In FY 07, as we complete the transition to new postage meters, we plan to transition to new standards for mail delivery to allow mail forwarding with notification from the US Postal Service through its address service. As part of the proposed new fee structure, we further plan to move to 2-day delivery of cards with delivery confirmation. This will reduce delivery times, give customers tracking numbers so they can track mail delivery, while also providing for more secure delivery.

USCIS reported in its recent fee proposal, now final, that it was partnering with the U.S. Postal Service (USPS) to develop a way for USCIS "to track delivery of each document and to respond to queries from applicants regarding the status of document delivery."[69] The proposed process change will apply to green cards and all USCIS secure documents (*i.e.*, EADs and travel documents). USCIS and USPS foresee secure documents delivered via priority mail, a higher class of service than first class, with delivery confirmation.[70] The Ombudsman will monitor the situation as the process is introduced.

IV.   UP-FRONT PROCESSING

As in previous annual reports, the Ombudsman continues to recommend the expeditious national roll-out of the DORA program or a similar program that utilizes up-front processing of applications for immigration benefits. This roll-out would be consistent with the principles articulated in the Second Stage Review process for DHS.[71] During the reporting period, USCIS expanded DORA to two offices – El Paso and Oklahoma City. Preliminary reports from those two offices have been negative, but inadequate resources and other circumstances need to be fully considered in an evaluation of DORA at those offices. In the meantime, the Ombudsman continues to recommend the expansion of DORA and up-front processing to all USCIS offices.

A.   Background

Up-front processing is characterized by:

- Pre-screened applications to ensure completeness prior to filing;

- One form and one fee per immigration benefit filed by customers;

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[69] 72 Fed. Reg. at 4899.

[70] *See id.*

[71] DHS Secretary Michael Chertoff stated the following in prepared remarks at the Ronald Reagan Building regarding the DHS Second Stage Review: "Part of the problem is that the current business model fosters a long delay between application and the final adjudication of applications for residence and citizenship, during which many applicants stay here as temporary residents . . .. [T]his system puts some of the most important security screening at the end of a lengthy process rather than the beginning, and leads to an unnecessary high rate of rejection late in the process." (July 13, 2005); http://www.dhs.gov/xnews/speeches/speech_0255.shtm (last visited June 5, 2007).

- Same-day interviews and biometric capture, if required; and

- Applications completed within days, or even hours, of filing.

The goals of up-front processing are to:

- Identify national security threats and fraud as early as possible in the immigration process;

- Reduce the issuance of interim benefits to mitigate the risk of ineligible applicants acquiring legal status in the United States before adjudication of the green card application;

- Improve customer service by implementing a streamlined process that adjudicates applications in less than 90 days; and

- Allocate resources effectively by focusing on adjudicating primary benefits instead of interim benefits.

In responding to the 2006 Annual Report, the agency stated (at p. 21):

> USCIS agrees with this premise as a long-term objective. It is USCIS' goal to process cases in ways that do not lead to interim benefits and provide high quality decisions within 90 days that reflect a full understanding and sensitivity to the national security and public safety of the United States and its citizenry.

The Ombudsman first recommended up-front processing in the 2004 Annual Report (at pp. 8-12). In May 2004, USCIS implemented several pilot programs including: DORA (the Family-Based Immigration Backlog Elimination Program); the California Service Center pilot (the Employment-Based Backlog Elimination Pilot), and the New York District Office pilot (the Backlog Elimination and Fraud Reduction Pilot). The Ombudsman's 2004, 2005, and 2006 annual reports provide extensive details on these programs.[72]

In its 2006 Annual Report Response (at p. 21), USCIS commented that the Ombudsman's up-front processing recommendation "creates potential vulnerabilities as unsuccessful customers walk away with their applications." USCIS further observed that "[d]uring Legalization, the INS

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[72] Of the up-front processing pilot programs, DORA most closely matches the Ombudsman's recommendations. Under DORA, a USCIS field office initiates certain background and security checks, reviews documents, and conducts eligibility interviews on the day of filing and then forwards the application for data entry and administrative processing at the Chicago Lockbox and the NBC. The applicant receives a notice for an appointment at an ASC, which captures biometric information. The Chicago Lockbox then issues a receipt notice to the applicant and forwards the newly created case to the NBC. The NBC assembles receipted applications into A-file jackets and initiates additional background and security checks. The NBC then forwards the files to the Dallas Field Office. When all background checks are completed, Dallas completes the adjudication of the case and orders production of green cards for qualified applicants.

was sued for allegedly front-desking applicants, telling them that they were not eligible and then sending them away . . ..." USCIS' comments and observations are in reference to litigation resulting from INS administration of legalization provisions of the 1986 Immigration Reform and Control Act.[73] In the legal proceedings, litigants claimed that they were erroneously told by INS officers that they were not eligible and prevented from filing for relief under the Act. INS was unable to prove this did not happen to particular individuals and, thus, had difficulty defending itself against such charges.

