

On March 16, 2005, Secretary Chertoff outlined a risk-based approach to homeland security threats, vulnerabilities, and consequences:

Risk management must guide our decision-making as we examine how we can best organize to prevent, respond, and recover from an attack Our strategy is, in essence, to manage risk in terms of these three variables – threat, vulnerability, consequence. We seek to prioritize according to these variables, to fashion a series of preventive and protective steps that increase security at multiple levels.⁴⁵

In addition, the IG recommended that USCIS establish a comprehensive, risk-based plan for the selection and completion of security checks.⁴⁶ Despite Secretary Chertoff's statement and the IG's recommendation, USCIS recently stated that "[r]esolving pending cases is time-consuming and labor-intensive; some cases legitimately take months or even several years to resolve."⁴⁷ Unfortunately, the process is not working and consideration should be given to re-engineering it to include a risk-based approach to immigration screening and national security.

RECOMMENDATION AR 2006 --04

The Ombudsman encourages USCIS to adopt the recommendation from the DHS Secretary's Second Stage Review to establish an adjudication process in which all security checks are completed prior to submission of the petition or application for an immigration benefit.

G. Funding of USCIS

The manner in which USCIS currently obtains its funding affects every facet of USCIS operations, including the ability to: (1) implement new program and processing initiatives; (2) begin information technology and other modernization efforts; and (3) plan for the future. USCIS is required to recover the full costs of operations with funds generated from filing fees. However, the process by which USCIS can change fees hampers its ability to receive fees commensurate with the actual costs to process particular application types. As discussed below, USCIS does not enjoy financial flexibility and thus finds itself making difficult operational decisions to provide services while meeting financial goals.⁴⁸

⁴⁵ DHS Secretary Michael Chertoff, Prepared Remarks at George Washington University Homeland Security Policy Institute (Mar. 16, 2005); <http://www.dhs.gov/dhspublic/display?theme=44&content=4391&print=true>.

⁴⁶ See generally DHS IG Report "A Review of U.S. Citizenship and Immigration Services' Alien Security Checks."

⁴⁷ See USCIS Fact Sheet, "Immigration Security Checks – How and Why the Process Works" (Apr. 25, 2006); http://www.uscis.gov/graphics/publicaffairs/factsheets/security_checks_42506.pdf.

⁴⁸ See generally GAO Report "Immigration Application Fees: Current Fees Are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operation," GAO-04-309R (Jan. 2004); <http://www.gao.gov/new.items/d04309r.pdf>.

Currently, USCIS calculates its budget by multiplying current fees by projected application volume and then conforms the budget to those numbers. Thus, USCIS develops the budget mostly without consideration for anticipated needs or costs, but rather from projected revenues. As USCIS backlogs increased and processing slowed over the past few years, the agency incorporated associated revenue projections into its annual budget calculation, *i.e.*, anticipated EAD applications from green card applicants and premium processing fees from nonimmigrant worker applications (Form I-129).

Furthermore, USCIS must provide Congress with an estimate of the agency's revenue needs for a new fiscal year and Congress then assigns a cap over which USCIS cannot spend. If USCIS has an operational need to expend funds in excess of the cap, the agency must ask Congress' permission through a lengthy and complex "reprogramming" process. Moreover, as a fee-funded agency, USCIS receives appropriated money only for specified projects, as it did for the backlog reduction effort.

Fee Calculations. USCIS calculates current filing fees based on a legacy INS 1997 time-and-motion fee study of application processing costs at a particular time.⁴⁹ While the filing fees developed in the 1997 study have been adjusted for inflation in succeeding years, reliance on this study resulted in many significant problems: (1) the nearly ten-year-old data have no relation to current processes or costs due to evolving processes over the years and additional adjudication requirements imposed after September 11, 2001; (2) subsequent filing fee adjustments build on incomplete data not included in the original fee study; and (3) the 1997 time-and-motion fee study was based on receipts and projected costs, not completions and actual costs.

All filing fees imposed since 1998 are derived from the legacy INS 1997 time-and-motion fee study. Adjustments to filing fees imposed since 1998 do not account for processing changes and, therefore, the filing fees first developed in 1997 do not enable USCIS to recover the full cost of administering the immigration benefit. USCIS is improving the way that it studies fees with the recent development of a new fee model that can factor in current data and address-certain "what if" scenarios and policy changes. However, the Ombudsman understands that the model still is based on projected application volume and fees charged.

The fees actually received from applicants often are quite different from the results of a USCIS fee model due to the lengthy regulatory process. The Ombudsman understands that the fee implementation process includes reviews by USCIS, DHS, and the OMB. The public also has an opportunity to submit comments on the proposed fee. The entire process can take many months before notice of a new fee is published in the Federal Register. As a result, a decision can be made to charge a smaller fee for an application than will allow USCIS to recover full costs to process the application.

