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# U.S. Citizenship and Immigration Services (USCIS) Functions and Funding

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## Summary

U.S. Citizenship and Immigration Services (USCIS), an agency within the Department of Homeland Security (DHS), performs multiple functions including the adjudication of immigration and naturalization petitions, consideration of refugee and asylum claims and related humanitarian and international concerns, and a range of immigration-related services, such as issuing employment authorizations and processing nonimmigrant change-of-status petitions. Processing immigrant petitions remains USCIS's leading function. In FY2014, it handled roughly 6 million petitions for immigration-related services and benefits.

USCIS's budget relies largely on user fees. The agency and its predecessor, the former Immigration and Naturalization Service (INS), have had the legal authority to charge fees for immigration services since before the passage of the Immigration and Nationality Act of 1952 (INA). In 1988, Congress created the Immigration Examinations Fee Account, which made the portion of USCIS's budget collected from user fees no longer subject to annual congressional approval.

Since the President announced the Immigration Accountability Executive Action on November 20, 2014, USCIS's budgetary structure has received increased attention. Among other provisions, the executive action included an expansion of the existing Deferred Action for Childhood Arrivals (DACA) program that was initiated in 2012, as well as a new Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program that grants certain unauthorized aliens protection from removal, and work authorization, for three years. If implemented, these programs would require applicants to submit petitions and pay a user fee to USCIS. The user fees would purportedly pay for the cost of administering the program.

Some in Congress oppose deferred action programs. However, Congress has limited options for halting the programs using the annual appropriations process. The executive action highlights some challenges Congress faces if it wishes to exert control over an agency whose funding is largely independent of the annual appropriations process. To alter existing statutory provisions governing the collection of user fees in the Immigration Examinations Fee Account, the availability of user fees for expenditure, or their prohibited use for certain purposes would require an enactment of law.

Congress does appropriate a small portion of the agency's budget each year, primarily to fund E-Verify, a system used to electronically confirm that individuals have proper authorization to work in the United States. Since 2003, such annual direct appropriations have constituted a declining portion of USCIS's budget. While some have welcomed this trend for reducing the cost to U.S. taxpayers of running USCIS, others have voiced concerns over the limitations on congressional oversight it reflects. Some contend that such budget independence also makes the agency less responsive to the need for affordable user fees and timely and effective customer service.

Potential issues that Congress may decide to consider include USCIS's accountability to Congress, given that much of its funding does not require annual congressional approval; whether some fees are at levels that inhibit some potential applicants from applying for benefits or inhibit lawful permanent residents from becoming citizens; whether the pace and progress of information technology modernization is sufficient to meet the agency's multiple functions and efficiently serve petitioners; and whether USCIS's management of its personnel and resources adequately

addresses sudden demands for processing and adjudication of petitions while maintaining processing times and adequate levels of service for all other petitions.

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## Introduction

U.S. Citizenship and Immigration Services (USCIS), an agency within the Department of Homeland Security (DHS), performs multiple functions including the adjudication of immigration and naturalization petitions and refugee and asylum claims, as well as other immigration-related services. USCIS currently funds over 95% of its budget by charging user fees to petitioners for its services. The agency and its predecessor, the former Immigration and Naturalization Service (INS), have had the legal authority to do so since at least the passage of the Immigration and Nationality Act of 1952 (INA).<sup>1</sup> In 1988, Congress created the Immigration Examinations Fee Account, which made the portion of USCIS's budget collected from user fees no longer subject to annual congressional approval.<sup>2</sup>

This budgetary structure has attracted congressional attention as the result of President Obama's recent executive action on immigration.<sup>3</sup> Among its other provisions, the action would expand the current use of deferred action<sup>4</sup> that some estimate could affect up to 5 million unauthorized aliens living in the United States.<sup>5</sup> USCIS would process all new deferred action petitions, the cost of which would be paid for through user fees.<sup>6</sup> Some Members of Congress oppose the executive action, particularly its expansion of existing deferred action provisions.<sup>7</sup> However, because USCIS's funding is largely independent of the annual appropriations process, Congress cannot use that process to halt the deferred action programs contained in the President's executive action. If Congress wanted to alter existing statutory provisions governing the collection of user fees in

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<sup>1</sup> P.L. 82-414, §281.

<sup>2</sup> P.L. 100-459, §209.

<sup>3</sup> See CRS Report R43852, *The President's Immigration Accountability Executive Action of November 20, 2014: Overview and Issues*, coordinated by William A. Kandel.

<sup>4</sup> Deferred action is a use of prosecutorial discretion to defer the removal against an unauthorized alien for a certain period of time. Deferred action does not provide lawful status. In 2012, in the absence of congressional action on DREAM Act legislation, DHS issued a memorandum announcing that certain unauthorized individuals who were brought to the United States as children and met other criteria would be considered on a case-by-case basis for deferred action from removal for two years. For more information, see CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*, by Andorra Bruno.

<sup>5</sup> See, for example, Migration Policy Institute, "MPI: As Many as 3.7 Million Unauthorized Immigrants Could Get Relief from Deportation under Anticipated New Deferred Action Program; With Existing DACA Program Included, Anticipated Actions Could Benefit More than 5.2 Million in Total—Nearly Half of U.S. Unauthorized Population," press release, November 19, 2014.

<sup>6</sup> According to the Office of Management and Budget (OMB), the term "user fee" applies to "fees, charges, and assessments the Government levies on a class directly benefitting from, or subject to regulation by, a Government program or activity, to be utilized solely to support the program or activity." See OMB, *Budget of the U.S. Government, FY2000, Analytical Perspectives* (Washington: 2009), "User Charges and Other Collections," chapter 18, pp. 271-285.

<sup>7</sup> In addition to expanding the current DACA program, the President's executive action would create a new Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program. DAPA would allow parents of U.S. citizens and lawful permanent residents (LPRs) to request deferred action and employment authorization if they meet residency and other criteria and pass required background checks. As of this writing, the deferred action programs of the President's executive action have been temporarily enjoined. See CRS Legal Sidebar, *Federal District Court Bars Implementation of the Obama Administration's Latest Deferred Action Initiatives (Part 1): States' Standing to Challenge the Initiatives*, February 18, 2015, by Kate M. Manuel; and CRS Legal Sidebar, *Federal District Court Bars Implementation of the Obama Administration's Latest Deferred Action Initiatives (Part 2): Reviewability and Rulemaking under the APA*, February 18, 2015, by Kate M. Manuel.

the Immigration Examinations Fee Account, the availability of user fees for expenditure, or the prohibition of user fees for certain purposes, it would need to enact legislation.

Apart from the agency's accountability to Congress, other issues may merit congressional attention. These include the agency's capacity to handle surges in application volume while maintaining stable service levels for the rest of its caseload; whether the underlying reasoning used to establish petition fees continues to be appropriate; whether current fees are at a level where they may be affecting or altering both the pool of applicants who apply for benefits and the pool of lawful permanent residents who decide to naturalize; and the pace and progress of information technology modernization within an agency that remains reliant upon paper copies of petitions and documents.

This report begins with a brief overview of USCIS functions. It then describes the agency's budgetary structure, including its three primary fee accounts for processing user fees. It discusses how the agency calculates user fees for particular immigration services and benefits. The report closes with a discussion of issues for Congress.

## USCIS Functions

USCIS was established with the Homeland Security Act of 2002 and assumed responsibility for the immigration service functions of the federal government on March 1, 2003.<sup>8</sup> USCIS has over 200 offices around the world and employs roughly 19,000 employees and contractors within four directorates<sup>9</sup> and nine program offices.<sup>10</sup> Processing petitions and applications, which is most of the agency's workload, occurs in four major USCIS Service Centers and 83 Field Offices in the United States, Puerto Rico, and Guam.<sup>11</sup>

## Responsibilities

Three major activities dominate USCIS functions: adjudication of immigration petitions,<sup>12</sup> adjudication of naturalization petitions, and consideration of refugee and asylum claims and related humanitarian and international concerns. USCIS also provides a range of immigration-related services, such as employment authorizations and change-of-status petitions.<sup>13</sup> While most costs are directly related to the agency's processing functions, other costs, such as administrative

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<sup>8</sup> P.L. 107-296. The act abolished the former INS and placed its functions under three new agencies: USCIS, Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE).

<sup>9</sup> These include Customer Service and Public Engagement; Field Operations; Fraud Detection and National Security; and Refugee, Asylum, and International Operations.

