

# CRS Report for Congress

## U.S. Citizenship and Immigration Services' Immigration Fees and Adjudication Costs: The FY2008 Adjustments and Historical Context

June 12, 2007

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Prepared for Members and  
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## Summary

The charging of fees for government services or benefits has long been practice in the United States by the federal government. Such fees have usually been charged as a service cost recovery only to those individuals who have used the service or benefit—so called *user fees*. More recently, this question has focused on the Department of Homeland Security's (DHS) Citizenship and Immigration Service (USCIS), which adjudicates immigration benefit applications. As immigration services grow in complexity, questions have emerged concerning what users of fee-based services should be obligated to pay for. As related to immigration, the current debate tends to produce two answers to the funding question: (1) an agency should either recover all of its costs through user fees, or (2) an agency should only charge user fees that recover the costs directly associated with providing services or benefits.

On May 30, 2007, USCIS published a new fee schedule for immigration and naturalization adjudications and benefits. These adjustments would increase fees by an average of 88% for each benefit. USCIS officials claim that the new fee structure is a necessary step to maintain proper service levels and avoid backlogs. The issue for Congress concerning the proposed new USCIS fees is whether USCIS has enough money to fulfill its mission and, if not, how that gap should be funded.

As part of the former Immigration and Naturalization Service (INS), USCIS was directed nearly two decades ago to transform its funding structure to become more fee-reliant. Although the agency has been appropriated several hundred million dollars in the last decade, these appropriations have largely been directed towards specific projects such as the backlog reduction initiative. The vast majority of the agency's funding, however, comes from the adjudication fees of immigration benefit applications and petitions. Consequently, if the agency is to operate in an efficient manner without the buildup of backlogs, agency funding must be sufficient to cover the overhead and adjudication costs.

Cost estimates by both USCIS and Government Accountability Office had found that the previous fee structure was insufficient to cover the services' entire operation. How these funds will be raised remains a divisive issue, since there is disagreement over whether such funding should come from fee increases or direct appropriations.

Fee increase proponents contend that even under the proposed fee schedule, U.S. immigration benefits are a "good deal" by world standards. Fee increase opponents are concerned about the potential impact of fee increases on lower-income families, and further believe that the push for making the agency entirely fee-reliant has resulted in a backlog buildup and promoted backlog definition changes. The Citizenship Promotion Act of 2007 (H.R. 1379; S. 795) would provide for an increase in directly appropriated funds to USCIS. Criticisms of the new fee schedule have taken on a heightened significance in the face of issues such as backlog reduction and comprehensive immigration reform. This report will not be updated.

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# U.S. Citizenship and Immigration Services' Immigration Fees and Adjudication Costs: The FY2008 Adjustments and Historical Context

## Introduction

The charging of fees for government services or benefits has long been practice in the United States by the federal government. Immigrants, for example, have had to pay admissions fees for entry into the country at least since 1903.<sup>1</sup> Such fees have usually been charged only to those individuals who have used the service or benefit, in order that the government may recover the cost of providing that service—so called *user fees*.<sup>2</sup> While this principle is seemingly simple, the issue of cost recovery for immigration services has grown more complicated in the past two decades. As immigration services grow in complexity, taking on new obligations and tasks tangentially related to services, questions have emerged concerning what users of fee-based services should be obligated to pay for. This question becomes especially difficult when an agency is established that is based almost entirely around providing a fee-based set of services. In such cases, agencies have historically received direct appropriations from Congress, thereby receiving some funding from non-users. As related to immigration, the current debate centers around two approaches to the funding question: (1) an agency should either recover all of its costs through user fees, or (2) an agency should only charge user fees that recover the costs directly associated with providing the given service or benefit.

More recently, this question has focused on the Department of Homeland Security's (DHS) Citizenship and Immigration Service (USCIS), which adjudicates immigration benefit applications. This agency, which used to be a component of the Immigration and Naturalization Service (INS), has transformed to become its own fee reliant agency, and has moved increasingly towards recovering full agency costs from users.<sup>3</sup> This movement resulted in a proposed new fee schedule, which coupled

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<sup>1</sup> 32 Stat. 1213.

<sup>2</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: 1999), chapter 4, "User Fees and Other Collections," pp. 93-104.

<sup>3</sup> USCIS was originally named the Bureau of Citizenship and Immigration Services (BCIS) when the agency was officially created on March 1, 2003 as a part of the new Department (continued...)

with the reduced request for direct appropriations would make USCIS almost completely fee reliant. The final fee schedule for immigration and naturalization adjudications and benefits that takes effect on July 30, 2007,<sup>4</sup> will increase fees by an average of 88% for each benefit and eliminate a number of fee waivers.<sup>5</sup> As a result, over 99% of the agency's budget would come directly from user fees.<sup>6</sup>

With the funding transformation of USCIS has also come a transformation in the stakeholder composition of the agency. As the agency funding becomes increasingly fee-based, the general public becomes less of a stakeholder in the agency's activities. While such a shift may be a welcome transformation financially, it raises functional questions over the degree to which congressional oversight would be performed over an entirely fee-reliant agency. In essence, issues arise from this agency transformation over whether the distribution of immigration benefits will be driven by public policy or the market mechanism of agency cost recovery. Opponents of the agency cost recovery contend that a fully fee-reliant agency compromises the public interest, since the agency would only be accountable to itself for its costs and expenditures.<sup>7</sup> If these costs escalate through agency inefficiencies, critics argue, fees could eventually elevate to levels that are prohibitively expensive for some potential users. Moreover, the recent fee schedule by USCIS has raised questions by some observers whether the prohibitive fee levels have already been reached.

Historically, the role of Congress has been to appropriate some funds to agencies adjudicating immigration benefits, particularly in relation to multi-year special projects. Congress has also had an oversight role in how these funds, as well as funds collected through fees, were being obligated by immigration agencies. As such, congressional reactions to these new fees have been strong and divergent, creating a continuum reflecting the overarching debate. The continuum tends to range from service cost recovery advocates on one end to agency cost recovery advocates on the other (hereafter referred to as *service cost advocates* and *agency cost advocates*, respectively). Service cost advocates have called for congressional action

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<sup>3</sup> (...continued)

of Homeland Security (DHS). Prior to March 1, 2003, Citizenship and Immigration Services (CIS) had been an entity within the former Immigration and Naturalization Service (INS), which was dissolved with the creation of DHS. This adjudication agency was renamed U.S. Citizenship and Immigration Services on September 1, 2003.

<sup>4</sup> These fee adjustments constitute the first fee revision since October 26, 2005. The fee structure is outlined in regulations in 8 CFR 103.7

<sup>5</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," *Federal Register*, vol. 72, no. 103 (May 30, 2007), pp. 29851–29873.

<sup>6</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Fiscal Year 2008 Congressional Budget Justifications*.

<sup>7</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. This press release was distributed in association with the introduction of the Citizenship Promotion Act of 2007 in both chambers of Congress (H.R. 1379 and S. 795).

to prevent the new fees from being implemented.<sup>8</sup> Although they are generally not opposed to the increased funding for USCIS, the opponents wish for USCIS to only recover direct service cost and otherwise request direct appropriations to offset agency costs.<sup>9</sup> Agency cost advocates,<sup>10</sup> however, contend that subsidizing agency costs may keep fees low enough to potentially allow immigrants that qualify as “public charges” under the Immigration and Nationality Act (INA) to receive immigration benefits.<sup>11</sup> These advocates further contend that the immigration benefits U.S. immigrants receive are a “good deal” by world standards, even under the new fee structure.<sup>12</sup> USCIS officials claim that the new fee schedule, which is set to become effective July 30, 2007, is a necessary step for them to maintain proper service levels and continue with other agency functions.

An issue for Congress concerning the new USCIS fees is whether USCIS has enough money to fulfill its mission and, if not, should that gap be funded through increased fees. The fee increase, however, raises potential issues for some Members. For example, although the new fees are based upon cost estimates which showed previous fees were inadequate on a per application basis, there are questions regarding how efficiently and effectively previously allocated resources have been expended by the agency. Additionally, concerns exist over the agency’s expenditure of previous direct appropriations aimed at reducing the agency’s application backlog. Some have questioned whether future applicants should shoulder the cost of processing previously submitted and previously funded applications. Allowing the agency to become fully fee reliant, critics argue, would only make the agency less accountable for any inefficiencies in processing.<sup>13</sup> Another issue concerning the fee increase is whether the reduction in fee waiver eligibility and the uniform fees for most applicants are acceptable policies.

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<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> Statements by U.S. House Representatives Steve King and Daniel Lungren in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Proposed Immigration Fee Increase*, 110<sup>th</sup> Congress, 1<sup>st</sup> sess., February 14, 2007.

<sup>11</sup> INA §212(a)(4). The term “public charge” is used in the context of drawing public benefits for low income households.

<sup>12</sup> Statements by U.S. House Representative Daniel Lungren in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Proposed Immigration Fee Increase*, 110<sup>th</sup> Congress, 1<sup>st</sup> sess., February 14, 2007.

<sup>13</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.

## USCIS Functions<sup>14</sup>

USCIS performs a variety of functions that cumulatively determine the agency's costs.<sup>15</sup> While most of these functions are direct results of the agency's processing functions, other costs such as administrative overhead result indirectly from these obligations. Of the activities that are listed below, administrative overhead and humanitarian functions are those which most frequently do not have a fee associated with them.

There are three major activities that dominate the functions of USCIS: the adjudication of immigration petitions, the adjudication of naturalization petitions, and the consideration of refugee and asylum claims and related humanitarian and international concerns. USCIS also processes a range of immigration-related benefits and services, such as employment authorizations and change-of-status petitions.<sup>16</sup>

**USCIS Immigration Adjudications and Services.** USCIS adjudicators determine the eligibility of the immediate relatives and other family members of U.S. citizens, the spouses and children of legal permanent residents (LPR), employees that U.S. businesses have demonstrated that they need, and other foreign nationals who meet specified criteria. They also determine whether an alien can adjust to LPR status.<sup>17</sup>

**USCIS Naturalization Adjudications.** USCIS is responsible for naturalization, a process in which LPR may become U.S. citizens if they meet the requirements of the law. Adjudicators must determine whether aliens have continuously resided in the United States for a specified period of time, have good moral character, have the ability to read, write, speak, and understand English, and have passed an examination on U.S. government and history. All persons filing naturalization petitions must be fingerprinted, as background checks are required of applicants.

**USCIS Humanitarian Functions.** This activity, located in the USCIS Office of International Affairs, adjudicates refugee applications and conducts background and record checks related to some immigrant petitions abroad.<sup>18</sup> The largest component of this program is the asylum officer corps, whose members

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<sup>14</sup> Portions of this subsection were authored by Ruth Ellen Wasem.

<sup>15</sup> For analysis of the USCIS budget see CRS Report RL34004, *Homeland Security Department: FY2008 Request for Appropriations*, coordinated by Jennifer E. Lake and Blas Nuñez-Neto.

<sup>16</sup> For additional discussion on USCIS' immigration-related responsibilities and organizational structure, see CRS Report RL33319, *Toward More Effective Immigration Policies: Selected Organizational Issues*, by Ruth Ellen Wasem.

<sup>17</sup> See CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

<sup>18</sup> For more on refugee and asylum policy, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno, and CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.



interview and screen asylum applicants. Although a small portion of the USCIS workload, it can be a high-profile activity.

**Other USCIS Immigration-Related Matters.** USCIS also makes determinations on a range of immigration-related benefits and services. The agency decides whether a foreign national in the United States on a temporary visa (i.e., a nonimmigrant) is eligible to change to another nonimmigrant visa. USCIS processes work authorizations to aliens who meet certain conditions and provides other immigration benefits to aliens under the discretionary authority of the Attorney General (e.g., aliens granted cancellation of removal by the Executive Office for Immigration Removal).

**USCIS Fraud Detection and Admissibility.** On an annual basis, USCIS adjudicates millions of applications for immigration benefits. Adjudication of these various immigration and naturalization petitions, however, is not a routine matter of processing paperwork. USCIS must confirm not only that the aliens are eligible for the particular immigration status they are seeking, but also whether they should be rejected because of other requirements of the law.<sup>19</sup> USCIS established the Office of Fraud Detection and National Security to work with the appropriate law enforcement entities to handle national security and criminal "hits" on aliens and to identify systemic fraud in the application process. Many of these duties were formerly performed by the INS enforcement arm that is now part of DHS' Immigration and Customs Enforcement (ICE).