The Ombudsman shares USCIS' concern regarding front-desking. To address this issue at the Dallas office, ineligible applicants are informed by an IIO that they will not qualify for the program for a particular reason, such as visa unavailability. The applicant then can file the application, despite the likelihood that it will result in a denial or RFE. This feature of the DORA acceptance policy addresses the concerns raised by the U.S. Supreme Court in *Reno v. Catholic Social Services, Inc.*[74] It should be noted that the Ombudsman is unaware of any lawsuits filed against the Dallas District Office claiming front-desking in the three years of the DORA pilot.

B.   The Dallas Office Rapid Adjustment Pilot Program

In the 2006 Annual Report Response (at p. 21), USCIS raises two key concerns with DORA. First, rigorous up-front screening of applications may result in customers visiting field offices multiple times. The Ombudsman agrees that customers should not return repeatedly to submit an application. Clearer instructions on USCIS forms and website, better information from the NCSC, and timely adjudications are the key factors to reducing repetitive field office visits. In DORA, customers have direct communication with IIOs and interviews are conducted on the day of application submission, which may reduce case status inquiries that often result from long-pending cases.

Second, USCIS states (at p. 21) that "[u]p-front processing can also lead to increased costs since each office must be staffed to handle fluctuating levels of case filings and remittances. Many of the processes in this model are currently handled in central locations, and the local offices do not staff for those processes." Variability in the quantity and type of immigration filings presents a recurring challenge to USCIS. From time to time, field offices and service centers may receive a deluge of applications and petitions due to a statutory or regulatory deadline, a change in law, or an increase in filing fees. At other times, USCIS offices may have excess capacity. Historically and from the customer's perspective, the principal issue has been processing backlogs, rather than excess capacity. Whether processing is at a centralized filing facility or at a field office, the challenge to USCIS is largely the same. Robust, proactive management of personnel and workflows is essential to efficient processing regardless of where USCIS performs processing and adjudications.

From its inception in the first week of May 2004 through May 4, 2007, DORA scheduled 33,538 appointments, of which 7,205 (21 percent) were no-shows. DORA rejected up-front

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[73] *See generally* Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986).

[74] *See* 509 U.S. 43, 61-63. (1993).

5,297 (16 percent) of the total applications received. Of the 25,432 applications accepted for processing through May 4, 2007, 18,563 were approved, 949 denied, and 2,844 remained pending.[75]

Figure 14: DORA and Servicewide Denial Rates, May 2004 – December 2006

■ USCIS Servicewide (Source: Performance Analysis System data, prepared May 2007)

■ DORA (Source: DORA data entitled "Reworked Metrics" May 11, 2007)