<sup>10</sup> These include the Administrative Appeals Office, Lockbox Intake, Office of Citizenship, Office of Communications, Office of Legislative Affairs, Office of Privacy, Office of Transformation and Coordination, and Systematic Alien Verification for Entitlements (SAVE) program.

<sup>11</sup> For information on the petitions that are handled at each Service Center and Field Office, see <https://egov.uscis.gov/cris/processTimesDisplayInit.do>.

<sup>12</sup> See **Appendix B** for a detailed list of petition types.

<sup>13</sup> Immigration-related services in this report refer to the full range of services, benefits, and adjudications performed by USCIS in the course of processing immigrant applications.

overhead, support these functions indirectly.<sup>14</sup> Of the activities listed below, only humanitarian functions generally have no associated fee.

**Immigration Adjudication:** USCIS processes roughly 6 million petitions each year, including about 1 million for permanent status and 5 million for temporary nonimmigrant<sup>15</sup> status. USCIS adjudicators determine the eligibility of immediate relatives and other family members of U.S. citizens and lawful permanent residents (LPRs),<sup>16</sup> employees that U.S. businesses have demonstrated that they need (and their immediate family members); and other foreign nationals who meet specified criteria. They also must determine whether a foreign national in the United States on a temporary visa (i.e., a nonimmigrant) is eligible to change to another nonimmigrant status or adjust to LPR status.<sup>17</sup>

**Work Authorization:** USCIS adjudicates work authorizations for aliens who meet certain conditions.<sup>18</sup>

**Employment Verification:** USCIS is responsible for the Electronic Employment Eligibility Verification (E-Verify) program used by employers to ensure that their employees possess lawful status to work in the United States.<sup>19</sup> Since FY2007, congressional appropriations have supported the E-Verify program.

**International Services:** The USCIS Office of International Affairs adjudicates refugee<sup>20</sup> applications and conducts background and record checks related to some immigrant petitions abroad.<sup>21</sup> The largest component of this program is the asylum officer corps, a small but occasionally high-profile part of USCIS's workload, whose members interview and screen asylum applicants.<sup>22</sup>

**Fraud Detection and National Security:** USCIS must confirm that all applicants are eligible for the particular immigration status they are seeking, or alternatively, determine they should be rejected because they fail to meet other legal requirements.<sup>23</sup> USCIS established the Office of

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<sup>14</sup> For an analysis of the USCIS budget, see CRS Report R43796, *Department of Homeland Security: FY2015 Appropriations*, coordinated by William L. Painter.

<sup>15</sup> A nonimmigrant is a foreign national who seeks temporary entry to the United States for a specific purpose and a delimited amount of time. Nonimmigrant classifications include foreign government officials, visitors, students, and temporary workers. For more information, see archived CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

<sup>16</sup> A lawful permanent resident is a foreign national who has been granted authorization to live and work permanently in the United States. In this report, "immigrant" is synonymous with "lawful permanent resident."

<sup>17</sup> See CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*, by William A. Kandel.

<sup>18</sup> For more information, see CRS Report R40446, *Electronic Employment Eligibility Verification*, by Andorra Bruno.

<sup>19</sup> Ibid.

<sup>20</sup> A refugee is a person fleeing his or her country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. For more information, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

<sup>21</sup> See Ibid and archived CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.

<sup>22</sup> A person seeking asylum is applying for protection from persecution for the same reasons as a refugee but, unlike a refugee, is present in the United States. For more information, see Ibid.

<sup>23</sup> See archived CRS Report RL34007, *Immigration Fraud: Policies, Investigations, and Issues*, by Ruth Ellen Wasem; and archived CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

Fraud Detection and National Security at the agency's inception in 2003 to work with the appropriate law enforcement entities to handle foreign nationals whose applications and petitions trigger national security and criminal database notifications and to identify systemic fraud in the application process. Many such duties formerly performed by the INS enforcement arm are now the responsibility of DHS's Immigration and Customs Enforcement (ICE).

**Civic Integration:** USCIS promotes instruction and training on citizenship rights and responsibilities and provides immigrants with the information and tools necessary to successfully integrate into American civic culture. This includes maintaining a Citizenship Resource Center website and managing the Immigrant Integration Grants Program, which assists public or private nonprofit organizations that provide citizenship instruction and naturalization application services to LPRs.<sup>24</sup>

**Naturalization:** USCIS is responsible for naturalization, a process that grants U.S. citizenship to LPRs who fulfill the related requirements established by Congress in the Immigration and Nationality Act of 1952 (INA).<sup>25</sup> Adjudicators must determine whether aliens have continuously resided in the United States for a specified period; possess good moral character, are able to read, write, speak, and understand English; and possess a basic knowledge of U.S. civics and history.

## Operations and Processing Workload

USCIS's workload can fluctuate considerably from year to year. To facilitate planning, USCIS regularly projects total application workload volume and associated user fees based on which applicants pay fees or receive exemptions.<sup>26</sup> While USCIS makes such projections by using modeling techniques and by anticipating filing trends and events that may influence volume, the agency's final tallies are influenced by factors such as shifts in U.S. immigration policy, the economy, and international political events, all of which can affect the decisions of people abroad who consider immigrating to the United States.

USCIS continues to process petitions in a paper-based form. This mode of operation generates complaints of lost files. Many observers comment that it is entirely outmoded to meet the growing workload and challenges facing the agency. Since 2008, USCIS has been implementing a long-term project to modernize its systems and processes in an effort to improve information sharing, workload capacity, and system integrity (see "**IT Modernization and Client Service**" below). Referred to as the USCIS Transformation, the project is expected to transition the paper-based system to a digital format managed and accessed online by USCIS and users.<sup>27</sup>

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<sup>24</sup> USCIS operates two websites with information on both programs: <http://www.uscis.gov/citizenship> and <http://www.uscis.gov/about-us/citizenship-and-integration-grant-program>.

<sup>25</sup> See CRS Report R43366, *U.S. Naturalization Policy*, by William A. Kandel.

<sup>26</sup> See U.S. Department of Homeland Security, Office of the Inspector General, *U.S. Citizenship and Immigration Services Information Technology Management Progress and Challenges*, OIG-14-112, July 2014.

<sup>27</sup> According to USCIS, "Transformation is an enterprise-wide investment that will transition USCIS from a fragmented, paper-based operational environment to a paperless, centralized, and consolidated environment, utilizing electronic processing for benefits filing and adjudication that will ensure national security and integrity, customer service, operational efficiency, and quality in immigration benefit decisions." U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Fiscal Year 2016 Congressional Budget Justifications*, p. 3357.



## USCIS Funding

Over two decades ago, the budgetary structure of USCIS's predecessor agency, the former INS, was transformed when the Immigration Examinations Fee Account (IEFA) was created to fund the agency's activities and operations.<sup>28</sup> Since the creation of USCIS in 2003, the agency has been largely dependent upon fees to fund its operations. The agency has two other smaller accounts described below that were created to receive monies to support specific purposes both within and outside USCIS: the H-1B Non-Immigrant Petitioner Fee Account and the H-1B<sup>29</sup> and L<sup>30</sup> Fraud Prevention and Detection Fee Account.<sup>31</sup> USCIS also receives a small portion of its budget through appropriations.

## Appropriations

USCIS receives direct appropriations through the annual DHS appropriations process. In earlier years, appropriations funded temporary special projects such as backlog reduction.<sup>32</sup> More recently, appropriations have exclusively funded E-Verify and immigrant integration grants.<sup>33</sup> (See **Appendix A** for a brief history of USCIS fee-funding.) In FY2014, direct appropriations constituted less than 4% of USCIS's budget (**Figure 1**).

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<sup>28</sup> INA §286(m), 8 U.S.C. §1356(m). The Immigration Examinations Fee Account was established by the FY1989 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, P.L. 100-459 (1988); it was amended the following fiscal year to fund all immigration adjudication activities by the FY1990 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, P.L. 101-162; the H-1B Non-Immigrant Petitioner Fee Account was established by P.L. 105-277, §414 (1998); and the H-1B and L Fraud Prevention and Detection Fee Account was authorized by P.L. 108-447, div. J, title IV §426 (2004).

<sup>29</sup> H-1B visas are for temporary "professional specialty workers," an employment category closely associated with science, technology, engineering, and mathematics (STEM) fields, but not limited to them. For more information, see CRS Report R43735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*, by Alison Siskin and Ruth Ellen Wasem.

