

January 2009

FEDERAL USER FEES

Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations



GAO

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Highlights of [GAO-09-180](#), a report to Congressional Requesters.

Why GAO Did This Study

U.S. Citizenship and Immigration Services (USCIS) announced an increase to its immigration and naturalization application fees by an average of 86 percent, effective July 2007, contributing to a surge in application volume that challenged the agency's pre-adjudicative operations. In July 2007, the incoming application volume increased an unprecedented 100 percent over the prior month and the processing of 1.47 million applications was delayed. GAO was asked to review USCIS's current fee design and compare it to the principles in GAO's user-fee design guide and USCIS's management of operations affected by the new fees, specifically in projecting application volumes and contracting for application processing services. To do so, GAO reviewed legislation and agency documentation; compared the fee design to GAO's principles of effective user-fee design (equity, efficiency, revenue adequacy, and administrative burden); visited processing centers; and interviewed agency officials at these locations and in headquarters.

What GAO Recommends

GAO is making seven recommendations to the Director of Homeland Security to improve the timing and comprehensiveness of its next fee review; analyze and use application projection information for workload purposes; and implement procedures to validate contractors' invoices for incoming mail. DHS agreed with GAO's recommendations.

To view the full product, including the scope and methodology, click on [GAO-09-180](#). For more information, contact Susan Irving at (202) 512-8288, irvings@gao.gov.

FEDERAL USER FEES

Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations

What GAO Found

USCIS's 2007 fee design reflects choices and trade-offs consistent with several of GAO's four user-fee design dimensions—efficiency, equity, revenue adequacy, and administrative burden. For example, in three areas the fee design reflects policy choices related to equity and administrative burden considerations: (1) the structure of fee exemptions and waivers, (2) limitations on certain fee increases for a population deemed unlikely to be able to pay, and (3) decisions about how costs were assigned among users. However, USCIS did not conduct the analyses necessary to fully inform congressional decision-making or internal deliberations on some key areas, such as the cost of activities funded by fees whose rates are set in statute. Notably, the \$1,000 fee for USCIS's premium-processing service for employment-based applications, which was the fifth largest single generator of funds for USCIS in fiscal year 2007, will be used for business process and technology improvements. As such, the additional costs of premium processing services are funded by nonpremium processing fee-paying applicants, raising equity concerns. Since USCIS has not identified the total costs of these services, the actual dollar amount being subsidized is unknown. The new fee design also does not allow for an appropriate "reserve" or carryover balance, to ensure the continuity of operations and cover fixed costs in the event of a decrease in applications, nor does it consider the costs associated with certain fee collection operations. According to USCIS's schedule, if the next review identifies a needed fee adjustment, it would occur in September 2009. However, USCIS did not provide documentation that would allow us to determine whether the 2009 fee review would address identified shortcomings in the 2007 fee review or whether the remaining time frames for key milestones, such as refining data and the proposed rulemaking schedule, are reasonable. Absent timely reviews, it is more likely that fees and costs will become misaligned, leading to costly challenges.

Projections of USCIS application volume have historically been developed and used as budget tools but do not effectively inform workload management efforts. Specifically, the projections do not identify monthly variations in application volume, despite variations that regularly exceed 20 percent and the serious operational challenges associated with application surges. USCIS's contractors do not receive workload projection information, despite requirements that processing centers shall maintain the capacity to accommodate "spikes" in receipt volumes that are anticipated at least 45 to 90 calendar days in advance. Further, USCIS projection documents do not consistently record critical information such as factors that drive application volume, inhibiting analysis that could improve projections over time.

Service-center contractors process USCIS mail and are paid according to a fixed unit price per piece. Contractors count up to 90 percent of incoming mail, but USCIS has not developed an agencywide standard operating procedure for validating the contractors' counts. As a result, USCIS is limited in its ability to verify that USCIS is receiving the service that it is paying for.

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Abbreviations

CFO Act	Chief Financial Officers Act of 1990
CPI	Consumer Price Index
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation
FMS	Financial Management Service
IEFA	Immigration Examinations Fee Account
INA	Immigration and Nationality Act
IRCA	Immigration Reform and Control Act of 1986
MOU	memorandum of understanding
OCFO	Office of the Chief Financial Officer
OIS	Office of Immigration and Statistics
OMB	Office of Management and Budget
OPD	Operations Planning Division
PMB	Production Management Branch
RFE	request for evidence
USCIS	United States Citizenship and Immigration Services

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United States Government Accountability Office
Washington, DC 20548

January 23, 2009

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration, Citizenship,
Refugees, Border Security and International Law
Committee on the Judiciary
House of Representatives

The Honorable David Price
Chairman
Subcommittee on Homeland Security
Committee on Appropriations
House of Representatives

The Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS) is responsible for granting or denying the applications or petitions of individuals seeking either to become citizens of the United States or to reside or work in this country. USCIS charges fees to process the millions of immigration and naturalization applications it receives each year to recover all processing costs.¹ Although annual appropriations over the last decade have been enacted for specific projects, such as USCIS's initiative to reduce its backlog of pending applications, a large proportion of USCIS's funding historically is derived from fees. In fiscal year 2007, USCIS received 7.69 million applications, which generated \$2.08 billion in fee collections. In fiscal year 2009, USCIS anticipates that fee collections will constitute \$2.33 billion, or about 94 percent of the agency's funding.

In 2004, we found that USCIS's fee collections were not sufficient to fully recover operating costs² so USCIS relied on funding from various sources, including appropriated funds to reduce backlog and premium processing

¹For the purposes of this report, the term "application" refers to both applications and petitions.

²See GAO, *Immigration Application Fees: Current Fees Are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operations*, [GAO-04-309R](#) (Washington, D.C.: Jan. 5, 2004).

fees.³ In February 2007, USCIS completed a fee review to determine the level at which fees should be set to recover the full cost of its services. Based on the review USCIS implemented a new fee schedule, which went into effect July 30, 2007, and increased application fees by an average of 86 percent.⁴ According to USCIS, the 2007 fee increases ensure sufficient funds to meet immediate goals for national security, customer service, and standard processing time and to sustain and improve service delivery through the end of 2009.

USCIS's new fee schedule has been widely questioned, partly because of the magnitude of the increases and partly because of the agency's failure to foresee and manage the surge in applications received immediately before the effective date of the fee increases.⁵ In July 2007, the incoming application volume increased an unprecedented 100 percent over the prior month. This increase far outpaced USCIS's pre-adjudicative application processing⁶ capacity, and as a result, the processing of 1.47 million applications was delayed. At your request, we reviewed:⁷

³In December 2000, Congress authorized the collection of a premium processing fee in addition to the regular application fees for employment-based applications. Congress set the amount of the fee at \$1,000 and directed that these amounts be available for (1) the premium processing activities and (2) infrastructure improvements associated with adjudications and customer-service. Pursuant to this authority and as established in regulations, USCIS guarantees that certain employment-based applications will be processed within 15 calendar days of receipt.

⁴This includes the biometric fee, which is charged when fingerprints are required to process an application.

⁵USCIS officials identified other factors that may have contributed to the 2007 surge, including the publication of a State Department Visa Bulletin stating that employment-based visas were immediately available.

⁶"Pre-adjudicative application processing" refers to the initial receipt and fee collection of applications, generally performed by non-USCIS employees as part of mail operations, data collection, and file operations. It does not include adjudication—the determination of whether to approve the benefits for which the applicant has applied.

⁷We are completing three reports related to USCIS fees. The first, *Federal User Fees: Improvements Could Be Made to Performance Standards and Penalties in USCIS's Service Center Contracts*, GAO-08-1170R, September 2008, discussed issues related to contract performance incentives for preadjudication activities at the service centers. This, the second report, discusses the design of USCIS fees and the effect of agency operations on those fees. The third report, *Immigration Application Fees: Costing Methodology Improvements Would Provide More Reliable Basis for Setting Fees*, GAO-09-70, assesses USCIS's methodology for determining application fees and controls over fees.

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- USCIS’s current fee design and compared it to the principles in GAO’s user-fee design guide,⁸ identifying issues that USCIS did and did not address effectively, and
 - USCIS’s management of operations affected by the new fees, specifically in projecting application volumes and contracting for application processing services.

To analyze the design of USCIS’s user fees we reviewed legislation and agency documentation such as the proposed and final *Federal Register* notices regarding the 2007 fee schedule and USCIS’s February 2007 fee-review analysis. In addition, we reviewed the principles of effective user-fee design: equity, efficiency, revenue adequacy, and administrative burden. To review the management of agency operations we analyzed service-center contracts, historic application volumes, application projections, and related documentation. We also conducted site visits at the four service centers which are located in Texas, Vermont, Nebraska, and California; the National Benefits Center in Missouri; and the Chicago Lockbox⁹ and interviewed agency officials at these locations and in headquarters.

Appendix I provides additional details about our scope and methodology. We conducted this performance audit from November 2007 through January 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained meets these standards.

Results in Brief

USCIS’s 2007 fee design provides transparent analysis and deliberate choices and trade-offs consistent with several of the four user-fee design principles—efficiency, equity, revenue adequacy, and administrative burden. For example, in three key areas the fee design reflects policy choices made that were consistent with issues related to equity and administrative burden: (1) the use of fee exemptions and waivers, (2)

⁸See GAO, *Federal User Fees: A Design Guide*, [GAO-08-386SP](#) (Washington, D.C.: May 2008). USCIS’s 2007 user fee review was issued prior to the issuance of [GAO-08-386SP](#), however the comparison of USCIS’s review to the user fee design principles is important to identifying opportunities for future improvements.

⁹A lockbox is a collection and processing service provided by financial institutions that accelerates the flow of funds to the Treasury.

limitations on certain fee increases for a population deemed unlikely to be able to pay, and (3) decisions about how costs were assigned among users.¹⁰ However, USCIS did not conduct the analyses necessary to fully inform either congressional decision-making or internal deliberations on key areas. Specifically, it did not analyze the cost of activities funded by statutorily set fees, the appropriate “reserve,” or carryover balance to ensure the continuity of operations of activities funded by IEFA in the event of a decrease in applications, or the costs associated with USCIS’s lockbox operation. It also lacks an established pattern of reviewing its fees biennially, as required by the CFO Act of 1990.

