commercialization of an invention in the marketplace. That is, inventors may bring their inventions to market by self-commercialization, or by either licensing (to earn royalties) or assigning their patent to other market participants (e.g., larger companies) that, in turn, commercialize the invention. Third, patent exclusivity provides a means for inventors to obtain capital financing (e.g., through venture capital) that can be used to self-commercialize, to improve the invention, or to fund other innovation.[[3]](#footnote-4)

The public disclosure of information required to obtain a patent helps avoid redundant R&D by others and promotes the dissemination of new technology and the development of innovations that build on current technology.[[4]](#footnote-5) The USPTO facilitates public disclosure of inventions by publishing design, plant, and utility patents upon their issuance, and by publishing utility patent applications 18 months from their earliest effective filing date.

U.S. companies are investing more in innovation—the research, development, and commercialization of intangible assets—than in the purchase of existing equipment and machines to spur growth. Reliable IP rights provide incentives for organizations and individuals to develop and pursue commercial opportunities related to their intangible assets. IP-intensive industries in the United States accounted for 41% of domestic economic activity, or output, in 2019. Output in IP-intensive industries grew at approximately the same rate as the entire domestic economy during the previous five years, with the exception of copyright-intensive industries, where output grew at a faster rate.[[5]](#footnote-6)

An efficient and effective patent system provides tools to protect new ideas and investments in innovation and creativity, benefitting both inventors and the economy. Timely, clear, and effective patent rights reduce uncertainty about the legal rights to new products, and increase the value of IP and capital. As a result, investments may be either misdirected or not undertaken, and costly litigation is more likely.[[6]](#footnote-7) Innovation depends, in part, on the USPTO’s success in optimizing the patent application pendency and examination time frames—both of which, when long, can stall market delivery of innovative goods and services and impede economic growth and the creation of high-paying jobs.

Securing a patent is an early step in the sometimes long and often expensive process of transforming an innovation into a marketable product or service. In addition to patent fees, expenses related to legal fees, R&D (more costly in some industries than others), licensing and royalties (where applicable), marketing, and production are all elements of the commercialization process. Given that patent fees are a proportionately small expense, the USPTO projects that the impact of the proposed fee rate changes on consumers of patented products—in the form of higher prices or fewer market choices—will be negligible.

# OVERVIEW OF ANALYSIS

* 1. Overview of Alternatives

The USPTO considered four patent fee schedule alternatives.

* Alternative 1: Proposed Patent Fee Schedule—Setting and Adjusting Patent Fees During Fiscal Year 2025—the proposed fee schedule detailed in the NPRM to produce adequate aggregate revenue to fund the aggregate costs of future budgetary requirements
* Alternative 2: Unit Cost Recovery—a fee schedule that generally sets fees equal to their individual activity-based unit cost (where that information is available) to produce adequate aggregate revenue to fund future budgetary requirements
* Alternative 3: Across-the-Board Adjustment—a fee schedule that generally applies a 12.5% inflationary factor to the Baseline (Alternative 4) to produce adequate aggregate revenue to fund future budgetary requirements
* Alternative 4: Baseline—current fee schedule that became effective on December 29, 2022
  1. Methodology

The USPTO analyzed the qualitative impact of costs and benefits for each alternative using key indicators when applicable. This section presents three methodologies used to develop information for this RIA: (1) activity-based costing (ABC); (2) aggregate patent fee revenue projections; and (3) aggregate patent cost projections.

* + 1. Activity-Based Costing

The USPTO’s ABI program used ABC methodology to derive the historical costs of agency-provided services. The USPTO used this data to set individual fees to further the key fee setting policy factor of aligning fees with the full cost of products and services. A discussion of methodology and results is available in a separate document, “Setting and Adjusting Patent Fees During Fiscal Year 2025—Activity-Based Information and Patent Fee Unit Expense Methodology,” available on the [fee setting section of the USPTO website](https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting). The USPTO also used ABI cost data to inform most individual fee amounts in Alternative 2: Unit Cost Recovery.

While the USPTO does not use historical cost information to directly assess any costs or benefits in this RIA, it does use this information, where available, to assess how well different fee amounts align to their service costs.

* + 1. Aggregate Fee Revenue Projections

The NPRM describes how the USPTO projects aggregate fee revenue (total money transferred to the agency by patent applicants and patent holders). These projections incorporate analysis of the RGDP (the broadest measure of economic activity) and other influential factors such as non-domestic patent activity, legislation, process efficiencies, court decisions, fee changes, and anticipated applicant behavior. Additional details about the aggregate fee revenue estimates for each alternative, including projected workloads by fee code, are available in “Setting and Adjusting Patent Fees During Fiscal Year 2025—Aggregate Revenue Tables,” available on the [fee setting and adjusting section of the USPTO website](https://www.uspto.gov/FeeSettingAndAdjusting). For a discussion of how the USPTO projects revenues for each alternative, see the Initial Regulatory Flexibility Analysis (IRFA) contained within the NPRM and the “Setting and Adjusting Patent Fees During Fiscal Year 2025—Aggregate Revenue Estimating Methodology” supplement available on the [fee setting section of the USPTO website](https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting).

In estimating aggregate revenue for the Baseline and other alternatives, the USPTO analyzed the relevant factors and indicators described above to project fee workload volumes for the five-year planning horizon (FY 2025-FY 2029). The availability of aggregate revenue directly impacts the USPTO’s ability to deliver services per its performance commitments. Table 3-1 shows two performance metrics the USPTO used in developing the four alternatives, and the forecasted values at the end of the five-year period. For more information on performance metrics see Appendix IX - Analysis of Performance Indicators in the FY 2025 Budget. Since Alternatives 1, 2, and 3 generate similar aggregate revenue, they are based on the same PPM; impacts on the production model due to the alternative fee schedules could be minimized by efficiently managing resources to ensure performance metrics are met. For purposes of comparison, the Baseline uses the same production models as the other alternatives, but the aggregate revenue resulting from the Baseline would require the USPTO to reduce planned spending, which would impede the agency’s ability to achieve these performance levels and other strategic priorities.

**Table 3-1**

| **Performance metrics** | **Alternatives** |
| --- | --- |
| Total patent term adjustment (PTA) compliance—all mailed actions | 80% |
| Total PTA compliance—remaining inventory | 81% |

For Alternatives 1, 2, and 3, the USPTO used elasticity-adjusted workloads. The USPTO recognizes that most fees have some price elasticity, which generally refers to how sensitive applicants and patentees are to fee (price) changes in terms of their decisions to pursue patenting. For the new fees proposed in this rule, USPTO subject matter experts developed workload estimates based on historical data, including data from related services, and expectations of customer behavior. As discussed above, aggregate revenue estimates for the alternatives are built from the same PPM; therefore, workloads vary between alternatives based solely on price elasticities. For Alternative 2 in particular, the USPTO recognizes that there would be changes in applicant demand related to adjustments of both entry and maintenance fee rates. In discussions of each alternative, the analysis includes additional insights on the magnitude and direction of these changes. A more detailed description of price elasticity is contained in “[Setting and Adjusting Patent Fees During Fiscal Year 2020—Description of Elasticity Estimates](https://www.uspto.gov/sites/default/files/documents/Elasticity_Appendix.docx).”

* + 1. Aggregate Patent Costs

As mentioned in the NPRM (see Part IV: Rulemaking Goals and Strategies), the basis for calculating aggregate patent costs is routine in the USPTO’s budget formulation and planning. The USPTO budget is a five-year plan, prepared annually, with projections for executing base programs (patent operations) and implementing strategic priorities. As discussed above, the USPTO’s analysis is based on the same PPM for each alternative, and therefore estimated budgetary requirements are the same for the Baseline and all other alternatives.

Aggregate patent costs are the total of estimated budgetary requirements and planned deposits to the operating reserve. Table 3-2 provides budgetary requirements, projected aggregate patent revenue, and the resulting patent operating reserve levels for each alternative. Since planned deposits to the operating reserve are an important part of aggregate patent costs, monitoring the projected operating reserve levels is key when analyzing costs.

**Table 3-2**

| **Budgetary Requirements and Projected Aggregate Patent Revenue by Alternative** **(dollars in millions)** | | | | | |
| --- | --- | --- | --- | --- | --- |
|  | **FY 2025** | **FY 2026** | **FY 2027** | **FY 2028** | **FY**  **2029** |
| **Budgetary requirements** | $3,975 | $4,102 | $4,268 | $4,431 | $4,600 |
| **Other income[[7]](#footnote-8)** | $50 | $50 | $50 | $50 | $50 |
| **Optimal operating reserve level** | $874 | $902 | $939 | $975 | $1,012 |
| **Alternative 1: Proposed Fee Schedule—Setting and Adjusting Patent Fees During Fiscal Year 2025—aggregate patent revenue** | $3,972 | $4,238 | $4,338 | $4,305 | $4,314 |
| *End-of-year (EOY) operating reserve Alternative 1* | $840 | $1,028 | $1,148 | $1,074 | $837 |
| **Alternative 2: Unit Cost Recovery—aggregate patent revenue** | $4,026 | $4,241 | $4,333 | $4,305 | $4,319 |
| *EOY operating reserve Alternative 2* | $894 | $1,082 | $1,197 | $1,121 | $890 |
| **Alternative 3: Across-the-Board Adjustment—aggregate patent revenue** | $3,934 | $4,228 | $4,336 | $4,299 | $4,305 |
| *EOY operating reserve Alternative 3* | $802 | $978 | $1,096 | $1,014 | $769 |
| **Alternative 4: Baseline—aggregate patent revenue** | $3,671 | $3,804 | $3,901 | $3,868 | $3,873 |
| *EOY operating reserve Alternative 4* | $485 | ($733) | ($1,050) | ($1,563) | ($2,239) |

Over the five-year time frame of this analysis (FY 2025-FY 2029), the USPTO projects that Alternatives 1, 2, and 3 would secure sufficient aggregate revenue to ensure financial sustainability and accommodate increases needed to improve the predictability and reliability of patent IP protection. Not only does the Baseline fail to generate sufficient revenue to achieve the optimal patent operating reserve during the five-year horizon, but absent reductions in spending that would impair agency performance, the operating reserve would incur a negative balance beginning in FY 2026. Section 4 provides detailed discussions of each alternative.

* 1. Overview of the Qualitative Costs and Benefits Across Alternatives

A high-level overview of the qualitative costs and benefits assessed in this RIA is presented below. Section 4 presents a more thorough description of each alternative and assesses relative costs and benefits. Table 3-3 contains a summary of identified qualitative costs and benefits for each alternative.