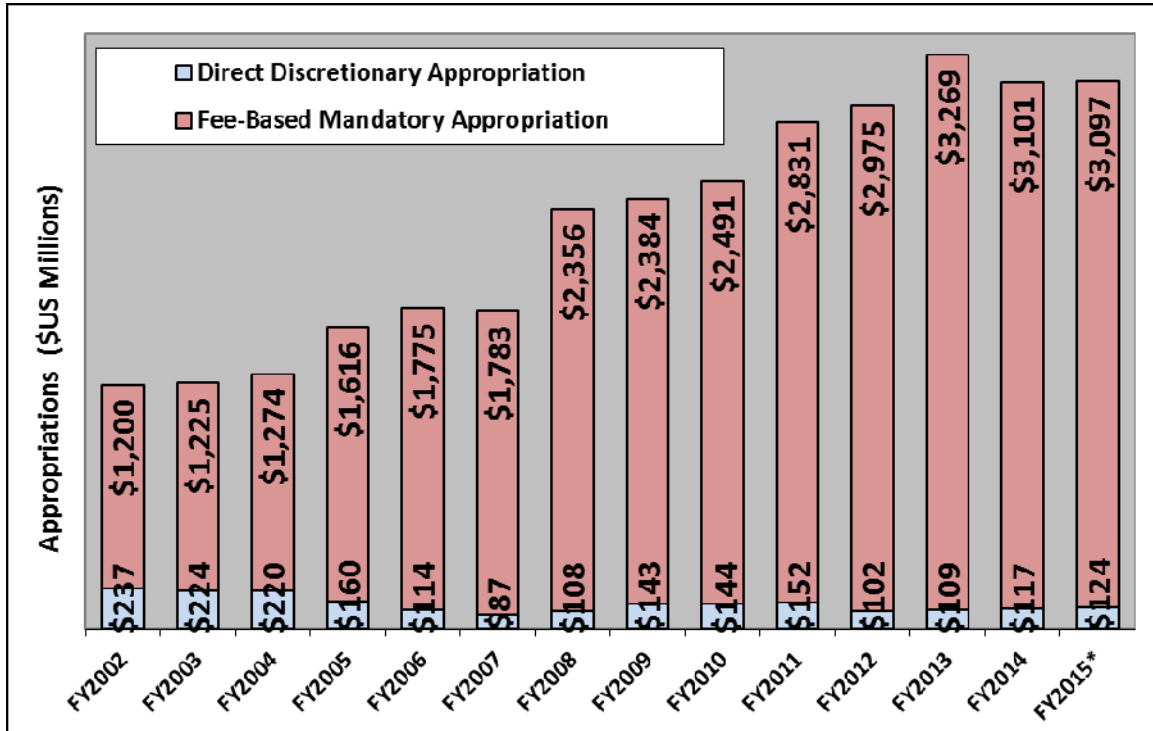
<sup>30</sup> The L visa allows a U.S. employer to transfer an executive or manager from one of its affiliated foreign offices to one of its offices in the United States. This classification also enables a foreign company that does not yet have an affiliated U.S. office to send an executive or manager to the United States with the purpose of establishing one. For more information, see *Ibid*.

<sup>31</sup> For more information on immigration fraud, see archived CRS Report RL34007, *Immigration Fraud: Policies, Investigations, and Issues*, by Ruth Ellen Wasem.

<sup>32</sup> For example, the Backlog Reduction Initiative of FY2005 sought to attain a six-month processing time standard for all immigration benefit applications by FY2006. See DHS, U.S. Citizenship and Immigration Services, *Fact Sheet*, February 2, 2004. See also <http://www.uscis.gov/tools/reports-studies/backlog-elimination>.

<sup>33</sup> CRS Report R43796, *Department of Homeland Security: FY2015 Appropriations*, coordinated by William L. Painter.

Figure I. USCIS Appropriations, FY2002-FY2015\*



Source: FY2002-FY2014: CRS presentation of actual figures from DHS Budget in Brief and Budget Justifications, FY2003 through FY2015; FY2015\*: enacted figures from P.L. 114-4 (The Department of Homeland Security Appropriations Act, 2015).

## Immigration Examination Fee Account

USCIS funds the processing and adjudication of immigrant, nonimmigrant, refugee, asylum, and citizenship benefits through its user fees deposited into the Immigration Examination Fee Account (IEFA).<sup>34</sup> This account is not subject to annual congressional approval. The INA states that user fees be set at a level that ensures recovery of the full costs of providing adjudication and naturalization services, including similar services to those people who are not charged, such as asylum applicants.<sup>35</sup> User fees can also be set at levels to cover “costs associated with the administration of the fees collected.”<sup>36</sup>

<sup>34</sup> In addition to user fees directly related to USCIS adjudications, USCIS also collects user fees for costs associated with processing some petitions initially submitted to the Executive Office of Immigration Review (EOIR). These fees are deposited into the IEFA pursuant to the statutory requirement that all fees for adjudications be deposited in that account. Each fiscal year since FY2008, \$4 million has been transferred from the IEFA to the Department of Justice-Administrative Review and Appeals Account that funds EOIR pursuant to appropriations provisions.

<sup>35</sup> INA §286(m), 8 U.S.C. §1356(m).

<sup>36</sup> Ibid. The provision states: “Notwithstanding any other provisions of law, all adjudication fees as are designated by the Attorney General in regulations shall be deposited as offsetting receipts into a separate account entitled “Immigration Examinations Fee Account” in the Treasury of the United States, whether collected directly by the Attorney General or through clerks of courts: Provided, however, that all fees received by the Attorney General from applicants residing in the Virgin Islands of the United States, and in Guam, under this subsection shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam: Provided further, that fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, (continued...)”

Further, the INA provides that deposited funds remain available until expended “for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the ‘Immigration Examinations Fee Account’.”<sup>37</sup> As such, the authority to set user fee levels and expend user fees is controlled outside the annual appropriations process and does not depend on annual action by Congress.

## **H-1B Nonimmigrant Petitioner Fee Account**

In 1998, Congress passed the American Competitiveness and Workforce Improvement Act (ACWIA),<sup>38</sup> which, among other provisions, temporarily increased the number of temporary skilled H-1B workers admitted to the United States. To provide training for American workers and thus reduce employer reliance on nonimmigrant workers, the act established the H-1B Nonimmigrant Petitioner Fee Account to fund training and education programs administered by the Department of Labor and the National Science Foundation, thereby establishing an affirmative role for U.S. employers to assist with education and training efforts for U.S. workers. The statutorily set H-1B Nonimmigrant Petitioner Fee is currently \$1,500 (\$750 if the employer has 25 or fewer full-time equivalent employees).<sup>39</sup> USCIS receives 5% of the fees paid into the account by all employers participating in the H-1B program.<sup>40</sup> In FY2014, the USCIS share of funding in this account was \$13 million, representing 0.07% of the USCIS budget.<sup>41</sup>

## **H-1B and L Fraud Prevention and Detection Fee Account**

On December 8, 2004, Congress passed the H-1B Visa Reform Act of 2004, which established the Fraud Prevention and Detection Account.<sup>42</sup> This account receives funds for fraud detection and prevention activities from a “Fraud Fee” (currently \$500) that must be submitted with a petition seeking an initial grant of H-1B, H-2B, or L visa classification to foreign nationals or by an employer seeking to change an alien’s employer within those classifications.<sup>43</sup> USCIS receives

(...continued)

including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.”

<sup>37</sup> INA §286(n), 8 USC §1356(n). The provision states: “All deposits into the ‘Immigration Examinations Fee Account’ shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the ‘Immigration Examinations Fee Account’.” All user fees from applications and petitions are pooled in IEFA to finance USCIS operations, with the exception of user fees from Form I-907 (Request for Premium Processing Services), which are tracked separately within IEFA and currently being used for the IT Transformation initiative. Email from USCIS Congressional Relations, February 4, 2015.

<sup>38</sup> P.L. 105-277, §414.

<sup>39</sup> Employers qualifying as an institution or organization per INA § 212(p)(1) – institutions of higher learning, nonprofit and government research organizations – are exempt from this fee.

<sup>40</sup> The remaining portion of these funds is appropriated to other agencies for activities such as worker retraining and fraud prevention. Employers, unless explicitly exempt under the law, are required to pay an ACWIA fee for each H-1B worker sponsored.