- **Statutorily set fees.** Notably, the statutory \$1,000 fee for USCIS’s premium-processing service for employment-based applications—which was fifth largest single generator of funds for USCIS in fiscal year 2007—will be used for business process and technology improvements. As such, the additional costs of premium processing services are funded by non-premium processing fee-paying applicants, raising equity concerns. Because USCIS has not identified the total costs of these services, the actual dollar amount being subsidized is unknown.
- **Carryover balances.** We have previously reported that carryover is one way agencies can establish reserve accounts, that is, revenue to sustain operations in the event of a sharp downturn in collections, which is especially important for agencies like USCIS, in which fees are expected to cover program costs. Although some processing costs would necessarily decline as the volume of applications decline, not all overhead costs are affected by application volume. For example, USCIS overhead costs include projected total rent—which is a fixed cost—of \$383 million for fiscal years 2008 and 2009. Therefore without analyzing its full contractual and operating costs and determining an appropriate target carryover balance, USCIS is at risk of reducing, disrupting, or discontinuing services should collections decrease.
- **Cost of lockbox operations.** USCIS’s 2007 fee review did not fully account for the costs associated with lockbox services because these costs were unknown at the time of the fee review. USCIS’s 2007 fee

¹⁰In a fully fee-funded agency, the costs of exemptions, waivers, and limitations on fee increases are distributed among other fee-paying applicants. We report on how USCIS assigned costs among users in [GAO-09-70](#).

review estimated \$2 million for lockbox costs, but this amount only represents about 4 percent of the total \$48 million estimated lockbox costs for fiscal years 2008 and 2009 (the period covered by the fee review). USCIS's lockbox costs will remain misaligned with fee collections unless USCIS adjusts the fees.

- **Biennial fee review.** OMB Circular A-25 recommends, and the CFO Act of 1990 requires agency CFOs to review their user fees biennially. USCIS's lack of timely, comprehensive fee reviews prior to 2007 led to the need for an average fee increase of 86 percent. This contributed to a surge in application volume as applicants attempted to submit their applications before the fee increase took effect, resulting in costly operational challenges. For example, the number of applications submitted increased an unprecedented 100 percent in July 2007 over the prior month, exceeding storage capacity. At the Texas Service Center unprocessed applications were stored outside in six rented 10-by-40-foot containers, double-locked, and monitored by a full-time security guard. USCIS incurred additional, unplanned costs as a result of the surge in applications.

In addition, the increased volume of applications exceeded the service center contractors' ability to process them. Fees were not deposited within the 24-hour deposit requirement, which is based on a Department of Treasury's financial management standard. As a result, the U.S. government did not earn interest on these undeposited collections.

According to USCIS's fee review schedule, if the next fee review identifies a needed fee adjustment, it would occur in September, 2009. However, USCIS did not provide documentation that would allow us either to determine whether the 2009 fee review would address identified shortcomings in the 2007 fee review or whether the agency could meet key dates such as data refinement and the proposed rulemaking schedule—all of which are necessary to complete the review in a timely manner. Absent timely reviews, it becomes increasingly likely that fees and costs will become misaligned, leading to costly challenges.

USCIS develops and uses annual application volume projections to inform budget projections but does not develop projections suitable to inform workload management efforts. This limits USCIS's ability to anticipate and mitigate variations in monthly application volume despite variations that regularly exceed 20 percent. In addition, little or no projection information is provided to any of USCIS's processing centers even though processing center personnel have said that such information could be used to mitigate

operational challenges resulting from surges. USCIS's contractors do not receive projection information either despite contract language that ties contractor performance to 45- and 90-day projections. Further, USCIS projection documents do not consistently record critical information about application volume drivers such as policy decisions and known demographic trends, inhibiting analysis that could improve projections over time. Service centers have demonstrated that they can effectively prepare for, and to some degree mitigate, surges in application volumes when such surges are anticipated. For example, in 2008, the California and Vermont Service Centers took steps to prepare for an anticipated surge in certain application types in the spring based on their past experience. In preparation, California Service Center officials worked with their contractor to develop a plan for managing the surge, including dedicating extra space for intake activities, employing multiple shifts, and increasing the number of intake personnel by drawing from a pool of 50 additional employees who are maintained through a contract with a local temporary employment agency. The Vermont Service Center's plan included extra dedicated space for intake activities.

Contractors perform all operations for incoming and outgoing mail at the service centers, and they are paid according to a fixed unit price for each piece of mail processed. USCIS mail operations payments totaled \$12 million over the first year of the contract. However, contractors process almost all of the incoming mail—for example, in Texas, more than 90 percent of the mail is counted by contractors—and USCIS has not developed an agencywide standard operating procedure for validating the contractors' counts. As a result, three of the four service centers do not validate contractor mail counts at all. GAO has previously reported that a basic tenet of government procurement is that before payment is made, the purchasing agency must verify that the services have been received in accordance with contractual requirements, and the price charged is proper and correct. In most cases, however, USCIS cannot verify that it is receiving the service that it is paying for.

We are making seven recommendations to the Secretary of Homeland Security to improve the comprehensiveness of future user fee reviews; to analyze and use application volume projections for workload management; and to develop and implement procedures to validate contractor invoices for incoming mail services. In written comments on a draft of this report, DHS generally concurred with our recommendations. DHS also provided technical comments, which we incorporated as appropriate.

Background

A user fee is a charge assessed to beneficiaries for goods or services provided by the federal government.¹¹ User fees generally apply to federal programs or activities that provide special benefits to identifiable recipients above and beyond what is normally available to the public and are generally related to the cost of the goods or services provided. GAO has previously concluded that regularly reviewing a fee's design helps ensure that Congress, stakeholders, and agencies have complete information about program costs, and fees that are not regularly reviewed run the risk of having fees and costs misaligned and overcharging or undercharging users.¹² Examinations of the trade-offs involved with a fee design can provide decision-makers with more comprehensive information and can support more robust deliberations about user-fee financing.

The Immigration and Nationality Act¹³ (INA), as amended,¹⁴ authorizes USCIS to charge fees for adjudication and naturalization services. Per the INA, these fees “may be set at a level that will ensure recovery of the full costs of providing all [adjudication and immigration] such services, including costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.” In fiscal year 2007, fee-exempt and fee-waived applications represented 7 percent of USCIS's total applications received.

User-fee design principles are also established by several other sources of guidance and criteria. GAO has previously reported on the principles of effective user-fee design, including efficiency, equity, revenue adequacy, and administrative burden.

- **Efficiency:** “Efficiency” refers to requiring identifiable beneficiaries to pay for the costs of services, allowing user fees to simultaneously constrain demand and reveal the value that beneficiaries place on the service. If those benefiting from a service do not bear the full social cost of the service, they may seek to have the government provide

¹¹See GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: September 2005).

¹²See [GAO-08-386SP](#).

¹³Public Law No. 82-414.

¹⁴Congress enacted the original Immigration and Nationality Act in 1952. Pub. L. No. 82-414, ch. 447, 66 Stat.163 (June 27, 1952). Since its enactment, the INA has been amended several times. The INA, as amended, is codified in various sections of title 8 of the U.S. Code.

more of the service than is economically efficient. User fees may also foster production efficiency by increasing awareness of the costs of publicly provided services and therefore increasing incentives to reduce costs where possible.

- **Equity:** “Equity” refers to everyone’s paying their fair share, but the definition of fair share can have multiple facets. Under the beneficiary-pays principle, the beneficiaries of a service pay for the cost of providing the service from which they benefit. Under the ability-to-pay principle, beneficiaries who are more capable of bearing the burden of fees should pay more for the service than those with less ability to pay.
- **Revenue adequacy:** “Revenue adequacy” refers to the extent to which the fee collections cover the intended share of costs. It encompasses variations in collections over time relative to the cost of the program. Revenue adequacy also incorporates the concept of revenue stability, which generally refers to the degree to which short-term fluctuations in economic activity and other factors affect the level of fee collections.
- **Administrative burden:** “Administrative burden” refers to the cost of administering the fee, including the cost of collection and enforcement as well as the compliance burden (the administrative costs imposed on the payers of the fee).

In addition, the Office of Management and Budget (OMB) provides guidance to executive branch agencies through Circular No. A-25. This circular establishes federal guidelines regarding user fees including the scope and types of activities subject to user fees and the basis upon which the fees are set. It also provides guidance for executive branch agency implementation of fees and the disposition of collections. Further, the Chief Financial Officers (CFO) Act of 1990¹⁵ requires an agency’s CFO to review, on a biennial basis, the fees, royalties, rents, and other charges for services and things of value and make recommendations on revising those charges to reflect costs incurred. The Statement of Federal Financial Accounting Standards Number 4, Managerial Cost Accounting Concepts and Standards for the Federal Government¹⁶ establishes standards for

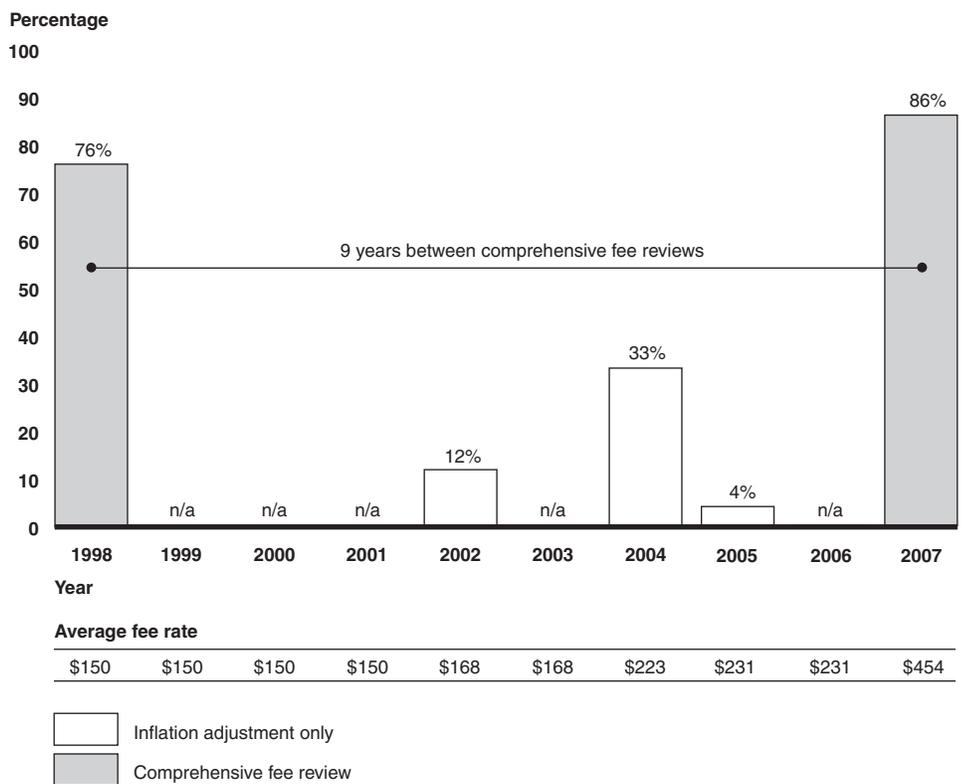
¹⁵Pub. L. No. 101-576, 104 Stat. 2838 (Nov. 15, 1990), *relevant sections codified at*, 31 U.S.C. § 902.