**Table 3-3**

| **Costs, Benefits, and Transfers** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Alternative 4** | **Alternative 1** | | **Alternative 2** | | **Alternative 3** |
|  | **Baseline** | **Proposed Patent  Fee Schedule** | | **Unit Cost Recovery** | | **Across-the-Board Adjustment** |
| **Costs:** | | | | | | |
| **Secure aggregate revenue to recover aggregate costs** | Significant | | See benefits | | See benefits | See benefits |
| **Fee schedule design** | Neutral | | Minimal | | Significant | Minimal |
| **Overall costs** | **Moderate** | | **Minimal** | | **Significant** | **Minimal** |
| **Benefits:** | | | | | | |
| **Secure aggregate revenue to recover aggregate costs** | See costs | | Significant | | Significant | Significant |
| **Fee schedule design** | Neutral | | Significant | | See costs | Neutral |
| **Overall benefits** | **Neutral** | | **Significant** | | **Neutral** | **Moderate** |
| **Transfers:** | | | | | | |
| **Aggregate increase in user fee payments** | Neutral | | Minimal | | Minimal | Minimal |
| **Overall net benefits/costs** | **Moderate costs** | | **Significant benefits** | | **Significant costs** | **Moderate benefits** |

### Qualitative Costs

This section summarizes features of the alternatives that represent a cost to one or more stakeholder groups. Table 3-4 shows the major qualitative costs associated with the alternatives considered in this analysis. If a cost applies to a certain alternative, it is denoted with a checkmark.

**Table 3-4**

| **Cost description** | **Alternative 4**  **Baseline** | **Alternative 1**  **Proposed Patent Fee Schedule** | **Alternative 2**  **Unit Cost Recovery** | **Alternative 3**  **Across-the-Board Adjustment** |
| --- | --- | --- | --- | --- |
| Secure aggregate revenue to recover aggregate costs | ü | -- | -- | -- |
| Fee schedule design | -- | ü | ü | ü |

Since it does not secure sufficient aggregate revenue to recover aggregate costs, the Baseline (Alternative 4) has a cost because it would not allow the USPTO to maintain operations or meet its strategic goals. Alternatives 1,2, and 3 have costs related to fee schedule design because increased filing fee rates, relative to the Baseline, will lead to fewer application filings and therefore less public disclosure of technical information. Alternative 2 has the greatest cost because it is counter to the USPTO’s general philosophy to charge applicants and holders lower filing, search, and examination (“front-end”) fees and higher issue and maintenance (“back-end”) fees, when they have more information about the relative value of their inventions. These costs are discussed in more detail in Section 4.

### 3.3.2 Qualitative Benefits

This section summarizes features of the alternatives that represent a benefit to one or more stakeholder groups. Table 3-5 shows the major qualitative benefits associated with the alternatives considered in this analysis. If a benefit applies to a certain alternative, it is denoted with a checkmark.

Table 3-5

| **Benefit description** | **Alternative 4**  **Baseline** | **Alternative 1**  **Proposed Patent Fee Schedule** | **Alternative 2**  **Unit Cost Recovery** | **Alternative 3**  **Across-the-Board Adjustment** |
| --- | --- | --- | --- | --- |
| Secure aggregate revenue to recover aggregate costs | -- | ü | ü | ü |
| Fee schedule design | -- | ü | -- | -- |

Using the assumptions found in the NPRM and the FY 2025 Budget, all alternatives, other than the Baseline, ensure the USPTO’s financial sustainability by providing adequate aggregate revenue to recover the aggregate costs required to maintain operations and improve the predictability and reliability of patent IP protection. However, the only alternative that offers additional benefits related to fee schedule design is Alternative 1. These benefits will be discussed in more detail in Section 4.

### Transfer Estimates

OMB Circular A-4 details the importance of distinguishing between real costs and transfer payments, stating that “benefit and cost estimates should reflect real resource use. Transfer payments are monetary payments from one group to another that do not affect total resources available to society.” OMB’s Regulatory Impact Analysis: A Primercites “fees to government agencies for goods or services provided by the agency” as an example of transfer payments. OMB Circular A-4 states that transfer payments should be addressed “in a separate discussion of the regulation’s distributional effects.”

The USPTO considers the NPRM’s distributional effects to be minimal given the fee increases contemplated and the equal application of fees to all users of USPTO services, as described herein. Further, the USPTO’s Proposed Patent Fee Schedule and other three alternatives apply fees for each service equally, regardless of the customer’s point of origin, technology, or economic sector.

The USPTO used Baseline fee revenue for all patent fees to calculate the Baseline transfer amount, a reasonable estimate because these fees represent the current patent fee schedule in the absence of rulemakings.

OMB Circular A-4 states that a discount factor should be used to adjust for differences in timing, and that invested resources “will normally earn a positive return, so current consumption is more expensive than future consumption, since you are giving up that expected return on investment when you consume today.” On the other hand, “people generally prefer present to future consumption. They are said to have positive time preference.” OMB Circular A-4 further states that estimates should be provided using both 3% and 7% discount rates to demonstrate sensitivity of the estimates to the discount rate assumption.

Tables 3-6, 3-7, and 3-8 compare undiscounted, 3%, and 7% discounted amounts of transfers for each of Alternatives 1, 2, and 3 to the Baseline. Dollar values reflected in Tables 3-6, 3-7, and 3-8 are in constant FY 2024 dollars using the CBO estimate of the CPI-U as the inflation index. The USPTO calculates transfer impacts as the total amount paid by patent applicants and patent holders to the USPTO over the Baseline estimate. Across undiscounted, 3%, and 7% discount rates, the USPTO estimates the increase in transfers to be relatively similar for Alternatives 1, 2, and 3 when compared to the Baseline.

**Table 3-6**

| **Patent Fee Transfers (Aggregate Fee Revenue)[[8]](#footnote-9) by Alternative—*Undiscounted* (constant FY 2024 dollars in millions)** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
|  | **FY 2025** | **FY 2026** | **FY 2027** | **FY 2028** | **FY 2029** | **Total** |
| **Baseline (Alternative 4)—fee revenue** | $3,590 | $3,564 | $3,431 | $3,126 | $2,814 | $16,524 |
| **Alternative 1: Proposed Patent Fee Schedule—fee revenue** | $3,884 | $3,971 | $3,815 | $3,479 | $3,134 | $18,283 |
| *Transfer amount from*  *Baseline for Alternative 1* | $294 | $407 | $384 | $353 | $320 | $1,759 |
| **Alternative 2: Unit Cost Recovery—fee revenue** | $3,937 | $3,973 | $3,810 | $3,480 | $3,138 | $18,337 |
| *Transfer amount from Baseline for Alternative 2* | $347 | $409 | $380 | $354 | $324 | $1,813 |
| **Alternative 3: Across-the-Board Adjustment—fee revenue** | $3,847 | $3,961 | $3,813 | $3,474 | $3,128 | $18,223 |
| *Transfer amount from Baseline for Alternative 3* | $257 | $397 | $382 | $348 | $314 | $1,699 |

**Table 3-7**

| **Patent Fee Transfers (Aggregate Fee Revenue) by Alternative—3% *Discount*** **(constant FY 2024 dollars in millions)** | | | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **FY 2025** | **FY 2026** | **FY 2027** | **FY 2028** | **FY 2029** | **Total (net present value)** | **Annualized (net present value)** |
| **Baseline (Alternative 4)—fee revenue** | $3,485 | $3,359 | $3,140 | $2,777 | $2,428 | $15,189 | $3,317 |
| **Alternative 1: Proposed Patent Fee Schedule—fee revenue** | $3,771 | $3,743 | $3,491 | $3,091 | $2,704 | $16,800 | $3,668 |
| *Transfer amount from Baseline for Alternative 1* | $286 | $384 | $351 | $314 | $276 | $1,611 | $352 |
| **Alternative 2: Unit Cost Recovery—fee revenue** | $3,822 | $3,745 | $3,487 | $3,092 | $2,707 | $16,853 | $3,680 |
| *Transfer amount from Baseline for Alternative 2* | $337 | $386 | $347 | $315 | $279 | $1,664 | $363 |
| **Alternative 3: Across-the-Board Adjustment —fee revenue** | $3,735 | $3,733 | $3,490 | $3,087 | $2,698 | $16,743 | $3,656 |
| *Transfer amount from Baseline for Alternative 3* | $250 | $374 | $350 | $310 | $270 | $1,554 | $339 |

**Table 3-8**

| **Patent Fee Transfers (Aggregate Fee Revenue) by Alternative—7% *Discount*** **(constant FY 2024 dollars in millions)** | | | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **FY 2025** | **FY 2026** | **FY 2027** | **FY 2028** | **FY 2029** | **Total (net present value)** | **Annualized (net present value)** |
| **Baseline (Alternative 4)—fee revenue** | $3,355 | $3,113 | $2,800 | $2,385 | $2,007 | $13,660 | $3,332 |
| **Alternative 1: Proposed Patent Fee Schedule—fee revenue** | $3,630 | $3,468 | $3,114 | $2,654 | $2,235 | $15,101 | $3,683 |
| *Transfer amount from Baseline for Alternative 1* | $275 | $355 | $314 | $269 | $228 | $1,441 | $351 |
| **Alternative 2: Unit Cost Recovery—fee revenue** | $3,679 | $3,470 | $3,110 | $2,655 | $2,237 | $15,151 | $3,695 |
| *Transfer amount from Baseline for Alternative 2* | $324 | $357 | $310 | $270 | $230 | $1,491 | $364 |
| **Alternative 3: Across-the-Board Adjustment—fee revenue** | $3,595 | $3,459 | $3,113 | $2,651 | $2,230 | $15,048 | $3,670 |
| *Transfer amount from Baseline for Alternative 3* | $240 | $346 | $313 | $266 | $223 | $1,388 | $339 |

* 1. Summary of the Proposed Patent Fee Schedule (Alternative 1)

The accounting statement shown in Table 3-9 summarizes the qualitative costs, benefits, and other impacts of the Proposed Patent Fee Schedule (Alternative 1). Overall, the Proposed Patent Fee Schedule has significant qualitative benefits to patent applicants, patent holders, other patent stakeholders, and society, with minimal qualitative costs.