<sup>41</sup> CRS Report R43796, *Department of Homeland Security: FY2015 Appropriations*, coordinated by William L. Painter, p. 87.

<sup>42</sup> The act was contained within the Omnibus Appropriations Act, 2005, P.L. 108-447, Title IV §426.

<sup>43</sup> The Fraud Fee does not apply to petitions that extend or amend an alien’s stay in H-1B or L classification filed by a current employer.

33% of the Fraud Detection and Prevention Account fees.<sup>44</sup> As with the H-1B Nonimmigrant Petitioner Fee, the Fraud Prevention and Detection Fee is set by statute, and DHS has no authority to adjust it. In FY2014, the USCIS share of funding in this account was \$41 million, representing 1.36% of the USCIS budget.<sup>45</sup>

## Year-End Cash Reserves Balance

USCIS maintains a cash reserves balance—the accumulated excess of user fees collected over user fees expended. As of February 2015, this balance totaled \$1.3 billion.<sup>46</sup> USCIS asserts that because it operates similar to a commercial enterprise, it must maintain a cash reserve balance of at least \$600 million annually for its fiscal protection.<sup>47</sup>

## USCIS Fees

As noted above, the INA permits USCIS to collect fees at a level that ensures recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants, as well as administrative costs. (See **Appendix B** for a list of selected USCIS petition fees as well as actual (FY2014) and projected (FY2015) petition processing volumes.) As such, USCIS can (with exceptions) adjust fees according to its budgetary needs.<sup>48</sup>

Setting fee levels, however, can be politically contentious (see “**Fee Levels and Public Policy**” below). To do so, USCIS must regularly assess the cost of providing its services and apply cost accounting analyses to appropriately and accurately assess fees to each petition type. Such analyses are particularly important for an agency that derives most of its operating budget from user fees. Since its formation, USCIS has come under scrutiny for weak cost assessments and occasional long processing waiting periods. (For a brief history of USCIS fees, see **Appendix A**.)

The Government Accountability Office (GAO) has investigated the degree to which the USCIS fee schedule corresponds to its processing costs.<sup>49</sup> Substantial revisions to USCIS fees in FY2004,

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<sup>44</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Fiscal Year 2015 Congressional Budget Justifications*.

<sup>45</sup> CRS Report R43796, *Department of Homeland Security: FY2015 Appropriations*, coordinated by William L. Painter, p.87.

<sup>46</sup> This balance is broken out as follows: IEFA Non-premium processing user fee balance (\$735 million); IEFA Premium processing user fee balance (\$467 million); Fraud Prevention and Detection user fee balance (\$56 million), and H-1B Nonimmigrant Petitioner user fee balance (\$16 million). Department of Homeland Security, U.S. Citizenship & Immigration Services, FY 2016 Budget, February 2015 (unpublished handout), p. 25.

<sup>47</sup> Testimony of Joseph Moore, USCIS Chief Financial Officer, at Senate Judiciary Committee hearing, *Oversight of U.S. Citizenship and Immigration Services: Ensuring Agency Priorities Comply with the Law*, March 3, 2015.

<sup>48</sup> Some fees, such as those for Temporary Protected Status (TPS) and premium processing for certain employment petitions, are set in statute and cannot be adjusted by USCIS. See C.F.R. 8 §103.7(b)(1) for a listing of all fees.

<sup>49</sup> See U.S. Government Accountability Office, *Immigration Application Fees: Current Fees are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operations*, GAO-04-309R, January 5, 2004. See also U.S. Government Accountability Office, *Federal User Fees: A Design Guide*, GAO-08-386SP, May 29, 2008; and U.S. Government Accountability Office, *Federal User Fees: Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations*, GAO-09-180, January 23, 2009; U.S. Government Accountability Office, *Immigration Application Fees: Costing Methodology Improvements Would Provide More* (continued...)

FY2007, and FY2010 have resulted in part from such GAO reviews.<sup>50</sup> For instance, the FY2004 fee adjustments stemmed from a cost review and fee assessment in FY1998.<sup>51</sup> The FY2007 fee adjustment was based on a cost review in FY2006, the first in eight years. In contrast, the FY2010 fee adjustments emerged following a cost review completed in FY2009, just three years after the previous one.

The timing of GAO and internal assessments can significantly affect both the average level of fee increases as well as USCIS workloads. In its 2009 report GAO recommended more frequent fee reviews to reduce the need for disproportionately large increases.<sup>52</sup> For instance, the FY2010 fee review resulted in an average fee increase of about 10%, compared with an 88% fee increase in FY2007.<sup>53</sup> In the month prior to when USCIS enacted the FY2007 fee increase, application volume soared, outpacing the agency's processing capacity. This contributed to a processing backlog of roughly 1.5 million petitions and created unplanned costs for the agency to store its paper-based applications.

As of April 2015, USCIS was working on a fee review for the FY2016-FY2017 biennial period. Based on the results of the fee review, USCIS will determine whether to adjust its fee structure.<sup>54</sup>

## Related Issues for Congress

### Accountability to Congress

The President's executive action of November 20, 2014, highlights the challenges facing Congress if it wishes to exert control over USCIS's budget or activities which are funded through user fees. As mentioned, in 1988 Congress effectively delegated to USCIS the authority to set fees, and to expend those fees once collected, through the law that established the Immigration Examinations Fee Account.

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(...continued)

*Reliable Basis for Setting Fees*, GAO-09-70, January 23, 2009; and U.S. Government Accountability Office, *Federal User Fees: Fee Design Characteristics and Trade-Offs Illustrated by USCIS's Immigration and Naturalization Fees*, GAO-10-560T, March 23, 2010. The 2002 Homeland Security Act, which established USCIS, mandated that the Comptroller General of the United States report to Congress on how USCIS could derive sufficient user fees to function without appropriations. P.L. 107-296, §477(d)(3).

<sup>50</sup> Other relatively minor fee increases during this period reflected inflation adjustments.

<sup>51</sup> U.S. Department of Homeland Security, "U.S. Citizenship and Immigration Services, Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule; Proposed Rule," *Federal Register*, vol. 72, no. 21 (February 1, 2007), pp. 4891-4892.

<sup>52</sup> U.S. Government Accountability Office, *Federal User Fees: Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations*, GAO-09-180, January 2009.

<sup>53</sup> GAO suggested that the modest increases in FY2010 compared to FY2007 resulted from a shorter time interval between the FY2009 and the previous comprehensive fee assessments. U.S. Government Accountability Office, *Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability*, GAO-13-820, September 2013.

<sup>54</sup> The Chief Financial Officers Act of 1990 (CFO Act of 1990) and the Office of Management and Budget's (OMB) Circular A-25 requires that USCIS completes a fee review on a biennial basis. Per Joseph Moore, USCIS Chief Financial Officer, via email correspondence from USCIS Legislative Affairs, March 2, 2015.

Some may appreciate that a declining portion of USCIS's budget consists of appropriations because it reduces the agency's fiscal burden on U.S. taxpayers. Others may be concerned about the limits it places on congressional oversight of the agency. Some immigration observers have argued that greater dependence of USCIS upon appropriations increases congressional oversight and provides an additional check on the Executive Branch.<sup>55</sup> Some contend that USCIS, by not having to request budgetary resources from Congress each year for many of its day-to-day operations, also faces fewer incentives to provide timely, efficient, or effective customer service.<sup>56</sup>

To alter existing statutory provisions concerning the collection of the fees in the Immigration Examinations Fee Account, the availability of user fees for expenditure, or the prohibition of its use for certain purposes would require an enactment of law. Provisions of a bill or joint resolution to accomplish these purposes would be subject to the constitutional requirements associated with the lawmaking process, which include that the measure be signed by the President.<sup>57</sup> Such an enactment would be within Congress's constitutional authority to legislate.

## **Recovering Individual Service Costs versus Full Agency Costs**

The practice of charging user fees for immigration services has long created a rift between those who prefer that USCIS be entirely funded through fees (*agency cost advocates*) and those who prefer that fees reflect only the cost of specific services provided (*service cost advocates*).<sup>58</sup>

Service cost advocates have called on Congress to prevent fee increases at times when USCIS was considering fee structure revisions.<sup>59</sup> Although they have generally not opposed increased funding for USCIS, they have argued that the agency should recover only direct service costs and otherwise request direct appropriations to offset agency costs.<sup>60</sup> Service cost advocates believe that more rigorous oversight by Congress of appropriated funds would protect the interests of immigration services applicants and provide more transparency and accountability in the agency.<sup>61</sup> They contend that if costs escalate, fees could also increase to levels that may be prohibitive for some potential applicants.<sup>62</sup>

Agency cost advocates, on the other hand, have argued that USCIS fees are set at reasonable levels that reflect the full cost of delivering immigration services and that provide users with

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<sup>55</sup> Fawn Johnson, "Democrats Aiming to Roll Back Planned Hike in Citizenship Fee," *Congress Daily*, March 7, 2007.