**Administrative Overhead.** In addition to the functions listed above, USCIS is also responsible for a host of administrative tasks that contribute to overhead costs, including the maintenance of a number of databases and projects. The agency has been granted several direct appropriations by Congress to deal with these databases in previous years, partly due to the costs associated with the projects. For example, USCIS is currently responsible for a project to modernize its systems and processes in an effort to improve information sharing, workload capacity, and system integrity.<sup>20</sup> Additionally, USCIS is responsible for the Employment Eligibility Verification (EEV) program for worksite enforcement,<sup>21</sup> and is seeking to expand the program through streamlined processes and marketing initiatives.<sup>22</sup>

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<sup>19</sup> For more information, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth Ellen Wasem.

<sup>20</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Fiscal Year 2008 Congressional Budget Justifications*.

<sup>21</sup> For additional discussion of the EEV, see CRS Report RL33973, *Unauthorized Employment in the United States: Issues and Options*, by Andorra Bruno, and CRS Report RL33125, *Immigration Legislation and Issues in the 109th Congress*, coordinated by Andorra Bruno.

<sup>22</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Fiscal Year 2008 Congressional Budget Justifications*.

## Immigration Examination Fees

As previously mentioned, USCIS is a fee-reliant agency. The agency generally will charge a user fee for the goods and services it provides.<sup>23</sup> As part of the former Immigration and Naturalization Service (INS), USCIS was directed nearly two decades ago to transform its funding structure with the creation of the Immigration Examinations Fee Account (hereafter referred to as the *exam fee account*)—an account designed to fund the agency’s activities and operations.<sup>24</sup> Although the agency has been appropriated several hundred million dollars in the last decade, these appropriations have largely been directed towards specific projects such as the backlog reduction initiative. The vast majority of the agency’s funding, however, comes from the adjudication fees of immigration benefit applications and petitions. For example, in the FY2008 budget request, the agency requested \$30 million in direct appropriations.<sup>25</sup> The remaining \$2.5 billion of the appropriations requested would be funded from collected fees.<sup>26</sup> Consequently, if the agency is to operate in an efficient manner without the buildup of backlogs, agency funding must be sufficient to cover the overhead and adjudication costs.

### Fee Increase

The fees that fund the adjudication and petition processing at USCIS are deposited into the exam fee account.<sup>27</sup> The newly released fee schedule is based upon the first comprehensive cost estimates of the activities funded by this account since FY1998.<sup>28</sup> GAO released a study in January 2004 that criticized the former

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<sup>23</sup> For further discussion on user fees and budget procedures, see CRS Report RS20439, *User Fees: Applicable Budget Enforcement Procedures*, by Bill Heniff Jr.

<sup>24</sup> P.L. 100-459 §209.

<sup>25</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Fiscal Year 2008 Congressional Budget Justifications*.

<sup>26</sup> *Ibid.*

<sup>27</sup> There are two other fee accounts at USCIS, known as the H-1B Nonimmigrant Petitioner Account and the Fraud Prevention and Detection Account. The funding in these accounts is drawn from separate fees that are statutorily determined (P.L. 106-311 and P.L.109-13, respectively). Furthermore, the former fee funds are required to be paid by employers who participate in the H-1B program. The latter fees are for activities related to detecting and preventing fraud in benefit applications for initial grants of H-1B, H-2B, or L visa classification to foreign nationals. USCIS receives 5% of the H-1B Nonimmigrant Petitioner Account funding and 33% of the Fraud Detection and Prevention Account funding (the remaining portion of these funds are appropriated to other agencies for activities such as worker retraining and fraud prevention). In FY2006, the USCIS shares of funding in these accounts were approximately \$13 million and \$16 million respectively, and these funds combined for roughly 3% of the USCIS budget. (U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Fiscal Year 2008 Congressional Budget Justifications*)

<sup>28</sup> U.S. Department of Homeland Security, “U.S. Citizenship and Immigration Services, Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee (continued...) ”

USCIS fee schedule for being “outdated” and not reflecting increased costs of additional processing actions put into effect after the fee schedule.<sup>29</sup> Subsequently, USCIS performed the recommended comprehensive fee study. The outcome of the most recent cost assessment was that the previous fees did “not reflect the current processes or recover the full cost of services that should be provided.”<sup>30</sup> In response, the new petition and fee schedule will raise the fee average by \$174, from an average fee of \$264 to \$438.<sup>31</sup>

**Notable Fee Increases.** As the fee schedule shows in **Appendix A**, although numerous forms will have an upward fee adjustment, there are four different forms that will result in fee increases of more than \$500: I-485, I-526, I-698, and I-829. Forms I-526 and I-829 applications are for the “initial application of an alien entrepreneur” and the “removal of conditional status on an alien entrepreneur’s legal permanent residence (LPR) classification,” respectively. These immigrants must provide \$1 million to invest in a U.S.-based enterprise (\$500,000 for targeted areas) to qualify for entry as an alien entrepreneur.<sup>32</sup> Form I-698 is a petition to adjust from temporary to permanent status. All three of these forms are relatively low volume petitions. As **Appendix A** shows, these three forms combined for a total volume of 1,519 petitions in FY2006, or less than one tenth of 1% of the total workload volume.

Critics of the fee schedule have reacted to the fee increase, most frequently with respect to adjust status or register as a permanent resident (Form I-485).<sup>33</sup> This form is required by all foreign nationals applying for LPR status and experienced a volume of 606,425 applications in FY2006. The application fee is scheduled to increase from \$325 to \$930, an increase of \$605 or 186%.<sup>34</sup> Critics have argued that this fee

<sup>28</sup> (...continued)

Schedule; Proposed Rule,” *Federal Register*, vol. 72, no. 21 (February 1, 2007), p. 4892. (Hereafter, 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.”)

<sup>29</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

<sup>30</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,” p. 4888.

<sup>31</sup> *Ibid.*

<sup>32</sup> For additional information on alien entrepreneurs, see CRS Report RL33844, *Foreign Investor Visas: Policies and Issues*, by Chad C. Haddal.

<sup>33</sup> Letter from American Immigration Lawyers Association, to the Director of the Regulatory Management Division, USCIS, April 1, 2007, at [http://www.bibdaily.com/pdfs/AILA%20fee%20comment%204-1-07.pdf].

<sup>34</sup> Previously, all individuals ages 14-79 were required to pay the \$325 I-485 application fee and a \$70 biometrics fee. For individuals under the age of 14, the I-485 fee was \$225 with no biometrics fee. Individuals over the age of 79 paid the full I-485 cost but were not required to pay a biometrics fee. Under the new schedule, children under age 14 applying (continued...)

increase places a significant burden on lower income families who must pay this fee for each family member. USCIS has responded to these criticisms by noting that despite the significant increase, applicants who file to adjust status would no longer be charged for interim benefits, including applications for travel documents and employment authorization. For applicants with interim benefits, USCIS estimates that the multi-year cost for an adjustment of status to permanent resident is approximately \$800, thus accounting for most of the fee.<sup>35</sup> Critics, however, have noted that the new fee would also be charged to individuals who do not seek interim benefits, such as juvenile family members.<sup>36</sup>

**Projected Workload.** Despite the significant fee increase, USCIS projects a reduced workload volume for FY2008 and FY2009 (hereafter FY2008/09).<sup>37</sup> Much of this decrease comes from an assumption that temporary protected status (TPS) will not continue for individuals of certain nationalities.<sup>38</sup> The result of this assumption is a projected decrease of 304,086 applications from FY2006 levels in both I-821 (application for temporary protected status) and I-765 applications (application for employment authorization). In total, the workload volume for USCIS is projected to decrease by 414,317 applications or 7%, from 5,991,362 to 5,577,045. Furthermore, according to USCIS, the fee paying volume of the total workload is projected to decrease by 960,204 applications or 17%, from 5,702,571 to 4,742,367. The discrepancy between the workload volume and fee-paying reductions is partly due to the absorption of interim benefit applications for work and travel authorization into the adjustment of status application.<sup>39</sup>

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<sup>34</sup> (...continued)

with at least one parent will have to pay \$600, while those over the age of 79 will have to pay \$930. Neither children under age 14 or adults over the age of 79 will be required to pay the biometrics fee.

<sup>35</sup> USCIS Director Emilio T. Gonzalez stated at a hearing that the average adult Form I-485 applicant seeks interim benefits twice while his or her application is being adjudicated. (Testimony of USCIS Director Emilio T. Gonzalez, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Proposed Immigration Fee Increase*, 110<sup>th</sup> Congress, 1<sup>st</sup> sess., February 14, 2007)

<sup>36</sup> Statements by U.S. Representatives Luis Gutierrez, Artur Davis, and Keith Ellison in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Proposed Immigration Fee Increase*, 110<sup>th</sup> Congress, 1<sup>st</sup> sess., February 14, 2007.

<sup>37</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," p. 4903.

<sup>38</sup> *Ibid.*

<sup>39</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," p. 4903.

## Background

Since the passage of the Immigration and Nationality Act of 1952 (INA),<sup>40</sup> immigration statutes have prescribed a number of fees for certain government services. Furthermore, under a general “user” statute in Title V of the Independent Offices Appropriations Act of 1952,<sup>41</sup> government agencies were authorized to charge fees for services they performed. Legislation in 1968 removed the enumeration of statutory fees under the INA,<sup>42</sup> and subsequently immigration fees were prescribed in regulations under the authorization of the latter “user” statute.<sup>43</sup>

Following the 1968 legislation, the INS continued to periodically adjust fees as it deemed necessary.<sup>44</sup> However, more concerted efforts towards making the adjudication functions of the INS more fee-reliant began during the second term of the Reagan Administration. At the same time that Congress passed the Immigration Reform and Control Act of 1986 (IRCA),<sup>45</sup> which included a legalization program for certain unlawfully present aliens, the INS decreased fees for stays of deportation,<sup>46</sup> but increased the fees 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>47</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 that the charge was necessary to ensure that the program was self-funding.<sup>48</sup> In 1988,

<sup>40</sup> P.L. 82-414.

<sup>41</sup> P.L. 82-137, 31 USC §9701.

<sup>42</sup> P.L. 90-609.

<sup>43</sup> Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and Procedure*, vol. 1, §3.25[1] (Matthew Bender, Rev. Ed.).

<sup>44</sup> Prior to the recently published proposed fee schedule, USCIS underwent at least 14 revisions of its fee schedule. While some of these 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, and 2005.

<sup>45</sup> P.L. 99-603.

<sup>46</sup> In present terms, a “stay of deportation” is referred to as a “cancellation of removal.” These changes occurred with passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. (P.L. 104-208, 110 Stat. 3009)

<sup>47</sup> In its publication of the new schedule, the INS stated: “The INS and the EOIR 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>48</sup> Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and* (continued...)

Congress mandated the creation of the exam fee account in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1989,<sup>49</sup> such that the funding for the legalization fees could be isolated. These fees would then be available to the INS to recover any costs associated with providing immigration services. The Chief Financial Officers Act of 1990<sup>50</sup> implemented the requirement that a federal agency perform biennial fee reviews to determine the full cost of providing fee-based services.<sup>51</sup>

Following the passage of the Immigration Act of 1990,<sup>52</sup> the INS experienced a period of unprecedented growth in applications and petitions for immigration benefits.<sup>53</sup> This growth was further compounded in 1995 when approximately 3 million individuals who had legalized under IRCA became eligible to naturalize.<sup>54</sup> At roughly the same time, the U.S. Government Accountability Office (GAO) released a report on the financial practices of the INS.<sup>55</sup> It found that the INS had inadequate controls over its fee funding and was vulnerable to fraud and other abuses. GAO also found that despite a large increase in fee funding, the agency suffered from inadequate service processing times and poor leadership and management.<sup>56</sup> The INS responded to this report through centralization initiatives within the bureau and by stating that the new fee schedule of 1991 would reduce the growing applications backlog.<sup>57</sup> Yet, by 1993 concern among observers had grown that the increasing fees were not producing the promised performance results, and

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<sup>48</sup> (...continued)

*Procedure*, vol. 1, §3.25[1] (Matthew Bender, Rev. Ed.).

<sup>49</sup> P.L. 100-459.

<sup>50</sup> P.L. 101-576.

<sup>51</sup> Prior to the review of 2005, the most recent examination fee review had been performed by the Department of Justice for the INS in FY1999.

<sup>52</sup> P.L. 101-649.