Note: The May 11, 2007 DORA "Reworked Metrics" recorded the DORA Denial Rate for May 2004 -- December 2006.
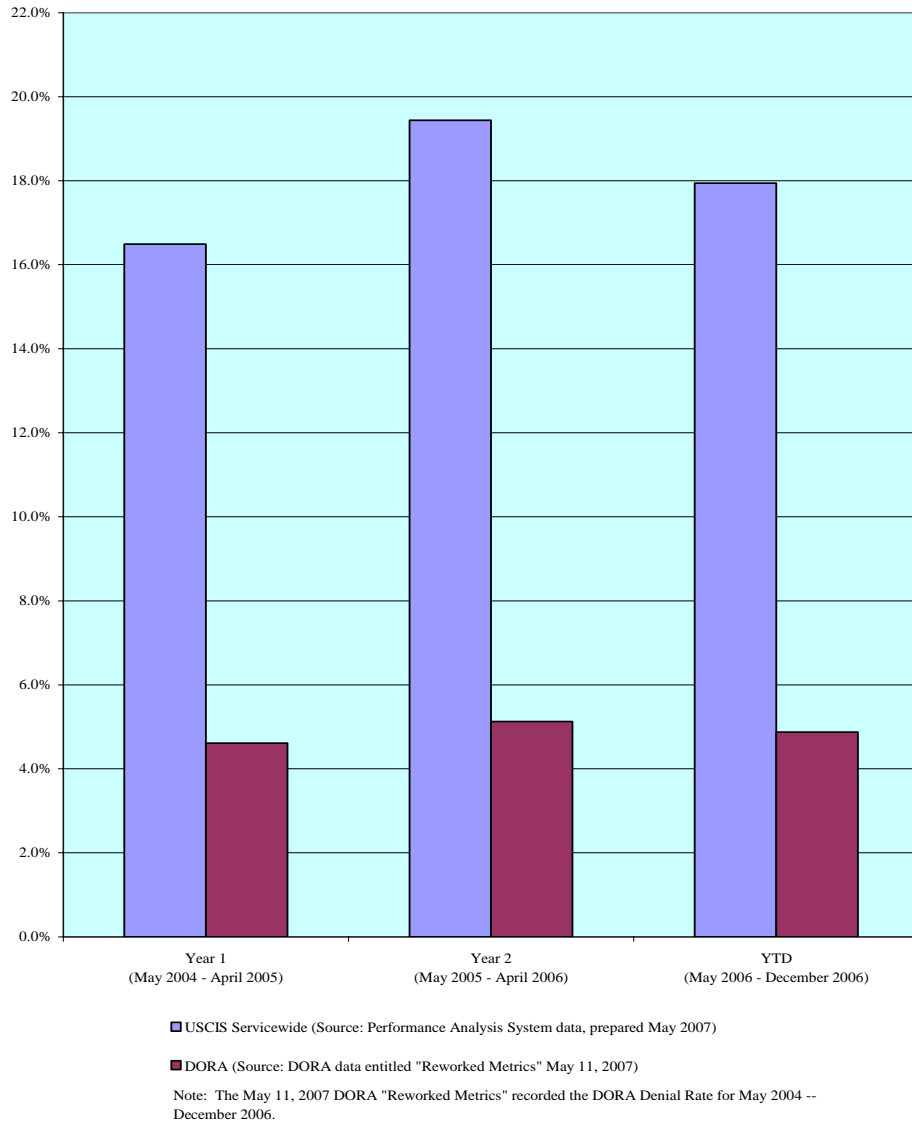
Figure 14 shows the dramatic difference in denials in the DORA process wherein many applicants are rejected up-front versus the USCIS national standard of accepting most applications even when incomplete.

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[75] The Dallas District Office provided the raw data on DORA.

Approximately 46 percent of accepted cases were completed within 90 days of filing (11,997 approved of 25,432 considered). Had it not been for delays caused by FBI name check issues, the 90-day completion rate would have exceeded 66 percent. Only 3,677 interim benefits were issued to DORA applicants – 14 percent of the total number of DORA green card applications. Nationally, most applicants applying for green cards also apply for interim benefits because USCIS only publishes its 180 day processing goals, rather than actual processing times, if under 180 days.[76]

Congress and the media have focused much attention on the REAL ID Act, which sets standards for new drivers' licenses and identification documents issued by the states.[77] If, however, foreign nationals are able to obtain interim benefits from USCIS, they can legally obtain drivers' licenses and Social Security cards – even if they are ultimately not eligible for a green card. Issuance of interim benefits to ineligible applicants undermines the larger objective of the REAL ID Act and, for that reason, the continuation of the current application processing methodology may compromise national security. DORA's up-front processing approach provides a fix that has proven itself for three years.

Unfortunately, the DORA data available only tell part of the story. The agency has not implemented any evaluation criteria to analyze up-front processing programs, despite numerous requests by the Ombudsman. USCIS welcomed the assistance of the Ombudsman to develop such metrics, but the Ombudsman understands that such metrics still are not in use months later. After three years of a successful pilot program, USCIS needs to move forward. The agency has a history of continuing pilot programs indefinitely, which it does not seem to be able to fully evaluate, implement, or shut down.

C.   The 90-Day Program

Aside from the DORA up-front processing program, USCIS has implemented a 90-day program in nearly all of its field offices, but the agency has not made this program transparent to customers and stakeholders. This lack of transparency, combined with published processing dates showing a minimum of 180 days processing, has resulted in hundreds of thousands of applicants continuing to file interim benefit applications even though in many jurisdictions USCIS confirms that processing times are less than 90 days.

As currently designed, the 90-day program is identical to the New York District Office Backlog Elimination and Fraud Reduction Pilot, which often did not meet its processing time goal. The 90-day program seeks to compress the current process into 90 days, rather than use an up-front screening of applications to ensure completeness prior to submission. In the 90-day program, if USCIS requests additional evidence, the employment authorization is not issued until the customer provides the requested information.[78] The 90-day clock stops when USCIS

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[76] *See* section III.C.

[77] *See* Div. B of Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, 119 Stat. 231, 310 (May 11, 2005).