<sup>56</sup> Editor, *Comment: Thatcher And H1Bs And The Poor*, ILW.COM, American Immigration LLC, April 10, 2013.

<sup>57</sup> See CRS Report R42843, *Introduction to the Legislative Process in the U.S. Congress*, by Valerie Heitshusen.

<sup>58</sup> Language in the authorizing statute states: "Provided further, that fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected." 8 U.S.C. §1356(m).

<sup>59</sup> For example, in 2007 then U.S. Senator Barack Obama and others opposed fee increases that were being considered and which ultimately were enacted. See U.S. Senator Barack Obama, "Obama, Gutierrez, Schakowsky Bill Would Send Immigration Fee Hikes Back to the Drawing Board," press release, March 7, 2007.

<sup>60</sup> *Ibid.*

<sup>61</sup> National Council of La Raza, "NCLR Critical of Fee Increases for Immigration Services," press release, April 15, 2007, p. 1, at <http://www.nclr.org/content/news/detail/25082>.

<sup>62</sup> *Ibid.*

valuable benefits.<sup>63</sup> They note that fees include costs for preventing fraud and providing services to those applying for immigration benefits on the basis of humanitarian need. They argue that subsidizing agency costs might be disadvantageous because it would keep fees at levels that would permit some immigrants to receive immigration services who would otherwise be classified as “public charges” under the INA.<sup>64</sup>

These two perspectives reflect a debate over who pays for immigration services received by beneficiaries who are exempted from fees. For example, when a policy decision is made to exempt foreign national victims of human trafficking (T visa) or victims of certain crimes (U Visa) from paying petition fees, the processing costs for those petitions must then be recovered through the fees charged against other applications.

## Fee Levels and Public Policy

Fee levels for immigration services can reflect policy considerations. In its 2010 review of USCIS fees, GAO outlined four broad policy considerations that could be used when considering how to set fee levels: *equity* (everyone pays his/her fair share), *efficiency* (simultaneously constrain demand and reveal the value that beneficiaries place on the service), *revenue adequacy* (the extent to which fee collections cover the intended share of costs), and *administrative burden* (the entire cost of administering the fee).<sup>65</sup>

Policy considerations not only affect how the fees are set, but also who should pay. In the case of USCIS, these policy considerations can conflict with each other. For instance, while the agency pursues revenue adequacy as a goal, it nevertheless does not collect fees from asylees and refugees on humanitarian grounds. Similarly, USCIS aims for equity in establishing fee levels, but when attempting to adjust fees for naturalization petitions on par with other petition fee adjustments, it confronts a vocal immigration advocacy community as well as its own broader policy objectives to foster citizenship.<sup>66</sup>

Immigrant advocates in particular argue that fee increases place disproportionate hardship on applicants for immigration services and benefits.<sup>67</sup> They contend that higher fees force some families to seek services and benefits incrementally rather than as a family unit, causing some

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<sup>63</sup> Statement by U.S. House Representative Steven King in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Hearing on the United States Citizenship and Immigration Services*, 111<sup>th</sup> Cong., 2<sup>nd</sup> session, March 23, 2010.

<sup>64</sup> INA §212(a)(4). The term “public charge” is used in the context of drawing public benefits for low-income households. Being a public charge has long been a ground for inadmissibility to the United States. See archived CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

<sup>65</sup> U.S. Government Accountability Office (GAO), *Fee Design Characteristics and Trade-Offs Illustrated by USCIS’s Immigration and Naturalization Fees*, GAO-10-560T, March 23, 2010.

<sup>66</sup> In 2010, USCIS decided to maintain the naturalization fee at \$680 rather than raise it, even though a review of its cost structure suggested otherwise. The action was consistent with USCIS’s policies promoting citizenship and immigrant integration but it required that commensurate cost increases for processing naturalization petitions be allocated to other immigration services petitioners. USCIS estimated an average impact of \$8 per petition for the rest of its fee paying volume. Since October 1, 2004, USCIS has waived naturalization petition fees for military personnel. For further discussion, see CRS Report R43366, *U.S. Naturalization Policy*, by William A. Kandel.

<sup>67</sup> American Immigration Lawyers Association, “AILA Dismayed With Proposed 10% USCIS Fee Increase: Users Must Receive Better Value for Fees Paid”, AILA InfoNet Doc. No. 10060910 (posted June 9, 2010).

members to forgo the application process entirely.<sup>68</sup> Some argue that high fees discourage eligible lawful permanent residents (LPRs) from naturalizing.<sup>69</sup>

At a broader level, immigration advocates have argued that sizeable fee increases may make wealth a *de facto* driving element of immigration policy.<sup>70</sup> They have also suggested that increased fees might impact the size of the unauthorized alien population by encouraging illicit work arrangements and visa overstays.<sup>71</sup> Under current regulations, applicants may receive a fee waiver if they can demonstrate an inability to pay.<sup>72</sup> According to USCIS, about 1% of applicants apply for fee waivers. Others argue that some fees in the United States, such as that for naturalization, are substantially higher than comparable fees in other advanced economies.<sup>73</sup>

Agency cost advocates cite immigration statutes to argue that concerns about the potential financial hardship are not valid criteria for developing a USCIS fee schedule. They argue that immigrants who receive the many benefits of living in the United States should pay the full cost the U.S. government incurs on their behalf to make their immigration possible. They contend that substantial fee increases should not be judged to be excessive if they accomplish the goal of recovering the full cost of services provided to immigrants, including expenses such as overhead, personnel support, and particularly, the cost of background checks and fraud reduction. They object to a fee structure that requires “overtaxed and overstretched Americans” to support an agency that benefits immigrants.<sup>74</sup>

## IT Modernization and Client Service

USCIS customers who seek immigration services and benefits often face challenges as they navigate the complexity of U.S. immigration laws and regulations. Obtaining answers to questions and resolving issues may require visits to USCIS offices that can be time-consuming and inconvenient. For many services, USCIS customers must apply for most benefits by mail. USCIS employees then review submitted paper files and ship documents between offices to complete their adjudication. According to the DHS Inspector General’s office, USCIS was relying on paper-based processes to manage the filing and adjudication of immigration benefits as recently as 2011.<sup>75</sup>

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<sup>68</sup> Letter from American Immigration Lawyers Association, to the Director of the Regulatory Management Division, USCIS, April 1, 2007, <http://www.bibdaily.com/pdfs/AILA%20fee%20comment%204-1-07.pdf>.

<sup>69</sup> National Foundation for American Policy, *Reforming the Naturalization Process*, NFAP Policy Brief, August 2011. In 2010, USCIS revised its fee structure for many immigrant petitions, but exempted the N-400 *Application for Naturalization* from any fee increase.

<sup>70</sup> U.S. Senator Barack Obama, “Obama, Gutierrez, Schakowsky Bill Would Send Immigration Fee Hikes Back to the Drawing Board,” press release, March 7, 2007, p. 1.

<sup>71</sup> Council on Foreign Relations, Independent Task Force Report No. 63, *U.S. Immigration Policy*, 2009, pp. 49-64.

<sup>72</sup> 8 C.F.R. 103.7(c).

<sup>73</sup> Madeleine Sumption and Sarah Flamm, *The Economic Value of Citizenship for Immigrants in the United States*, Migration Policy Institute, Washington, DC, September 2012.

<sup>74</sup> Statement by U.S. House Representative Steven King in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Hearing on the United States Citizenship and Immigration Services*, 111<sup>th</sup> Cong., 2<sup>nd</sup> session, March 23, 2010.

<sup>75</sup> DHS Office of Inspector General, “U.S. Citizenship and Immigration Services’ Progress in Transformation,” OIG-12-12, November 2011.