<sup>53</sup> For additional analysis of immigration trends and legislation, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

<sup>54</sup> 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 naturalize 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>55</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>56</sup> *Ibid.*

<sup>57</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> sess., March 18, 1991.

some critics asserted that the INS was using a portion of funds from the exam fee account for enforcement activities rather than adjudication services.<sup>58</sup>

Between 1993 and 2001, the INS continued to come under fire for not meeting its service obligations, despite increases in funding from fees and appropriations.<sup>59</sup> Many observers suspected that the INS was using a portion of its immigration benefit collections to fund non-service activities such as border security and interior enforcement. As a result of this suspected interweaving of service and non-service funding, there was a significant push to separate the service and enforcement functions of the INS.<sup>60</sup> These efforts resulted in a series of recommendations made by the U.S. Commission on Immigration Reform (Commission).<sup>61</sup> In its report, the Commission recommended that the INS be dismantled and the adjudication and enforcement functions be divided up between the Department of State (DOS) and DOJ, respectively.<sup>62</sup> The Clinton and Bush Administrations, however, categorically rejected the proposal of INS dismantlement, and instead pushed for internal reforms.<sup>63</sup>

Subsequent to the terrorist attacks of September 11, 2001, Congress decided to formally separate the enforcement and adjudication functions, as well as dissolve the INS. With the passage of The Homeland Security Act of 2002 (HSA),<sup>64</sup> Congress established USCIS, a new immigration adjudication agency, within the newly formed Department of Homeland Security (DHS).<sup>65</sup> INS did attempt to increase its fees in FY2003 to cover certain additional costs related to security checks, but DOJ did not act upon the request due to the upcoming transition of immigration functions from

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<sup>58</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> sess., March 30, 1993.

<sup>59</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)

<sup>60</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>61</sup> U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigration Policy*, report to Congress, Executive Summary, September 1997.

<sup>62</sup> *Ibid.*, pp. XL-LVIII.

<sup>63</sup> CRS Report RL30257, *Proposals to Restructure the Immigration and Naturalization Service*, by William J. Krouse, available upon request.

<sup>64</sup> P.L. 107-296.

<sup>65</sup> 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, and CRS Report RL33319, *Toward More Effective Immigration Policies: Selected Organizational Issues*, by Ruth Ellen Wasem.

DOJ to DHS.<sup>66</sup> In the years since the agency was created, USCIS has been largely dependent upon fees to fund its services, with direct appropriations being provided mainly for temporary special projects such as the backlog reduction initiative.

## GAO's Recent Investigations

The HSA required that GAO report on whether USCIS would be likely to derive sufficient funds from fees to carry out its functions without directly appropriated funds.<sup>67</sup> The HSA specified that funding for USCIS services would come directly from fees, and that these fees should be sufficient to fully cover the cost of the agency's services.<sup>68</sup> As a result, GAO released a report on fee-based funding and the processing costs of USCIS services for FY2001 through FY2003.<sup>69</sup>

The principal finding of GAO's investigation was that USCIS fees were insufficient to cover the services' entire operation. GAO determined that the costs were not fully covered by fees because the fee schedule was based upon an outdated fee study, and in the interim additional processing requirements and costs had developed. According to GAO's cost analysis, the three year total for FY2001 through FY2003 showed that \$458 million, or approximately 11.4% of total operating costs were not covered by fee collections.<sup>70</sup> During the same period, Congress provided an annual direct appropriation to INS of which approximately \$441 million was used for administrative and overhead costs.<sup>71</sup>

In addition to USCIS' fee collection shortages, GAO additionally determined that USCIS did not have an effective strategy for reducing processing times to an average of six months,<sup>72</sup> or a strategy for reducing the backlog of pending applications.<sup>73</sup> GAO consequently recommended that USCIS undergo a

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<sup>66</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.

<sup>67</sup> P.L. 107-296, § 477(d)(3).

<sup>68</sup> P.L. 107-296, § 457.

<sup>69</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.

<sup>70</sup> *Ibid.*, p. 13.

<sup>71</sup> *President's Budget Request* for FY2002 through FY2004.

<sup>72</sup> As part of a presidential directive on processing time, the agency has as a goal to reducing the processing time of all immigration benefits to six months or less. (Remarks by the President at INS Naturalization Ceremony (July 10, 2001), at [<http://www.whitehouse.gov/news/releases/2001/07/20010710-1.html>])

<sup>73</sup> The applications backlog was addressed further in a subsequent study by GAO, which found that USCIS had reduced significant portions of its backlog by introducing criteria to redefine "backlogged" applications as "pending." (U.S. Government Accountability Office, *Improvements Needed to Address Backlogs and Ensure Quality of Adjudications*, GAO-06-



comprehensive fee study to determine the cost of processing new immigration applications, and that the agency determine the cost of eliminating the backlog of pending applications. USCIS generally agreed with GAO's recommendations and performed a comprehensive fee study which served as the justification for the new fee schedule.

## Costs and Processing

The cost of USCIS' various activities is unknown. However, according to published data on costs from the initial fee proposal, the majority of the agency's costs come from processing activities. These costs involve the various activities that USCIS conducts in order to adjudicate an application or petition. Processing services therefore accumulate costs in the areas of: informing the public, capturing biometrics, intake operations, conducting interagency border inspection system checks, reviewing records, making determinations, performing fraud detection and prevention, and issuing documents. In recent years, USCIS has come under scrutiny for poorly assessing these costs and the agency has been criticized for what some have deemed as inefficient processing performance. GAO has concluded that this processing under-performance is linked directly to the agency's insufficient recovery of its costs. USCIS has accepted GAO's conclusions and has been actively engaged in obtaining an accurate assessment of its costs—a process from which the proposed fees stem.

CRS conducted its own analysis of the data released by USCIS in order to illuminate the cost claims associated with immigration benefits being made by the agency. This analysis is included in the sections below on costs, funding, and historical workloads. Because most of the data which the analysis is based reflects FY2006 and projected figures for FY2008 and FY2009, the conclusions drawn are only applicable to the current and forthcoming financial situation of USCIS, except where otherwise noted.

### Variance in Processing Costs

One of the primary adjudication interests for many observers is the cause for the wide variance in the processing costs of different immigration benefit applications. USCIS has stated that the costs and new fee increases are related to the amount of processing time<sup>74</sup> involved for each application.<sup>75</sup> CRS analysis of FY2006 data

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<sup>73</sup> (...continued)  
20, November 2005.

<sup>74</sup> There are as of February 2007 four immigration benefit applications that take over 20 months for USCIS to process: Form I-695, Form I-698, Form I-829, and Form N-300. As shown in **Appendix B**, these forms currently have processing times of 23, 27, 39, and 24 months, respectively. Despite the long processing times and significant deviation from the President's processing time goals, these applications constitute a relatively small portion of the actual workload. Cumulatively, the FY2006 workload of applications with processing times of over 20 months was 1,039, which represents less than one tenth of 1% percent of (continued...)

published by USCIS<sup>76</sup> indicates that as processing time increases, the costs tend to increase as well.<sup>77</sup> Moreover, analysis indicates that the new fees also tend to reflect the current processing time involved across all categories of immigration benefits. Thus, the new fees will statistically constitute an improvement over the previous fees, since there is virtually no relationship between the previous fee and processing time.<sup>78</sup>

In addition to the relationship of fees to processing time, USCIS has asserted that the costs (and consequently the proposed fees) tend to be inversely related to the volume of applications received for a given immigration benefit.<sup>79</sup> Based upon application volumes for FY2006, this assertion only results in a strong relationship for the lowest volume applications such as Forms I-695, I-829, and N-300. Yet, when correlating the current workload to total costs and proposed fees, the analysis showed that only a weak, inverse relationship existed.<sup>80</sup> Furthermore, the same data show that there is almost no relationship between the projected workload to the proposed fee.<sup>81</sup> Thus, while there is support for the relationship of new fees to processing time, the evidence supporting the relationship of new fees to immigration benefit workloads is significantly weaker. In other words, the data that USCIS provided do not support the asserted relationship of fees to processing time.

**Additional Cost Reductions.** In addition to the increase in fees, USCIS projects that some costs will be recovered through future reductions in workload. Although such reductions do not reduce costs on a per application basis, they do contribute to a reduction in the overall agency costs. For example, one of the more significant reductions in activity costs comes from the assumption that temporary

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<sup>74</sup> (...continued)

the FY2006 total workload of 5,991,362. Furthermore, based upon the benefit forms in question, these applicants are unlikely to face immediate removal, be in violation of status due to the application being pending, or otherwise have to apply for continuing benefits.

<sup>75</sup> Testimony of USCIS Chief Financial Officer Rendell Jones, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, 110<sup>th</sup> Congress, 1<sup>st</sup> sess., February 14, 2007).

<sup>76</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," pp. 4888-4915.

<sup>77</sup> Analysis of the total cost to processing time show a correlation score of 0.67, which is both strong and positive. The correlation score between the proposed fee and processing time was 0.62.

<sup>78</sup> These scores constitute significant improvements over the relationship of the previous fee to processing time, which with a score of -0.07 indicates virtually no relationship.

<sup>79</sup> Testimony of USCIS Chief Financial Officer Rendell Jones, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., February 14, 2007.

<sup>80</sup> The correlation score of -0.28 indicates that while the relationship did exist it was weak and inverse in nature.

<sup>81</sup> Correlation analysis of the projected workload to the new fee returned a correlation score of -0.11.

protected status for nationals from certain Central American countries will not continue. Protections under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA)<sup>82</sup> are assumed not to be renewed in the projected workload, and the combined effect of reduced volumes of Temporary Protected Status applications (Form I-821) and employment authorizations (Form I-765) is a projected decrease of 304,086 applications.<sup>83</sup> Additionally, the workload volume would also be reduced for Form I-881, which pertains to the suspension of deportation or application of special rule under NACARA §203.<sup>84</sup>

## Funding and Appropriations<sup>85</sup>

In the push to make USCIS an entirely fee-based agency, USCIS has requested and Congress has tended to appropriate decreasing direct appropriations for USCIS activities. These appropriations are depicted in **Figure 1** below. The President's FY2008 budget request proposes a level of direct appropriations that is 88% lower than that of FY2003 (the year USCIS was created). The \$923 million in total direct appropriations during this time period (plus an additional \$24 million transferred to other accounts) have largely been dedicated towards backlog reductions and other special USCIS projects, according to USCIS officials. Since FY2003, approximately \$414 million of these discretionary funds have been used specifically for the backlog reduction initiative. Furthermore, **Figure 1** demonstrates that while the proportion of discretionary appropriations to the total appropriated amount has decreased, the mandatory appropriations from fee-based collections has increased. In FY2003, of the \$1.4 billion appropriation to USCIS, approximately \$1.2 billion or 84% were mandatory appropriations from fee-based collections. By FY2007, this same proportion had increased to \$1.8 billion or 91% of the agency's appropriations. In the FY2008 budget request for \$2.5 billion, 99% of the funds are proposed to be fee-based collections. The requested amounts for FY2008 includes the new USCIS fee increases.

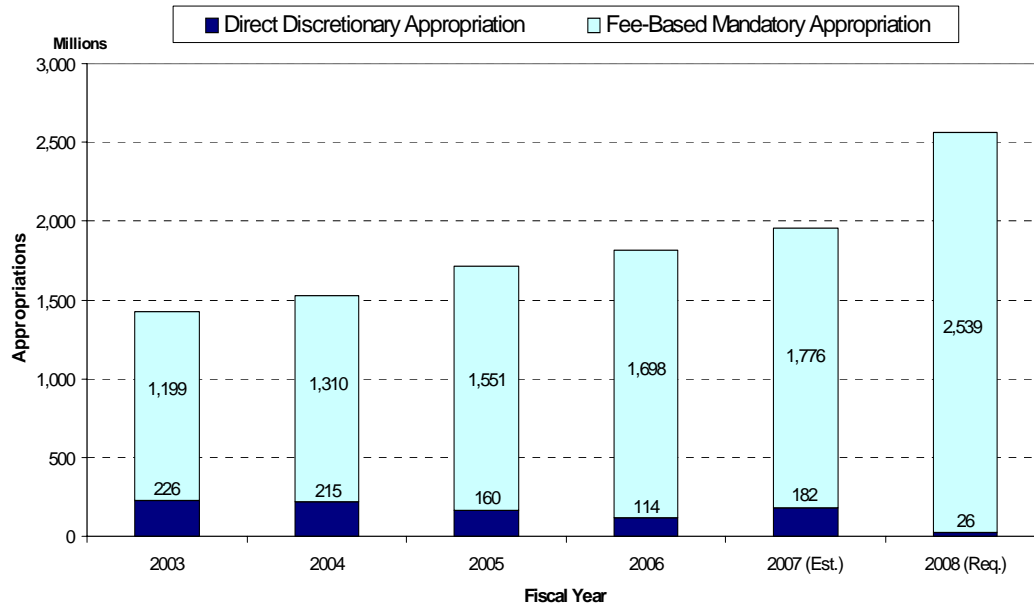
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<sup>82</sup> P.L. 105-100, title II. For additional discussion, see CRS Report 98-3, *The Nicaraguan Adjustment and Central American Relief Act: Hardship Relief and Long-Term Illegal Aliens*, by Larry M. Eig. The report is available from the author.

