

Appendix - Form I-539 Extension: 30-Day FRN Public Comment and Response

Comment Submitted by John Flanagan.	USCIS Response
<p>I am an attorney in private practice whose firm has filed I-539's in numerous different contexts (e.g. U visa extension based on exceptional circumstances, employment based NIV extension, B-2 extension for medical treatment, etc.). The estimated hour burden of 2.00 hours to fill out Form I-539 and append the required initial evidence is woefully inaccurate. Almost every I-539 requires some external evidence - e.g., an employer letter, a travel itinerary, medical documents, or supporting documentation of special circumstances - which takes way more than 2 hours to collect and submit. I have never had an I-539 that takes less than 6-8 hours. Indeed, USCIS provides no justification for its methodology in estimating the hour burden.</p> <p>Furthermore, the I-539 eligibility questions on page 3 are excessive and essentially seek to relitigate the NIV benefit. The I-539 should be tailored to the narrow circumstances of the renewal and whether the renew is timely or untimely. If an inadmissibility provision becomes apparent from the biometrics or from the record, an RFE can issue at that point.</p>	<p><u>Methodology in Estimating the Hour Burden:</u> USCIS appreciates the commenter's concern over the transparency of how the estimates were calculated. The Office of Information and Regulatory Affairs (OIRA) does not require agencies to provide how estimates were derived in an Information Collection Federal Register Notice. However, agencies are required to provide this analysis in the Supporting Statement that accompanies the Information Collection Request that is submitted to OIRA for review and conclusion. The necessary information is provided in Questions 12 – 15 and corresponding citations are provided in the Notes Section. USCIS uses primary sources that range from USCIS for the respondent estimates to the Bureau of Labor Statistics, Occupational Employment Statistics (BLS) for the respondent average hourly wage and wage multiplier estimates.</p> <p><u>Time Burden:</u> In calculating the time burden to complete the Form I-539, USCIS has determined that it takes approximately 2 hours to complete. USCIS has also determined that it takes approximately 1 hour to complete the Form I-539A for each accompanying family member. Therefore, it may take more than the estimated 2 hours to complete the Form I-539 and accompanying Forms I-539A for each family member riding on the I-539 when calculating the time burden in the aggregate. USCIS will revisit the time burden calculation during the next revision action for the Form I-539 and I-539A.</p> <p><u>Eligibility Question:</u> The Form I-539 is used adjudicate request to both extend stay and change status, so a review of the Form I-539 may be the only opportunity USCIS has to revisit these questions after the requestor has been in the United States for a significant period of time. Additionally, 8 CFR 214.1 requires that every nonimmigrant who files for an extension of stay must be admissible, or that any ground of inadmissibility be waived, and these questions are used establish whether the applicant's status has changed since their admission or previous extension. Additionally, the results of required biometric background and security checks may not provide answers to all of these questions. Therefore, USCIS believes it is necessary to continue to ask these questions and have the applicant attest to their validity.</p>

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