Table 3-9

| **Agency/Program Office: United States Patent and Trademark Office**  **Rule Title: Setting and Adjusting Patent Fees During Fiscal Year 2025**  **RIN: 0651-AD64**  **Date: April 3, 2024** | | | | |
| --- | --- | --- | --- | --- |
| ***Category*** | ***Primary estimate*** | ***Minimum estimate*** | ***Maximum estimate*** | ***Source citation*** |
|  | **FY 2025–2029** | | |  |
| **BENEFITS (see Section 4 for a detailed explanation of the benefits related to the Baseline and alternatives)** | | | | |
| Incremental unquantified (qualitative) benefits | The Proposed Patent Fee Schedule allows for reduced barriers to innovation, cultivating access and inclusion in the IP ecosystem; and delivering timely, efficient services through optimizing USPTO technology, practices, policies, and rules. The fees from the Proposed Patent Fee Schedule help to promote clear, enforceable patents that are essential to economic growth, global competitiveness, and the promotion of innovation. The fee schedule design is also improved over the current fee schedule to better support key policy factors. | | | RIA Section 4 |
| **COSTS (see Section 4 for a detailed explanation of the costs related to the Baseline and alternatives)** | | | | |
| Incremental unquantified (qualitative) costs | The increased fee rates in the Proposed Patent Fee Schedule could reduce the number of patent applications. The public disclosure of information required to obtain a patent helps avoid redundant R&D by others and promotes development of innovations that build on current technology. The relative inelasticity of patent fees, and the size of fee increases, limit the expected decrease in application filings and thus the expected cost. Therefore, the USPTO believes the fee schedule design costs to be minimal. | | | RIA Section 4 |
| **TRANSFERS (see Section 3 for a detailed explanation)** | | | | |
| Total monetized transfers: “On Budget” | $1,759 | $1,847 | $1,935 | RIA Section 3 |
| From whom to whom | From patent applicants and patent owners to the U.S. government | | |  |
| **Other impacts** | | | | |
| ***Category*** | ***Effects*** | | | ***Source citation*** |
| Effects on state, local, and/or tribal governments | n/a | | | n/a |
| Effects on small businesses | Changes in patent fees can affect further innovation and commercialization by small entities. The patent fee schedule includes discounts for small and micro entities for certain fees. The estimated impact on small businesses is addressed in the IRFA. | | | IRFA |
| Effects on growth | The impact of patent fee changes on fostering innovation, which helps drive economic growth, was an important factor in this analysis. The Proposed Patent Fee Schedule is expected to produce the revenue needed for the USPTO to achieve the strategic priorities encompassed in its Strategic Plan, including providing enhanced access and support to innovators, creators, entrepreneurs, and brand owners across the country. | | | RIA |

Qualitative benefits of the Proposed Patent Fee Schedule (Alternative 1) are (1) improvements in the design of the fee schedule in alignment with key policy factors; and (2) securing sufficient aggregate revenue to recover aggregate costs.

As to the first benefit, the Proposed Patent Fee Schedule (Alternative 1) includes several changes that would better achieve fee setting policy factors than the current fee schedule. Specifically, rather than increasing all fees equally, Alternative 1 includes carefully targeted fee adjustments to facilitate effective administration of the patent system. Also, the Proposed Patent Fee Schedule continues to foster innovation, competitiveness, and economic growth by keeping front-end fees below cost, maintaining low barriers to entry into the patent system

The Proposed Patent Fee Schedule also fulfills the agency’s strategic objective to successfully resource the mission by building the operating reserve balance to the optimal reserve target. In the Proposed Patent Fee Schedule, the USPTO is focused on building resiliency against financial shocks. At optimal levels, the operating reserve allows operations to continue for three months in the event of interruptions in the agency’s ability to access collected fees, including a lapse in appropriations (*i.e.*, government shutdown). In this alternative, the optimal operating reserve level, to be reached during FY 2026 and FY 2027, is then available to supplement anticipated fee collections during FY 2028 and FY 2029.

The USPTO also identified fee schedule design costs for the Proposed Patent Fee Schedule, in the form of reduced public disclosure of technical information. The increased fee rates could reduce the number of patent applications. The public disclosure of information required to obtain a patent helps avoid redundant R&D by others and promotes development of innovations that build on current technology.

The initial fees to file a patent would be increased in this proposal and the USPTO estimates this will reduce the number of applications filed relative to the Baseline. The relative inelasticity of patent fees, and the size of fee increases, limit the expected decrease in application filings and thus the expected cost. Therefore, the USPTO believes the fee schedule design costs of the Proposed Patent Fee Schedule to be minimal.

The transfers identified in the Proposed Patent Fee Schedule represent an aggregate increase in user fee payments, which the agency expects to be higher than the Baseline (Alternative 4). This additional fee revenue will allow the USPTO to accomplish its mission: to drive U.S. innovation, inclusive capitalism, and global competitiveness by delivering high quality and timely patent examination and review proceedings that produce robust and reliable patent rights for domestic and international stakeholders.

In summary, based on the analysis of costs and benefits, the Proposed Patent Fee Schedule (Alternative 1) is offers more significant benefits and better supports key policy factors than the other alternatives or the Baseline, with minimal costs.

# ANALYSIS OF BASELINE AND ALTERNATIVES

The USPTO assessed three alternative patent fee schedules against the current patent fee schedule (Baseline) to evaluate their ability to meet the rulemaking’s strategies and goals. The subsections below provide a detailed description of the Baseline and other alternatives. Each description contains an overview of key indicators impacting the costs and benefits of the alternative.

* 1. Baseline (Alternative 4, Current Fee Schedule)

**Table 4-1**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Patent Costs and Revenue by Alternative** | | | | | | |
| **(dollars in millions)** | | | | | | |
|  | **FY 2025** | **FY 2026** | **FY 2027** | **FY 2028** | **FY 2029** | **Total** |
| **Budgetary requirements** | $3,975 | $4,102 | $4,268 | $4,431 | $4,600 | $21,376 |
| Alternative 4: Baseline—fee revenue | $3,621 | $3,754 | $3,851 | $3,818 | $3,823 | $18,867 |
| Other income | $50 | $50 | $50 | $50 | $50 | $250 |
| **Aggregate revenue** | $3,671 | $3,804 | $3,901 | $3,868 | $3,873 | $19,117 |
| Operating reserve | $485 | ($733) | ($1,050) | ($1,563) | ($2,239) |  |
| Optimal operating reserve | $905 | $939 | $963 | $954 | $956 |  |
| **Optimal operating reserve surplus (deficit)** | ($420) | ($1,671) | ($2,012) | ($2,517) | ($3,195) |  |

* + 1. Description of the Baseline (Alternative 4)

The Baseline for this analysis is the current patent fee schedule that became effective on December 29, 2022. The USPTO estimates that the Baseline would generate approximately $3.6 billion in patent fees during FY 2025, based on assumptions found in the NPRM and the FY 2025 Budget.

The Baseline would not secure enough aggregate revenue to recover the aggregate costs of budgetary requirements described in the FY 2025 Budget. Under the Baseline, the USPTO expects to collect sufficient revenue to continue executing only some, not all, patent priorities. For example, the agency plans to hire about 1,800 patent examiners over estimated attrition levels during the five-year planning horizon. This additional examination capacity will allow the USPTO to improve patent reliability and maintain PTA compliance rates. The Baseline provides neither sufficient resources to hire the same number of examiners, nor sufficient resources to continue building the patent operating reserve to its optimal level in the five-year planning horizon. In fact, current agency estimates project that under the Baseline fee schedule, the USPTO would withdraw funds from the patent operating reserve every year until its exhaustion during FY 2028. As discussed in the NPRM and the FY 2025 Budget, funding an operating reserve as part of aggregate agency costs aligns with the USPTO’s strategic plan objective to resource mission success. As a fully user fee-funded agency, the patent operating reserve adds consistency to operational funding by absorbing and responding to immediate and temporary changes in economic and operating environments or circumstances.

* 1. Proposed Patent Fee Schedule (Alternative 1)

**Table 4-2**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Patent Costs and Revenue by Alternative**  **(dollars in millions)** | | | | | | |
|  | **FY 2025** | **FY 2026** | **FY 2027** | **FY 2028** | **FY 2029** | **Total** |
| **Budgetary requirements** | $3,975 | $4,102 | $4,268 | $4,431 | $4,600 | $21,376 |
| Alternative 1: Proposed Patent Fee Schedule—fee revenue | $3,922 | $4,188 | $4,288 | $4,255 | $4,264 | $20,918 |
| Other income | $50 | $50 | $50 | $50 | $50 | $250 |
| **Aggregate revenue** | $3,972 | $4,238 | $4,338 | $4,305 | $4,314 | $21,168 |
| Operating reserve | $840 | $1,028 | $1,148 | $1,074 | $837 |  |
| Optimal operating reserve | $980 | $1,047 | $1,072 | $1,064 | $1,066 |  |
| **Optimal operating reserve surplus (deficit)** | ($140) | ($19) | $76 | $10 | ($229) |  |

* + 1. Description of Proposed Patent Fee Schedule (Alternative 1)

The Proposed Patent Fee Schedule (Alternative 1) is the recommended fee schedule set forth in the NPRM. Based on assumptions found in the NPRM and the FY 2025 Budget, transitioning to the Proposed Patent Fee Schedule in FY 2025 will provide the USPTO a 8.3% increase in fee collections over the Baseline fee collection level. Once fully transitioned to the new fee schedule, the agency estimates that FY 2026 fee collections will exceed FY 2026 Baseline fee collections by 11.6%. In FY 2029, aggregate revenue, supplemented by the operating reserve, will be sufficient to recover the aggregate costs of patent operations and support the USPTO’s strategic objectives to issue and maintain robust and reliable patents; improve patent application pendency; optimize the patent application process to enable efficiencies for applicants and other stakeholders; and enhance internal processes to prevent fraudulent and abusive behaviors that do not embody the agency’s mission.

The Proposed Patent Fee Schedule focuses on enhancing resiliency against financial shocks by maintaining the minimum operating reserve balance while building it to the optimal reserve target (approximately three months of operating expenses). With Alternative 1, in FY 2026, the agency’s optimal operating reserve target is $1.0 billion, and the EOY anticipated operating reserve balance is $1.0 billion. The agency expects the operating reserve to exceed the target in FY 2027 and FY 2028 but fall below the optimal level to supplement anticipated fee collections during FY 2029.

The USPTO will continue to assess the patent operating reserve balance against its target annually; at least every three years, the agency will evaluate the target balance to determine if it is necessary and sufficient to provide needed funding stability. In accordance with the USPTO’s operating reserve policy, if the balance is projected to exceed the optimal level by 10% for two consecutive years in a future five-year budget forecast, the agency will consider fee reductions. It is important to balance accomplishing strategic priorities with building the operating reserve to ensure sufficient resources are available to maintain agency operations at desired service levels.

The Proposed Patent Fee Schedule aligns with the USPTO’s fee setting policy factors. Like the Baseline, Alternative 1 sets many fees either below or above cost, consistent with the key policy factors of promoting innovation strategies, aligning fees with the full cost of products and services, facilitating effective administration of the patent system, and offering patent processing options to applicants (see Table 4-3). The Proposed Patent Fee Schedule also maintains the front-end/back-end balance that is the enduring cornerstone of the agency’s patent fee schedule design.

