

cost recovery. By combining the two fees, USCIS mitigates its dependency on fees from interim benefits and eliminates the appearance of the agency prolonging processing times of the primary benefit application to collect fees on interim benefits.

Figure 12 shows that interim benefits accounted for approximately 18 percent of all USCIS revenue in FY 06. Currently, USCIS must dedicate resources to the adjudication of interim benefits, rather than focus on green card and other benefits processing. A cycle of delays and fees has developed to the detriment of customers and USCIS alike.

EADs confer many of the privileges that the green card provides, including permission to work in the United States and ability to obtain other federal and state forms of identification such as Social Security cards and drivers' licenses. These documents enable an individual to secure property and obtain credit in the United States. They also legitimize the individual's presence in the United States, although legal status is not yet fully determined. It is not uncommon for individuals to receive EADs for years, only to have the green card application eventually denied. In fact, applicants who know they are ineligible for green cards may rely on the continuation of a backlog to obtain the EAD, which allows them to live and work in the United States legally for months, if not years.

## **2. Thousands of Ineligible Green Card Applicants Continue to Receive EADs**

In 2004, the Ombudsman recommended an up-front processing model that would eliminate the need to issue EADs in many instances.<sup>47</sup> USCIS implemented a pilot program to test a version of this model, which became known as the Dallas Office Rapid Adjustment (DORA) program. As discussed in section IV of this annual report, the Ombudsman strongly supports the expansion of the DORA program or a similar up-front processing model that would eliminate the issuance of interim benefits to most ineligible applicants.

During the reporting period, the DORA data reflected similar approval and denial rates as in the 2006 reporting period.<sup>48</sup> Unfortunately, USCIS has been unable to provide accurate and complete data on the exact number of interim benefits issued nationally to green card applicants. In the 2006 Annual Report, the Ombudsman estimated the data, but is not including these data for this reporting period as the DORA program continues to perform as in 2006 and nationwide denials continue to be significantly higher. Consequently, there are tens of thousands of green card applicants who continue to receive EADs even though they eventually are deemed ineligible for the green card.

## **H. Funding of USCIS**

The USCIS funding structure is one of the principal challenges to efficient and timely delivery of immigration services. The manner in which USCIS obtains its funding affects every facet of USCIS operations, including the ability to: (1) implement new program and processing initiatives; (2) begin information technology and other transformation efforts; and (3) plan for

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<sup>47</sup> See sections IV and V.27.

<sup>48</sup> See Figure 14.

the future. Congress mandates that USCIS be self-funded. This includes covering the cost of programs for which the agency charges no fees, *i.e.*, “unfunded mandates,” such as asylum and refugee processing and U.S. armed forces naturalization filings, as well as operational overhead and information technology modernization.

**Figure 12: USCIS Fee Revenue for FY 06**

<b>Form</b>	<b>Total Revenue (millions)</b>
I-765 (Employment Authorization Application)	\$241
N-400 (Naturalization Application)	\$233
Biometric Fees -- Photograph and Fingerprint Fee	\$165
Premium Processing (for I-129s)	\$160
I-485 (Green Card Application)	\$160
I-130 (Family Immigrant Petition)	\$141
I-90 (Green Card Replacement Application)	\$122
I-129 (Temporary Employment)	\$79
I-131 (Travel Document Application)	\$62
I-539 (Extension or Change of Temporary Status)	\$46
I-751 (Removal of Conditional Residence)	\$27
I-140 (Employment Immigrant Petition)	\$26
Life Act (74)- 245(i) (Penalty Fee for Immigrant Petition)	\$39
I-290B (Notice of Appeal to the Administrative Appeals Office)	\$18
I-600A (Application for Advance Processing of Orphan Petition)	\$15
N-600 (Petition to Classify Orphan as an Immediate Relative)	\$15
I-129F (Fiancé(e) Petition)	\$11
I-687 - over 18 years of age (Application for Status as A Temporary Resident)	\$10
<b>Subtotal</b>	<b>\$1,570</b>
All Other Forms and Miscellaneous Revenue	\$79
<b>Grand Total</b>	<b>\$1,649</b>

Source: USCIS FY 06 Fee Collections

### **1. USCIS Sets New Fees for Petitions and Applications**

On May 30, 2007, USCIS published a final rule entitled “Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule,” to set new application fees.<sup>49</sup> The fees increase on average \$223 per application or petition and \$605 for green card applications (from \$325 to \$930 including fees for interim benefits).

<sup>49</sup> See generally 72 Fed. Reg. 29,851 (May 30, 2007).

The current fee schedule is based on data and analysis of INS benefits processes from 1997, and all subsequent fee adjustments were based on that data until the May 2007 fee adjustment. The new fee schedule improves the methodology and updates the data used to calculate and set user fees. It takes into account current costs, current service levels, goals for additional services, new post-September 11, 2001 security requirements, and data from the USCIS Performance Analysis System (PAS). However, some of the inputs for the model are flawed. For example, PAS data are often deficient and do not precisely capture USCIS workloads and statistics. USCIS also plans to review fees every two years to ensure the agency is recovering the full cost of processing immigration benefits.