<sup>83</sup> U.S. Citizenship and Immigration Services, "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule; Proposed Rule," p. 4903.

<sup>84</sup> According to the DHS Office of Immigration Statistics' *Immigration Monthly Statistical Report: FY2005*, 79,251 cases, or roughly 78% of the pending asylum application total, were due to NACARA or the Haitian Refugee Immigration Fairness Act (HRIFA) of 1998 (P.L. 105-277, title IX).

<sup>85</sup> The calculations performed by CRS in this section are based upon the initial fee proposal, and not on the final rule. The only fee difference between these two publications is the adjustment to Form I-485. The fee proposal called for a fee of \$905, while the final fee scheduled adjusted the fee to \$930 for adults, and \$600 for children under age 14 applying with at least one parent. CRS assumes in its analysis that this change will have little impact on the overall revenues of USCIS.

**Figure 1. USCIS Appropriations by Type, FY2003-FY2008**

**Source:** CRS presentation of data from the President’s Budget Request for FY2005 through FY2008.

**Note:** The numbers used for FY2003-FY2006 are actual figures. The amount for FY2007 is estimated. Appropriated amounts for FY2008 reflect the requested funds. The total requested amount for FY2008 was \$30 million, of which \$4 million would be transferred to other accounts. FY2004 appropriations do not reflect an additional \$20 million in discretionary appropriations funds that were transferred to other accounts.

**Projected Funding.** In terms of the projected funding of USCIS from fee-based collections, the proposed funding based on fee-paying volumes would have decreased under the previous fee structure. Due to various factors such as the removal of temporary protected status from NACARA eligible persons, USCIS forecasts a decrease in the fee-paying volume of 17% from approximately 5.7 million to 4.7 million fee-paying applicants.<sup>86</sup> As shown in **Table 1** below, funding from applications scheduled for fee increases were approximately \$1.44 billion. Based upon the projected volumes of fee-paying applicants *under the previous fee structure*, the projected fee funding for FY2008/09 would have totaled \$1.25 billion, a reduction from the FY2006 fee funding of \$188 million or 13.1%. By contrast, this same projected volume *under the scheduled new fee structure* would generate projected funding of \$2.33 billion, representing an increase of 62.1% over the FY2006 fee funding. Consequently, the funding differences between the current and new fees under the projected volumes are \$1.08 billion, with the new fees generating 86.5% more funding in FY2008/09 than the previous fees would.

<sup>86</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,” pp. 4888-4915.

**Table 1. Costs and Funding from Actual Fee-Paying Benefit Seekers for FY2006 and Projected Fee-Paying Benefit Seekers for FY2008/09**

Calculation	Fee Funding (in Millions)	Change from FY2006	Processing Activity Cost (in Millions)	Change from FY2006
<i>Funding from FY2006 fee-paying volumes with previous fees</i>	\$1,438	N/A	\$2,259	N/A
<i>Funding from projected fee-paying volumes for FY2008/09 with scheduled new fees</i>	\$2,331	62.1%	\$1,983	-12.2%
<i>Funding from projected fee-paying volumes for FY2008/09 with previous fees</i>	\$1,250	-13.1%	\$1,983	-12.2%

**Source:** CRS analysis of USCIS data. Data is available in 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 (Feb. 1, 2007), pp. 4888-4915.

**Note:** Projected funding in the table do not include fees submitted to the H-1B Nonimmigrant Account or the Fraud Prevention and Detection Account, nor do they include premium processing fees collected. The FY2006 processing activity cost does not include the fee waiver and exemption costs of \$150 million or the asylum and refugee costs of \$191 million. For FY2008/09, USCIS expects these fee waiver/exemption costs and asylum/refugees costs to account for the difference between fee funding and processing activity cost. Thus, these programs and operations are expected to cost \$348 million. Differences between the CRS reported figures and those provided by USCIS may be due to rounding and the fact that CRS figures do not account for inflation. CRS' numbers are only approximations.

An additional finding in **Table 1** shows that based upon its own cost estimates USCIS has recently collected funding that is significantly below its processing costs. According to the USCIS cost estimates, processing activity costs for FY2008/09 would be approximately \$1.98 billion given the projected fee-paying volumes. With the proposed budget funding, fee funding would completely recover processing costs in this time period. The projected processing activity costs for FY2008/09 would be a 12.2% reduction from the FY2006 level of roughly \$2.26 billion. Furthermore, the projected financial situation for FY2008/09 constitutes an improved financial profile for the agency as compared to FY2006. In FY2006, only 63.6% of processing activity costs were recovered from fee funding, while under the scheduled new fee structure the fee collections should exceed processing cost by almost \$350 million. Thus, analysis of the numbers shows that in order to recover activity processing costs additional funds to previous fees (either through additional appropriations or fee increases) would be needed.

## Historical Perspectives

Congress has been concerned for many years about the immigration petition processing difficulties dating back to the INS. As such, some Members question whether the scheduled new fees will remedy the processing ills that have historically

plagued the agency. In light of these historical difficulties there are two concerns tied to the proposed fee structure: (1) the effect of previous fee increases on workloads (also known as the elasticity of demand),<sup>87</sup> and (2) the general trends of the USCIS workload over time. The analysis below of each of these factors helps illuminate the potential impact that a fee increase may produce by illustrating the effects of recent fee increases.

## Previous Fee Increases

According to historical fee schedules presented by USCIS, the agency has undergone two larger upward adjustments of its most common fees (see **Table 2**) in the past decade, in FY1998 and FY2004. Each of these adjustments was based upon the cost reviews implemented in FY1998.<sup>88</sup> Although other upward adjustments to the fee have occurred in the last eight years, they have generally reflected inflation and thus constituted minor increases in fees.<sup>89</sup> The fee adjustments of FY1998 and FY2004 were more significant and thus warrant further examination.

Subsequent to the fee review implementation of FY1998, the immigration benefits workload increased by roughly 62%, from 4.5 million in FY1998 to 7.3 million in FY2001.<sup>90</sup> Furthermore, the fee increase of FY2004 resulted in a workload increase of 14% over the subsequent two years from 5.3 million in FY2004 to 6 million initial receipts in FY2006. However, between FY1998 and FY2002, when the fee increases were significantly smaller, the number of initial receipts for immigration benefits initially increased to a peak level of 7.3 million in FY2001, before decreasing to a level of 6.3 million in FY2002. Thus, the data revealed a direct relationship between USCIS workload and the fees for the five most common immigration benefit applications, as opposed to the expected inverse relationship of fees and workload moving in opposite directions.

In order to compare application fees, CRS looked at fees for the five applications that had more than 400,000 initial receipts in FY2006.<sup>91</sup> These five

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<sup>87</sup> The elasticity of price on demand is a concept within economic theory that measures the responsiveness of a change in demand for a good or service to a change in price. Using this measure, economists may determine how changing the price of a good or service changes the demand for that good. Goods and services whose percentage change in demand for quantity of the good are *greater* than the percentage change in the price of that good are said to be “elastic.” Alternatively, goods and services whose percentage change in demand for quantity of the good are *less* than the percentage change in the price of that good are said to be “inelastic.”

<sup>88</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,” pp. 4891-4892.

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*, pp. 4888-4915.

<sup>91</sup> The number 400,000 was chosen on the basis that it was a seemingly logical cut-point in the projected workloads for FY2008/09. For the projected workloads, 400,000 applications (continued...)

forms (which are described in **Table 2**) were: Form I-90 (replace permanent resident card), Form I-129 (petition for nonimmigrant worker), Form I-130 (petition for alien relative), Form I-485 (adjustment of status), and Form I-765 (employment authorization). Using the assumption that the demand for these applications has been historically strong, CRS asserted that increases in these fees would be a reasonable indicator for the potential impact (if any) of fee increases on overall demand for immigration benefits. In FY2006, these five applications accounted for 3.96 million applications, or approximately 66% of the fee-based applications processed by USCIS, not including fees for capturing biometric information.<sup>92</sup> Thus, even when accounting for concurrent applications, the fee changes on these particular forms are likely to affect a significant proportion of the applicants.

**Table 2. Selected Historical Immigration Benefit Application Fees**

Form	FY1994 (in dollars)	FY1998 (in dollars)	Change	FY2002 (in dollars)	FY2004 (in dollars)	Change
I-90	\$75	\$110	47%	\$130	\$185	42%
I-129	\$75	\$110	47%	\$130	\$185	42%
I-130	\$80	\$110	38%	\$130	\$185	42%
I-485	\$130	\$220	69%	\$255	\$315	24%
I-765	\$70	\$100	43%	\$120	\$175	46%
<b>Average</b>	<b>\$86</b>	<b>\$130</b>	<b>51%</b>	<b>\$153</b>	<b>\$209</b>	<b>37%</b>

**Source:** CRS presentation of USCIS data. Data is available in 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 (Feb.1, 2007), pp. 4888-4915.

**Note:** Form I-90 is the Application to Replace Permanent Resident Card; Form I-129 is the Petition for a Nonimmigrant Worker; Form I-130 is the Petition for Alien Relative; Form I-485 is the Application to Register Permanent Residence or Adjust Status; and Form I-765 is the Application for Employment Authorization.

As shown in **Table 2**, Forms I-90, I-129, and I-130 were each set at \$110 in FY1998, which was an increase of approximately 38-47% from FY2004 for these three applications. In FY2004, these three forms experienced fee increases of 42% to \$185 from the FY2002 level of \$130. As for Form I-485, its fee increased by 69% in FY1998 when compared to FY2004, from \$130 to \$220, and was later adjusted upward by 24% from \$255 in FY2002 to \$315 in FY2004. Form I-765 was adjusted upward by 43% in FY1998 to \$100 from its FY1994 level of \$70, and later increased by 46% from \$120 in FY2002 to \$175 in FY2004. On average, the fees of these five

<sup>91</sup> (...continued)

represents approximately 7% of the fee-paying application total, not including biometrics.

<sup>92</sup> Capturing and processing biometric information is not included in the workload totals presented in the analysis of this report, except where specifically noted.

most common forms were increased by 51% between FY1994 and FY1998, while the time span of FY2002 to FY2004 showed an average increase of 37%.

Based upon the patterns of initial receipts by USCIS, the impact of past fee increases on demand for immigration benefits seems negligible. Despite the increases in fees, the application rate for immigration benefits remained in the millions. That is not to say that fee increases do not affect the disposable income of the individual petitioners or does not represent a potential financial hardship for some applicants. Rather, the overall demand for immigration benefits tends to be inelastic. In other words, fee increases have little or no effect on demand. A possible interpretation of the pattern of initial receipts is that the number of initial receipts is more responsive to external factors, such as terrorist attacks (e.g., September 11, 2001) or natural disasters (e.g., Hurricane Mitch striking Honduras).<sup>93</sup> Depending upon the external factor, an event may cause demand for immigration benefits to increase or decrease. Consequently, the variation in the upward trends in immigration benefit applications are a complex interaction of push-pull factors of potential immigrants with international events that affect the actual or perceived supply of immigration benefits available.

## Historical Workloads

In recent years, USCIS has experienced a varying workload on an annual basis. **Figure 2** depicts the USCIS workload in terms of initial receipts, pending, and completed applications.<sup>94</sup> (The raw data is presented in **Appendix C**). The figure further distinguishes the data between naturalizations (Form N-400) and all other immigration benefit applications. As the initial receipts of *all* benefit applications demonstrates, the number of initial receipts of applications showed an upward trend between FY1999 and FY2001. Subsequent to this time period, the total number of receipts has remained below the FY2001 peak. The completed applications totals steadily increased between FY1999 and FY2002. In FY2003 this total declined by 13%, but began to increase again in FY2004. In comparison to the initial receipts and completed applications, the number of pending applications increased markedly from FY1999 to FY2003. In this time period, the number of pending applications increased by 170%, before dropping by 41% between FY2003 and FY2005.