⁴⁹ INS began charging fees in 1968 and Congress established the Examinations Fee Account in 1989. INS has completed two fee studies to date, in 1997 and 1999, based on an activity based costing model. INS previously used traditional cost accounting in which they examined direct costs (payroll, benefits, fingerprint checks, and card production costs) as well as indirect costs (everything else), which were evenly distributed among all applications.

Creation of USCIS. After the breakup of INS and the creation of USCIS, the agency encountered three funding difficulties:

- Certain efficiencies were eliminated, for example, whereas previously one INS person accomplished a particular task before the reorganization, the task itself became divided and involved action by personnel from USCIS, ICE, and CBP.
- Several services became “shared services.” For example, USCIS became the records manager for all three agencies. USCIS has since had difficulty obtaining reimbursement for these shared services.
- USCIS has been required to absorb the cost for certain legacy INS programs, for example, the processing of Freedom of Information Act requests and the Systematic Alien Verification for Entitlements (SAVE) program.

BEST PRACTICE

The Ombudsman commends USCIS for recently creating the office of the Chief Financial Officer, which was staffed during this reporting period and centralized all of the agency’s financial concerns in one office.

Unfunded Programs. USCIS operates some programs for which it collects no fees and receives no additional appropriations. For example, the asylum and refugee program, military naturalizations, and fee waivers are funded by a surcharge added to the fees paid by applicants for other benefits. In the past, Congress removed the surcharge, but without appropriations to fill the gap, the surcharge was reinstated promptly.⁵⁰

Paying for unfunded programs with fees from other petitions and applications exacerbates USCIS funding problems. This is best illustrated with premium processing and interim benefits.⁵¹ Each of these services is necessary because of slow and inefficient processing. The requirement to finance unfunded programs with filing fees from other application types creates a conundrum for USCIS because as backlogs are reduced, fees are lost from premium processing and applications for interim benefits. As long as USCIS conducts operations for which it does not collect fees, and for which it does not receive appropriated funds, USCIS will be confronted with competing demands. USCIS must maintain sufficient revenue from filing fees and programs with which to operate the agency, but reducing processing times through increased efficiency also would largely cut off these needed funding streams.

RECOMMENDATION AR 2006 -- 05

There are at least two impediments to USCIS implementing the cost and resource savings inherent in up-front and expedited (premium type) processing. As case

⁵⁰ See 68 Fed. Reg. 3798 (Jan. 24, 2003); 68 Fed. Reg. 8989 (Feb. 27, 2003).

⁵¹ For a detailed discussion of premium processing and interim benefits, see sections II.E and III.D.

backlogs grew, USCIS became reliant on the filing fee revenue to fund other unfunded programs. By expecting USCIS to be largely self-funded through fees, Congress created competing demands for USCIS management. USCIS must ensure revenue streams are adequate for the entire agency. At the same time, eliminating backlogs and improving USCIS efficiency risks the agency cutting off a significant percentage of its revenue. Unless alternative revenue sources are identified that are not dependent on slow processing or a backlog of cases, USCIS will have difficulty foregoing fee-based revenue without running afoul of antideficiency laws.⁵² Under the current USCIS financial structure, USCIS simply cannot afford to eliminate the backlogs or slow processing of regular applications.

Based on the findings of Secretary Chertoff's Second Stage Review, the Ombudsman suggests that Congress consider a revolving fund account or other appropriated funding source for USCIS. A revolving fund used to defray current costs would be replenished from future fees and would: (1) enable the agency to test innovative processes; (2) address unexpected program requirements from new legislation; (3) avoid potential temporary anti-deficiency concerns; and (4) encourage USCIS leadership to innovate processes instead of continuing programs which do not enhance customer service, efficiency, and national security, but nevertheless generate essential revenue.

H. Information Technology Issues

The USCIS Information Technology (IT) Transformation Initiative, now part of USCIS' overall transformation program, is presented as a comprehensive effort to provide USCIS with a modern, world-class digital processing capability to enhance national security, improve customer service, and increase efficiency. However, USCIS has devoted considerable resources to various types of transformations since the 1990s with minimal progress. In addition, there are questions whether all field offices will obtain technology updates if dependent upon available funds. The effective and efficient deployment of IT systems to all field offices remains a major challenge for USCIS.⁵³

Three broad IT areas of concern are: (1) most USCIS adjudications processes are paper-based; (2) existing USCIS information management systems do not provide robust data analysis tools necessary to monitor productivity and make changes when necessary; and (3) most USCIS information management systems are stand-alone systems with little or no information interconnectivity.

Paper-Based Adjudications. In comparable private sector business processes, digital technology speeds turnaround times and improves the quality of decisions. However, USCIS customers generally file paper applications and petitions, and officers must transfer paper files

⁵² See *supra* note 8.

⁵³ See generally DHS IG Report "USCIS Faces Challenges in Modernizing Information Technology," The Ombudsman notes that USCIS still has not implemented many of these and other IT-related recommendations.