¹⁶Federal Accounting Standards Advisory Board, Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Standards and Concepts (July 31, 1995).

federal agencies to use in reporting the costs of their products, services, and activities.¹⁷

Most of USCIS's user fees are cost-based fees set through the regulatory process and deposited into the Immigration Examinations Fee Account. Prior to the 2007 review, USCIS's last comprehensive fee review was conducted in fiscal year 1997; the resultant fee increase averaged \$65. However, as shown in figure 1, the average fee increase of \$223 in 2007 dwarfs the other increases.

Figure 1: Weighted Average Application Fee Adjustments Since Fiscal Year 1998



Source: GAO analysis of USCIS data.

Note: The July 30, 2007 increase of 86 percent includes the biometric fee.

¹⁷We report on USCIS's adherence to these standards in [GAO-09-70](#).

For some fees, the fee rate is set in statute. This includes (1) premium fees for employment based applications; and (2) fees on certain employers sponsoring an individual for H-1B nonimmigrant worker status. Premium fee collections are deposited into the Immigration Examinations Fee Account, along with other fees set by regulation pursuant to 31 U.S.C. § 1356(m). The collection of fees imposed upon employers sponsoring aliens for H-1B status are deposited into the H-1B Nonimmigrant Petitioner Account.

Persons seeking immigration or naturalization benefits mail their applications and associated fees (when applicable) to one of four service centers or one of two lockbox facilities, depending on the form type and geographic location of the applicant. Contract employees at the service centers and designated financial agent employees at the lockbox facilities are responsible for the initial processing of applications: mail operations, data collection, fee collection, and file operations. This report collectively refers to these processing activities as pre-processing, or pre-adjudicative, services. Because the National Benefits Center receives applications from the lockboxes after any fee instruments have been detached and deposited, it does not collect fees. After pre-processing, USCIS employees adjudicate the applications (i.e., make determinations about whether to approve or deny the benefits for which the applicant has applied).

USCIS also utilizes lockbox services provided by a designated financial agency of the United States in accordance with an Economy Act interagency agreement between USCIS and the Department of Treasury's Financial Management Service (FMS). This agreement incorporates a memorandum of understanding between USCIS, FMS, and the designated financial agent addressing the performance of lockbox services supporting the collection of fees for adjudication and naturalization services.

SI International and Stanley Associates, Inc. are the contractors employed at the service centers and the National Benefits Center. SI International operates at the National Benefits Center, the Nebraska Service Center, and the Texas Service Center, while Stanley Associates, Inc. operates at the California Service Center and the Vermont Service Center.

FMS has designated the financial agent, JP Morgan Chase, as a qualified lockbox service provider authorized to process USCIS's application fees.¹⁸

¹⁸A second designated financial agent currently provides some lockbox services for USCIS, but USCIS officials said these activities are being shifted to JPMC-run lockboxes.

The lockbox in Chicago currently processes a limited number of form types, but by the end of 2010 it is expected to process all USCIS form types both at its Chicago location and at other locations across the United States. USCIS officials have identified several reasons to transition certain operations to the lockboxes. Specifically, USCIS officials have said that FMS-designated financial agents offer

- a more secure environment for fee collections, resulting in improved internal controls;
- centralized and expedited application- and fee-collection intake;
- reduced operational costs, as USCIS anticipates that FMS will fund a portion of the lockbox activities through its permanent, indefinite appropriation; and
- flexibility in addressing issues related to unanticipated surges in volume.

USCIS Fee Design Reflects Deliberate Choices Consistent with User Fee Design Principles, but USCIS Lacks a Plan to Capture Certain Key Costs in Future Reviews, Increasing the Risk of Misaligned Costs and Collections, Major Fee Increases, and Processing Delays

Many fee design choices described in USCIS's 2007 fee review provide transparent analysis and are consistent with user-fee design principles such as considerations related to equity and administrative burden. However, USCIS did not conduct the analysis necessary to fully inform either congressional decision-making or USCIS's internal deliberations on key areas such as the cost of activities funded by statutorily-set fees or the appropriate level of carryover balance for the agency. As described below, despite costly operational challenges that resulted, in part, from USCIS's lack of regular, comprehensive fee reviews, and although fiscal years 2008 and 2009 fee collections significantly lag projections, USCIS has no plans to determine and include in its next fee review certain key costs that were missing from the 2007 review. Without considering all costs associated with its fee-funded operations when setting fee rates, USCIS fee collections may not be sufficient to cover costs, especially since a large amount of USCIS's costs are fixed costs; that is, costs that do not vary with the number of applications received and processed. Since USCIS is mainly a fee-funded agency, this raises concerns about potential service delays and disruption.

USCIS Fee Design Reflects Trade-offs among Fee Design Principles, Particularly Equity, and Administrative Burden

User fees can be designed to achieve various policy goals. Because the four user-fee design principles—equity, efficiency, revenue adequacy, and administrative burden—can be in conflict with one another, trade-offs often must be made among them to achieve a given policy goal or preference. It is important for decision makers to know the costs of achieving a policy goal in order to understand and evaluate the approach used to achieve the goal. USCIS’s user-fee review clearly describes the choices it made in structuring the fees it sets, particularly in terms of equity and administrative burden, in three key areas: (1) the use of exemptions and waivers, (2) limitations on certain fee increases for a population deemed unlikely to be able to pay, and (3) decisions about how costs were assigned among users.

Fee Exemptions and Waivers

USCIS’s user-fee design allows fee exemptions for certain form types and fee waivers for some applicants, and USCIS funds these activities through a surcharge added to fee-paying applicants. For example, certain form types are fee-exempt, such as for refugees and applicants seeking asylum, and fee waivers are granted on a case-by-case basis for applicants who demonstrate an inability to pay by meeting certain need-based criteria.¹⁹ The cost of fee exemptions and waivers is allocated to the fee-based applications as a flat-rate surcharge. As a result of USCIS’s 2007 fee review, the fee-exempt and fee-waiver surcharge is \$72 per fee-based application, or 15 percent of the average application fee.

We have previously reported that the cost of providing services to fee-exempted or fee-waived users is commonly funded by general revenues or by the fees of other users. When those who are more capable of bearing the burden of fees pay more for the service than those with less ability to pay, the ability-to-pay definition of equity is employed, creating conflict with the beneficiary-pays definition of equity and causing cross-subsidization among applicants. Both definitions of equity are valid approaches depending on the policy goal an agency is trying to achieve. Fee exemptions and waivers may also increase an agency’s administrative burden—the cost of administering the fee—since the agency must carefully track when fees are due and from whom rather than simply charging every applicant. Fee-paying applicants also bear an

¹⁹In determining inability to pay, USCIS considers the totality of all factors, circumstances, and evidence the applicant supplies including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit, as well as other factors associated with each specific case. More information about fee waiver guidance can be found at <http://www.uscis.gov/feewaiver>.

Downward Adjustment of
Application Fees

administrative burden in terms of compliance costs associated with waiver and exemption policies.

USCIS limited the increase in the fee charged for some low volume applications to avoid what, in some cases, would have been a 250 percent fee increase or greater, levied on a population unlikely to be able to pay. Instead USCIS limited the increase to the total average increase across all applications—96 percent.²⁰ The unrecovered processing costs for these form types were distributed across other form types and thus distributed among other fee-paying applicants.

USCIS's adjustments are consistent with two different definitions of equity. Specifically, USCIS demonstrated the ability-to-pay principle of equity by adjusting the fees for form types where the dramatic fee increase would likely exceed the applicant's ability to pay, thereby ensuring that the fee increase was comparable to that which other applicants would be paying. As a result, USCIS applied the adjustment to:

- Form I-360, Petition for Amerasian Widow(er) or Special Immigrant (where fee is not exempted);
- Form I-690, Application for Waiver of Excludability;
- Form I-695, Application for Replacement Employment Authorization or Temporary Residence Card;
- Form N-300, Application to File Declaration of Intention; and
- Form N-470, Application to Preserve Residence for Naturalization Purposes.

Second, USCIS demonstrated the beneficiary pays principle of equity by not applying a downward adjustment to a second set of fees, for which the population would likely be able to pay the large fee increase, some of which increased by more than 250 percent. By not adjusting them USCIS closely aligned these fees with the cost of providing the services to these users. USCIS did not apply the downward adjustment of application fees to:

- Form I-694, Notice of Appeal of Decision;
- Form I-698, Application to Adjust Status From Temporary to Permanent Resident; and
- Form I-829, Petition by Entrepreneur to Remove Conditions.

²⁰This does not include the biometrics fee.

USCIS's user-fee review states that for these three form types there does not appear to be a substantial rationale for lowering the fee below the charge under the applicable methodology, because the affected populations are likely able to pay the actual application cost. For example, the Forms I-694 or I-698 are application forms associated with the Immigration Reform and Control Act (IRCA) of 1986. IRCA established a legalization program for immigrants residing in the United States since at least 1982. USCIS determined that since these individuals have lived in the United States for such a long period of time they were more likely to be able to afford the applicable fee. In addition, applicants filing Form I-829 must be entrepreneurs with \$500,000 to invest, making it reasonable to assume that the full cost of the fee would not be a hardship.

Assigning Costs among Users

USCIS assigned costs to various fee-paying users in a combination of ways in determining its fee rates. In our related study, we discuss how the methodology used to determine the cost assignments could be improved.²¹ Some costs were assigned based on the average time to adjudicate the specific form types, some costs were assigned as a flat-rate surcharge to all fee-funded form types, and some costs were assigned proportionally among form types. For example, USCIS identified the costs for adjudicating each form type, referred to as the "make determination" costs, and assigned these costs to the corresponding form type. In addition, all fee-paying applicants pay a flat-rate \$72 surcharge to recover the costs associated with asylum and refugee services and fee-waived and fee-exempt applications. Lastly, USCIS allocated in proportion to FTEs \$732 million in overhead costs, including payroll, accounting, and legal services.