The Ombudsman strongly supports the concept that fee levels should recover the cost of processing applications and petitions and other USCIS expenses. It is essential that USCIS maintain a funding stream that provides it with adequate revenue to complete adjudications in a timely manner and make investments for the future in infrastructure, technology, and personnel. At the same time, the Ombudsman recognizes that many people and organizations are concerned that the new fees are excessive and unfairly burden applicants. They are concerned, as is the Ombudsman, that user fees are used in an efficient and cost-effective manner to improve processing and customer service. In that regard, USCIS should demonstrate through public milestones its progress in achieving the 20 percent productivity gains promised by the Director in his testimony to Congress on the new fee schedule.<sup>50</sup> There should be visible evidence of better facilities and digital processing. Working with stakeholders, USCIS should establish a list of deliverables with timelines to allow the public to see what it gains from the considerable money spent in fees.

Applications for ancillary services necessitated by lengthy processing times generate substantial additional revenue for USCIS, but the new fee rule takes steps to address the problems previously noted by the Ombudsman. Under the rule, fees for interim benefits will be included in the overall fee for green card applications. This approach is an important step in reducing USCIS' reliance on revenue that directly results from delays in adjudications. However, inclusion of interim benefits fees means that most green card applicants will pay for interim benefits whether they need them or want to obtain work authorizations or travel documents.<sup>51</sup> In addition, customers who applied for green cards prior to publication of the final fee adjustment rule will continue to apply and pay fees separately for interim benefits as well as renew work authorization and travel documents annually.

The new fee rule also eliminates the double fee for K-3 foreign national spouses who file Forms I-130 and I-129F (Petition for Alien Fiancé(e)).<sup>52</sup> There is no charge for the K-3 visa petition if the petitioner is the beneficiary of an immigrant petition filed by a U.S. citizen on the Form I-130.

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<sup>50</sup> See Testimony of Emilio Gonzalez, Director USCIS, before the U.S. House Judiciary Committee Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law (Feb. 14, 2007).

<sup>51</sup> In the final rule, USCIS provided for applicants age 14 and younger to pay a reduced fee. See 72 Fed. Reg. at 29862.

<sup>52</sup> See *id.* at 29873.

## 2. Premium Processing

Premium processing service guarantees a 15-day processing time for certain immigration benefits applications upon payment of an additional \$1,000 fee.<sup>53</sup> USCIS must respond within the 15 days with a grant, denial, or request for evidence (RFE). Otherwise, it must return the money. Premium processing illustrates the fundamental dilemma USCIS faces in balancing its efforts to improve efficiency and need to ensure a continuous flow of funds. At the same time, premium processing demonstrates USCIS' capability to provide world-class, 21st century service to its customers.

Premium processing addresses many of the pervasive and serious problems identified in regular processing. Customers who pay the additional fee for premium processing can contact USCIS directly by phone, email, or facsimile to answer basic questions. The need for USCIS to issue requests for additional evidence is reduced as applications are more complete. Time is saved both for the adjudicator and applicant. The quick turnaround time for premium processing cases eliminates the need for benefits applications to be warehoused, which requires substantial contractor expenditures for storage and retrieval. With a 15-day processing time, it is less likely applicants will have changed addresses.

During the reporting period, USCIS announced the addition of employment-based immigrant visa categories for premium processing.<sup>54</sup> With benefits to both the agency and customers, USCIS should use elements of premium processing for all of its cases.

In its 2006 Annual Report Response (at p. 20), USCIS stated:

[The agency] believes in incrementally expanding Premium Processing options to give customers choices of fee and service levels . . . . The Ombudsman, focused on processing times and costs, asserts that USCIS data shows that it could apply the attributes of premium processing to all applications at less cost. Only in a very narrow sense is this true, for faster processing and direct communication with the customer can reduce some tangential costs. However, this overlooks the key to premium processing, which is speed.

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<sup>53</sup> “The Attorney General is authorized to establish and collect a premium fee for employment-based petitions and applications. This fee shall be used to provide certain premium-processing services to business customers, and to make infrastructure improvements in the adjudications and customer-service processes. For approval of the benefit applied for, the petitioner/applicant must meet the legal criteria for such benefit. This fee shall be set at \$1, 000, shall be paid in addition to any normal petition/application fee that may be applicable, and shall be deposited as offsetting collections in the Immigration Examinations Fee Account. The Attorney General may adjust this fee according to the Consumer Price Index.” 8 U.S.C. §1356(u).