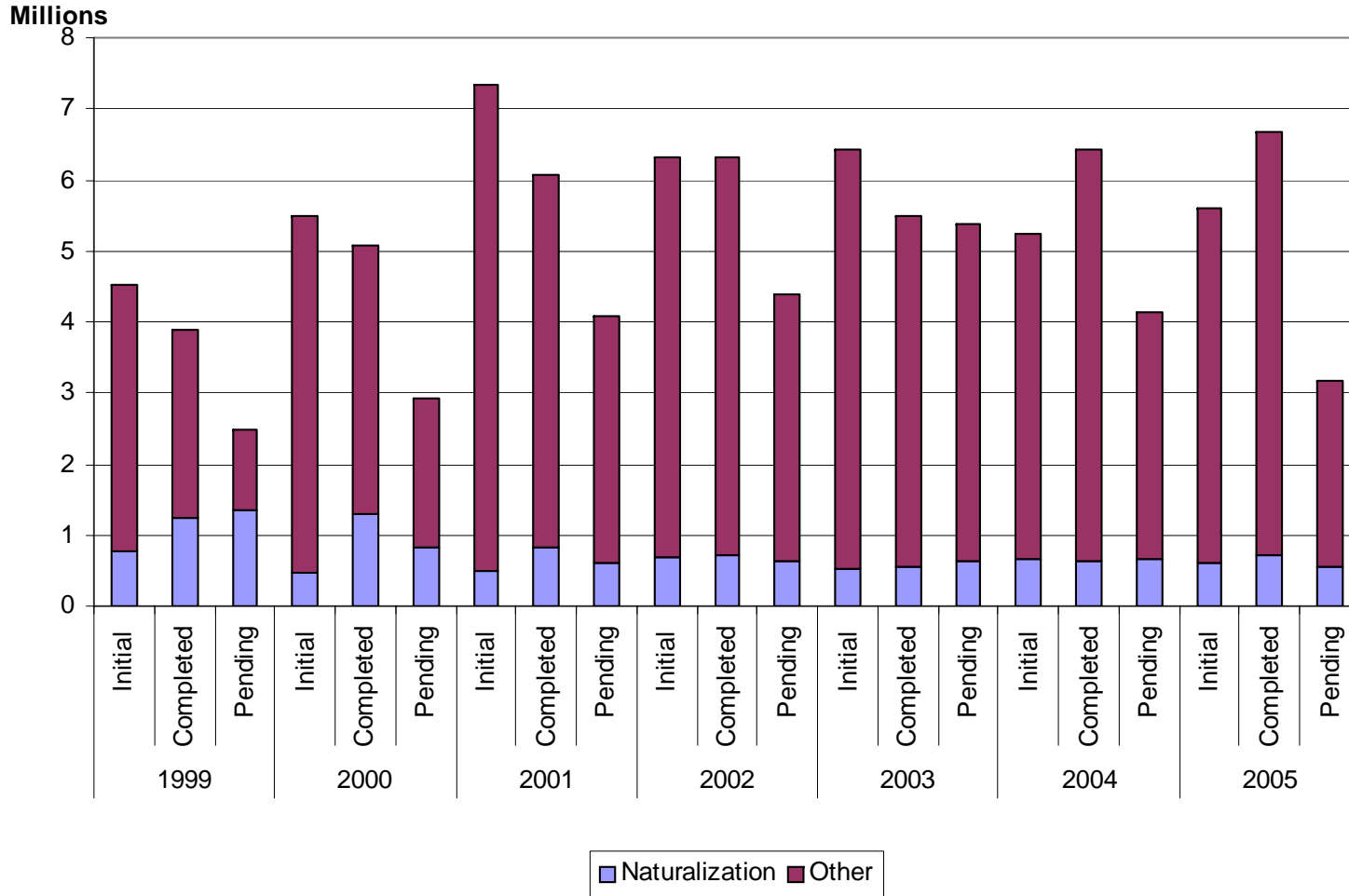
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<sup>93</sup> Historical data show that the application rate for immigration benefits dropped immediately following the terrorists attacks of September 11, 2001. Conversely, subsequent to the destruction caused by Hurricane Mitch in the Honduras, applications for immigration benefits for Honduran nationals increased.

<sup>94</sup> The category of ‘initial receipts’ are those applications which are received in a given fiscal year. Pending applications includes all applications pending at USCIS, both from the current fiscal year and previous fiscal year. Completed applications consists of the total of those applications that are approved and denied in the given fiscal year. Since not all applications that are received in a given fiscal year are adjudicated in the same fiscal year, there may appear to be some numerical discrepancy across categories in certain fiscal years. These discrepancies are generally attributable to the “rolling over” of applications from one fiscal year to the next.



**Figure 2. Receipts, Completions and Pending Applications for All Applications and N-400 Naturalization, FY1999-FY2005**



**Source:** CRS Presentation of DHS Office of Immigration Statistics data.

**Note:** The category of “completed” applications is compiled from DHS data on “approved” and “denied” applications.

Unlike the pattern for the cumulative benefit application total in **Figure 2**, the totals for N-400 Naturalization applications show a distinct convergence pattern across initial receipts, completions and pending applications. Prior to FY2002, the number of initial receipts and pending applications experienced significant declines, while the number of completions increased. However, beginning in FY2002, these three categories converged relative to previous years. This pattern sustained itself through FY2005. Consequently, USCIS experienced a minor workload decrease in the number of naturalization applications between FY2002 and FY2005. This stagnation in the pending applications occurred despite the decrease in the cumulative reduction of immigration benefits applications pending. Thus, it is unclear whether the convergence pattern for N-400 applications was a result of an agency emphasis on processing other pending benefit applications, or if the convergence occurred due to resource shortages or factors external to the agency.

## **Congressional Concerns, Legislative Developments, and Philosophical Tensions**

The issue of fee increases for immigration benefits has sparked a lively debate between proponents and critics about the proper course of action for Congress. Agency cost advocates argue in favor of a laissez-faire approach, contending that it has been Congress' intent for USCIS to recuperate all agency costs through fees and become fully fee-reliant.<sup>95</sup> Service cost proponents, however, are worried about the level of the fee increase and that wealth may become a *de facto* driving element of immigration policy.<sup>96</sup> These same critics have also stated concerns over the potentially detrimental effects to congressional oversight of executive agencies that receive no direct congressional appropriations. An added layer of complexity develops when these opposing views are factored together with (1) the contextual relationship of fees to income levels, (2) the linkages between legal adjudication and enforcement activities, and (3) the potential for comprehensive immigration reform. Thus, the cleavage of agency cost recovery versus service cost recovery has sparked a number of related issues for Congress.

### **Recovering Service Costs or Recovering Agency Costs?**

The fundamental division running through the USCIS fee debate is the issue of which costs USCIS should recover. While there is general agreement that the agency should recover the direct costs of the adjudication services it provides, there is disagreement over whether this cost recovery should extend to indirect costs as well. Since it was established as its own agency in 2003, USCIS has moved towards recouping an increasing proportion of its costs through fees paid for applications and

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<sup>95</sup> Statements by U.S. House Representatives Steve King and Daniel Lungren in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Proposed Immigration Fee Increase*, 110<sup>th</sup> Congress, 1<sup>st</sup> sess., February 14, 2007.

<sup>96</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.

petitions. In the FY2008 budget request, approximately 99% of the budget funding is proposed to stem from fee-based collections, making USCIS a fee-reliant agency.<sup>97</sup> What has concerned some observers is that under the current budgetary system applicants allegedly bear the cost of other agency functions in addition to those being directly sought.

User fees are intended to represent a payment for a benefit that is provided, and is frequently related to the cost of the service that is being provided. In some cases, additional collections are permitted to recover certain specified costs, such as the costs of processing refugees and asylees who do not pay their own fees. However, for many service cost advocates, the trend towards recovering full agency cost places too much of a financial burden on the applicant.<sup>98</sup> Moreover, service cost advocates have argued that making USCIS more dependent upon direct appropriations from Congress would increase the congressional oversight functions and provide an additional check on an executive agency.<sup>99</sup> These critics believe that the push for making the agency entirely fee-funded has resulted in a backlog buildup and promoted changes to the definition of the agency's application backlog.<sup>100</sup> Service cost advocates believe that more rigorous oversight by Congress of directly appropriated funds would both protect the interests of applicants for immigration benefits and provide more transparency and accountability in the agency.<sup>101</sup>

## Fee Waivers

Under regulations, individuals applying for certain benefits may also apply for a fee waiver if that applicant can demonstrate an inability to pay.<sup>102</sup> The criteria for demonstrating an inability to pay are general, as it is USCIS policy to treat each case as unique and judge each case upon its merits.<sup>103</sup> For example, while it is desirable that an individual provides documentation to demonstrate financial hardship, in some cases detailed testimony may be deemed sufficient by a USCIS supervising officer

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<sup>97</sup> Reports by the Congressional Budget Office and GAO conducted during the Clinton Administration found that collections of user fees had increased during the 1970s and 1980s. GAO studied 27 fee-reliant agencies and found that fees had also increased by approximately 27% between FY1991 and FY1996. (U.S. Congressional Budget Office, *The Growth of Federal User Charges: An Update*, October 1999; U.S. Government Accountability Office, *Federal User Fees: Budgetary Treatment, Status, and Emerging Management Issues*, AIMD-98-11, December 1997)

<sup>98</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>99</sup> Fawn Johnson, "Democrats Aiming to Roll Back Planned Hike in Citizenship Fee," *CongressDaily*, March 7, 2007, at [<http://www.govexec.com/dailyfed/0307/030707cdpm2.htm>].

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> 8 CFR 103.7(c).

<sup>103</sup> Memorandum, William R. Yates, "Field Guidance to Granting Fee Waivers Pursuant to 8 CFR 103.7(c)," March 4, 2004, at [<http://www.uscis.gov/files/article/FeeWaiverGd3404.pdf>].

to qualify the individual for a fee waiver.<sup>104</sup> More commonly, individuals demonstrate eligibility for a fee waiver by providing documentation such as evidence that the individual has qualified for or received a “federal means-tested public benefit” within the last 180 days or tax documents showing the individual’s income was at or below the poverty level.<sup>105</sup> Once the USCIS officer with jurisdiction over the request is satisfied that the individual is unable to pay the fee, a fee waiver may be granted.

The new fee schedule will remove the fee waivers for several benefit applications and petitions.<sup>106</sup> USCIS has justified this proposal on the basis that an inability to pay would invoke the Immigration and Nationality Act’s (INA) §212(a)(4), which states that an alien who is likely to become a public charge is inadmissible,<sup>107</sup> and as such would be ineligible for the benefit.<sup>108</sup> However, under the previous fee structure the USCIS’ field guidance memorandum stated that for the fee waiver petitions for Form I-485: “The granting of a fee waiver does not necessarily subject the applicant or petitioner to a public charge liability under other provisions of the INA, such as deportability under §237(a)(5) or inadmissibility under §212(a)(4).”<sup>109</sup> Additionally, this public charge rationale does not apply to U.S. citizens who may be petitioning USCIS on behalf of a relative or fiancé, even though

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<sup>104</sup> The applicant’s affidavit of his or her inability to pay is the only required document.

<sup>105</sup> Additional qualifying documents for fee waivers may include:

- Evidence verifying the applicant’s disability;
- Employment records, including pay stubs, W-2 forms, and tax returns;
- Receipts for essential expenditures, including rent, utility, food, medical expenses, and child care;
- Evidence of applicant’s living arrangements, such as living in a relative’s household or having numerous dependents residing in his or her household; and
- Evidence of essential extraordinary expenditures for the applicant or dependents residing in the United States.

(Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and Procedure*, vol. 1, §3.25[1] (Matthew Bender, Rev. Ed.)). For further information on federal public assistance for noncitizens, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

<sup>106</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,” *Federal Register*, vol. 72, no. 103 (May 30, 2007), pp. 29851–29873.

<sup>107</sup> For further discussion on inadmissibility, see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion and Removal of Aliens*, by Michael John Garcia and Ruth Ellen Wasem.

<sup>108</sup> The forms for which a fee waiver would no longer be available include Form I-90, Form I-485, Form I-751, Form I-765, Form I-817, Form N-300, Form N-336, Form N-400, Form N-470, Form N-565, Form N-600, Form N-600k, and Form I-290B (if related to a motion or appeal on a waiver eligible application). See **Appendix A**.