As part of a comprehensive set of initiatives to modernize the agency, USCIS embarked on an agency-wide investment referred to as “transformation” that began transitioning the agency from a fragmented, paper-based operational environment to a centralized and consolidated environment facilitating electronic processing of the adjudication function.<sup>76</sup> In 2012, USCIS formally launched the first two phases of its electronic immigration application system, known as ELIS. Under ELIS, eligible individuals can establish an account and apply online to extend or change their nonimmigrant status for certain visa types. ELIS enables USCIS officers to review and adjudicate filings online. It also includes tools to combat fraud and identify national security concerns. Nevertheless, ELIS still possesses limited features and must expand substantially before USCIS can move to an entirely electronic platform.<sup>77</sup>

## Processing Times and Backlogs

Congress has repeatedly called upon USCIS to improve its processing times and, on occasion, to eliminate backlogs of applications awaiting adjudication. Between FY2002 and FY2010, Congress provided approximately \$574 million in direct appropriations towards backlog reduction efforts.<sup>78</sup> Immigration observers questioned some backlog reduction efforts that resulted from changes in how USCIS defined the backlog.<sup>79</sup> Some critics believe that USCIS’s reliance on other agencies to conduct background checks limits the agency from preventing future backlogs, even with funding that fully covers adjudication costs.<sup>80</sup>

If reforms or changes to immigration laws or regulations occur that affect large numbers of individuals, the issue of managing adjudication workloads and recovering service costs could become an issue for USCIS. Some observers question whether the agency can process in a timely fashion the increased application volumes resulting from such changes. Previous efforts at immigration reform, for example, resulted in substantial increases in applications for immigration services as well as USCIS’s overall adjudication costs.<sup>81</sup>

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<sup>76</sup> DHS Office of Inspector General, “U.S. Citizenship and Immigration Services Information Technology Management Progress and Challenges,” OIG-14-112, July 2011.

<sup>77</sup> For example, time studies conducted by USCIS service centers indicate that adjudicating on paper is at least two times faster than adjudicating in ELIS. See U.S. Department of Homeland Security, Office of the Inspector General, *U.S. Citizenship and Immigration Services Information Technology Management Progress and Challenges*, OIG-14-112, July 2014, p. 17. See also Aliya Sternstein, “New USCIS Computer Was Supposed to Speed up Immigration Processing. What Went Wrong?,” *Nextgov*, March 13, 2015.

<sup>78</sup> As of June 2010, DHS had allocated \$574 million for this effort, including \$494 million in direct appropriations. According to USCIS budget documents, no additional funds have been appropriated for this purpose since then.

<sup>79</sup> In July 2004, USCIS reclassified 1.1 million petitions that were in the hands of other government agencies for background checks as no longer part of the backlog. Critics contend that changes in the agency’s backlog definition masked the seriousness of the USCIS backlog. The DHS Inspector General expressed concerns that the new backlog definition would not resolve “the long-standing processing and IT problems that contributed to the backlog in the first place.” U.S. Department of Homeland Security, Office of the Inspector General, *USCIS Faces Challenges in Modernizing Information Technology*, OIG-05-41, September 2005, p. 28. The USCIS Ombudsman also noted “these definitional changes hide the true problem and the need for change.” U.S. Department of Homeland Security, Citizenship and Immigration Service Ombudsman, *Annual Report 2006*, June 29, 2006, p. 9.

<sup>80</sup> *Ibid.* For more information on background checks, see USCIS, *Immigration Security Checks—How and Why the Process Works*, fact sheet, April 25, 2006.

<sup>81</sup> GAO notes that when the 3 million individuals who legalized under IRCA in 1986 became eligible for naturalization in 1995, the application backlog increased markedly. See U.S. Government Accountability Office, *Immigration Benefits: Several Factors Impede Timeliness of Application Processing*, GAO-01-488, May 2001.

## Capacity

USCIS regularly faces concerns from immigration observers about the agency's ability to manage adjudication workloads, particularly during surges in application volume that result from changes in immigration policy or other major events. The issue arose most recently with the President's executive action, causing some to question how the agency would handle the workload from as many as 5 million new deferred action applications. Agency spokespersons posit that USCIS has the capacity to quickly scale up and deal with surges in volume such as those expected to result from the President's executive action. They argue that the agency's experience with the 2012 Deferred Action for Childhood Arrivals (DACA) program served as a test case for handling larger workloads anticipated from the most recent executive action.<sup>82</sup> They also cite past examples, such as the roughly 2.7 million persons the agency processed between 1987 and 1989 following passage of the Immigration Reform and Control Act of 1986 (IRCA, P.L. 99-603),<sup>83</sup> which, by most accounts, was successfully administrated.<sup>84</sup>

Other immigration observers refute such assessments. They note that USCIS struggled for several years to reduce a processing backlog caused by the surge in petition volume from its relatively large FY2007 fee adjustments. Going back earlier, GAO noted that when the 3 million individuals who legalized under IRCA in 1986 became eligible for naturalization in 1995, the application backlog increased markedly.<sup>85</sup> Processing backlogs may affect processing times for other petitions as resources within the agency are reconfigured to address urgent needs. This latter concern has been raised by some who argue the agency is diverting resources used to process petitions of those immigrating to the United States legally in order to process DACA and other petitions that benefit the unauthorized alien population.<sup>86</sup>

Critics also describe a processing system that continues to rely primarily on paper applications and postal mail and argue that other agency services will suffer from the diversion of USCIS resources to attend to the pressing caseload caused by the 2014 executive action.<sup>87</sup> Since it was

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<sup>82</sup> Testimony of Bo Cooper, Esq., Partner at Fragomen, Del Rey, Bernsen & Loewy LLP, in U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Hearing on Deferred Action on Immigration: Implications and Unanswered Questions*, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., February 4, 2015. As of December 31, 2014, USCIS had received and processed 962,000 new and renewal petitions for the 2012 DACA program. DACA statistics are available from USCIS at <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-deferred-action-childhood-arrivals>.

<sup>83</sup> IRCA was passed to control and deter illegal immigration to the United States. It contained a number of major provisions, including those that legalized 2.7 million undocumented aliens who had been continuously unlawfully present since 1982. The magnitude of the program substantially increased the workload of the former INS.

<sup>84</sup> CRS briefing with USCIS, Legislative Affairs personnel, August 20, 2013.

<sup>85</sup> U.S. Government Accountability Office, *Immigration Benefits: Several Factors Impede Timeliness of Application Processing*, GAO-01-488, May 2001.

<sup>86</sup> See testimony of Senator Thom Tillis at Senate Judiciary Committee hearing, *Oversight of U.S. Citizenship and Immigration Services: Ensuring Agency Priorities Comply with the Law*, March 3, 2015. For example, USCIS reported 109,956 pending I-130 petitions (*Petition for Alien Relative*) as of September 30, 2012. As of December 31, 2014, the figure was 784,323, despite the fact that the petition volume for such petitions had not increased inordinately during the two-year period. Similarly, USCIS reported 130,496 pending I-485 petitions (*Application to Register Permanent Residence or Adjust Status*) as of August 31, 2012. As of December 31, 2014, the figure was 414,146, also despite the fact that the petition volume for I-485 petitions had not increased inordinately during the period. See U.S. Citizenship and Immigration Services, *Immigration and Citizenship Data*, at <http://www.uscis.gov/tools/reports-studies/immigration-forms-data>, accessed by CRS on May 1, 2015.

<sup>87</sup> Testimony of Luke Peter Bellocchi, of Counsel, Wasserman, Mancini & Change, PC, in U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Hearing on Deferred Action on Immigration*: (continued...)

announced in November, the agency has made plans to hire over 1,000 full and part-time personnel to handle the workload.<sup>88</sup> Costs for the new hires reportedly would be covered by the DACA petition fees. If the executive action goes forward as planned, it remains to be seen whether the new personnel and required procedures would be in place and sufficient to handle the volume of related petitions.

## Conclusion

Over two decades ago, the budget structure of USCIS's predecessor agency, the former INS, was transformed by the law that created the Immigration Examinations Fee Account to fund the agency's activities and operations. Since that time, and particularly since USCIS was created in 2002, the agency has relied almost entirely on user fees to fund its operations. Appropriations have been granted for special projects and currently fund the E-Verify program. Having a government agency funded by user fees reduces the fiscal burden on U.S. taxpayers. However, it also might reduce the influence and oversight that Congress can exert over how the agency spends its user fees. Such limitations became more apparent following the passage of the President's executive action of November 20, 2014, which included a new deferred action program that some Members of Congress oppose.