**Table 4-3**

| **Patent Fee Rates and Unit Cost** | | | |
| --- | --- | --- | --- |
|  | **Baseline fee rate** | **Alternative 1 fee rate** | **FY 2022 unit cost** |
| Filing | $320 | $350 | $250 |
| Search | $700 | $770 | $2,430 |
| Examination | $800 | $880 | $3,100 |
| First request for continued examination (RCE) | $1,360 | $1,500 | $3,059 |
| **Front-end fees** | **$3,180** | **$3,500** |  |
| Issue | $1,200 | $1,260 | $574 |
| 1st stage maintenance | $2,000 | $2,100 | n/a |
| 2nd stage maintenance | $3,760 | $3,950 | n/a |
| 3rd stage maintenance | $7,700 | $8,085 | n/a |
| **Back-end fees** | **$14,660** | **$15,395** |  |
| **Total fees** | **$17,840** | **$18,895** |  |

As shown in Table 4-3, the cost for an undiscounted entity to secure and maintain a patent through a typical prosecution sequence for its full 20-year term increases by $1,055 (5.9%) under the Proposed Patent Fee Schedule. Assuming a 3% discount rate, the net present value of investing in a patent under the Proposed Patent Fee Schedule is $14,184, compared to a net present value of $13,363 for the Baseline (for an undiscounted entity).

Table 4-4 presents fee adjustments included in the Proposed Patent Fee Schedule with the greatest impact on patent revenue. Undiscounted, small, and micro entity dollar and percentage changes are compared to current undiscounted, small, and micro entity fees. A complete list of fee changes for Alternative 1 can be found in the document titled “Table of Patent Fee Changes—Current, Proposed Patent Fee Schedule, and Unit Cost Recovery” on the [fee setting section of the USPTO website](https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting).

Table 4-4

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Proposed Patent Fee Schedule (Alternative 1)** | | | | |
| **Select Current and Proposed Fees** | | | | |
| **Description** | **Entity type** | **Current fee** | **Proposed fee** | **Fee change (%)** |
| Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t)) | Undiscounted | $320 | $350 | 9% |
| Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t)) | Small | $128 | $140 | 9% |
| Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t)) | Micro | $64 | $70 | 9% |
| Basic filing fee - Utility (electronic filing for small entities) | Small | $64 | $70 | 9% |
| Each claim in excess of 20 | Undiscounted | $100 | $200 | 100% |
| Each claim in excess of 20 | Small | $40 | $80 | 100% |
| Each claim in excess of 20 | Micro | $20 | $40 | 100% |
| Utility search fee | Undiscounted | $700 | $770 | 10% |
| Utility search fee | Small | $280 | $308 | 10% |
| Utility search fee | Micro | $140 | $154 | 10% |
| Utility examination fee | Undiscounted | $800 | $880 | 10% |
| Utility examination fee | Small | $320 | $352 | 10% |
| Utility examination fee | Micro | $160 | $176 | 10% |
| Utility issue fee | Undiscounted | $1,200 | $1,260 | 5% |
| Utility issue fee | Small | $480 | $504 | 5% |
| Utility issue fee | Micro | $240 | $252 | 5% |
| Extension for response within third month | Undiscounted | $1,480 | n/a | n/a |
| Extension for response within third month | Small | $592 | n/a | n/a |
| Extension for response within third month | Micro | $296 | n/a | n/a |
| Extension for response within third month, except provisional applications | Undiscounted | n/a | $1,555 | n/a |
| Extension for response within third month, except provisional applications | Small | n/a | $622 | n/a |
| Extension for response within third month, except provisional applications | Micro | n/a | $311 | n/a |
| For maintaining an original or any reissue patent, due at 3.5 years | Undiscounted | $2,000 | $2,100 | 5% |
| For maintaining an original or any reissue patent, due at 3.5 years | Small | $800 | $840 | 5% |
| For maintaining an original or any reissue patent, due at 3.5 years | Micro | $400 | $420 | 5% |
| For maintaining an original or any reissue patent, due at 7.5 years | Undiscounted | $3,760 | $3,950 | 5% |
| For maintaining an original or any reissue patent, due at 7.5 years | Small | $1,504 | $1,580 | 5% |
| For maintaining an original or any reissue patent, due at 7.5 years | Micro | $752 | $790 | 5% |
| For maintaining an original or any reissue patent, due at 11.5 years | Undiscounted | $7,700 | $8,085 | 5% |
| For maintaining an original or any reissue patent, due at 11.5 years | Small | $3,080 | $3,234 | 5% |
| For maintaining an original or any reissue patent, due at 11.5 years | Micro | $1,540 | $1,617 | 5% |
| Request for prioritized examination | Undiscounted | $4,200 | $4,410 | 5% |
| Request for prioritized examination | Small | $1,680 | $1,764 | 5% |
| Request for prioritized examination | Micro | $840 | $882 | 5% |
| Request for continued examination (RCE) - 1st request (see 37 CFR 1.114) | Undiscounted | $1,360 | $1,500 | 10% |
| Request for continued examination (RCE) - 1st request (see 37 CFR 1.114) | Small | $544 | $600 | 10% |
| Request for continued examination (RCE) - 1st request (see 37 CFR 1.114) | Micro | $272 | $300 | 10% |
| Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114) | Undiscounted | $2,000 | n/a | n/a |
| Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114) | Small | $800 | n/a | n/a |
| Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114) | Micro | $400 | n/a | n/a |
| Request for continued examination (RCE) - 2nd request (see 37 CFR 1.114) | Undiscounted | n/a | $2,500 | n/a |
| Request for continued examination (RCE) - 2nd request (see 37 CFR 1.114) | Small | n/a | $1,000 | n/a |
| Request for continued examination (RCE) - 2nd request (see 37 CFR 1.114) | Micro | n/a | $500 | n/a |
| Request for continued examination (RCE) - 3rd and subsequent request (see 37 CFR 1.114) | Undiscounted | $2,000 | $3,600 | 80% |
| Request for continued examination (RCE) - 3rd and subsequent request (see 37 CFR 1.114) | Small | $800 | $1,440 | 80% |
| Request for continued examination (RCE) - 3rd and subsequent request (see 37 CFR 1.114) | Micro | $400 | $720 | 80% |
| Basic national stage fee | Undiscounted | $320 | $350 | 9% |
| Basic national stage fee | Small | $128 | $140 | 9% |
| Basic national stage fee | Micro | $64 | $70 | 9% |
| National stage search fee - search report prepared and provided to USPTO | Undiscounted | $540 | $565 | 5% |
| National stage search fee - search report prepared and provided to USPTO | Small | $216 | $226 | 5% |
| National stage search fee - search report prepared and provided to USPTO | Micro | $108 | $113 | 5% |
| National stage examination fee - all other situations | Undiscounted | $800 | $880 | 10% |
| National stage examination fee - all other situations | Small | $320 | $352 | 10% |
| National stage examination fee - all other situations | Micro | $160 | $176 | 10% |

* + 1. Costs of Proposed Patent Fee Schedule (Alternative 1)

The USPTO identified fee schedule design costs for the Proposed Patent Fee Schedule (Alternative 1), in the form of reduced public disclosure of technical information. . A patent is a property right granted by the government of the United States of America to an inventor "to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States" for a limited time in exchange for public disclosure of the invention when the patent is granted. Most patent applications are published (and thus disclosed to the public) prior to grant. . This disclosure provides the opportunity for others to learn about the invention, and to make use of the invention after the patent term has ended. The publication of patents and patent applications generates large knowledge spillovers, reduces technology duplication, and increases R&D. This information disclosure also facilitates follow-on innovation, as different inventors may conceive of improvements to the existing invention. The benefit of disclosure applies and adds value to the intellectual property system even if the invention is deemed not to be patentable.

The initial fees to file a patent would be increased in this proposal and the USPTO estimates this will reduce the number of applications filed relative to the Baseline. The relative inelasticity of patent fees, and the size of fee increases, limit the expected decrease in application filings and thus the expected cost. Therefore, the USPTO believes the fee schedule design costs of Alternative 1 to be minimal.

The USPTO has accounted for the expected changes in workloads resulting from the increased fee rates. The proposed fee rates recover enough aggregate revenue to support the USPTO’s goals, and the benefits of Alternative 1, discussed below, outweigh the minimal fee schedule design cost.

* + 1. Benefits of Proposed Patent Fee Schedule (Alternative 1)

The USPTO identified two benefits of the Proposed Patent Fee Schedule (Alternative 1): (1) fee schedule design benefits; and (2) securing aggregate revenue to recover aggregate costs. The following discussion of fee schedule design benefits evaluates how the fee adjustments reflect the agency’s key fee setting policy factors, namely, promoting innovation strategies, aligning fees with the full cost of products and services, facilitating effective administration of the patent system, and offering patent processing options for applicants. This discussion includes only those fees for which reasonable conclusions can be drawn about benefits as they relate to fee schedule design; therefore, it does not address all fees included in Table 4-4. A more detailed discussion of each fee change’s rationale is available in the NPRM in Part V: Individual Fee Rationale.

1. **Promoting innovation strategies by setting select fees below cost:**Currently, utility patent filing, search, and examination fees for an undiscounted entity recover only a portion of the average unit cost for prosecuting a patent application. See “Setting and Adjusting Patent Fees During Fiscal Year 2025—Activity-Based Information and Patent Fee Unit Expense Methodology,” available on the [fee setting section of the USPTO website](https://www.uspto.gov/FeeSettingAndAdjusting). This alternative continues the agency’s longstanding policy factor of promoting innovation strategies by keeping front-end fees (e.g., filing, search, and examination) below cost with a back-end subsidy. As previously discussed, a more comprehensive study of the patent fee structure, as required by the UAIA, is currently underway; the results of this study will inform future USPTO rulemakings to set and adjust patent fees.   
    To help balance aggregate costs with aggregate revenue, the Proposed Patent Fee Schedule aims to increase total filing, search, and examination fees to recover slightly more of the average unit cost for processing a patent application, all while keeping total paid fees below cost. Maintaining below-cost entry fees as part of the fee schedule design is a benefit and supports the USPTO’s key fee setting policy consideration of promoting innovation strategies.

In addition to front-end utility patent fee rate changes, the Proposed Patent Fee Schedule increases fee rates for design patent applications. Despite this increase, these fees will remain below cost and continue to be partially subsidized by utility fees to encourage entry into the IP system.