[78] *See* 8 C.F.R. §§ 274a.13(d) and 103.2(b)(8) and (10). In its 2006 Annual Report Response (at p 22), USCIS stated that it "is directly attacking backlogs and the provision of interim benefits . . . through early, comprehensive

requests the additional information. While the Ombudsman is supportive of innovative approaches that reduce processing times for customers, in many cases the 90-day program has not provided timely and efficient delivery of immigration services. Additionally, unless actual processing times are published, instead of the current 180-day standard processing goal times, the applicant will be induced to apply for unnecessary interim benefits, which creates an appearance that USCIS continues this program for financial gain.

The target dates for actions to occur to meet the goal of 90-day adjudication are as follows:

Figure 15: Target Dates for 90-Day Adjudication Process

Day	Process
1	Application Filed
5	Application Received at NBC from Lockbox
20	Application Interview Ready
25	Interview Scheduled
50	File Sent to Field Office
65	Interview Conducted
90	Application Adjudicated

Specifically, in the 90-day program, applicants file applications at the Lockbox staffed mainly by a financial services contractor for USCIS. The Lockbox accepts and deposits the fees, sends receipts, and performs the initial data entry. The Lockbox then ships the cases to the NBC.

The NBC performs a *prima facie* review within ten days of the filing date and initiates background checks. Applicants then are scheduled for fingerprints and biometrics at ASCs. Next, cases either are available for interview at field offices or, where necessary, the NBC issues an RFE.

Field offices schedule available cases for interview at least 40 days in advance of the interview date, and the NBC generates an interview notice. The file is sent to the field office for interview with the ultimate goal of completing adjudications within 90 days.

The NBC processes ancillary applications such as EADs and travel authorizations beginning on day 75 to issue these documents by day 90, if required.

D. Expansion of DORA to El Paso and Oklahoma City Field Offices

While the Ombudsman is pleased that USCIS expanded DORA beyond the Dallas office, in both El Paso and Oklahoma City there has been insufficient training, staffing, or resources

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prescreening of adjustment of status and related applications to identify deficiencies. Until the deficiencies are resolved, the processing clock is stopped so that employment authorization and similar benefits are not granted." The use of the term "prescreening" may be misleading in this context. At that stage, USCIS already has accepted the green card application at the Lockbox facility, deposited the fees, and forwarded the case to the NBC for administrative processing before the comprehensive screening, which may result in the stopping of the processing clock and delay in issuance or denial of interim benefits.

devoted to the pilots to successfully implement them. Consequently, the results of the DORA expansion may not demonstrate the advantages of up-front processing.

When an up-front processing model is introduced at an office, there is a short-term need for additional staffing to enable the program to be implemented simultaneously with existing caseloads. Field offices often have interviews scheduled up to six months in advance. Until that workload is cleared, there may be a need for more adjudicators to conduct the additional interviews, and appropriate resources must be provided. The announcement in February 2007 of the proposed fee increases resulted in a surge in applications. As a result, implementation of the DORA program at the El Paso and Oklahoma City offices was even more challenging, especially since the offices received no additional short-term resources to begin the process. Additionally, in Oklahoma City, current lack of a field office director leaves the office without the leadership necessary to implement and test the up-front processing model.

In its 2006 Annual Report Response (at p. 23), USCIS stated that both the 90-day process and DORA have "advantages" and that the agency "will conduct a full analysis of both methods to decide which to adopt nationally." A full and fair comparison of DORA and the 90-day program requires testing that includes controlling for the variables mentioned. The Ombudsman looks forward to receiving the results of that analysis.

> *RECOMMENDATION AR 2007 -- 24*
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> *The Ombudsman recommends that USCIS end the now three-year old DORA pilot. USCIS should evaluate the different up-front processing programs to determine the comparative value of each program and whether they should be expanded. The USCIS findings and empirical data should be made available to the public. The agency should either implement a version of DORA nationwide or another program which will achieve the same objectives with equal or better results.*

V. RECOMMENDATIONS

This section includes summaries of the Ombudsman's formal recommendations for the 2007 reporting period, as well as those prior recommendations to which the Ombudsman received new USCIS responses during the period.[79] The recommendations stem from a variety of sources, including problems reported to the Ombudsman by individuals and employers, discussions with immigration stakeholders, and suggestions of USCIS employees themselves. For the full text of the recommendations and USCIS responses, please refer to the Ombudsman's website at www.dhs.gov/cisombudsman.

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[79] The Homeland Security Act of 2002, 6 U.S.C. § 272(c)(1), states that the Ombudsman's annual report shall include an inventory of the recommendations and indicate: (1) if action has been taken and the result of that action; (2) whether action remains to be completed; and (3) the period during which the item has been on this list.