Some have expressed concerns about the impact that a relatively sudden and large demand for USCIS adjudication services might have on the rest of the agency's workload. USCIS has experience in handling surges in petition volume. It also has, with the existing DACA program initiated in 2012, an active model for confronting potential challenges posed by similar programs initiated within the recent executive action. However, past experience also suggests that processing backlogs could occur, as well as increases in processing times for other types of petitions. Such delays underscore both the agency's limited personnel resources and its continued reliance on a largely paper-based system.

In addition to these issues, immigration observers continue to express concerns over several perennial issues related to USCIS. The most frequently cited concern involves fee levels. Some evidence suggests that the current naturalization petition fee, in particular, poses a barrier to individuals wishing to become U.S. citizens, a critical step toward political and civic incorporation. While immigrant advocacy groups argue that lower fees would increase the numbers of LPRs who naturalize, USCIS has not signaled any plans to adjust its fee structure to address this concern beyond maintaining the naturalization petition fee at its current level.

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(...continued)

*Implications and Unanswered Questions*, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., February 4, 2015.

<sup>88</sup> U.S. Citizenship and Immigration Services, "USCIS Today e-News 12-1-14," press release, December 1, 2014.

## Appendix A. History of USCIS Fee Funding

In its original version, the Immigration and Nationality Act of 1952 (INA) prescribed fees for certain immigration services.<sup>89</sup> Furthermore, a general “user” statute in Title V of the Independent Offices Appropriations Act of 1952<sup>90</sup> granted government agencies the authorization to charge fees for services performed. Legislation<sup>91</sup> in 1968 removed the enumeration of statutory fees under the INA, and subsequently immigration fees were prescribed in regulations under the authorization of the latter “user” statute.<sup>92</sup>

Following the 1968 legislation, the former Immigration and Naturalization Service (INS) continued to periodically adjust fees as it deemed necessary.<sup>93</sup> However, the second term of the Reagan Administration saw more concerted efforts to make INS adjudication functions fee-reliant. At the same time that Congress passed the Immigration Reform and Control Act of 1986 (IRCA),<sup>94</sup> which included a legalization program for certain unlawfully present aliens, the INS decreased fees for stays of deportation<sup>95</sup> but increased them for certain other deportation related motions. In the publication of the final fee schedule after passage of IRCA, the agency stated that it believed it was legally required to recover all of its costs for services it provided.<sup>96</sup> The 1987 amendment to the fee schedule added fees for the legalization program under IRCA, and despite opposition to the \$185 filing fee, the INS maintained the charge was needed to ensure the program was self-funding.<sup>97</sup>

In 1988, Congress mandated the creation of the Immigration Exam Fee Account (IEFA) in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1989,<sup>98</sup> such that the funding for the legalization fees could be isolated and a portion of those fees retained by the agency. These fees would then be available to the INS to recover some

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<sup>89</sup> P.L. 82-414, §281.

<sup>90</sup> P.L. 82-137.

<sup>91</sup> P.L. 90-609.

<sup>92</sup> Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and Procedure*, vol. 1, §3.25[1]. Following the “Act of Oct. 21, 1968” (P.L. 90-609), which eliminated the specific statutory authorization for particular INS fees in the INA, the INA used the authority granted by P.L. 82-137 to issue its entire schedule of fees through regulation. This authority to issue fees through regulation continued to apply when certain INS functions were transferred to USCIS in 2003. All USCIS fees are now found in 8 C.F.R. 103.7.

<sup>93</sup> USCIS has undergone at least 16 revisions of its fee schedule. While some revisions were due to cost assessments, others were minor inflation adjustments. These fee schedule revisions occurred in 1969, 1976, 1978, 1983, 1986, 1987, 1991, 1994, 1995, 1998, 1999, 2001, 2004, 2005, 2007, and 2010.

<sup>94</sup> P.L. 99-603.

<sup>95</sup> A “stay of deportation” is also referred to as a “cancellation of removal.” These terminology changes occurred with passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. (P.L. 104-208).

<sup>96</sup> In its publication of the new schedule that year, the INS stated: “The INS and the EOIR (the Department of Justice’s Executive Office of Immigration Review) believe it is clear that 31 U.S.C. 9701 and OMB Circular A-25 require Federal agencies to establish a fee system in which a benefit or a service provided to or for any person be self-sustaining to the fullest extent. We believe arguments to the contrary are wholly without merit. Fees are neither intended to replace nor to be influenced by the budgetary process and related considerations, but instead, to be governed by the total cost to the agency to provide the service. A policy of setting fees on any basis other than cost would violate this principle.” U.S. Department of Justice, Immigration and Naturalization Service, “8 CFR Part 103,” *Federal Register*, vol. 51, no. 213 (November 4, 1986), pp. 39993-39994.

<sup>97</sup> Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and Procedure*, vol. 1, §3.25[1].

<sup>98</sup> P.L. 100-459.

of the costs associated with providing immigration services. The following fiscal year, the IEFA was amended in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1990,<sup>99</sup> giving INS the authority to retain and expend all of the adjudication fees collected. The purpose of this change was that funding for the Adjudications and Naturalization Program of the INS would be financed solely through this mechanism.<sup>100</sup>

Following the passage of the Immigration Act of 1990,<sup>101</sup> the INS experienced a period of unprecedented growth in applications and petitions for immigration services. This growth was further compounded in 1995 when approximately 3 million individuals who had legalized under IRCA became eligible to naturalize.<sup>102</sup>

At roughly the same time, GAO released a report on the financial practices of the INS that found inadequate controls over fee funding and vulnerability to fraud and other abuses.<sup>103</sup> GAO also found that despite a large increase in fee funding, the agency suffered from inadequate service processing times and weak leadership and management.<sup>104</sup> The INS responded to this report through centralization initiatives and by stating that its new fee schedule of 1991 would reduce the growing applications backlog.<sup>105</sup> Yet, by 1993 observers expressed growing concerns that increased fees had not yielded the promised performance improvements.<sup>106</sup> Some asserted that the INS was using a portion of funds from the IEFA for enforcement activities rather than adjudication services.<sup>107</sup>

Between 1993 and 2001, the INS continued to receive criticism for not meeting its service objectives, despite increases in funding from fees and appropriations.<sup>108</sup> Many observers continued to assert that INS was using a portion of its immigration services collections to fund non-service activities such as border security and interior enforcement. This suspected

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<sup>99</sup> P.L. 101-162.

<sup>100</sup> S. Rept. 101-144, pp. 48-49.

<sup>101</sup> P.L. 101-649.

<sup>102</sup> Some have speculated that part of the increase in naturalization petition volume in the mid-1990s stemmed from greater eligibility restrictions for welfare and other federal assistance enacted through the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). See Jennifer Van Hook, Susan K. Brown, and Frank D. Bean, "For Love or Money? Welfare Reform and Immigrant Naturalization," *Social Forces*, Vol. 85, No. 2, (December 2006), pp. 643-666. In response to the growth in naturalization applications, the INS launched an initiative called Citizenship USA, which had the explicit goal of reducing the naturalization backlog and naturalizing eligible applicants within six months of submitting an application. According to GAO, the program experienced numerous quality and integrity problems, and resulted in some ineligible applicants receiving citizenship. (U.S. Government Accountability Office, *Immigration Benefits: Several Factors Impede Timeliness of Application Processing*, GAO-01-488, May 2001).

<sup>103</sup> U.S. Government Accountability Office, *Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems*, GAO/GDD-91-28, January, 1991.

<sup>104</sup> *Ibid.*

<sup>105</sup> Testimony of INS Commissioner Gene McNary, in U.S. Congress, House Committee on the Appropriations, Subcommittee on Commerce, Justice, State, and the Judiciary Appropriations, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1992*, 102<sup>nd</sup> Congress, 1<sup>st</sup> session, March 18, 1991.

<sup>106</sup> Testimony of Theodore Ruthizer, president of the American Immigration Lawyers Association, in U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, *Immigration and Naturalization Service: A Mandate for Change*, 103<sup>rd</sup> Congress, 1<sup>st</sup> session, March 30, 1993.