We have previously reported that if the cost of providing a service varies for different types of users, fees may vary (a user-specific fee²²) or be set at an average rate (a systemwide fee). All other factors being equal, user-specific fees promote equity and economic efficiency because the amount of the fee is closely aligned with the cost of the service. USCIS's make-determination costs, which make up 49 percent of its total costs, vary by form type and are assigned accordingly; as such, this portion of the costs are aligned with the associated fees. Systemwide fees minimize

²¹For a complete review of USCIS's cost accounting and fee-setting methodology, see [GAO-09-70](#).

²²In USCIS's case, this would be a form-specific fee as all fee-paying applicants for a certain form type would pay the same amount regardless of how much their individual application cost to process.

administrative burden because they do not require identifying and charging specific costs to each user. However, we raise concerns about the lack of justification and support for USCIS's allocation of remaining costs in our related report, including how USCIS allocated certain overhead costs and whether alternate allocation methods may offer greater precision.²³

USCIS Has Not Identified Costs Associated with Statutorily Set Fees, Omitting Key Information Useful to Congressional Decision Makers

USCIS does not know the relationship between the costs and the fees associated with those fees that are set in statute; as a result, decision-makers lack this key information for reviewing fees. The most notable of the statutorily set fees is the \$1,000 fee for the premium-processing service, which was USCIS's fifth largest single generator of funds in fiscal year 2007. USCIS officials said that they had not identified the costs associated with statutorily set fees and that doing so is not a priority for them because USCIS cannot change these fee rates through the regulatory process. Unlike most of USCIS's application fees, the premium processing and H-1B fees are not cost-based fees, but Congress can still review and revise the fee. We have previously reported that reliable information on the costs of federal programs and activities is crucial for agencies and Congress to ensure effective management of government operations, which includes setting user fees.

Premium Processing

In December 2000, Congress authorized the collection of a premium processing fee, in addition to the regular application fees, for employment-based applications.²⁴ Congress set the amount of the fee at \$1,000 and directed that these amounts be available for (1) the premium processing activities and (2) infrastructure improvements associated with adjudications and customer-service.²⁵ Pursuant to this authority and as established in regulations, USCIS guarantees that certain employment based applications will be processed within 15 calendar days of receipt.²⁶

²³See [GAO-09-70](#).

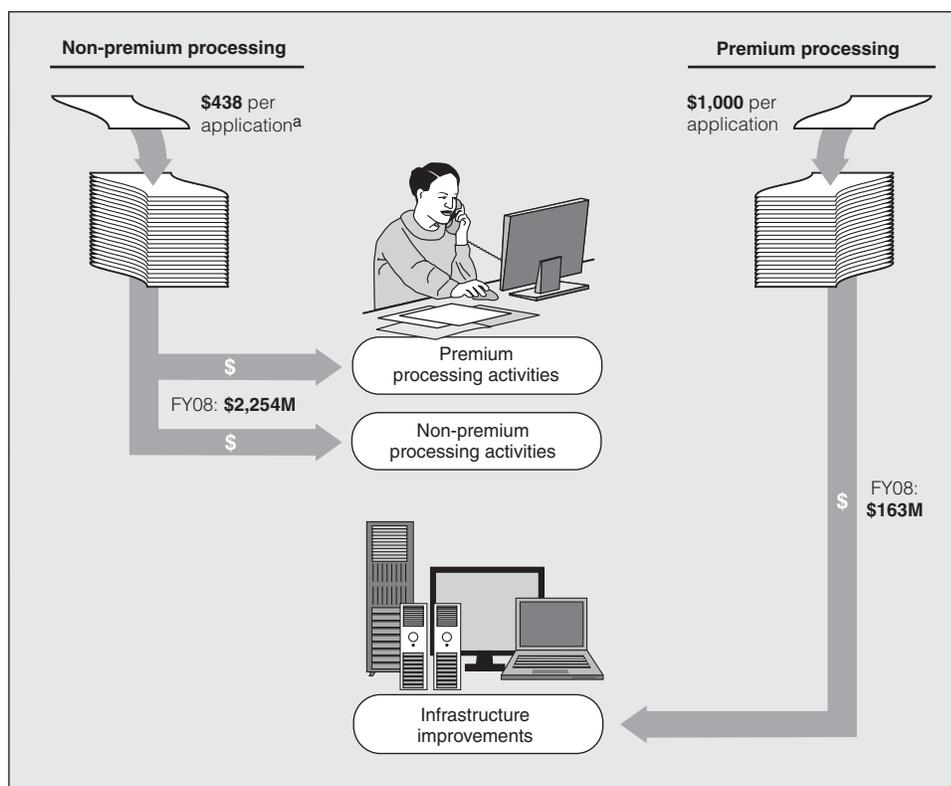
²⁴Pub.L.No. 106-553, App. B, Title I, § 112, 114 Stat. 2762, 2762A-68 (Dec. 21, 2000).

²⁵Pub.L.No. 106-553, App. B, Title I, § 112, 114 Stat. 2762, 2762A-68 (Dec. 21, 2000), *codified at*, 8 U.S.C. § 1356(u).

²⁶8 C.F.R. § 103.2(f). USCIS may designate the employment-based applications that are eligible for premium services pursuant to public notice in the *Federal Register*.

USCIS's 2007 fee review states that the agency intends to use all premium-processing collections to fund planned infrastructure improvements, as shown in figure 2, which are a significant component of USCIS's Transformation Program²⁷ and for the purposes of the fee review, are not included in what the agency's definition of overhead costs. Funding the Transformation Program with premium-processing activities is consistent with the House Report to the FY 2008 DHS Appropriation Bill, H.R. 2638, which²⁸ directed USCIS to allocate all premium-processing fee collections to information technology and business-system transformation.

Figure 2: The Flow of Premium Processing Collections and Usage



Source: GAO analysis of USCIS data.

²⁷USCIS is embarking on an agency-wide Transformation Program that is intended to transform USCIS's current paper-based data systems into a modern, digital processing resource that will enhance customer service and better prevent future backlogs.

²⁸H.R. No. 110-181, at 114 (2007).

This policy choice raises various equity issues. First, because all of the premium processing funds will be used for business process and technology improvements, the additional costs of premium processing services are funded by non-premium processing fee-paying applicants. However, since USCIS has not identified the total costs of these services, neither Congress nor the agency knows the dollar amount of the premium-processing costs being subsidized by non-premium-processing, fee-paying applicants, though evidence suggests that there are some additional costs. For example, we found that the California Service Center had dedicated 20 adjudicators and a file room exclusively for premium processing, and the Vermont Service Center has a dedicated mail room for receiving premium-processing applications. Second, while Congress supports this use of premium processing collections, we note that these applicants are bearing an uneven amount of the costs of the Transformation Program—an initiative that will ultimately benefit all types of future applicants. Spreading the transformation costs among all application fees would also create inequities between applicants at different points in time—today’s applicants would be paying for improvements likely to benefit future applicants but would distribute the burden across all fee-paying applicants.

When the premium processing fee was enacted in December 2000 Congress authorized USCIS to adjust it by the consumer price index (CPI) but USCIS has not done so. USCIS officials said that adjusting with the CPI was not necessary because the 2007 fee increases would fully recover USCIS’s transformation-related costs. However, had the premium-processing fee been adjusted by the CPI each year, the 2007 fee increases for other form types might have been less. If USCIS had adjusted the premium-processing fee by the CPI during this period the premium-processing fee in fiscal year 2007 would have been approximately \$1,171 rather than \$1,000,²⁹ and total premium-processing collections would have been \$221 million rather than \$189 million in 2007.³⁰ The additional \$32 million collected in just one year could have been used to defray the costs of the premium processing service, thereby limiting the amount of cross-subsidization by non-premium processing applicants.

²⁹Based on the Bureau of Labor Statistics inflation rate of 17 percent from 2001 to 2007.

³⁰Assumes the same number of applications would have been submitted.

H-1B Visa

In 1998, Congress enacted a mandatory fee on employers seeking to have an individual admitted to the United States as an H-1B Nonimmigrant Worker.³¹ Congress sets the amount pursuant to statute; currently the fee is \$1,500 for most employers with more than 25 full-time employees.³² Congress has directed that five percent be available to the Department of Homeland Security and USCIS for various duties related to the processing of H-1B applications, including collecting the employer fee, and processing the applications.³³ USCIS officials said that these funds are used for service center contract activities.

All nonimmigrant workers, including workers seeking H-1B status, must complete a Form I-129, Petition for Nonimmigrant Worker. The I-129 fee is a cost-based fee set pursuant to regulation and is currently \$320. Accordingly, for most individuals seeking H-1B status, USCIS collects and is authorized to use two fees: (1) five percent of the statutorily set \$1,500 employer fee; and (2) the Form I-129 fee of \$320.³⁴

Congress “caps” the number Petitions for Nonimmigrant Workers seeking H-1B status (H-1B petitions) for new employment on an annual basis. Since fiscal year 2004, the annual cap on H-1B petitions has been 65,000.³⁵ For fiscal year 2009, USCIS began accepting H-1B petitions on April 1, 2008 and received 163,000 H-1B petitions subject to the annual cap requirements within the first week. USCIS instituted a two-step lottery selection process to determine which of the 163,000 petitions received

³¹Congress also directed this fee be imposed on employers seeking to extend the stay of an H-1B Nonimmigrant worker or seeking authorization for an H-1B Nonimmigrant worker to change employers.

³²Primary and secondary education institutions, certain institutions of higher education, and certain nonprofit institutions are exempted from paying the H-1B employer fee. The fee for employers with 25 full-time employees or less is currently \$750. USCIS deposits the H-1B fees into the H-1B Nonimmigrant Petitioner Account.

³³The remaining ninety-five percent is available to the Secretary of Labor or the Director of the National Science Foundation for related scholarship and grant activities noted in 8 U.S.C. § 1356(s)(1)-(4).

³⁴In accordance with other USCIS fees set through the regulatory process, USCIS deposits the I-129 fees, including those paid with H-1B Nonimmigrant worker petitions, into the Immigration Examinations Fee Account.

³⁵The first 20,000 H-1B petitions filed on behalf of aliens with U.S. earned master’s degrees or higher are exempt from the annual cap, so in practice 85,000 applications may be allowed under the cap. Petitions filed on behalf of immigrants seeking employment in certain educational and nonprofit institutions are also exempt from the annual cap.

would be adjudicated. This required USCIS to first complete basic data collection for, and assign a number to, each petition. USCIS has not identified the additional costs associated with either administering the H1-B lottery or adjudicating applications associated with the H1-B cap.