1. **Aligning fees with the full cost of products and services:**The Proposed Patent Fee Schedule (Alternative 1) better aligns fees with the full cost of products and services without increasing the fee rate for every fee code by the same percentage. One example of this is Patent Trial and Appeal Board (PTAB) trial fees; the proposed fee increases will better align the fee rates charged to petitioners with the actual costs borne by the USPTO in providing these proceedings. This proposed rulemaking will help the PTAB continue to maintain the appropriate level of judicial and administrative resources to continue providing to provide high-quality and timely decisions for AIA trials.
2. **Facilitating effective administration of the patent system:**The USPTO proposes to establish new fees related to continuing applications for presenting certain benefit claims in nonprovisional applications. These new fees would apply to a nonprovisional application (the “later-filed application”) that has an actual filing date more than five years, or more than eight years, later than the earliest filing date for which benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c), and 37 CFR 1.78(d). Since FY 2010, the volume of continuing applications has tripled, and they now represent about 34% of the USPTO’s serialized filings. The volume and rapid increase of continuing applications negatively impacts workload and docketing practices. For example, it is difficult for the agency to balance patent examining resources between the examination of “new” (i.e., noncontinuing) applications disclosing new technology and innovations, and continuing applications, which in some cases are a repetition of prior applications that have already been examined and either issued as patents or abandoned. The proposed fees will facilitate effective administration of the patent system, specifically by encouraging more efficient filing and prosecution behavior from applicants and partially offsetting foregone maintenance fee revenue from later-filed continuing applications.

An additional example is Alternative 1’s proposal to increase the fee for filing, or later presenting at any other time, each independent claim in excess of three, as well as each claim (whether dependent or independent) in excess of 20. The USPTO designed these changes to promote compact prosecution and incentivize applicants motivated by costs to not to file excess claims. These changes will also provide more revenue to help cover additional search and examination costs associated with excess claims and recoup prosecution costs not covered by front-end fees.

One final example is the proposal to split existing RCE fees into three parts: a fee for a first RCE, a higher fee for a second RCE, and a still higher fee for third and subsequent RCEs filed in a single patent application. A higher fee for RCEs filed subsequent to the first RCE filing in a patent application should help further promote compact prosecutions by reducing RCE filings in favor of appeal or reaching agreement with the examiner.

1. **Offer Application Processing Options for Applicants:** The USPTO offers prosecution options via the After Final Consideration Program 2.0 (AFCP 2.0), which was designed to encourage continued collaboration between examiners and applicants after close of prosecution and reduce pendency by avoiding RCEs and continued prosecution applications. The program offers several benefits to participating applicants. Under customary practice, after a final rejection, applicants have no right to unrestricted further prosecution. AFCP 2.0 provides participating applicants an opportunity to potentially have an examiner consider an amendment that otherwise would not be considered at this stage. AFCP 2.0 is a popular program, with applicants filing more than 60,000 requests each year—more than half of the after-final responses filed). The USPTO’s costs of administering the program are significant, and the agency must consider not renewing (i.e. terminating) the program. The proposed fee allows the USPTO to continue offering this processing option to applicants.

**Summary of Fee Design Benefits for the Proposed Patent Fee Schedule (Alternative 1):**The Proposed Patent Fee Schedule captures the most benefits of any alternative examined by the USPTO. The fee schedule is designed around the key fee setting policy factors referenced throughout this document and the NPRM. As demonstrated by a continuing front-end/back-end subsidy framework and the new and revised fees discussed above and in the NPRM, this alternative designs the fee structure to achieve both rulemaking and operational strategies and goals, while benefitting patent stakeholders. Additional fee schedule design benefits beyond the front-end/back-end subsidy are unique to Alternative 1 and not present in the Baseline or two other alternatives.

**Summary of Secure Sufficient Aggregate Revenue to Recover Aggregate Costs for the Proposed Patent Fee Schedule (Alternative 1):**The Proposed Patent Fee Schedule secures sufficient aggregate revenue to allow for improved pendency and delivery of timely, efficient services that enable innovators to bring their ideas and products to impact more quickly and efficiently. This revenue will allow the USPTO to continue balancing timely examination with improvements in patent quality, particularly the robustness and reliability of issued patents, and ensure resourcing for mission success. See the [USPTO’s Quality Metrics webpage](https://www.uspto.gov/patents/quality-metrics) for more information on patent quality including (1) statutory compliance measures, (2) process measures, and (3) perception measures.

* 1. Unit Cost Recovery (Alternative 2)

Table 4-5

| **Patent Costs and Revenue by Alternative** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| **(dollars in millions)** | | | | | | |
|  | **FY 2025** | **FY 2026** | **FY 2027** | **FY 2028** | **FY 2029** | **Total** |
| **Budgetary requirements** | $3,975 | $4,102 | $4,268 | $4,431 | $4,600 | $21,376 |
| Unit Cost Recovery (Alternative 2)—fee revenue | $4,026 | $4,241 | $4,333 | $4,305 | $4,319 | $21,223 |
| Other income | $50 | $50 | $50 | $50 | $50 | $250 |
| **Aggregate revenue** | $4,076 | $4,291 | $4,383 | $4,355 | $4,369 | $21,473 |
| Operating reserve | $894 | $1,082 | $1,197 | $1,121 | $890 |  |
| Optimal operating reserve | $874 | $902 | $939 | $975 | $1,012 |  |
| **Optimal operating reserve surplus (deficit)** | $20 | $180 | $258 | $146 | ($122) |  |

* + 1. Description of Unit Cost Recovery (Alternative 2)

The Unit Cost Recovery (Alternative 2) fee structure would set most individual undiscounted fees at the USPTO’s historical cost of performing the activities related to a particular service. As required by law, this alternative maintains existing small and micro entity discounts. For FY 2025 through FY 2029, the USPTO based Unit Cost Recovery fee rates on FY 2022 historical unit costs. Because unit cost calculations are retrospective, the agency recognizes that this approach does not account for inflationary factors that will likely, and have already, increased the costs of certain patent services and necessitate higher fees in the outyears. Despite these limitations, the USPTO believes that FY 2022 data is the best available data to inform this analysis.

Based on assumptions found in the NPRM and the FY 2025 Budget, the aggregate revenue generated by the Unit Cost Recovery alternative would be sufficient to recoup the aggregate costs of patent operations and support the USPTO’s strategic priorities of (1) driving inclusive U.S. innovation and global competitiveness; (2) promoting the efficient delivery of reliable IP rights; (3) promoting the protection of IP against new and persistent threats; (4) bringing innovation to impact; and (5) generating impactful employee and customer experiences by maximizing agency operations. It is important that the agency balance accomplishing these strategic priorities and their objectives together so once they are achieved, sufficient resources remain to maintain operations at desired service levels.

As shown in Table 4-6, the Unit Cost Recovery fee schedule includes the highest combined filing, search, and examination fee rates and lowest maintenance fee rates of any alternative. As shown in Table 4-6, the cost of securing and maintaining a patent through a typical prosecution sequence for its full 20-year term increases by $4,310 (24.2%) under Unit Cost Recovery. For an undiscounted entity, assuming a 3% discount rate, the net present value of investing in a patent for this alternative is $16,852, compared to a net present value of $15,189 for the Baseline. In particular, the difference in front-end fees is telling: $8,840 ($8,412 net present value assuming a 3% discount) versus $3,180 ($3,013 net present value assuming a 3% discount) under the Baseline.

**Table 4-6**

| **Patent Fee Rates and Unit Cost** | | | |
| --- | --- | --- | --- |
|  | **Baseline fee rate** | **Alternative 2 fee rate** | **FY 2022 unit cost** |
| Filing | $320 | $250 | $250 |
| Search | $700 | $2,430 | $2,430 |
| Examination | $800 | $3,100 | $3,100 |
| First RCE | $1,360 | $3,060 | $3,059 |
| **Front-end fees** | **$3,180** | **$8,840** |  |
| Issue | $1,200 | $575 | $574 |
| 1st stage maintenance | $2,000 | $1,770 | n/a |
| 2nd stage maintenance | $3,760 | $3,330 | n/a |
| 3rd stage maintenance | $7,700 | $6,815 | n/a |
| **Back-end fees** | **$14,660** | **$13,310** |  |
| **Total fees** | **$17,840** | **$22,150** |  |

The Unit Cost Recovery alternative would present significant barriers to stakeholders seeking patent protection because it would significantly increase front-end fees for all applicants, even with small and micro entity fee reductions. Further, this alternative is counter to the USPTO’s longstanding philosophy of charging applicants and patent holders lower fees during the initial application stages, when they have less information about the relative value of their innovations. Lower front-end fees serve to encourage innovation, even as front-end services are more costly to the USPTO. At the back end, applicants know more about the commercial value of their innovations and can make better informed decisions regarding maintenance fee payments.

Setting fees at cost recovery is a common practice in the federal government; OMB [Circular A-25, User Charges](https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf) provides guidance stating that user charges (fees) should be sufficient to recover the full costs of providing a service, resource, or good when the government is acting in its capacity as sovereign. There are several complexities in achieving individual fee cost recovery for the patent fee schedule, the most significant of which is the statutory requirement to provide a 60% discount on fees to small entities and an 80% discount on fees to micro entities. The USPTO considered several options while designing the Unit Cost Recovery alternative. For example, one option considered increasing each individual fee paid by undiscounted entities to recover the lost revenue associated with the 60% and 80% entity discounts. The agency deemed this option to be unduly punitive to undiscounted entities, and instead adjusted the undiscounted fee to reflect the full cost of the provided service (continuing to recover lost revenue from entity discounts through other fees). Because the Unit Cost Recovery alternative sets most fees at individual undiscounted fee cost recovery, few additional fees are available to subsidize the revenue shortfall. For fees without available cost data, current fee rates are retained in this alternative, with one exception (maintenance fees, discussed below).

Given these complexities, the USPTO will require more revenue to sustain operations than a simple cost recovery alternative would generate. Therefore, it would be necessary for the agency to adjust maintenance fee rates above their costs to meet the aggregate costs outlined in the FY 2025 Budget. Under the Unit Cost Recovery alternative, maintenance fees are almost the same amount as the Baseline alternative—only $725 (approximately 5.4%) lower than current maintenance fee rates.

The USPTO has not received revenue equal to the full cost of examining applications remaining in the pending inventory, as they were filed when fees were set below cost. If the agency were to implement the Unit Cost Recovery alternative, it must, in turn, address the funding gap (see section 1.3, which describes how the USPTO operated prior to fee setting authority under the AIA).

The USPTO believes that, under the Unit Cost Recovery alternative, the high costs of entry into the patent system could decrease incentives to invest in innovative activities across the board, especially among small and micro entities and those who are under-resourced. Funds previously used for issue and maintenance fee payments could offset higher front-end costs for some users, but the front-end costs could prove insurmountable for other innovators.

Additional information about the agency’s fee cost calculation methodology, including cost components related to respective fees, is available on the [fee setting section of the USPTO website](https://www.uspto.gov/FeeSettingAndAdjusting) in the document titled “USPTO Setting and Adjusting Patent Fees During Fiscal Year 2025—Activity-Based Information and Patent Fee Unit Expense Methodology.” Table 4-7 presents a summary of historical unit costs associated with major fees. As stated above, the USPTO used FY 2022 unit cost information to inform the undiscounted fee rates that comprise this alternative.