<sup>109</sup> Memorandum, William R. Yates, “Field Guidance to Granting Fee Waivers Pursuant to 8 CFR 103.7(c),” March 4, 2004, at [<http://www.uscis.gov/files/article/FeeWaiverGd3404.pdf>].

these citizens would also be ineligible for fee waivers.<sup>110</sup> At a congressional hearing on the new fee structure, USCIS representatives testified that across all potential fee waiver categories, 85% of the applicants who applied for a fee waiver based on financial hardship were granted a waiver.<sup>111</sup>

**Asylees and Refugees.** One potential issue with the new fee schedule is that refugees and asylees adjusting their status would be treated differently. As stated in the USCIS final fee schedule, asylees will not be able to seek a fee waiver when applying to adjust status to legal permanent residence on Form I-485. Refugees will not have to pay any fees because they are specifically exempted from adjustment of status fees. While asylees are exempted from paying any fees for their initial asylum application, they must apply for fee waivers to avoid paying to adjust their status or register as permanent residents. The new fee schedule will no longer provide this waiver option. Despite USCIS' claims that aliens that could potentially become a public charge are inadmissible, asylees are exempt from this ground of inadmissibility. Thus, it is unclear from the USCIS' publications what the legal justification is for not allowing asylees to seek fee waivers for I-485. Furthermore, from a policy perspective it is unclear why USCIS is developing disparate fee policies between refugees and asylees on applications for adjusting status and registering permanent residence.

**Reducing Bottlenecks.** By removing several fee waivers, USCIS does not only stand to potentially reduce its costs for internal processing, it also may gain more control over its processing times. Currently, fee waivers are one of four types of applications that must be sent to the Federal Bureau of Investigation (FBI) for background checks through the National Name Check Program (NNCP).<sup>112</sup> This program, which conducts electronic and manual searches of the FBI's Central Records System, has been accused by the USCIS Ombudsman of serving as a bottleneck in the processing of immigration benefits.<sup>113</sup> By eliminating several fee waivers, fewer applications will be subject to the NNCP.

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<sup>110</sup> Immediate relatives of U.S. citizens are not subject to a public charge determination when petitioning.

<sup>111</sup> Testimony of USCIS Chief Financial Officer Rendell Jones, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, 110<sup>th</sup> Congress, 1<sup>st</sup> sess., February 14, 2007).

<sup>112</sup> The other types of applications that require NNCP background checks are asylum, adjustment of status to legal permanent resident, and naturalization. USCIS pays the FBI for NNCP services with a portion of the biometrics fee funding. The NNCP is one of several types of security checks USCIS conducts.

<sup>113</sup> According to the USCIS Ombudsman, processing delays due to FBI name checks were an issue in 15.7% of all written case problems the Ombudsman's office received. The Ombudsman has recommended that USCIS not participate in NNCP because of the costs and inconveniences caused by processing delays. He has additionally suggested that these delays inadvertently increase the risk to national security, since it may extend the time a criminal or terrorist remains in the United States. Moreover, the Ombudsman contends that since the NNCP is only a name check, and not a biometric check, its security value is limited. (U.S. Department of Homeland Security, Citizenship and Immigration Service Ombudsman, *Annual Report 2006*, June 29, 2006, pp. 23-26)

## Fees and Low Income Citizens and Legal Permanent Residents (LPR)

The principal stated concern of the service cost advocates is the effect of these fees on lower income citizens and LPR that are applying for immigration benefits.<sup>114</sup> These opponents of the new fees argue that the new fee schedule will place a disproportionate hardship on citizens and LPR with lesser financial means to seek immigration benefits such as naturalization.<sup>115</sup>

As evidence of the possible disproportionate impact the fee-increase would have, service cost advocates note the absence of any per family cap for immigration benefits. Although the new fee structure has some discounted rates for juveniles under the age of 14, unless a waiver is granted all family members must pay for individual applications for a given benefit. Under the new fee structure there will not be a per family fee cap either, and a number of applications would no longer allow for financial waivers.<sup>116</sup> Service cost advocates have argued that the significant level of the fee increases may force some families to seek benefits incrementally as opposed to as a family unit, and may cause some families to forgo benefits for certain family members all together.<sup>117</sup>

**Public Charges.** To further illustrate the potential impact of fee increases on lower-income families, service cost advocates have cited the effect on a U.S. citizen or LPR seeking to sponsor the admission of family members, but with an income slightly above the public charge level.<sup>118</sup> Under INA §212, an admissions officer may consider an affidavit of support to serve as a sponsor for an immigrant who might be deemed a potential public charge. The statutory requirement for such an affidavit is that the sponsor must maintain the sponsored alien(s) at a level that is not less than 125% of the federal poverty line specified by the Department of Health and Human Services.<sup>119</sup> For a family of four, the 2007 poverty guidelines<sup>120</sup> specifies an income level of \$20,650 as the upper limit of the poverty level for the 48 contiguous states

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<sup>114</sup> Letter from American Immigration Lawyers Association, to the Director of the Regulatory Management Division, USCIS, April 1, 2007, at [<http://www.bibdaily.com/pdfs/AILA%20fee%20comment%204-1-07.pdf>].

<sup>115</sup> *Ibid.*

<sup>116</sup> The proposed fee structure does not mention allowing any discounted rates on applications for juveniles under the age of 14.

<sup>117</sup> Letter from American Immigration Lawyers Association, to the Director of the Regulatory Management Division, USCIS, April 1, 2007, at [<http://www.bibdaily.com/pdfs/AILA%20fee%20comment%204-1-07.pdf>].

<sup>118</sup> Statements by U.S. Representatives Luis Gutierrez, Artur Davis, and Keith Ellison in House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Proposed Immigration Fee Increase*, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., February 14, 2007

<sup>119</sup> INA §213A(a)(1).

<sup>120</sup> U.S. Department of Health and Human Services, "Annual Update of the HHS Poverty Guidelines," *Federal Register*, vol. 72, no. 15, January 24, 2007, pp. 3147–3148.

and the District of Columbia.<sup>121</sup> For such a household, a gross income of \$25,813 would render the U.S. citizen or LPR eligible for sponsorship. Given the scheduled new fee structure, however, if the sponsor wanted to adjust the status of the sponsored aliens, applying for the three sponsored aliens simultaneously would cost a total of between \$2,130–2,790, depending on the age of the dependents, plus fees for biometrics.<sup>122</sup> The removal of fee waivers would place the full financial obligation of these fees upon the applicants and sponsor. Critics thus contend that such high fees could place hardship on immigrants wishing to apply for immigration benefits.

By contrast, agency cost advocates contend that such examples of potential hardships actually serve as a justification for USCIS' proposed removal of numerous fee waivers.<sup>123</sup> They note that under INA §212(a)(4) a person who is likely to become a public charge is inadmissible to the United States.<sup>124</sup> Agency cost advocates thus contend that if an alien applicant requires a fee waiver on the basis of income, that alien is inadmissible to the United States and should be disqualified from receiving such a benefit. Consequently, based upon immigration statutes, agency cost advocates argue that potential financial hardship is not a valid basis for developing a USCIS fee schedule. Furthermore, they contend that the new immigration benefit fees should be viewed in a comparative context, claiming that relative to other advanced industrialized countries the USCIS benefit fees are lower.<sup>125</sup>

**Policy Impact.** Despite the possibility of admitting potential public charges, some opponents of the scheduled new fee increases are concerned about the impact of the fee increase on immigration policy.<sup>126</sup> As one of the principal pillars of U.S.

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<sup>121</sup> The poverty guidelines specify an upper income level of \$25,820 for Alaska, and \$23,750 for Hawaii for a four person household.

<sup>122</sup> The new fee schedule will set the fee for capturing and processing biometrics at \$80. Since children under age 14 and adults over age 79 are exempt from the biometrics requirement, the biometrics fee for a family of four would vary depending upon the ages of the household members. USCIS may also waive the biometric fee on an individual basis. Additionally, children under the age of 14 who are applying with at least one parent will be charged an application fee of \$600.

<sup>123</sup> Statements by U.S. House Representatives Steve King and Daniel Lungren in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Proposed Immigration Fee Increase*, 110<sup>th</sup> Congress, 1<sup>st</sup> sess., February 14, 2007.

<sup>124</sup> As noted earlier, this criterion is not applicable to denying fee waivers to U.S. citizens petitioning on behalf of family members or a fiancé.

<sup>125</sup> Statements by U.S. House Representatives Steve King and Daniel Lungren in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Proposed Immigration Fee Increase*, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., February 14, 2007.

<sup>126</sup> Letter from American Immigration Lawyers Association, to the Director of the Regulatory Management Division, USCIS, April 1, 2007, at

immigration policy, family unification has been central to the INA since its passage in 1952. Some critics of the fee increase are concerned that the size of the fee increase will cause a latent shift in immigration policy, where benefits will in a *de facto* manner be denied to otherwise qualifying aliens on the lower end of the income ladder. These critics believe the new fees may force some families to choose which of its members, if any, should receive benefits, and thereby would run counter to one of the INA pillars. Therefore, some of these critics believe that Congress should provide USCIS with some direct appropriations to avoid the creation of an income-based double standard in the USCIS benefit processing.<sup>127</sup>

## Backlog Reduction

An item that has concerned Congress for a number of years has been USCIS' backlog of unadjudicated applications.<sup>128</sup> The USCIS adjudication process has also been a stated priority of President George W. Bush, who has sought to reduce the application processing time for immigrant benefits to six months or less.<sup>129</sup> Congress has called upon the service to improve its processing time and to eliminate the backlog. To this effect, since FY2002, Congress has appropriated \$574 million towards backlog reduction efforts, including \$494 million in direct appropriations. Although USCIS reports that the backlog has been reduced since Congress began appropriating direct funds for backlog elimination, questions remain concerning whether most of the backlog has been eliminated because of newly provided definitions of what constitutes a backlog. USCIS Director Emilio T. Gonzalez has stated that the current backlog of applications due to factors under the control of USCIS was approximately 65,000.<sup>130</sup> Critics continue to be concerned, however, about the more than 1 million additional applications that have been pending for more than six months that USCIS does not count in its backlog figures, and that the seriousness of the USCIS backlog is masked by changes in the agency's backlog definition.<sup>131</sup>

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<sup>126</sup> (...continued)

[<http://www.bibdaily.com/pdfs/AILA%20fee%20comment%204-1-07.pdf>].

<sup>127</sup> *Ibid.*

<sup>128</sup> Statements by U.S. Representatives Luis Gutierrez, Artur Davis, and Keith Ellison in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., February 14, 2007

<sup>129</sup> Remarks by the President at INS Naturalization Ceremony (July 10, 2001), at [<http://www.whitehouse.gov/news/releases/2001/07/20010710-1.html>].

<sup>130</sup> *Ibid.*

<sup>131</sup> The DHS Inspector General has expressed concern that the changing backlog definitions “will 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 criticized the definition changes, saying that “these definitional changes hide the true problem and the need for change” (U.S. Department of Homeland Security, Citizenship and Immigration Service Ombudsman, (continued...))



**Definition Changes and Measuring the Backlog.** The definition of the “backlog” of applications for immigration benefits has been altered several times since FY2002. Generally, these redefinitions have involved determining that an aspect of the adjudications process lies outside the control of USCIS and thus classifying a case as pending as opposed to backlogged. In some cases, these reclassifications involved delays with background checks conducted by other agencies. Other cases, however, have reclassifications that were due to such factors as the agency awaiting customer information, or in some naturalization cases the applicant still needing to take the oath. Critics contend that these changes in the backlog definition were a significant factor in causing the backlog to decrease<sup>132</sup> from approximately 3.5 million backlogged cases in March 2003 to 914,864 cases at the end of FY2005—a reduction of nearly 2.6 million cases.<sup>133</sup> Notably, as **Figure 3** below shows, over half of the backlog reduction occurred in the time span of June-August of 2004, when the agency twice redefined what constituted a backlog. Thus, while the backlog was reduced by 1.9 million applications in this time period, the number of pending applications increased by almost 1.5 million cases. But because of the multiple definition changes of the backlog, the actual number of backlogged applications is unclear.