While the cost of the H1-B random lottery selection process is not known, service-center employees have suggested that H1-B costs may be significant. Vermont Service Center officials estimated that “pre-filing” costs at just that service center for the H1-B program totaled \$1 million in 2008. They also said that Vermont Service Center preparations for the H1-B filing period were carried out at the expense of file-room operations. California Service Center officials said that in an effort to manage the H1-B applications, they hired temporary employees prior to and during the H1-B filing period in 2008. According to USCIS officials, fees collected for all I-129 Nonimmigrant Worker petitions cover these additional costs. Because USCIS officials do not know the total costs of the H1-B program, the agency and Congress do not know the extent to which the non-H1-B, I-129 applicants are subsidizing the costs of the H1-B lottery and associated activities, nor do they know whether USCIS’s statutorily set share of the H1-B fee covers H1-B processing costs.

USCIS Has Not Identified Its Share of Lockbox Costs nor Its Carryover Balance Target, Omitting Information Useful to Agency Decision Makers

USCIS’s 2007 fee review did not fully identify and consider the costs associated with lockbox operations nor a target level for carryover balances that would ensure continuity of operations in the event of a decrease in applications. If a fee review is not comprehensive, it may not provide sufficient information to assess whether a fee needs to be changed or the resulting fee rates could be insufficient to recover all of the related costs, affecting agency operations and service levels.

Lockbox Funding

USCIS’s 2007 fee review did not fully account for the costs associated with lockbox services because these costs were unknown at the time of the fee review. In September 2008, USCIS and FMS entered into an interagency agreement in which USCIS agreed to reimburse FMS for lockbox-related costs that were unique to the needs of USCIS.³⁶ This agreement incorporated a memorandum of understanding between USCIS, FMS and the designated depository outlining the terms and conditions of the

³⁶This interagency agreement was entered into pursuant to the Economy Act.

services provided, including the reimbursement levels for one-time and annual costs that USCIS will pay FMS, see table 1.

Table 1: Lockbox Costs to Be Borne by USCIS

One time charges for development of expanded lockbox services		Annual operating costs at operating sites	
Technology – paper solution	50 %	Designated financial agent operations labor services	40 %
IT Development resources	50 %	Facility charges	5 %
IT Production Resources	50 %	Technology charges – vendor services	40 %
IT Hardware Purchases	5 %	IT production support	40 %
Facilities – leasehold improvements for Chicago, Dallas, and Phoenix lockbox facilities	5 %	Ongoing tech, service support	5 %
Implementation costs and ramp-up costs	30 %	Operating costs	25 %
		Program management and project implementation team	50 %
		Record of Proceeding order	100 %
		Pass-through expenses	100 %
		Change requests – initiated by USCIS	100 %
		Vermont data entry site costs	100 %

Source: USCIS.

USCIS’s 2007 fee review estimated \$2 million for lockbox costs, but this amount only represents about 4 percent of the total \$48 million estimated lockbox costs for fiscal years 2008 and 2009 (the period covered by the fee review). USCIS must also retroactively pay for some lockbox services incurred from October 1, 2007, through the date the MOU was signed (March 27, 2008), and 20 percent of the actual lockbox processing costs for five additional form types that are processed at the lockbox but not covered by the MOU.

USCIS’s lockbox costs will remain misaligned with fee collections unless USCIS adjusts the fees. USCIS officials said the contracts for pre-adjudicative operations at the service centers will be reduced as the lockbox operations are expanded. Therefore, the net extent of the misalignment for 2009 and beyond is unknown. However, USCIS expects that lockbox costs will continue to increase over time, as shown in table 2.

Table 2: Estimated Lockbox Costs Shared by USCIS and FMS

	FY2008	FY2009	FY2010	FY2011
One-time costs	\$11,430,000	\$9,260,000	\$4,900,000	\$2,000,000
Annual costs	\$5,800,000	\$21,600,000	\$30,000,000	\$37,100,000
Total	\$17,230,000	\$30,860,000	\$34,900,000	\$39,100,000

Source: USCIS.

Carryover Balance

In its 2007 fee review, USCIS did not fully consider issues related to revenue adequacy because it did not conduct the analysis needed to establish a target level of carryover balance, or “reserve,” that would allow for the continuity of operations funded by the IFEA account in the event of a decrease in application volume. We previously reported that when fees are expected to cover program costs that do not necessarily decline with a drop in fee collections, a carryover balance is important.³⁷ Agencies should also consider revenue stability, or the degree to which short-term fluctuations in economic activity and other factors affect the level of fee collections. For example, a decrease in application volume could significantly affect operations when an agency receives nearly all of its funding from application fees.

USCIS officials said they have not conducted the analysis to determine what their carryover balance should be. However, they told us that an appropriate level of carryover balance level should reflect: (1) USCIS’s first-quarter obligations, which includes the full contract value for the whole fiscal year;³⁸ (2) deferred revenue equal to the amount of its outstanding workload,³⁹ and (3) the operating “tempo” of the organization. USCIS anticipates a carryover balance of \$450 million at the end of fiscal year 2009 depending on the level of revenue collected during the year, actual spending, any dips in receipt, and/or any sudden surges. Without analyzing its contractual and operating costs to determine an appropriate target carryover balance, USCIS is at risk of reducing or disrupting services if collections decrease. It is unclear for how long and at what service level USCIS would be able to operate using its current carryover

³⁷GAO-08-386SP.

³⁸USCIS enters into year-long contracts at the start of the year and therefore must have collections equal to the full contract value available for obligation at the start of the year.

³⁹USCIS’s deferred revenue are fee collections received by the agency for applications for which the adjudications have not been completed.

should this become necessary. Moreover, the 2007 fee review projected collections of \$2,331 million for each of the fiscal years 2008 and 2009 but actual fiscal year 2008 collections were only \$2,254 million (a difference of \$77 million). USCIS revised its fiscal year 2009 fee collection projections to \$2,287 million (\$33 million more than fiscal year 2008 collections and \$44 million less than the original projection.)

Long Lags between Fee Reviews Resulted in Large Fee Increases and Costly Challenges

USCIS's 2007 fee review, the first comprehensive fee review since 1998, increased application fees by an average of 86 percent which contributed to a surge in application volume as applicants attempted to submit their applications before the fee increase took effect.⁴⁰ The 2007 fee increase and subsequent application surge contributed to the following costly challenges:

- **Increased filings of fee-waiver applications.** The number of applications for fee waivers increased after the new fee schedule as proposed. For example, USCIS received more than three times the average number of fee-waiver applications for Form N-400 (the application for naturalization) in January 2007 (when the fee increase was announced) than it had received in any of the preceding 15 months. Fee waivers add to the cost of processing the corresponding applications because USCIS must first determine whether to approve the waiver before it adjudicates the corresponding application.
- **Suspension of premium-processing service for some form types.** USCIS suspended premium process services for one form type for almost a year as it responded to the surge in applications, reflecting a strategic decision to reduce the agency's obligation to offer a service that it likely could not have delivered effectively at that time. At \$1,000 per application, suspending premium processing resulted in an unknown, but likely significant loss of collections for the agency. While USCIS did not see a decrease in total premium-processing collections for 2007 as compared to 2006, it is likely collections would have been higher if premium processing had not been suspended. The effects—if any—on USCIS's transformation efforts, which are funded solely by premium-processing collections, are as yet unknown.

⁴⁰USCIS has identified additional factors that contributed to the application surge, including the publication of a State Department Visa Bulletin stating that employment-based visas were immediately available.

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- **Increased costs to secure high volumes of unprocessed collections.** The number of total applications submitted—and therefore the fees collected—increased an unprecedented 100 percent between June and July 2007, exceeding storage capacity. At the Texas Service Center unprocessed applications were stored outside in six rented 10-by-40-foot containers, double-locked, and monitored by a full-time security guard. While the storage containers and guards were important to ensuring the security and internal controls over the applications, USCIS incurred additional, unplanned costs as a result of the surge in applications.
 - **Fees were not deposited according to the 24-hour cash management standard.** The increased volume of applications exceeded the service center contractors' ability to process them. Fees were not deposited within the 24-hour time frame required by the contracts.⁴¹ The 24-hour deposit requirement is consistent with the Department of Treasury's financial management standards and ensures government receipts are safe and available to accrue interest for the government. Further, the U.S. government did not earn interest on these undeposited collections. In some cases, like those applications stored in the rented containers at the Texas Service Center, application fees were not deposited for months.

USCIS's Current Fee Review Time Frames are Consistent with Biennial Review Requirements but USCIS Has No Plans to Consider All Key Costs

Under USCIS's 2009 fee review schedule any fee adjustments would take effect in September 2009 (see table 3). According to this schedule, USCIS has refined its activity-based costing model, updated the model data, completed its initial policy review, and plans to complete the fee review by February 2009. However, as discussed above, USCIS's 2007 methodology did not identify key costs, such as the costs of completing premium processing applications or those applications for which the fee rate is set in statute, and did not include a plan for achieving an appropriate level of carryover balance. USCIS did not provide documentation of its revised fee methodology that would allow us to determine whether these shortcomings would be addressed in the 2009 fee review or whether the remaining timeframes for key milestones are reasonable. We have previously reported that regular, substantive fee reviews help ensure that Congress, executive branch agencies, and stakeholders have complete information about both program costs and the alignment between costs

⁴¹Specifically, the contract states that the fees be deposited not later than the depository pick-up time on the next business day after the receipt of the fees in service centers.

and collections. Absent regular reviews, it becomes increasingly likely that fees and costs will become misaligned leading to costly challenges, such as those described above. Further, the CFO Act of 1990 requires that agency CFOs conduct a comprehensive fee review once every two years, increasing the importance of meeting the timeframes for the remaining fee review milestones.

Table 3: USCIS 2009 Fee Review Milestones and Time Frames

2009 Fee review milestone	Timeframe
FY 2008	
Refine activity-based cost (ABC) model	January (complete)
Update ABC model data	June (complete)
Initial resource baseline, enhancement, policy review	August (complete)
FY 2009	
Refine data and assess need for a rulemaking	December
Final decision on need and schedule for fee rulemaking	February
Issue notice of proposed rule making ^a	May
Issue final rule ^a	July
Final rule takes effect ^a	September

Source: USCIS.