Table 4-7

| **Description** | **Unit cost** | | |
| --- | --- | --- | --- |
| **FY 2020** | **FY 2021** | **FY 2022** |
| Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t)) | $250 | $253 | $250 |
| Basic filing fee - Utility (electronic filing for small entities) | $250 | $253 | $250 |
| Basic filing fee – Design | $250 | $253 | $250 |
| Basic filing fee - Design CPA | $723 | $741 | $930 |
| Basic filing fee – Plant | $250 | $253 | $250 |
| Provisional application filing fee | $147 | $151 | $142 |
| Basic filing fee – Reissue | $247 | $252 | $249 |
| Basic filing fee - Reissue (Design CPA) | $723 | $741 | $930 |
| Utility search fee | $2,276 | $2,457 | $2,430 |
| Design search fee or Design CPA search fee | $448 | $456 | $532 |
| Plant search fee | $2,276 | $2,457 | $2,430 |
| Reissue search fee or Reissue (Design CPA) search fee | $2,276 | $2,457 | $2,430 |
| Utility examination fee | $2,877 | $3,144 | $3,100 |
| Design examination fee or Design CPA examination fee | $724 | $782 | $835 |
| Plant examination fee | $2,877 | $3,144 | $3,100 |
| Reissue Examination Fee or Reissue (Design CPA) Examination Fee | $2,877 | $3,144 | $3,100 |
| Utility issue fee | $348 | $431 | $574 |
| Reissue issue fee | $348 | $431 | $574 |
| Design issue fee | $348 | $431 | $574 |
| Plant issue fee | $348 | $431 | $574 |
| Petition for the delayed payment of the fee for maintaining a patent in force | $102 | $94 | $161 |
| Request for continued examination (RCE) - 1st request (*see* 37 CFR 1.114) | $2,611 | $2,846 | $3,059 |
| Request for continued examination (RCE) - 2nd and subsequent request (*see* 37 CFR 1.114) | $1,959 | $2,130 | $2,191 |
| Other publication processing fee | $33 | $35 | $27 |
| Request for voluntary publication or republication | $102 | $94 | $161 |
| Request for expedited examination of a design application | $102 | $94 | $161 |
| Processing fee for provisional applications | $33 | $35 | $27 |
| Filing a submission after final rejection (*see* 37 CFR 1.129(a)) | $2,611 | $2,846 | $3,059 |
| For each additional invention to be examined (*see* 37 CFR 1.129(b)) | $2,611 | $2,846 | $3,059 |
| Certificate of correction | $144 | $158 | $181 |
| Ex parte reexamination (§1.510(a)) | $54,809 | $47,454 | $40,554 |
| Request for supplemental examination | $10,488 | $9,980 | $9,703 |
| Reexamination ordered as a result of supplemental examination | $52,629 | $45,378 | $35,956 |
| Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3 | $1,842 | $1,068 | $832 |
| Notice of appeal | $21 | $26 | $28 |
| Filing a brief in support of an appeal in an inter partes reexamination proceeding | $22,788 | $30,353 | $24,256 |
| Request for oral hearing | $1,647 | $2,259 | $2,254 |
| Forwarding an appeal in an application or ex parte reexamination proceeding to the Board | $8,563 | $8,169 | $8,770 |
| Inter partes review request fee - Up to 20 claims | $22,556 | $23,052 | $21,980 |
| Inter partes review post-institution fee - Up to 15 claims | $39,531 | $34,245 | $37,563 |
| Post-grant or covered business method review request fee - Up to 20 Claims | $30,246 | $34,287 | $37,683 |
| Post-grant or covered business method review post-institution fee - Up to 15 Claims | $42,414 | $46,998 | $49,198 |
| Petition for a derivation proceeding | n/a | n/a | n/a |
| Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I) | $270 | $281 | $376 |
| Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II) | $270 | $281 | $376 |
| Petitions requiring the petition fee set forth in 37 CFR 1.17(h) (Group III) | $102 | $94 | $161 |
| Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding | $270 | $281 | $376 |
| Petition for the delayed submission of a priority or benefit claim | $270 | $281 | $376 |
| Filing an application for patent term adjustment | $102 | $94 | $745 |
| Request for reinstatement of term reduced | $102 | $94 | $161 |
| Extension of term of patent | $102 | $926 | $2,581 |
| Initial application for interim extension (*see* 37 CFR 1.790) | $102 | $512 | $2,347 |
| Subsequent application for interim extension (*see* 37 CFR 1.790) | $102 | $512 | $2,347 |
| Basic national stage fee | $317 | $325 | $343 |
| National stage search fee - U.S. was the ISA | $403 | $440 | $449 |
| National stage search fee - search report prepared and provided to USPTO | $2,276 | $2,457 | $2,430 |
| National stage search fee - all other situations | $2,276 | $2,457 | $2,430 |
| National stage examination fee - all other situations | $2,877 | $3,144 | $3,100 |
| Transmittal fee | $323 | $328 | $320 |
| Search fee - regardless of whether there is a corresponding application (*see* 35 U.S.C. 361(d) and PCT Rule 16) | $1,867 | $1,944 | $1,731 |
| Supplemental search fee when required, per additional invention | $1,867 | $1,944 | $1,731 |
| Transmitting application to Intl. Bureau to act as receiving office | $5 | $5 | $3 |
| Preliminary examination fee - U.S. was the ISA | $1,067 | $1,144 | $1,222 |
| Preliminary examination fee - U.S. was not the ISA | $1,067 | $1,144 | $1,222 |
| Supplemental examination fee per additional invention | $1,067 | $1,144 | $1,222 |
| Application fee (non-refundable) | $419 | $341 | $362 |
| On registration to practice under §11.6 or On grant of limited recognition under §11.9(b) | $776 | $622 | $652 |
| Certificate of good standing as an attorney or agent, standard | $70 | $56 | $60 |
| Certificate of good standing as an attorney or agent, suitable for framing | $84 | $67 | $71 |
| For test administration by commercial entity | $769 | $649 | $718 |
| Review of decision by the Director of Enrollment and Discipline under § 11.2(c) | $3,114 | $2,500 | $2,608 |
| Review of decision of the Director of Enrollment and Discipline under § 11.2(d) | $2,980 | $2,398 | $2,510 |
| On petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office | $5,368 | $4,357 | $4,599 |
| Administrative reinstatement fee | $1,445 | $1,161 | $1,212 |
| Delinquency fee | $415 | $333 | $353 |
| Unspecified other services, excluding labor | n/a | n/a | n/a |
| On change of registration from agent to attorney | $143 | $115 | $122 |
| For USPTO-assisted change of address within the Office of Enrollment and Discipline Information System | $24 | $19 | $20 |
| For USPTO-administered review of registration examination | $834 | $703 | $777 |

Although the Unit Cost Recovery alternative provides sufficient aggregate revenue to recover aggregate costs, it reverses the USPTO’s longstanding policy of promoting innovation via lower front-end fees. This alternative produces the largest increase in front-end fees of any alternative considered by the agency.

Table 4-8 presents the fee changes between the Baseline and the Unit Cost Recovery alternative for the same fees shown in Table 4-4. A complete list of fee changes for the Unit Cost Recovery alternative is available on the [fee setting section of the USPTO website](https://www.uspto.gov/FeeSettingAndAdjusting) in the document titled “Initial Regulatory Flexibility Analysis Tables.”

Table 4-8

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Unit Cost Recovery (Alternative 2)** | | | | |
| **Select Current and Proposed Fees** | | | | |
| **Description** | **Entity type** | **Current fee** | **Proposed fee** | **Fee change (%)** |
| Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t)) | Undiscounted | $320 | $250 | -22% |
| Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t)) | Small | $128 | $100 | -22% |
| Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t)) | Micro | $64 | $50 | -22% |
| Basic filing fee - Utility (electronic filing for small entities) | Small | $64 | $50 | -22% |
| Each claim in excess of 20 | Undiscounted | $100 | $100 | 0% |
| Each claim in excess of 20 | Small | $40 | $40 | 0% |
| Each claim in excess of 20 | Micro | $20 | $20 | 0% |
| Utility search fee | Undiscounted | $700 | $2,430 | 247% |
| Utility search fee | Small | $280 | $972 | 247% |
| Utility search fee | Micro | $140 | $486 | 247% |
| Utility examination fee | Undiscounted | $800 | $3,100 | 288% |
| Utility examination fee | Small | $320 | $1,240 | 288% |
| Utility examination fee | Micro | $160 | $620 | 288% |
| Utility issue fee | Undiscounted | $1,200 | $575 | -52% |
| Utility issue fee | Small | $480 | $230 | -52% |
| Utility issue fee | Micro | $240 | $115 | -52% |
| Extension for response within third month | Undiscounted | $1,480 | $1,480 | 0% |
| Extension for response within third month | Small | $592 | $592 | 0% |
| Extension for response within third month | Micro | $296 | $296 | 0% |
| For maintaining an original or any reissue patent, due at 3.5 years | Undiscounted | $2,000 | $1,770 | -12% |
| For maintaining an original or any reissue patent, due at 3.5 years | Small | $800 | $708 | -12% |
| For maintaining an original or any reissue patent, due at 3.5 years | Micro | $400 | $354 | -12% |
| For maintaining an original or any reissue patent, due at 7.5 years | Undiscounted | $3,760 | $3,330 | -11% |
| For maintaining an original or any reissue patent, due at 7.5 years | Small | $1,504 | $1,332 | -11% |
| For maintaining an original or any reissue patent, due at 7.5 years | Micro | $752 | $666 | -11% |
| For maintaining an original or any reissue patent, due at 11.5 years | Undiscounted | $7,700 | $6,815 | -11% |
| For maintaining an original or any reissue patent, due at 11.5 years | Small | $3,080 | $2,726 | -11% |
| For maintaining an original or any reissue patent, due at 11.5 years | Micro | $1,540 | $1,363 | -11% |
| Request for prioritized examination | Undiscounted | $4,200 | $4,200 | 0% |
| Request for prioritized examination | Small | $1,680 | $1,680 | 0% |
| Request for prioritized examination | Micro | $840 | $840 | 0% |
| Request for continued examination (RCE) - 1st request (see 37 CFR 1.114) | Undiscounted | $1,360 | $3,060 | 125% |
| Request for continued examination (RCE) - 1st request (see 37 CFR 1.114) | Small | $544 | $1,224 | 125% |
| Request for continued examination (RCE) - 1st request (see 37 CFR 1.114) | Micro | $272 | $612 | 125% |
| Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114) | Undiscounted | $2,000 | $2,190 | 10% |
| Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114) | Small | $800 | $876 | 10% |
| Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114) | Micro | $400 | $438 | 10% |
| Basic national stage fee | Undiscounted | $320 | $345 | 8% |
| Basic national stage fee | Small | $128 | $138 | 8% |
| Basic national stage fee | Micro | $64 | $69 | 8% |
| National stage search fee - search report prepared and provided to USPTO | Undiscounted | $540 | $2,430 | 350% |
| National stage search fee - search report prepared and provided to USPTO | Small | $216 | $972 | 350% |
| National stage search fee - search report prepared and provided to USPTO | Micro | $108 | $486 | 350% |
| National stage examination fee - all other situations | Undiscounted | $800 | $3,100 | 288% |
| National stage examination fee - all other situations | Small | $320 | $1,240 | 288% |
| National stage examination fee - all other situations | Micro | $160 | $620 | 288% |

* + 1. Costs of Unit Cost Recovery (Alternative 2)

Costs for Unit Cost Recovery (Alternative 2) consist of fee schedule design costs. Individual fee amounts and their relationship to other fees in the fee schedule affect the fee schedule design costs.