<sup>107</sup> *Ibid.*

<sup>108</sup> For example, GAO issued another report, which found that despite making some progress, the INS had yet to adequately resolve many longstanding management issues. (U.S. Government Accountability Office, *INS Management: Follow-up on Selected Problems*, GGD-97-132, July 1997).

interweaving of service and non-service funding prompted a push to separate the service and enforcement functions of the INS.<sup>109</sup> In 1997, the U.S. Commission on Immigration Reform recommended that the INS be dismantled and the adjudication and enforcement functions be divided up between the Department of State and the Department of Justice (DOJ), respectively.<sup>110</sup> The Clinton and Bush Administrations, however, categorically rejected the proposed dismantling of INS and instead encouraged internal reforms.<sup>111</sup>

Following the terrorist attacks of September 11, 2001, Congress decided to formally separate INS's enforcement and adjudication functions. With the passage of the Homeland Security Act of 2002 (HSA),<sup>112</sup> Congress dissolved the INS and established USCIS, a new immigration adjudication agency, within the newly formed Department of Homeland Security (DHS).<sup>113</sup> The INS did attempt to increase its fees in FY2003 to cover anticipated additional costs related to security checks, but DOJ did not act upon the request due to the upcoming transition of immigration functions from DOJ to DHS.<sup>114</sup> Since its creation, USCIS has been largely dependent upon fees to fund its services, with direct appropriations provided primarily for temporary projects.

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<sup>109</sup> For further discussion, see CRS Report RL30257, *Proposals to Restructure the Immigration and Naturalization Service*, by William J. Krouse, available upon request; and CRS Report RL31388, *Immigration and Naturalization Service: Restructuring Proposals in the 107<sup>th</sup> Congress*, by Lisa M. Seghetti, available upon request.

<sup>110</sup> U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigration Policy*, report to Congress, Executive Summary, September 1997.

<sup>111</sup> CRS Report RL30257, *Proposals to Restructure the Immigration and Naturalization Service*, by William J. Krouse, available upon request.

<sup>112</sup> P.L. 107-296.

<sup>113</sup> It also established the Customs and Border Protection (CBP) and the Immigration and Customs Enforcement (ICE) agencies, which together with USCIS replaced the functions of the former INS. Note that only USCIS receives its funding through the Immigration Examination Fee Account. For discussion on USCIS organizational issues, see CRS Report RL31388, *Immigration and Naturalization Service: Restructuring Proposals in the 107<sup>th</sup> Congress*, by Lisa M. Seghetti, available on request; and CRS Report RL33319, *Toward More Effective Immigration Policies: Selected Organizational Issues*, by Ruth Ellen Wasem.

<sup>114</sup> U.S. Government Accountability Office, *Immigration Application Fees: Current Fees are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operations*, GAO-04-309R, January 5, 2004, p. 22.

## Appendix B. Fee and Processing Volume Statistics

**Table B-1. Fees, Processing Volumes (FY2013, FY2014), and Projected Volumes (FY2015) for Selected Immigration Petitions**

USCIS Form Number	Form Description	Fee	Application/Petition Receipts		
			FY2013 (Actual)	FY2014 (Actual)	FY2015 (Projected)
I-90	Application to Replace Permanent Resident Card*	\$365	443,065	781,701	783,238
I-102	Application for Replacement/Initial Nonimmigrant Arrival—Departure Document	\$330	13,715	9,679	10,143
I-129	Petition for a Nonimmigrant Worker	\$325	404,520	432,987	420,954
I-129F	Petition for Alien Fiancé(e)	\$340	45,360	48,394	48,505
I-130IR/PREF	Petition for Alien Relative	\$420	545,646	788,633	860,668
I-131	Application for Advance Parole / Reentry Permit / Refugee Travel Document*	\$360	381,119	375,568	425,110
I-140	Immigrant Petition for Alien Worker	\$580	69,714	81,658	89,268
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)		\$585	64,635	63,449	110,496
I-290B	Appeal for any decision other than BIA	\$630	N/A	N/A	24,662
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	\$405	20,161	20,270	25,676
I-485	Application to Register Permanent Residence or Adjust Status*	\$985	546,651	588,755	593,294
I-526	Immigrant Petition by Alien Entrepreneur	\$1,500	6,346	10,928	12,518
I-539	Application to Extend/Change Nonimmigrant Status*	\$290	148,274	182,184	172,001
I-589	Application for Asylum and Withholding of Removal	No fee	44,453	56,912	65,000
I-590	Registration for Classification as a Refugee	No fee	N/A	N/A	80,000
I-600/600A	Petition to Classify Orphan as an Immediate Relative	\$720	5,011	7,743	15,031
I-601A	Provisional Unlawful Presence Waivers	\$585	19,085	37,592	N/A
I-687	Application for Status as a Temporary Resident under INA Sections 245A or 210	\$1,130	N/A	N/A	18
I-690	Application for Waiver of Grounds of Inadmissibility	\$200	N/A	N/A	21
I-694	Notice of Appeal of Decision under INA Sections 245A or 210	\$755	N/A	N/A	39
I-698	Application to Adjust Status from Temporary to Permanent Resident (A)	\$1,020	N/A	N/A	91

I-730	Refugee/Asylee Relative Petition	No fee	18,458	16,768	17,161
I-751	Petition to Remove the Conditions on Residence*	\$505	171,651	178,359	142,707
I-765	Application for Employment Authorization*	\$380	1,781,576	1,370,404	1,433,828
I-800/800A	Petition to Classify Convention Adoptee as an Immediate Relative	\$720	7,880	8,031	See I-600/600A
I-800A	Request for Action on Approved Form I-800A (Supplement 3)	\$360	N/A	N/A	1,585
I-817	Application for Family Unity Benefits*	\$435	2,378	2,067	2,069
I-821	Application for Temporary Protected Status*	\$50	328,022	54,617	290,147
I-821D	Deferred Action for Childhood Arrivals	No fee	432,307	262,535	See I-821
I-824	Application for Action on an Approved Application or Petition	\$405	12,227	12,151	11,153
I-829	Petition by Entrepreneur to Remove Conditions	\$3,750	1,217	2,516	3,131
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (B)	\$285	1,108	795	764
I-905	Application for Authorization to Issue Certification for Health Care Workers	\$230	N/A	N/A	NA
I-907	Request for Premium Processing Service	\$1,225	N/A	N/A	NA
I-910	Civil Surgeon Designation	\$615	N/A	N/A	613
I-914	Application for T Nonimmigrant Status	No fee	99	1,869	1,953
I-918	Petition for U Nonimmigrant Status	No fee	25,432	45,268	45,600
I-924	Application for Regional Center Under the Immigrant Investor Pilot Program	\$6,230	436	642	939
I-929	Petition for a Qualifying Family Member of a U-I Nonimmigrant <sup>215</sup>	\$215	397	679	575
N-300	Application to File Declaration of Intention	\$250	43	22	43
N-336	Request for Hearing on a Decision in Naturalization Procedures	\$650	4,452	4,307	4,630
N-400	Application for Naturalization—Regular* (R)	\$595	762,438	763,950	824,173
N-400	Application for Naturalization—Military (M)	\$0	10,195	9,874	See N-400(R)
N-470	Application to Preserve Residence for Naturalization Purposes	\$330	354	311	369
N-565	Application for Replacement Naturalization/Citizenship Document	\$345	27,204	27,732	28,197
N-600/600K	Application for Certificate of Citizenship	\$600	66,982	60,863	68,962
G-1041	Genealogy Index Search Request	\$20	N/A	N/A	3,530
G-1041A	Genealogy Records Request	\$20	N/A	N/A	2,335
<b>Total Immigration Benefit Volume</b>			<b>6,413,311</b>	<b>6,310,213</b>	<b>6,621,197</b>



**Sources: processing data: FY2013-FY2014:** USCIS Immigration Forms Data (website): <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-all-uscis-application-and-petition-form-types>; **FY2015 Projected:** Department of Homeland Security, U.S. Citizenship & Immigration Services, FY 2016 Budget, February 2015 (unpublished handout), p. 30; **fee data:** Department of Homeland Security, U.S. Customs and Immigration Services, form *G-1055, Fee Schedule* (12/18/14), available at <http://www.uscis.gov/fees>.

**Notes:** Petition information is presented for all USCIS petitions for which processing volume data are available from the DHS sources above. Appendix B accounts for most of USCIS's petition volume, but the exact proportion is not known. USCIS form numbers may include more than one petition variant. \* Indicates that an additional biometric fee of \$85 (not included in the listed fee) is also required for this petition. Biometric fees may not be required for some variants of particular USCIS form numbers. **(A):** Under Section 245A of P.L. 99-603; **(B):** Pursuant to Section 203 of P.L. 105-110.

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