^aThese elements are included only if a new rulemaking is deemed appropriate and necessary.

USCIS Application Volume Projections Do Not Effectively Inform Workload Management despite Operational Challenges Associated with Application Surges

USCIS projects incoming application volume on an annual basis to inform the agency’s budget formulation. However, the annual projections do not identify anticipated monthly volume variations, limiting their usefulness for workload management purposes, and are no longer provided to the processing centers that receive incoming applications. In addition, USCIS has not consistently documented key information and decisions about application volume drivers that could improve projections over time.

USCIS's Workload and Fee Projection Group (Fee Group) Projects Annual Application Volumes

The Fee Group is comprised of representatives from a number of USCIS offices and DHS's Office of Immigration and Statistics (OIS). OIS is responsible for producing application volume projections based on statistical analysis of historical application volumes, while the USCIS offices are responsible for enhancing the accuracy of the OIS projections through their understanding of immigration and naturalization issues affecting application volumes.

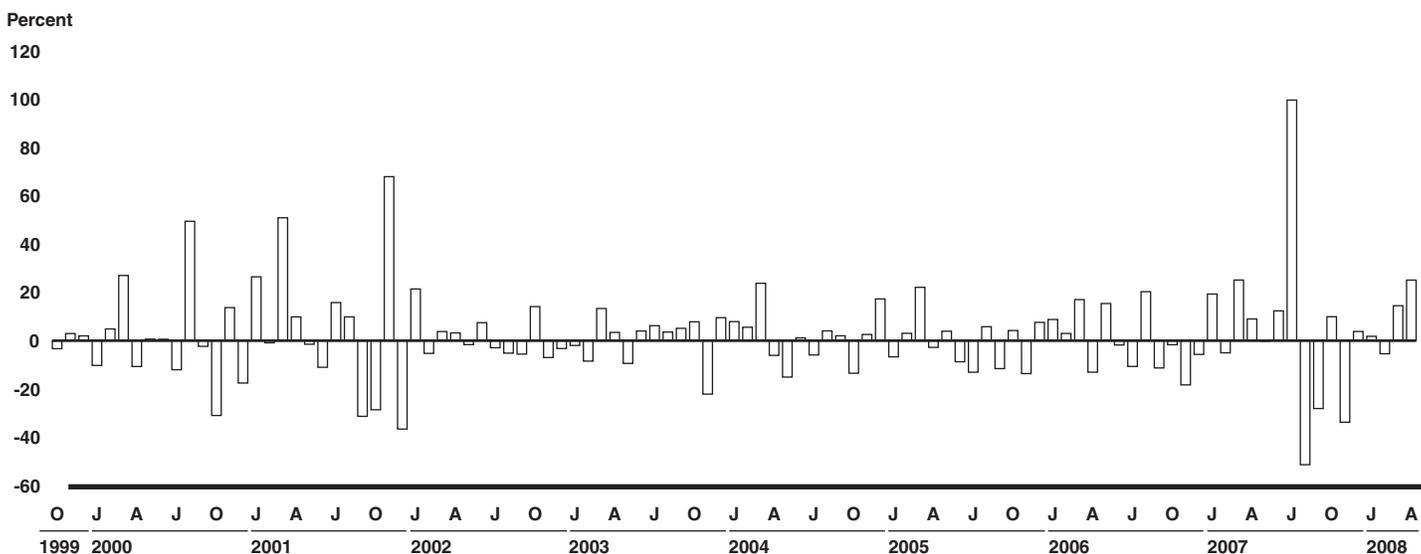
OIS typically develops an initial annual application volume projection for the current and forthcoming fiscal years in November of the current fiscal year, and the Fee Group meets to discuss the OIS projection shortly thereafter. At the Fee Group meetings, representatives from USCIS's Production Management Branch (PMB) often provide their own projections, which emphasize more recent application volumes, and then lead discussions regarding the potential effect of application volume drivers, such as policy decisions and stakeholder activities. Through these discussions, OIS, PMB, and the other USCIS offices collectively produce the Fee Group projections of annual application volume by form type and fiscal year—typically for the current and forthcoming fiscal years. OIS officials said they typically provide updated projections to USCIS quarterly, and the Fee Group generally meets two more times a year to produce updated Fee Group projections.

USCIS Projections Do Not Identify Monthly Variations in Application Volume despite Their Magnitude and Effect on Workload Management

Despite the processing challenges created by monthly application volume variations, USCIS officials from the Office of the Chief Financial Officer (OCFO), the Operations Planning Division (OPD) and PMB—all members of the Fee Group—said that USCIS projects application volumes in order to project revenue but does not develop monthly application volume projections to inform workload management. In the past, these challenges have both increased costs and diminished service levels. For example, the 2007 application surge contributed to delays in the processing of 1.47 million applications, and, as of May 2008, USCIS did not expect to shorten processing time as originally anticipated until the second quarter of 2010. As previously discussed, the surge also contributed to increased operating costs.

Monthly variations in application volume met or exceeded 20 percent 20 times from fiscal year 2000 through April 2008 and approached or exceeded 50 percent on five occasions during that time frame, as shown in figure 3 below.⁴²

Figure 3: Percent Variation in Application Volume on a Monthly Basis from Fiscal Year 2000 through April 2008



Source: GAO presentation of USCIS data.

USCIS officials said that the variations have the greatest impact on USCIS’s contractors and lockbox operations because, as noted, application fees must be processed and deposited within 24 hours of receipt at the processing centers.

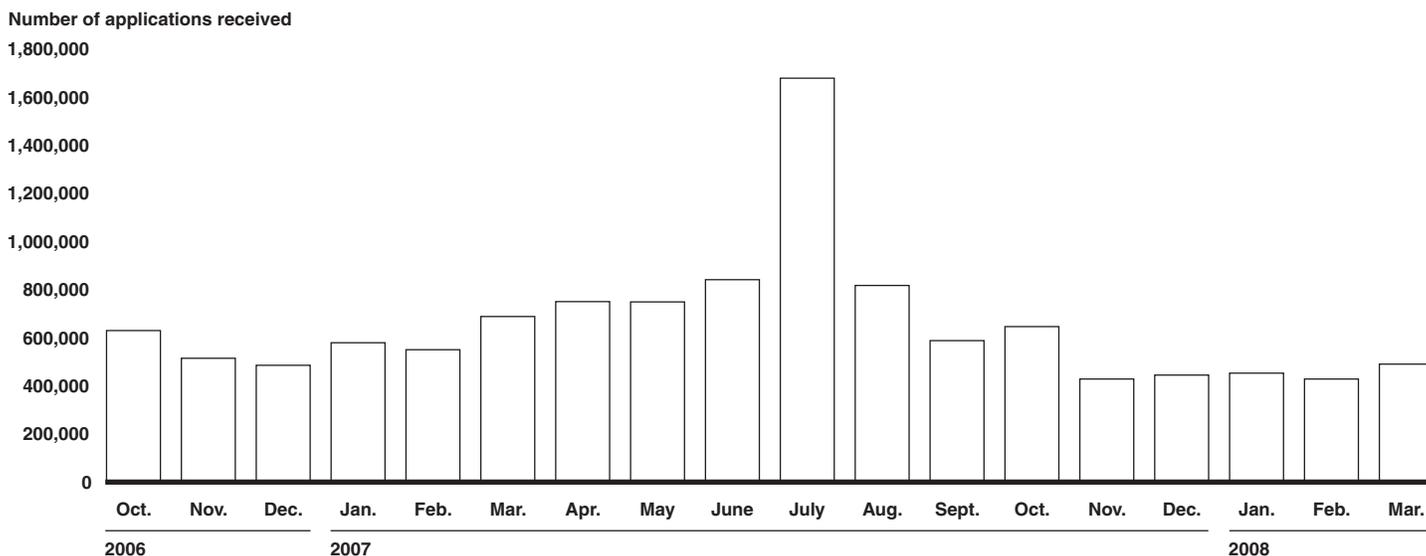
The service center contracts and the lockbox interagency agreement tie performance expectations to application volume projections. The contracts for pre-adjudication activities state that the contractors shall maintain the capacity to accommodate “spikes” in receipt volumes that are anticipated at least 45 calendar days in advance. Additionally, the lockbox interagency agreement states that the designated financial agent at the lockbox shall maintain the capacity necessary to process surges of up to 20,000 applications per day per processing site when the financial agent is

⁴²As we have noted, during the 2007 surge the most dramatic monthly application volume variation occurred from June to July, when incoming application volume increased 100 percent.

informed of anticipated surges 90 calendar days prior to the start of those surges. However, the Fee Group’s annual application projections do not reflect fluctuations over 45 and 90 day periods and therefore the agency is unable to provide this information to contractors and the designated financial agents.

Projections for fiscal year 2007 illustrate the limitations of annual projections—the inability to forecast a significant monthly fluctuation even when a particular event—like the July 2007 fee increase—is known. USCIS requested that OIS perform an analysis of the historical relationship between fee changes and application volume on an annual basis in order to project the effect the proposed 2007 fee change would have on USCIS’s budget formulation activities. However, projecting application volume on an annual basis obscured volume variations on a monthly basis. Specifically, the annual projection did not identify a surge in application volume in the months preceding the fee change because this temporary surge was largely negated by a decrease in application volume in the months following the fee change. See figure 4 below.

Figure 4: Actual Incoming Application Volume USCIS-wide from October 2006 through March 2008



Source: GAO presentation of USCIS data.

OIS officials said they can and have in the past developed projections that account for monthly variations. The designated financial agent who will be responsible for many USCIS pre-adjudication activities by the end of 2009 projects monthly application volume for workload management purposes.

Specifically, the designated financial agent uses the same data as the Fee Group to produce projections that account for monthly variations and subsequently inputs the projection data into models that predict how its resource requirements might change during application surges.

USCIS Projection Documents Do Not Consistently Record Critical Information about Application Volume Drivers, Limiting Analysis That Could Improve Projections over Time

The USCIS Fee Group's projection documents do not consistently identify and record the drivers of application volume or how the projections account for these application volume drivers. As a result, the Fee Group does not have historical data that could be used to improve projections over time. According to the Fee Group's charter, it is responsible for assessing and documenting its projection methodologies to determine what factors may account for gaps between the Fee Group's projections and actual application volume—e.g., policy decisions, demographic trends, etc. According to the charter, these assessments and the corresponding documentation are intended to increase the accuracy of the Fee Group's projections. While the Fee Group's projection documents have identified policies that are expected to affect application volume, as well as relevant demographic trends, the Fee Group still does not consistently identify and document:

- known application volume drivers, such as policy decisions and demographic trends;
- the magnitude by which baseline projections have been adjusted in order to account for application volume drivers; and
- reasons why OIS's baseline projections were not adjusted by the Fee Group in an effort to enhance the accuracy of the projections.