The following discussion of the fee schedule design evaluates how well the fee adjustments reflect the USPTO’s key policy factors, namely promoting innovation strategies, facilitating effective administration of the patent system, and offering patent processing options for applicants. This discussion includes only those fees for which reasonable conclusions about the costs may be drawn; therefore, the discussion that follows does not address all fees included in Table 4-8. A complete list of fees for the Unit Cost Recovery alternative can be found on the [fee setting section of the USPTO website](https://www.uspto.gov/FeeSettingAndAdjusting) in the document titled “Initial Regulatory Flexibility Analysis Tables.”

1. **Utility—Basic Filing, Search, and Examination:**The Unit Cost Recovery alternative offers the most significant change to the current fee schedule of any alternative and reverses the USPTO’s longstanding policy of setting front-end fees below cost to foster innovation. Setting basic utility patent application fees (i.e., filing, search, and examination) at cost ($5,780 for an undiscounted entity) would create barriers to entry into the patent system. This fee could cause some patent applicants—whether undiscounted, small, or micro entities—to completely forgo seeking patent protection. As a result, this alternative has the largest reduction in public disclosure of information of all alternatives examined by the USPTO. The potential costs to society from reduced innovation include less or inefficient R&D, lessening support for economic growth and the creation of high-paying jobs.
2. **Request for Continued Examination:**An applicant may file an RCE if prosecution in an application is closed (e.g., the USPTO has mailed a final rejection). Applicants typically file an RCE when they choose to continue to prosecute an application before the examiner rather than appeal a rejection or abandon the application. Under the Unit Cost Recovery alternative, the fee for the first RCE ($3,060) could limit access to this service. Given the full cost of basic utility application fees, this higher RCE fee could have significant adverse impacts on applicants, especially those with the fewest resources (e.g., small and micro entities). Setting all RCE fees at cost recovery is contrary to the USPTO’s fee setting policy factors of promoting innovation strategies and offering patent prosecution options for applicants, as it would increase costs when an applicant has less information about the relative value of their invention.
3. **Appeal Fees:**Under the Unit Cost Recovery alternative, undiscounted fees paid upon filing a notice of appeal and forwarding it to the PTAB would increase to $8,800, a 175% increase over the Baseline fee of $3,200. This increase would create a significant barrier to applicants using this service and hinder innovation, since appeal processes help ensure high standards for patent examination by acting as an additional review of the merits of a patent application.
4. **Ex Parte Reexamination and Supplemental Examination:**These procedures permit certain art-based challenges to be made against issued patents. These services are highly specialized, and the costs for performing them are significant. Under the Unit Cost Recovery alternative, the fee for an ex parte reexamination (§1.510(a)) non-streamlined would be $40,555, a 222% increase over the Baseline fee amount of $12,600.
5. **Utility Issue Fee:**The Unit Cost Recovery alternative does not provide a subsidy for front-end application fees. Setting front-end application fees (i.e., filing, search, and examination) at cost does not require back-end fees to be set above cost (i.e., the issue fee would decrease from $1,200 to $575). The Unit Cost Recovery fee structure does not support the USPTO’s policy factor of promoting innovation strategies.
6. **Maintenance Fee—1st, 2nd, and 3rd Stages:** The cost of processing maintenance fee payments is minimal. To recover aggregate costs with aggregate revenue, though, the USPTO would set maintenance fee rates at $1,770 (1st Stage), $3,330 (2nd Stage), and $6,815 (3rd Stage) for undiscounted entities. As shown in Table 4-8, these fees are 11.5% less than Baseline maintenance fees.

**Summary of Fee Schedule Design Costs for Unit Cost Recovery (Alternative 2):** While the Unit Cost Recovery alternative represents the federal government’s standard approach to fee setting, it does not support the USPTO’s rulemaking strategies and goals, particularly the important policy factors that inform the agency’s individual fee setting strategy. The largest fee schedule design cost in this alternative is the loss of a front-end subsidy designed to promote innovation strategies, but the impacts of much costlier patent processing options (e.g., RCEs and appeals) are also significant. Overall, the Unit Cost Recovery alternative would produce appreciable costs, especially when compared to the Proposed Patent Fee Schedule (Alternative 1).

* + 1. Benefits of Unit Cost Recovery (Alternative 2)—Securing Aggregate Revenue to Recover Aggregate Costs

The USPTO identified one benefit of Unit Cost Recovery (Alternative 2)—securing aggregate revenue to recover aggregate costs. This alternative generates sufficient aggregate patent revenue to meet the strategic priority of resourcing mission success. While recovering aggregate patent costs is classified as a benefit in this analysis, the Unit Cost Recovery alternative is wholly insufficient at fulfilling three of the USPTO’s four fee setting policy factors (promote innovation strategies, set fees to facilitate the effective administration of the patent system, and offer application processing options for applicants).

* 1. Across-the-Board Adjustment (Alternative 3)

**Table 4-9**

| **Patent Costs and Revenue by Alternative** | | | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **(dollars in millions)** | | | | | | | |
|  | **FY 2025** | **FY 2026** | **FY 2027** | **FY 2028** | **FY 2029** | **Total** |
| **Budgetary requirements** | $3,975 | $4,102 | $4,268 | $4,431 | $4,600 | $21,376 |
| Across-the-Board Adjustment (Alternative 3)—fee revenue | $3,884 | $4,178 | $4,286 | $4,249 | $4,255 | $20,852 |
| Other income | $50 | $50 | $50 | $50 | $50 | $250 |
| **Aggregate revenue** | $3,934 | $4,228 | $4,336 | $4,299 | $4,305 | $21,102 |
| Operating reserve | $802 | $978 | $1,096 | $1,014 | $769 |  |
| Optimal operating reserve | $971 | $1,044 | $1,071 | $1,062 | $1,064 |  |
| **Optimal operating reserve surplus (deficit)** | ($169) | ($67) | $24 | ($49) | ($295) |  |

* + 1. Description of Across-the-Board Adjustment (Alternative 3)

Prior to enactment of the AIA, the USPTO used its statutory authority to adjust statutory fees annually according to annual changes in the CPI-U, a commonly used measure of inflation. Building on this approach, the Across-the-Board Adjustment (Alternative 3) uses the AIA section 10 fee setting authority to apply an inflationary adjustment of 12.5% to the Baseline to achieve aggregate patent revenue roughly equivalent to the Proposed Patent Fee Schedule (Alternative 1) and Unit Cost Recovery (Alternative 2) and to recover the aggregate costs detailed in the FY 2025 Budget.

As shown in Table 4-9, based on assumptions in the NPRM and FY 2025 Budget, having the Across-the-Board Adjustment fee schedule in place for part of FY 2025 would provide the USPTO a 7.2% increase in fee collections from Baseline levels. The agency projects that in FY 2026, with the new fee levels in place for a full year, fee collections would exceed the Baseline by approximately 11.1%.

The Across-the-Board Adjustment focuses on building resiliency against financial shocks by maintaining the minimum operating reserve balance (approximately three months of operating expenses) while building to the optimal reserve target. Under this alternative, the projected EOY operating reserve balance exceeds the optimal reserve target for FYs 2026-2028. During FY 2029, the agency projects the balance would fall below the optimal level as it supplements anticipated fee collections. Overall, aggregate revenue would be sufficient to recover the aggregate costs of patent operations and strategic priorities, thereby maintaining operations at desired service levels. The Across-the-Board Adjustment gradually builds toward the optimal patent operating reserve balance while maintaining the minimum for the entire five-year outlook.

As shown in Table 4-10, the Across-the-Board Adjustment retains the same fee relationships and subsidization policies as the Baseline. The fees for securing and maintaining a patent through a typical prosecution sequence for its full 20-year term increase by $2,235 (12.5%) under this alternative. Assuming a 3% discount rate, the net present value of investing in a patent in the Across-the-Board Adjustment fee schedule would be $16,742, compared to a net present value of $15,189 for the Baseline.

**Table 4-10**

| **Patent Fee Rates and Unit Cost** | | | |
| --- | --- | --- | --- |
|  | **Baseline fee rate** | **Alternative 3 fee rate** | **FY 2022 unit cost** |
| Filing | $320 | $360 | $250 |
| Search | $700 | $790 | $2,430 |
| Examination | $800 | $900 | $3,100 |
| First RCE | $1,360 | $1,530 | $3,059 |
| **Front-end fees** | **$3,180** | **$3,580** |  |
| Issue | $1,200 | $1,350 | $574 |
| 1st stage maintenance | $2,000 | $2,250 | n/a |
| 2nd stage maintenance | $3,760 | $4,230 | n/a |
| 3rd stage maintenance | $7,700 | $8,665 | n/a |
| **Back-end fees** | **$14,660** | **$16,495** |  |
| **Total fees** | **$17,840** | **$20,075** |  |

This alternative maintains the status quo ratio of front-end and back-end fees. All fees would be adjusted by the same escalation factor, thereby promoting innovation strategies and allowing applicants to gain access to the patent system through front-end fees set below cost. Patent holders would pay issue and maintenance fees above cost to subsidize the below-cost front-end fees. The Across-the-Board Adjustment alternative nevertheless fails to implement policy factors and deliver benefits beyond what exists in the Baseline fee schedule (e.g., no fee adjustments to offer patent prosecution options or facilitate more effective administration of the patent system).

Table 4-11 presents the major fee changes between the Baseline and the Across-the-Board Adjustment alternative for the same fees shown in Table 4-4. A complete list of the Across-the-Board Adjustment fee changes is available on the [fee setting section of the USPTO website](https://www.uspto.gov/FeeSettingAndAdjusting) in the document titled “Initial Regulatory Flexibility Analysis Tables.”