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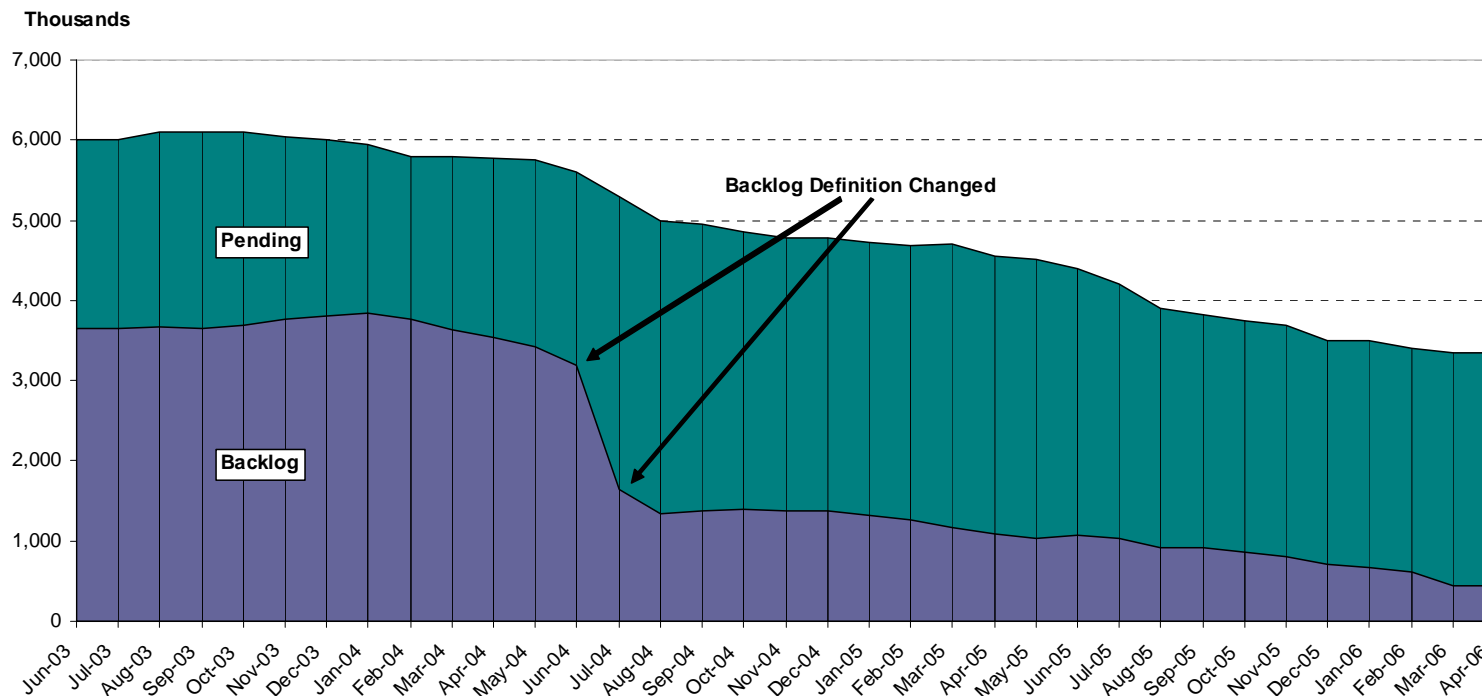
<sup>131</sup> (...continued)

*Annual Report 2006*, June 29, 2006, p. 9).

<sup>132</sup> *Ibid.*

<sup>133</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Backlog Elimination Plan: Fiscal Year 2006, 2<sup>nd</sup> Quarter Update*, September 28, 2006.

**Figure 3. USCIS Pending Forms and Backlog of Forms Eligible for the Backlog Elimination Plan, June 2003-April 2006**



**Source:** CRS presentation of USCIS data presented in U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Backlog Elimination Plan: Fiscal Year 2006, 2<sup>nd</sup> Quarter Update*, September 28, 2006, p. 1.

**Note:** On June 16, 2004, USCIS decided that the backlog calculation would no longer include applications received in the previous six months. In July 2004 the agency also decided not to include cases in the backlog total where benefits were not immediately available for the applicant.

In 2005, GAO released a report on the USCIS backlogs and the reduction strategy that the agency had in place.<sup>134</sup> The report noted the importance many observers have attached to reducing the backlog, as some believe the backlog creates incentives for businesses and individuals to circumvent legal immigration procedures. The report noted that although a number of improvements had been made in the adjudications process, the agency still needed to streamline some of its processes and provide for a better quality assurance program.<sup>135</sup> USCIS reportedly planned to both address the current backlog and prevent future backlogs through improved resource allocation and investments in technological transformation. Yet, as GAO noted, USCIS did not expect these changes to be complete until FY2010.<sup>136</sup>

Subsequent to GAO's backlog report, USCIS has made additional strides to reduce its backlog and increase its processing efficiency.<sup>137</sup> **Appendix B** offers the processing times as of September 30, 2006. According to the published data, there were 20 immigration benefit forms for which the processing time was less than six months, 13 forms with processing times exceeding six months, and two forms for which processing times were not made public. When combined with the workload totals from **Appendix A**, the forms exceeding the six month processing standard combined for a workload volume of 1,519,598, or approximately 25.4% of the FY2006 workload volume.

Despite these improvements in processing times, questions remain about USCIS' current and future handling of the backlogs and whether the proposed fee increase will affect the agency's ability to deal with these backlogs. USCIS claims that the scheduled new fees are more aligned with the agency's adjudication costs,<sup>138</sup> and respond to the criticisms raised by the Government Accountability Office over the USCIS cost structure.<sup>139</sup> Thus, the agency contends that the new fees will put the

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<sup>134</sup> U.S. Government Accountability Office, *Immigration Benefits: Improvements Needed to Address Backlogs and Ensure Quality of Adjudications*, GAO-06-20, November 2005.

<sup>135</sup> One of the criticisms GAO presented was that despite the reduction in pending applications, a majority of the pending applications at the time were for naturalization and adjustment of status. GAO was skeptical that USCIS would be able to reduce the processing time below the President's adjudication target time of six months. However, as in **Appendix B** demonstrates, by January 2007 the average processing times for adjustment of status had been reduced to 7.07 months, while the processing time for naturalization had been reduced to 5.57 months.

<sup>136</sup> U.S. Government Accountability Office, *Immigration Benefits: Improvements Needed to Address Backlogs and Ensure Quality of Adjudications*, GAO-06-20, November 2005, p. 5.

<sup>137</sup> GAO reported that USCIS' strategy for the backlog reduction initiative since FY2002 was to commit approximately 70% of backlog reduction funds to authorizing overtime and employing approximately 1,100 temporary adjudicator staff. (*Ibid*, p.5)

<sup>138</sup> U.S. Citizenship and Immigration Services, "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule; Proposed Rule," pp. 4893-4894.

<sup>139</sup> U.S. Government Accountability Office, *Immigration Application Fees: Current Fees* (continued...)

agency in a better position to prevent future backlogs.<sup>140</sup> Some critics, however, believe that due to the interagency dependence for conducting background checks, USCIS is not necessarily in a position to prevent all future backlogs, even with funding that fully covers the adjudication costs.<sup>141</sup>

## Immigration Adjudication and Enforcement Linkages

Among some service cost advocates, there have been concerns about the potential economic impact and the flow of illegal immigrants the scheduled new fee increase might create. A number of observers have contended that timely and affordable processing of immigration benefits are an essential element for managing the levels of illegal immigrants. These observers contend that slow processing times and higher fees encourage illicit work arrangements and visa overstays, since workers are either priced out of the immigration benefits or placed in limbo by extended waiting periods for USCIS adjudication.<sup>142</sup> In particular, these fees could affect the behavior of workers in low wage sectors of the economy. Additionally, some service cost advocates have been concerned that if these fee changes do price out lower wage workers, then it could adversely affect businesses that depend upon lower cost alien workers.

Contrary to some of these concerns, a statutorily mandated<sup>143</sup> study was conducted by the agency on the impact the fee increase would have on small businesses. Using analysis of a random sample of immigration applications, USCIS determined that all employers in the sample would exhibit an impact on their sales revenue of less than 1%. Additionally, since the study concluded that the average impact on small entities was less than 0.06% of sales revenue, the proposed rule was deemed by USCIS to be economically insignificant.<sup>144</sup> Critics argue that pricing out low wage foreign labor would benefit U.S. citizens by providing employment

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<sup>139</sup> (...continued)

*are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operations*, GAO-04-309R, January 5, 2004.

<sup>140</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," *Federal Register*, vol. 72, no. 103 (May 30, 2007), pp. 29851–29873.

<sup>141</sup> For immigration benefit applications, USCIS submits names to the FBI for checks against the National Name Check Program (NNCP) for the following benefits: asylum, adjustment of status to legal permanent resident, naturalization, and waivers. According to the FBI, most electronic requests are returned by the system within 48–72 hours, at which time some additional manual secondary checks are conducted. Some officials for USCIS have claimed that the FBI's NNCP has served as one source of processing bottlenecks which has contributed to the existing backlogs.

<sup>142</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>143</sup> Regulatory Flexibility Act, 5 U.S.C §601(6).

<sup>144</sup> Hereafter, 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," p. 4913.

opportunities in those economic sectors, as well as driving up wages by limiting supplies.<sup>145</sup> Service cost advocates, however, contend that in order to keep prices of their products lower and product demand high, some business owners may seek out unauthorized aliens if low wage authorized aliens are unavailable.<sup>146</sup>

**Congressional Response.** Representatives Gutierrez and Schakowsky introduced H.R. 1379, also known as the “Citizenship Promotion Act of 2007,” which would prevent USCIS from increasing the citizenship application fees to levels above application processing costs. Senator Obama has introduced an identical version for consideration in the Senate (S. 795). This legislation would require that USCIS only charge applicants the direct costs associated with providing immigration services. The legislation would also mandate that USCIS be provided with a direct appropriation from Congress for any indirect costs associated with immigration services. These cost estimates would stem from a USCIS report the agency would be required to submit to the Judiciary Committees in the Senate and House of Representatives identifying direct and indirect costs of providing immigration services, as well as distinguishing such costs from immigration enforcement and national security costs. No estimates have been released detailing the impact of this legislation on the fees applicants would have to pay. Despite the potential of being criticized for shifting some of the adjudication costs to taxpayers, sponsors of H.R. 1379 contend that the bill would offer benefits beyond direct savings for immigration benefit applicants, such as improved congressional oversight over USCIS.

## Comprehensive Immigration Reform

As Congress considers comprehensive immigration reform, the issues of managing adjudication workloads and recovering service costs could play a role in the debate. There are some who believe that if comprehensive immigration reform happens, it will result in significantly higher inflows of migrants and an increase in applications for immigration benefits.<sup>147</sup> These beliefs are based upon previous efforts at comprehensive immigration reform, as well as the current effort entitled the Comprehensive Immigration Reform Act of 2007 (S. 1348), which would result in the creation of several new immigration categories and wider visa eligibility for aliens abroad. Thus, if these changes occur, USCIS would likely see an increase in demand for immigration benefits and an increase in its adjudication costs.

Based upon the possible projected inflows produced by various immigration analysts, many observers believe that USCIS is not in a position to process such a

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<sup>145</sup> George J. Borjas, “Increasing the Supply of Labor Through Immigration Measuring the Impact on Native-born Workers,” *Center for Immigration Studies Background*, May 2004, at [<http://ksghome.harvard.edu/~GBorjas/Papers/cis504.pdf>].

<sup>146</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>147</sup> Testimony of USCIS Director Emilio T. Gonzalez, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Proposed Immigration Fee Increase*, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., February 14, 2007.

projected application increase.<sup>148</sup> Given the reported difficulties USCIS has had with reducing its backlog and pending applications, some observers believe that USCIS would require a substantial funding increase in order to address both the additional application receipts and the existing backlog. GAO, for example, has 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>149</sup> Some additionally believe that if a legalization program took effect, the resulting increase in the application rate for immigration benefits would make a direct appropriation necessary to adequately staff USCIS prior to the legalization taking effect.<sup>150</sup> They say an increase in fees would potentially accomplish this task by allowing USCIS to build up a sufficient cash balance to handle some increases in demand for benefits.

## Conclusion

Although the current debate is based upon the division between recovering service costs versus recovering agency costs, the near doubling of fees for immigration benefits may signal an eventual shift in future fee debates. If fees for immigration benefits move beyond the tipping point of what Members find acceptable, the focus could shift from what applicants should *pay for* to what should the government *charge*. Current discussions over the possibility of a sliding scale for fees has already hinted at this debate shift. Whether this shift would come to fruition likely hinges on the ability of USCIS to control its costs and provide immigrants with a set of services that Members deem acceptably priced. Yet, the debate will also likely be impacted by whether Congress continues to support the notion of a fully fee-reliant USCIS and whether Members agree upon legislation for comprehensive immigration reform.