The Fee Group's projection documents from the first three quarters of fiscal year 2008 document five versions of the fiscal year 2009 volume projections—an original version and four revisions—for 10 of fiscal year 2007's largest volume forms.⁴³ Within these revisions, there were 22 projection changes, while the remaining 28 projections were not adjusted from the preceding projection rounds. See table 4 below.

⁴³In 2008, the Fee Group ceased producing projections for the I-129S, which was the sixth largest form by volume in fiscal year 2007, because it is a non-revenue form. The Fee Group combined projections for I-90 Renewals and Replacement ARC for fiscal year 2009.

Table 4: Fiscal Year 2009 Application Volume Projections for Top 10 High-Volume Form Types

Form Number	18-Oct, 07	30-Oct, 07	19-May, 08	28-May, 08	3-Jun, 08
I-90	637,000	637,000	1,046,100	1,046,100	1,326,000
I-129	438,000	438,000	375,000	375,000	375,000
I-130 Immediate Relative	289,000	289,000	480,705	480,705	480,705
I-130 Preference	446,000	446,000	194,295	194,295	194,295
I-131	198,000	198,000	160,000	179,000	179,000
I-140	135,000	135,000	135,000	135,000	135,000
I-485	439,038	439,038	346,762	346,762	346,762
I-765	1,176,000	1,176,000	1,280,000	1,400,000	1,400,000
I-821	0	0	310,000	310,000	310,000
N-400	750,000	750,000	650,000	650,000	650,000

Source: GAO presentation of USCIS data.

Note: Bold numbers represent changes to fiscal year 2009 volume forecasts.

The projection documents also show 23 unique explanations for the 22 projection estimates. In some instances, although the projection estimate did not change, the explanation for the estimate did. For the I-140 from October 30th to May 19th, the projection estimate remained 135,000; however the explanation for this projection was changed. Nineteen of these 23 unique explanations did not comprehensively account for the critical information identified above. Specifically, our review of the projection documents revealed that the Fee Group does not identify:

- application volume drivers (9 of the 23 unique projection explanations),
- the magnitude by which baseline projections have been adjusted in order to account for application volume drivers (6 of the 23 unique projection explanations), and
- reasons why OIS’s baseline projections were adopted without any adjustments being made (4 of the 23 unique projection explanations).

The Fee Group has had some success in accounting for application volume drivers in this manner in the past. For example, in the cases of the N-400 and I-90 renewal applications, the Fee Group has identified and documented quantitative relationships between past and future application volumes as well as the manner in which these relationships have informed the respective projection methodologies. This type of documented analysis, however, is the exception. USCIS officials have stated that factors such as “public thinking” and the “immigration

environment” affect application volume but it is often unclear how the Fee Group has accounted for these drivers in their projections. While some drivers can be difficult to quantify, consistently documenting these drivers and the resulting decisions will provide information that can be analyzed and adjusted to improve both workload volume and revenue over time.

Little or No Projection Information Is Provided to USCIS Processing Centers despite the Potential to Mitigate Operation Challenges Resulting from Surges

Operations personnel at processing centers across the country said that they receive little or no information about application volume projections from USCIS headquarters that would be useful for workload management. Officials at the four service centers and the NBC also said that USCIS headquarters did not provide them with application volume projections for the months preceding the July 2007 fee increase. USCIS Service Center Operations officials also did not meet with processing center contractors to discuss anticipated application volume increases in 2007, despite the fact that USCIS officials stated that contractors would be most affected by surge management issues.

Officials from USCIS’s Service Center Operations said the projected monthly application volumes for each service center are equal for all months through the end of a projection period. In other words, while these projections are adjusted each month to account for year-to-date application volume, the remaining workload is assumed to be evenly distributed across forthcoming months. Although USCIS Service Center Operations used to provide these projections to the processing centers, they determined that the projections had not been accurate enough for operational purposes and no longer make this data available. While the nature of USCIS’s mission places a premium on responsiveness and flexibility, GAO has reported that government agencies must move from reactive behavior to more forward-looking approaches in order to successfully transform into high-performing organizations.⁴⁴

Service centers have demonstrated that they can effectively prepare for and to some degree, mitigate, surges in application volumes when such surges are anticipated. For example, in 2008, the California and Vermont service centers anticipated a surge in application volume during the H1-B filing period based on the service centers’ experiences in 2007. In

⁴⁴See GAO, *High Performing Organizations: Metrics, Means, and Mechanisms for Achieving High Performance in the 21st Century Public Management Environment*, [GAO-04-343SP](#) (Washington, D.C.: February 2004).

preparation, California Service Center officials worked with their contractor to develop a plan for managing it, including dedicating extra space for intake activities, employing multiple shifts, and increasing the number of intake personnel by drawing from a pool of 50 additional employees who are maintained through a contract with a local temporary employment agency. The Vermont Service Center’s plan included extra dedicated space for intake activities.

Vermont Service Center officials also suggested that additional actions could be taken to improve operations by using workload projections. Specifically, they suggested that the negative effects of surges could be mitigated if filing periods for certain high-volume form types were scheduled to not overlap. They also noted that overtime hours could be allocated prior to an anticipated surge in a particular form type in order to better manage the workload for other form types. This would provide for less dramatic resource reallocations during the surge itself.

USCIS Does Not Consistently or Adequately Validate Invoices for Mail Operations at the Service Centers

Contractors perform all operations for incoming and outgoing mail at the service centers, and they are paid according to a fixed unit price for each piece of mail processed. USCIS expects these mail operations payments to total \$12 million over the first year of the contract. However, a large portion of the per-piece mail count is conducted by the contractor, and USCIS’s approach to validating these counts is inconsistent across service centers. In most cases USCIS cannot verify that it is receiving the service that it is paying for.

The majority of incoming mail is delivered through local U.S. post offices, uncounted, in large “tubs.” The contractors count the pieces of mail they process and inform USCIS of the total. According to the contracts, these counts shall be subject to government verification. However, USCIS has not developed an agency-wide standard operating procedure for validating the contractors’ counts. As a result, three of the four service centers do not validate contractor mail counts at all.

According to USCIS Service Center Operations officials at headquarters, service centers are responsible for developing methods to validate contractor mail counts. The Vermont Service Center’s “Incoming Mail Count Instruction” document and the Nebraska Service Center’s standard operating procedure for incoming mail do not require USCIS employees to validate the contractors’ incoming mail counts. California Service Center employees told us that they do not validate 100 percent of the incoming mail counts because a manual counting process would be inefficient and

disruptive. They also said that certain types of electronic count verification such as counting the number of forms that are data entered into USCIS's data systems would be unreliable because a single piece of mail may include multiple forms. Also, mail that does not include forms would not be data entered and therefore not captured by this type of verification.

The Texas Service Center is the exception, having developed a method for validating the contractor's mail count. USCIS employees randomly select samples of "tubs" of incoming mail multiple times each week, count the pieces of mail contained in the tubs and compare their counts to the contractor's counts for these tubs. Texas Service Center officials told us that over the course of the month, service center employees ensure that they review an adequate sample size, aggregate the difference between their sample counts and the contractor's sample counts, multiply this difference by a factor that accounts for the ratio between the sample size and the total amount of incoming mail, and apply the result to adjust the contractor's monthly total count for all incoming mail.

GAO has previously reported that a basic tenet of government procurement is that before payment is made, the purchasing agency must verify that the services have been received in accordance with contractual requirements, and the price charged is proper and correct.⁴⁵ Without doing so, USCIS may be paying its contractors for services that it has not received.

Conclusions

The transparency and quality USCIS's user fee design depends on complete, reliable information on which to base informed trade-offs that support the goals of USCIS. Analyzing and understanding the costs of providing these services are important so that both USCIS and the Congress have the best possible information available to them when designing, reviewing, and overseeing these fees. To this end, USCIS took an important step forward with its 2007 fee review and should continue to build on its efforts by including in its fee review the full costs of its services including, premium processing, H1-B visas, and other applications regardless of whether the fee is set through the regulatory or statutory process. Further, Congress authorized USCIS to adjust the premium

⁴⁵See GAO, *Improvements Needed in Financial Management of GSA's Teleprocessing Services Program*, [GAO/AFMD-83-8](#) (Washington, D.C.: December 1982).

process fee according to the consumer price index but USCIS has not adjusted the fee since the fee's enactment. The additional collections that would result from an inflation adjustment could have been used to defray the costs of the premium processing service—currently born completely by non-premium processing customers—thereby limiting the amount of cross-subsidization by non-premium processing applicants.

Regular, timely, and substantive fee reviews are critical for any agency, but especially for agencies—like USCIS—that are mostly or solely fee funded in order to ensure that fee collections and operating costs remain aligned. Moreover, without analyzing its contractual and operating costs to determine an appropriate target carryover balance, USCIS is at risk of reducing, disrupting, or discontinuing services if collections decrease.

A critical part of regularly reviewing and analyzing the fees is understanding and managing the monthly fluctuations in the volume of immigration and naturalization applications USCIS receives. Application volume drives not only USCIS's annual budget but also its workload. USCIS has developed a methodology for projecting application volume to inform their budget formulation. By leveraging USCIS and OIS data and analytical resources to identify and document application volume drivers USCIS will improve its ability to predict both fee collections and workload. Using this information to develop and implement a servicewide surge management plan USCIS could improve its ability to prepare for and respond to fluctuations in application volume and help improve the timeliness, accuracy, and quality of USCIS's services. While unexpected factors will always influence the rates of immigration and naturalization filings, better analysis would allow USCIS to at least partially mitigate the effect of these factors and improve its ability to maintain high service levels.

Although service centers are responsible for developing methods to validate contractor mail counts only one service center has developed a reliable method to do so. Without a way to verify contractor mail counts, USCIS's procurement practices are not consistent with basic tenets of government procurement practices, and the agency has little assurance that it is receiving the services for which it is paying.