**Table 4-11**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Across-the-Board Adjustment (Alternative 3)** | | | | |
| **Select Current and Proposed Fees** | | | | |
| **Description** | **Entity type** | **Current fee** | **Proposed fee** | **Fee change (%)** |
| Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t)) | Undiscounted | $320 | $360 | 13% |
| Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t)) | Small | $128 | $144 | 13% |
| Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t)) | Micro | $64 | $72 | 13% |
| Basic filing fee - Utility (electronic filing for small entities) | Small | $64 | $72 | 13% |
| Each claim in excess of 20 | Undiscounted | $100 | $115 | 15% |
| Each claim in excess of 20 | Small | $40 | $46 | 15% |
| Each claim in excess of 20 | Micro | $20 | $23 | 15% |
| Utility search fee | Undiscounted | $700 | $790 | 13% |
| Utility search fee | Small | $280 | $316 | 13% |
| Utility search fee | Micro | $140 | $158 | 13% |
| Utility examination fee | Undiscounted | $800 | $900 | 13% |
| Utility examination fee | Small | $320 | $360 | 13% |
| Utility examination fee | Micro | $160 | $180 | 13% |
| Utility issue fee | Undiscounted | $1,200 | $1,350 | 13% |
| Utility issue fee | Small | $480 | $540 | 13% |
| Utility issue fee | Micro | $240 | $270 | 13% |
| Extension for response within third month | Undiscounted | $1,480 | $1,665 | 13% |
| Extension for response within third month | Small | $592 | $666 | 13% |
| Extension for response within third month | Micro | $296 | $333 | 13% |
| For maintaining an original or any reissue patent, due at 3.5 years | Undiscounted | $2,000 | $2,250 | 13% |
| For maintaining an original or any reissue patent, due at 3.5 years | Small | $800 | $900 | 13% |
| For maintaining an original or any reissue patent, due at 3.5 years | Micro | $400 | $450 | 13% |
| For maintaining an original or any reissue patent, due at 7.5 years | Undiscounted | $3,760 | $4,230 | 13% |
| For maintaining an original or any reissue patent, due at 7.5 years | Small | $1,504 | $1,692 | 13% |
| For maintaining an original or any reissue patent, due at 7.5 years | Micro | $752 | $846 | 13% |
| For maintaining an original or any reissue patent, due at 11.5 years | Undiscounted | $7,700 | $8,665 | 13% |
| For maintaining an original or any reissue patent, due at 11.5 years | Small | $3,080 | $3,466 | 13% |
| For maintaining an original or any reissue patent, due at 11.5 years | Micro | $1,540 | $1,733 | 13% |
| Request for prioritized examination | Undiscounted | $4,200 | $4,725 | 13% |
| Request for prioritized examination | Small | $1,680 | $1,890 | 13% |
| Request for prioritized examination | Micro | $840 | $945 | 13% |
| Request for continued examination (RCE) - 1st request (see 37 CFR 1.114) | Undiscounted | $1,360 | $1,530 | 13% |
| Request for continued examination (RCE) - 1st request (see 37 CFR 1.114) | Small | $544 | $612 | 13% |
| Request for continued examination (RCE) - 1st request (see 37 CFR 1.114) | Micro | $272 | $306 | 13% |
| Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114) | Undiscounted | $2,000 | $2,250 | 13% |
| Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114) | Small | $800 | $900 | 13% |
| Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114) | Micro | $400 | $450 | 13% |
| Basic national stage fee | Undiscounted | $320 | $360 | 13% |
| Basic national stage fee | Small | $128 | $144 | 13% |
| Basic national stage fee | Micro | $64 | $72 | 13% |
| National stage search fee - search report prepared and provided to USPTO | Undiscounted | $540 | $610 | 13% |
| National stage search fee - search report prepared and provided to USPTO | Small | $216 | $244 | 13% |
| National stage search fee - search report prepared and provided to USPTO | Micro | $108 | $122 | 13% |
| National stage examination fee - all other situations | Undiscounted | $800 | $900 | 13% |
| National stage examination fee - all other situations | Small | $320 | $360 | 13% |
| National stage examination fee - all other situations | Micro | $160 | $180 | 13% |

### Costs for Across-the-Board Adjustment (Alternative 3): Aggregate Increase in User Fee Payments

The USPTO identified fee schedule design costs for the Across-the-Board Adjustment (Alternative 3), in the form of reduced public disclosure of technical information. The increased fee rates could reduce the number of patent applications. The public disclosure of information required to obtain a patent helps avoid redundant R&D by others and promotes development of innovations that build on current technology.

The initial fees to file a patent would be increased in this proposal and the USPTO estimates this will reduce the number of applications filed relative to the Baseline. The relative inelasticity of patent fees, and the size of fee increases, limit the expected decrease in application filings and thus the expected cost. Therefore, the USPTO believes the fee schedule design costs of Alternative 3 to be minimal.

### Benefits of Across-the-Board Adjustment (Alternative 3)

When compared to the Baseline, the Across-the-Board Adjustment produces one benefit—securing adequate aggregate revenue to recover aggregate costs. This benefit is significant, as it would allow for reduced barriers to innovation, cultivating access and inclusion in the IP ecosystem, and deliver timely, efficient services through optimizing agency technology, practices, policies, and rules. The Across-the-Board Adjustment fee schedule would help promote clear, enforceable patents that are essential to U.S. economic growth, global competitiveness, and promoting innovation. In addition, the operating reserve balances would enable the USPTO to predictably finance the agency’s daily operations and mitigate financial risks. The Across-the-Board Adjustment nevertheless fails to implement policy factors and deliver benefits beyond what exists in the Baseline fee schedule (e.g., no fee adjustments that offer patent prosecution options or facilitate more effective administration of the patent system).

# ACHIEVEMENT OF PROPOSED RULE STRATEGIES AND GOALS

* 1. Achievement of Proposed Rule Strategies and Goals

Given the economic significance of the NPRM, this RIA analyzed four alternatives for their alignment with the USPTO’s rulemaking goals and strategies. As noted throughout this document, the agency’s rulemaking goals and strategies are comprised of strategic priorities from the Strategic Plan and fee setting policy factors. Based on the costs and benefits identified in this RIA, namely (1) fee schedule design and (2) securing aggregate revenue to recover aggregate costs, the Proposed Patent Fee Schedule (Alternative 1) offers the greatest net benefits. The benefits of the Proposed Patent Fee Schedule clearly outweigh those of the other alternatives considered. It maintains the existing front-end/back-end balance while offering additional fee schedule design benefits through targeted changes and secures the aggregate revenue required to achieve the USPTO’s strategic priorities.

The agency purposefully chose each alternative. Unit Cost Recovery represents the standard methodology that federal agencies use to set user fees per OMB Circular A‑25. In the case of the USPTO, where front-end services are much costlier than back-end services, a unit cost methodology does not align with the purposeful subsidization of entry fees as a means to promote innovation strategies. Similarly, many stakeholders would agree that if the USPTO seeks more revenue than the Baseline fee schedule is projected to provide, an acceptable and logical solution would be an across-the-board fee increase to secure required revenue. Given that the USPTO’s prior fee setting authority revolved around CPI-U adjustments to the existing fee schedule, there is a precedent for such increases. This alternative does not take full advantage of the AIA section 10 authority that allows the USPTO to readjust the relationships between fees in ways that benefit both applicants and the agency (e.g., facilitating effective and efficient administration of the patent system and setting fees for users using higher-cost services). In these ways, the Proposed Patent Fee Schedule (Alternative 1) again offers more net benefits and allows the USPTO to provide greater value to stakeholders.

* 1. Closing

In closing, unlike traditional regulatory actions that seek to change behavior, redistribute costs and benefits to different stakeholder groups, or both, this RIA is essentially an analysis of the costs and benefits associated with increases to the fees transferred from patent stakeholders to the USPTO in exchange for services provided. Given that each alternative the USPTO considered beyond the Baseline (Alternative 4) provides the necessary revenue to maintain progress on its operational and strategic priorities, the differentiator between them is how their fee schedule design benefits IP stakeholders. The Proposed Patent Fee Schedule is not fundamentally different from the Across-the-Board Adjustment or the Baseline in terms of alignment with the agency’s fee setting policy factors, but the prudent targeted fee adjustments within the Proposed Patent Fee Schedule benefit applicants, patent holders, the public, and the USPTO.

# APPENDIX: Acronyms

ABC–activity-based costing

ABI–activity-based information

AIA–Leahy-Smith America Invents Act

CBO–Congressional Budget Office

CPI-U–Consumer Price Index for All Urban Consumers

IRFA–Initial Regulatory Flexibility Analysis

EOY–end of year

FY–fiscal year

IP–intellectual property

ISA–International Search Authority

NPRM–Notice of Proposed Rulemaking

OIRA–Office of Information and Regulatory Affairs

OMB–Office of Management and Budget

PPAC–Patent Public Advisory Committee

PCT–Patent Cooperation Treaty

PPM–Patent Pendency Model

PTA–patent term adjustment

PTAB–Patent Trial and Appeal Board

R&D–research and development

RCE–request for continued examination

RGDP–real gross domestic product

RIA–Regulatory Impact Analysis

SUCCESS Act–The Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018

U.S.C.–United States Code

USPTO–United States Patent and Trademark Office

1. U.S. Government Accountability Office, Intellectual Property Additional Agency Actions Can Improve Assistance to Small Businesses and Inventors, GAO-20-556 (Washington, DC 2020), 16, https://www.gao.gov/products/gao-20-556. [↑](#footnote-ref-2)
2. Elasticity point estimates are used in this analysis. The USPTO has previously examined the impact of using the lower and upper bound elasticity estimates. Due to the relative inelasticity of most patent fees and the magnitude of fee adjustments considered, the upper and lower bound estimates do not materially change the analysis. [↑](#footnote-ref-3)
3. Daniel F. Spulber, “How Patents Provide the Foundation of the Market for Inventions,” *Journal of Competition Law & Economics*, 18, no. 3 (May 2015): 271-316. [↑](#footnote-ref-4)
4. Suzanne Scotchmer, “Standing on the Shoulders of Giants,” *Journal of Economic Perspectives* 5, no. 1 (Winter 1991): 29-41. [↑](#footnote-ref-5)
5. Andrew A. Toole, Richard D. Miller, and Nicholas Rada, “[Intellectual property and the U.S. economy: Third edition](https://www.uspto.gov/sites/default/files/documents/uspto-ip-us-economy-third-edition.pdf),”USPTO. [↑](#footnote-ref-6)
6. Edmund W. Kitch, “The Nature and Function of the Patent System,” *Journal of Law and Economics* 20, no. 2 (October 1977): 265-290. [↑](#footnote-ref-7)
7. For example, income from reimbursable agreements and recoveries of prior year obligations. [↑](#footnote-ref-8)
8. Does not include “other income” such as reimbursements. The revenue in the transfer tables is solely from fee collections. [↑](#footnote-ref-9)