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<sup>148</sup> For an example of projected immigration increases under S. 2611, see Robert Rector, *Senate Immigration Bill Would Allow 100 Million New Legal Immigrants over the Next Twenty Years*, The Heritage Foundation, Web Memo no. 1076, May 15, 2006, and Robert Rector, *Immigration Numbers: Setting the Record Straight*, Web Memo no. 1097, May 26, 2006. Additionally, see CRS Congressional Distribution Memorandum CD06164, *Legal Immigration: Modeling the Principal Components of Permanent Admissions*, and CRS Congressional Distribution Memorandum CD06124, *Legal Immigration: Modeling the Principal Components of Permanent Admissions, Part 2*, by Ruth Ellen Wasem, available upon request.

<sup>149</sup> U.S. Government Accountability Office, *Immigration Benefits: Several Factors Impede Timeliness of Application Processing*, GAO-01-488, May 2001.

<sup>150</sup> National Council of La Raza, "NCLR Applauds Introduction of 'Citizenship Promotion Act of 2007,'" press release, March 7, 2007, at [<http://www.nclr.org/content/news/detail/44631>].

### Appendix A. USCIS Fees, Processing Time, and Workloads for Immigration Benefit Applications and Petitions

Form No.	Description	Previous Fee (in dollars)	Scheduled New Fee (in dollars)	Fee Difference	FY2006 Actual Workload Volume	FY2008/09 Projected Workload Volume	Actual to Projected Workload Difference
I-90	Application to Replace Permanent Resident Card.	\$190	\$290	\$100	682,149	552,025	(130,124)
I-102	Application for Replacement/Initial Nonimmigrant Arrival—Departure Document.	\$160	\$320	\$160	24,139	24,035	(104)
I-129	Petition for a Nonimmigrant Worker.	\$190	\$320	\$130	417,955	400,000	(17,955)
I-129F	Petition for Alien Fiancé(e).	\$170	\$455	\$185	66,177	66,177	0
I-130	Petition for Alien Relative.	\$190	\$355	\$165	747,012	743,823	(3,189)
I-131	Application for Travel Document.	\$170	\$305	\$135	371,880	339,000	(32,880)
I-140	Immigrant Petition for Alien Worker.	\$195	\$475	\$280	140,158	135,000	(5,158)
Waivers	Waiver Applications	\$265	\$545	\$280	45,459	45,459	0
I-290B/ Motions	Appeal for any decision other than BIA; Motion to reopen or reconsider decision other than BIA.	\$385	\$585	\$200	47,645	47,645	0
I-360	Petition for Amerasian, Widow(er), or Special Immigrant.	\$190	\$375	\$185	16,086	16,000	(86)
I-485	Application to Register Permanent Residence or Adjust Status.	\$325	\$930	\$605	606,425	613,400	6,975
I-526	Immigrant Petition by Alien Entrepreneur.	\$480	\$1,435	\$955	600	600	0
I-539	Application to Extend/Change Nonimmigrant Status.	\$200	\$300	\$100	233,531	220,000	(13,531)
I-600/ 600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition.	\$545	\$670	\$125	29,500	29,601	101
I-687	For Filing Application for Status as a Temporary Resident.	\$255	\$710	\$455	38,278	500	(37,778)

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Form No.	Description	Previous Fee (in dollars)	Scheduled New Fee (in dollars)	Fee Difference	FY2006 Actual Workload Volume	FY2008/09 Projected Workload Volume	Actual to Projected Workload Difference
I-690	Application for Waiver of Excludability.	\$95	\$185	\$90	3,293	3,293	0
I-694	Notice of Appeal of Decision.	\$110	\$545	\$435	3,696	3,696	0
I-695	Application for Replacement Employment Authorization or Temporary Residence Card.	\$65	\$130	\$65	29	56	27
I-698	Application to Adjust Status from Temporary to Permanent Resident.	\$180	\$1,370	\$1,190	831	494	(337)
I-751	Petition to Remove the Conditions on Residence.	\$205	\$465	\$260	143,360	143,000	(360)
I-765	Application for Employment Authorization.	\$180	\$340	\$160	1,462,583	1,300,000	(162,583)
I-817	Application for Family Unity Benefits.	\$200	\$440	\$240	5,762	5,762	0
I-821	Application for Temporary Protected Status.	\$50	\$50	\$0	N/A	N/A	N/A
I-824	Application for Action on an Approved Application or Petition.	\$200	\$340	\$140	40,105	40,785	680
I-829	Petition by Entrepreneur to Remove Conditions.	\$475	\$2,850	\$2,375	88	88	0
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of P.L. 105-100) (NACARA).	\$285	\$285	\$0	22,509	0	(22,509)
I-905	Application for Authorization to Issue Certification for Health Care Workers.	\$230	\$230	\$0	2	10	8
I-914	Application for T Nonimmigrant Status.	\$270	\$0	-\$270	403	400	(3)
N-300	Application to File Declaration of Intention.	\$120	\$235	\$115	91	100	9
N-336	Request for Hearing on a Decision in Naturalization Procedures.	\$265	\$605	\$340	13,692	14,000	308
N-400	Application for Naturalization.	\$330	\$595	\$265	730,642	734,716	4,074
N-470	Application to Preserve Residence for Naturalization Purposes.	\$155	\$305	\$150	669	669	0



Form No.	Description	Previous Fee (in dollars)	Scheduled New Fee (in dollars)	Fee Difference	FY2006 Actual Workload Volume	FY2008/09 Projected Workload Volume	Actual to Projected Workload Difference
N-565	Application for Replacement Naturalization/Citizenship Document.	\$220	\$380	\$160	31,902	32,000	98
N-600/600K	Application for Certification of Citizenship/Application for Citizenship and Issuance of Certificate under Section 322.	\$255	\$460	\$205	64,711	64,711	0
	<b>Total, Services other than Biometrics</b>				<b>5,991,362</b>	<b>5,577,045</b>	<b>(414,317)</b>
Biometrics	Capturing and Processing Biometric Information.	\$70	\$80	\$10	3,318,000	3,154,330	(163,670)
	<b>Total</b>				<b>9,309,362</b>	<b>8,731,375</b>	<b>(577,987)</b>

**Source:** CRS presentation of USCIS data. Data is available in 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(Feb. 1, 2007), pp. 4888-4915; and U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services. “Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule,” *Federal Register*, vol. 72, no. 103 (May 30, 2007), pp. 29851–29873..

**Note:** Waiver applications include Form I-191, *Application for Advance Permission to Return to Unrelinquished Domicile*; Form I-192, *Application for Advance Permission to Enter as Nonimmigrant*; Form I-193, *Application for Waiver of Passport and/or Visa*; Form I-212, *Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal*; Form I-601, *Application for Waiver on Grounds of Excludability*; and Form I-612, *Application for Waiver of the Foreign Residence Requirement*.

**Appendix B. Processing Time, Completion Rates, and Total Cost Per Petition**

<b>Form No.</b>	<b>Description</b>	<b>Processing Time (in months)</b>	<b>Completion Rate Total</b>	<b>Total Cost (per Unit)<sup>1</sup></b>
I-90	Application to Replace Permanent Resident Card.	4.38	1.43	287
I-102	Application for Replacement/Initial Nonimmigrant Arrival—Departure Document.	2.91	1.30	316
I-129	Petition for a Nonimmigrant Worker.	2.03	0.49	316
I-129F	Petition for Alien Fiancé(e).	2.9	5.76	451
I-130	Petition for Alien Relative.	6.02	1.86	354
I-131	Application for Travel Document.	1.97	0.88	302
I-140	Immigrant Petition for Alien Worker.	3.31	2.87	473
Waivers	Waiver Applications	9.39	3.1	543
I-290B/ Motions	Appeal for any decision other than BIA; Motion to reopen or reconsider decision other than BIA.	7.73	N/A	583
I-360	Petition for Amerasian, Widow(er), or Special Immigrant.	6.34	3.21	2,480
I-485	Application to Register Permanent Residence or Adjust Status.	7.07	6.25	900
I-526	Immigrant Petition by Alien Entrepreneur.	4.14	6.41	1,424
I-539	Application to Extend/Change Nonimmigrant Status.	2.07	1.91	296
I-600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition.	3.39	1.53	665
I-687	For Filing Application for Status as a Temporary Resident.	10.59	5.53	707
I-690	Application for Waiver of Excludability.	10.19	5.63	602
I-694	Notice of Appeal of Decision.	4.5	4.72	542
I-695	Application for Replacement Employment Authorization or Temporary Residence Card.	22.76	14.85	1,329
I-698	Application to Adjust Status from Temporary to Permanent Resident.	26.85	4.83	1,360
I-751	Petition to Remove the Conditions on Residence.	3.74	1.82	463

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Form No.	Description	Processing Time (in months)	Completion Rate Total	Total Cost (per Unit) <sup>1</sup>
I-765	Application for Employment Authorization.	1.97	0.66	336
I-817	Application for Family Unity Benefits.	3.94	2.91	435
I-821	Application for Temporary Protected Status.	2.54	N/A	N/A
I-824	Application for Action on an Approved Application or Petition.	3.63	2.18	338
I-829	Petition by Entrepreneur to Remove Conditions.	38.94	8.69	2,832
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of P.L. 105-100) (NACARA).	0.35	N/A	N/A
I-905	Application for Authorization to Issue Certification for Health Care Workers.	N/A	N/A	N/A
I-914	Application for T Nonimmigrant Status.	3.64	N/A	N/A
N-300	Application to File Declaration of Intention.	23.88	1.67	748
N-336	Request for Hearing on a Decision in Naturalization Procedures.	6.22	1.34	603
N-400	Application for Naturalization.	5.57	1.17	590
N-470	Application to Preserve Residence for Naturalization Purposes.	16.18	3.39	640
N-565	Application for Replacement Naturalization/Citizenship Document.	4.35	1.18	379
N-600/600K	Application for Certification of Citizenship/Application for Citizenship and Issuance of Certificate under Section 322.	5.27	1.97	457
Biometrics	Capturing and Processing Biometric Information.	N/A	N/A	79

**Source:** CRS presentation of USCIS data. Data is available in 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(Feb. 1, 2007), pp. 4888-4915.

**Note:** Waiver applications include Form I-191, *Application for Advance Permission to Return to Unrelinquished Domicile*; Form I-192, *Application for Advance Permission to Enter as Nonimmigrant*; Form I-193, *Application for Waiver of Passport and/or Visa*; Form I-212, *Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal*; Form I-601, *Application for Waiver on Grounds of Excludability*; and Form I-612, *Application for Waiver of the Foreign Residence Requirement*.

### Appendix C. Data on Applications for All Immigration Benefits and for N-400 Naturalizations, FY1998-FY2005

Fiscal	Applications for Immigration Benefits					N-400 Naturalization Benefits				
	Initial	Approved	Denied	Completed	Pending	Receipts	Approved	Denied	Completed	Pending
1998	4,531,702	3,661,246	344,192	4,005,438	1,992,137	932,957	473,152	137,395	610,547	1,802,902
1999	4,534,938	3,572,263	314,833	3,887,096	2,487,403	765,346	872,427	379,993	1,252,420	1,355,524
2000	5,483,792	4,734,328	353,479	5,087,807	2,928,254	460,916	898,315	399,670	1,297,985	817,431
2001	7,333,338	5,606,705	460,844	6,067,549	4,083,052	501,646	613,161	218,326	831,487	618,750
2002	6,324,496	5,690,938	635,557	6,326,495	4,383,154	700,649	589,728	139,779	729,507	623,519
2003	6,419,618	4,833,017	665,895	5,498,912	5,370,248	523,370	456,063	91,599	547,662	628,025
2004	5,253,844	5,658,329	764,473	6,422,802	4,151,484	662,794	536,176	103,339	639,515	653,128
2005	5,609,957	5,893,064	777,438	6,670,502	3,182,223	602,972	600,609	108,247	708,856	552,940

**Source:** Data is compiled from tables published in the DHS Office of Immigration Statistics' Fiscal Year End Statistical Report for FY1999-FY2005.

**Note:** The data in these tables are referred to as "to date" and are thus not the numbers considered final by DHS. Thus, some final adjustments to these numbers may have occurred. The category of "initial receipts" are those applications which are received in a given fiscal year. Pending applications includes all applications pending at USCIS, both from the current fiscal year and previous fiscal year. Completed applications consists of the total of those applications that are approved and denied in the given fiscal year. Since not all applications that are received in a given fiscal year are adjudicated in the same fiscal year, there may appear to be some numerical discrepancy across categories in certain fiscal years. These discrepancies are generally attributable to the "rolling over" of applications from one fiscal year to the next.