Recommendations for Executive Action

We recommend the Secretary of the Department of Homeland Security direct the Acting Director of the United States Citizenship and Immigration Services to take the following 7 actions to:

- develop and conduct timely user-fee reviews that
 - builds on the 2007 fee review and keeps with the CFO Act's biennial user-fee review requirement, and
 - identifies and considers the full costs of USCIS's operations funded from the IEFA account, including the cost of lockbox operations and processing costs for applications where the fee rates are set in statute such as for premium processing and H1-B visa;
- adjust the premium-processing fees to account for the consumer price index;
- identify an appropriate level of carryover balance to ensure USCIS's continuity of operations for IEFA-funded activities and include in the next fee review a plan for achieving it;
- analyze application projection information from a workload perspective, accounting for anticipated monthly variations in application volume;
- use projection information across processing centers for workload management purposes, including (1) developing an agencywide application surge work-plan and (2) coordinating with the FMS-designated financial agent on application volume forecasting;
- document projection decision making more effectively, by more comprehensively accounting for (1) known application volume drivers, (2) the magnitude by which baseline projections have been adjusted in order to account for application volume drivers, and (3) reasons why OIS's projections—based on statistical analysis of historical application volumes—were not adjusted to account for any anticipated drivers; and
- develop and implement procedures for USCIS to validate the contractors' invoices for incoming mail services at all four service centers.

Agency Comments and Our Evaluation

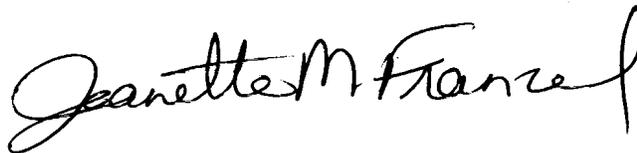
We provided a draft of this report to the Secretary of Homeland Security (DHS) for review and received comments that are reprinted in appendix II. In addition, DHS provided technical corrections, which were incorporated as appropriate. DHS concurred with our recommendations and provided additional comments for our consideration. In the comments, DHS noted that the draft report did not make clear that USCIS had not finalized its agreement for lockbox services with the Department of Treasury's Financial Management Service prior to the publication of the notice of proposed rulemaking for the 2007 fee review. We clarified this in the final report.

We are sending copies of this report to the Secretary of Homeland Security and interested congressional committees and other interested parties. We will also make copies available on request. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

Should you or your staff have any questions about this report, please contact Susan Irving (202) 512-8288 or irvings@gao.gov, or Jeanette Franzel at (202) 512-9406 or franzelj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff making major contributions to this report are listed in appendix III.



Susan J. Irving
Director for Federal Budget Analysis
Strategic Issues



Jeanette Franzel
Director
Financial Management and Assurance

Appendix I: Objectives, Scope, and Methodology

The objectives of this report were to review (1) the structure of USCIS's current fee schedule and compare it to the principles of GAO's User Fee Design Guide,¹ identifying issues that USCIS did and did not address effectively; and (2) USCIS's management of operations affected by the establishment of a new fee schedule, specifically in (a) projecting application volume and (b) contracting application pre-processing services.

To meet these objectives, we reviewed USCIS's: (1) *Federal Register* notices on the proposed and final rule that adjusted USCIS's fee schedule in 2007, (2) supporting documentation to the proposed rule, (3) fiscal year 2009 budget justification, (4) service center contracts and related contractor performance documents, (5) historic application volumes, and (6) application projections and related documentation. We also reviewed documents from USCIS's Ombudsman, DHS's Office of Immigration Statistics, and the Department of Treasury's Office of Financial Management. Finally, we reviewed prior GAO work on user fees and USCIS's operations.

We conducted site visits at the four service centers, which are located in California, Nebraska, Vermont, and Texas; the Chicago lockbox facility; the Dallas District Office; and the National Benefits Center, which is located in Missouri. We met with USCIS, contract, and financial-agent officials responsible for mail operations, fee collection, data collection, and file operations, communicating with the public, engineering workflow processes, and managing contractors. We also toured each of these facilities and tracked the flow of application processing through initial receipt and data collection, file storage, adjudications, and final processing.

In addition, we interviewed USCIS officials from the Office of the Chief Financial Officer, the Office of Field Operations, the Operations Planning Division, the Production Management Branch, the Service Center Operations office, and the USCIS contracting office.

We also interviewed individuals from DHS's Office of Immigration Statistics, DHS's Inspector General's office, USCIS's Ombudsman's office, and representatives from non-governmental groups: the American Council on International Personnel, the American Immigration Lawyers

¹See [GAO-08-386SP](#).

Association, and the National Association of Latino Elected and Appointed Officials. We also observed formal USCIS–stakeholder interactions by attending a monthly outreach meeting with community-based organizations.

We conducted this performance audit from November 2007 through January 2009, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

January 13, 2009

Ms. Susan J. Irving
Director for Federal Budget Analysis
Strategic Issues

Ms. Jeanette Franzel
Director, Financial Management and Assurance
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Irving and Ms. Franzel:

RE: Draft Report GAO-09-180, Federal User Fees: Additional Analysis and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations (GAO Job Code 450642)

The Department of Homeland Security (Department) appreciates the opportunity to review and comment on the draft report referenced above. The report contains seven recommendations. The Department, specifically the United States Citizenship and Immigration Services (USCIS), agrees with the recommendations.

This report and its recommendations will help the USCIS strengthen processes by which it analyzes costs and operations. USCIS appreciates the work of the U.S. Government Accountability Office (GAO) staff but has several concerns.

First, GAO's analysis relies heavily upon its report, *Federal User Fees: A Design Guide (GAO-08-386SP)* (Design Guide) as a benchmark for USCIS's efforts. While USCIS finds the Design Guide to be helpful, it is important to note that it was published 15 months *after* USCIS published its Notice of Proposed Rulemaking (NPRM) adjusting its fees. Thus, the guide was unavailable when USCIS was completing most of its analysis. USCIS will look to the Design Guide as it undertakes current and future fee reviews.

Second, GAO suggests that USCIS does not fully appreciate the need to assess the cost of activities funded by fees set in statute. While USCIS agrees that it would be helpful to understand costs associated with statutorily-set fee programs, USCIS believes that it appropriately prioritized its analytical resources on those fees that could be adjusted through rulemaking, and did not focus in 2007 on fees subject to change only by enactment of legislation. Indeed, in fiscal year 2006 the Administration proposed

www.dhs.gov

legislation to increase the fee for Temporary Protective Status, which is set by statute. That proposed increase was not acted upon. Nonetheless, USCIS will determine the cost of programs funded by statutorily-set fees and make that data available to policy-makers.

Finally, GAO expresses concern that the 2007 fee review inadequately took into account the future cost of lockbox operations. GAO's analysis however does not make clear to the reader that USCIS had not finalized its agreement with the Department of the Treasury's Financial Management Service (FMS) prior to the publication of the NPRM in January 2007. Thus, those costs were not decided and not available to estimate or factor into the new fee schedule. Furthermore, during the course of GAO's work, GAO was made aware that the final Lockbox Memorandum of Understanding (MOU) between USCIS and the FMS, which detailed a cost sharing arrangement, had not been signed prior to completing the 2007 fee review and NPRM.

GAO recommends that the Secretary of the Department of Homeland Security direct the Director of the USCIS to take the following actions:

Recommendation 1: Develop and conduct a timely user-fee review that

- is in keeping with the CFO Act's biennial user-fee review requirement;
- identifies and considers the full costs of USCIS's operations funded from the Immigration Examination Fee Account (IEFA), including the cost of lockbox operations and processing costs for applications where the fee rates are set in statute such as for premium processing and H1-B visa.

Response: USCIS officials are conducting a biannual fee review, identifying and considering full costs of operations funded by the IEFA, and assessing program costs associated with statutorily-set fees. USCIS made this public commitment in the NPRM. See 72 Fed. Reg. 4888, 4895, Feb. 1, 2007.

Recommendation 2: Adjust the premium processing fees to account for the consumer price index.

Response: USCIS will consider options to adjust premium processing fees.

Recommendation 3: Identify an appropriate level of carryover level to ensure USCIS's continuity of operations for IEFA-funded activities and include in the next fee review a plan for achieving it.

Response: USCIS will conduct the requisite analysis to develop an analytical basis for target estimates. It is important to note, however, that carryover balances will vary from year to year depending on annual contracts, staffing, and pending application costs.

Recommendation 4: Analyze application projection information from a workload perspective, accounting for anticipated monthly variations in application volume.

Response: USCIS will incorporate into its application projection process a review of historical monthly receipt levels and develop predictive models to both identify patterns and forecast trends that can improve future production management operations.

Recommendation 5: Use projection information across processing centers for workload management purposes, including (1) developing an agency-wide application surge work-plan and (2) coordinating with the FMS-designated financial agent on application volume forecasting.

Response: USCIS will provide application projection information that is specific to each Service Center in order to better inform workload management and related planning activities. USCIS will utilize application projection, monthly variance analysis, and office specific application volumes to develop agency-wide surge work-plans that include identification of required officer hours, full-time equivalent employee requirements, and completion targets. By utilizing these discrete data points and calculating application specific completion targets, field offices will be much better positioned to handle workload surges.

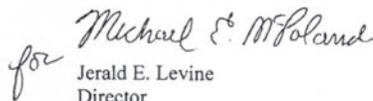
Recommendation 6: Document projection decision making more effectively, by more comprehensively accounting for (1) known application volume drivers, (2) the magnitude by which baseline projections have been adjusted in order to account for application volume drivers, and (3) reasons why Office of Immigration and Statistics projections—based on statistical analysis of historical application volumes—were not adjusted to account for any anticipated drivers.

Response: USCIS will include more documentation in subsequent fee reviews.

Recommendation 7: Develop and implement procedures for USCIS to validate the contractors' invoices for incoming mail services at all four service centers.

Response: USCIS has already adopted this recommendation by developing and implementing procedures to validate contractors' invoices for incoming mail services at all four Service Centers and considers this recommendation closed. Beginning in November 2008, the four Service Centers have all adopted the Texas Service Center's practice of sampling the daily incoming mail by counting it on a few days of each month.

Sincerely,


Jerald E. Levine
Director
Departmental GAO/OIG Liaison Office

Appendix III: GAO Contacts and Staff Acknowledgments

GAO Contacts

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Acknowledgments

Jacqueline M. Nowicki (Assistant Director), Chelsa Gurkin, Emily Eischen, Leah Probst, and Nate Tranquilli made key contributions to all aspects of the report. Amy Rosewarne, William T. Woods, Julia C. Matta, Sheila Rajabiun, Jack Warner, Diane Morris, Fred Evans, and Barry Grinnell also provided assistance.

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