<sup>54</sup> See USCIS News Releases, USCIS to Expand Premium Processing Service (Aug. 18, 2006, Sept. 22, 2006, and Nov. 8, 2006); <http://www.uscis.gov/files/pressrelease/PremProc081806NR.pdf>; <http://www.uscis.gov/files/pressrelease/PremProc092206PR.pdf>; and [http://www.uscis.gov/files/pressrelease/PremiumProcessingRelease\\_08No06.pdf](http://www.uscis.gov/files/pressrelease/PremiumProcessingRelease_08No06.pdf) (last visited June 6, 2007).

USCIS also gains substantial revenue from premium processed cases. In a three-year period from October 2003 through September 2006, USCIS collected \$501 million in premium processing fees and \$212 million for regular processing. Since the start of premium processing in June 2001, USCIS has collected more than \$800 million. The Ombudsman again notes that premium processing is less costly than regular USCIS benefits processing because fewer repeat steps are necessary, fewer employees must handle these applications, and delayed processing inquiries are eliminated. USCIS has not provided any credible data to the contrary. The margin of income that USCIS can derive from premium processing is higher than from regular processing.

*RECOMMENDATION AR 2007 -- 07*

*The Ombudsman recommends that USCIS conduct a thorough, transparent, and independent analysis of premium processing costs as compared with regular processing. The Ombudsman recommends that this process include a comparison for each stage of these processes for: (1) contractor costs; (2) federal employee costs; and (3) all other associated costs.*

As discussed in section III.H.1 of this annual report, USCIS has set new fee increases that would fully fund USCIS and allow premium processing revenue to be “isolated from other revenues and devoted to the extra services provided to premium processing customers and to broader investments in a new technology and business process.”<sup>55</sup>

Specifically, premium processing fees will be used to transform USCIS from a paper-based process to an electronic environment, making it possible to incorporate more effective processing of low risk applicants and better identification of higher risk individuals. The new operational concept will be based on the types of online customer accounts used in the private sector in order to facilitate transactions, track activities, and reduce identity fraud.<sup>56</sup>

The Ombudsman supports the idea of using premium processing revenue for its originally intended purpose. However, it is problematic for USCIS to rely on this particular fee to fund the transformation effort. To the extent that USCIS improves its processing times, as the agency anticipates and stakeholders want, applicants will have fewer reasons to pay the premium processing fees to obtain services. As a result, USCIS effectively undercuts the revenue it earmarked for transformation.

Apart from the questions of revenue and how it is used, the Ombudsman continues to urge USCIS to apply its experience with premium processing to improve regular processing of cases. The objective should be to make regular processing match the service level of premium processing without the applicant paying additional fees.

<sup>55</sup> See 72 Fed. Reg. at 4893-94.

<sup>56</sup> *Id.* at 4894.

### **3. The Ombudsman Urges Consideration of a Revolving Trust to Fund USCIS**

In the 2006 Annual Report (at p. 29), the Ombudsman suggested that USCIS approach Congress to establish a revolving trust account that would be replenished from future fees. A revolving trust would: (1) enable the agency to test innovative processes; (2) address unexpected program requirements from new legislation; (3) avoid potential temporary anti-deficiency concerns; and (4) encourage USCIS leadership to develop new processes instead of continuing programs which do not enhance customer service, efficiency, and national security, but nevertheless generate essential revenue. In its 2006 Annual Report Response (at p. 12), the agency stated:

USCIS has researched this and has found that even though fees would eventually replenish the appropriated funds deposited in the fund, the legislation required to enact such a vehicle is not deficit neutral. Therefore, any legislation would have budget scorekeeping implications within the context of the scorekeeping conventions of the Administration and the Congress.

USCIS does not discuss the benefits or drawbacks of a revolving trust. It only comments on the budget scorekeeping questions. The Ombudsman continues to believe that a revolving trust would resolve many of the USCIS revenue and funding problems.

### **4. USCIS Contracts**

In the 2006 Annual Report (at p. 82), the Ombudsman expressed interest in analyzing the critical role of contractors in application processing and record handling, and the many problems stemming from processes contractors now handle. Due to USCIS' concerns expressed to DHS about starting this review, DHS encouraged the Ombudsman to forward any such issues to the Department and its procurement office, which would have the proper resources to analyze and address them.

#### **I. Lack of Standardization Across USCIS Business Processes**

The INA and related regulations, policy, and procedures govern immigration benefits and should result in uniform and equitable adjudication of the law nationwide. The Ombudsman is encouraged by USCIS attempts to standardize adjudicative processes and decision-making. For example, USCIS now is continually updating its Standard Operating Procedures relating to specific application types and developed the Adjudicator's Toolbox described in its 2006 Annual Report Response (at p. 8). In addition, during the reporting period, USCIS released a Domestic Operations memorandum entitled "Case Management Timelines." This memo provides specific guidance for employees in the efficient management of cases through the adjudication process:

[T]he principle of 'active case management' which simply means that cases are managed through the process in such a manner that ensures that they do not linger unattended in any processing stage. Meeting [USCIS'] case processing time goals also means taking the right actions at the right time.