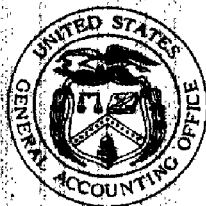


April 1994

INS USER FEES

INS Working to Improve Management of User Fee Accounts





**United States
General Accounting Office
Washington, D.C. 20548**

General Government Division

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The Honorable Edward M. Kennedy
Chairman, Subcommittee on Immigration
and Refugee Affairs
Committee on the Judiciary
United States Senate

The Honorable Romano L. Mazzoli
Chairman, Subcommittee on International Law,
Immigration, and Refugees
Committee on the Judiciary
House of Representatives

The Honorable Neil Abercrombie
House of Representatives

The Honorable Gary L. Ackerman
House of Representatives

The Honorable George E. Brown, Jr.
House of Representatives

The Honorable Ronald D. Coleman
House of Representatives

The Honorable Don Edwards
House of Representatives

The Honorable Eliot L. Engel
House of Representatives

The Honorable Benjamin A. Gilman
House of Representatives

The Honorable Marcy Kaptur
House of Representatives

The Honorable Matthew G. Martinez
House of Representatives

The Honorable Bill Orton
House of Representatives

The Honorable Major R. Owens
House of Representatives

The Honorable Nancy Pelosi
House of Representatives

The Honorable Charles B. Rangel
House of Representatives

The Honorable Bill Richardson
House of Representatives

The Honorable Ileana Ros-Lehtinen
House of Representatives

The Honorable Patricia Schroeder
House of Representatives

The Honorable Charles E. Schumer
House of Representatives

The Honorable José E. Serrano
House of Representatives

The Honorable Cliff Stearns
House of Representatives

The Honorable Edolphus Towns
House of Representatives

This report responds to a joint request from two Judiciary Subcommittee chairmen and 20 Members of Congress for information on the Immigration and Naturalization Service's (INS) 2 major user fee accounts—the Immigration Examinations Fee Account and the Immigration User Fee Account.¹ The 20 Members of Congress were particularly interested in naturalization fees, which are deposited in the Immigration Examinations Fee Account.

Specifically, we agreed to determine the following for both fee accounts:

- the method INS used to establish its fees,

¹INS has two other fee accounts—the Land Border Inspection and Legalization Fee Accounts.

- if fees reflected actual costs of providing services,
- if the expenditures from fee accounts were consistent with the purposes of the accounts and management and control of the fees were sufficient to prevent misuse of fee revenue, and
- whether staff were allocated in proportion to workload among the districts providing services that were financed by the fees.

To meet the above objectives we did the following:

- We reviewed the methodology used by INS to calculate the application fees in effect as of January 1994 (effective April 1991), reviewed the legislation establishing the application and passenger inspection fees, and determined how some application fees may have changed if indirect costs were prorated.
- We reviewed applicable legislation and guidance regarding the costs to be funded from the fee accounts.
- We reviewed (1) INS expenditures to determine if in our view they were consistent with the purposes of the fee accounts on the basis of the criteria for acceptable expenditures set forth in the legislation governing these accounts and (2) INS procedures for fee collection and deposit.
- We observed application fee collections at selected offices.
- We collected and analyzed data on staffing and application inventories and determined the expected waiting times for processing selected types of applications and compared the staffing levels at airports and seaports to the number of inspected passengers in seven INS districts that carry out the most inspections.

We conducted this review between October 1992 and January 1994 using generally accepted government auditing standards. In carrying out our objectives, we used the results of recent Department of Justice Office of Inspector General (OIG) reports. Appendix I contains details of our objectives, scope, and methodology. We provided a draft of this report to the Department of Justice for its oral comments. We met with its representatives, including the Acting Executive Associate Commissioner for Management who is responsible for the INS fee accounts. Their comments are presented on page 25.

Results in Brief

INS established its application fees by identifying certain direct labor costs for processing each type of application. To this amount, INS added a fixed amount to recover its indirect processing costs. INS then added a surcharge to each application, principally to cover the cost of processing asylum

applications for which it does not charge a fee. The fees are generally intended to recover full costs by reflecting both direct and indirect costs for each application as provided in Office of Management and Budget (OMB) guidance. However, in allocating indirect costs INS applied the same amount of indirect cost to each type of application regardless of direct cost. INS did not prorate the indirect costs in relation to direct cost. Prorating the indirect costs might result in more accurately setting fees in relation to costs. In addition, all of the fees did not reflect full cost because INS lowered some of the naturalization-related fees due to concerns about fairness to aliens.

Congress established a \$5 inspection fee in 1986 and required the Attorney General to report to Congress biennially on the fee's adequacy and recommend any adjustment in the fee that may be required to ensure that the receipts collected cover the cost of providing services. INS reviewed and reported on the adequacy of its inspection fees in 1988, concluding that the \$5 fee was adequate. According to INS officials, INS did not conduct the required reviews for 1990 and 1992. However, in response to a 1993 recommendation from the Attorney General, the administration proposed raising the fee to \$6. The 1994 Department of Justice Appropriation Act increased the fee to \$6.

With respect to both application and inspection fees, we could not determine the extent to which INS identified the full costs of providing services because INS had not defined the specific activities and associated costs that should be charged to the fee accounts. However, it appears that INS did not include all costs in its initial fees since subsequent INS and OIG studies identified additional costs that could have been reimbursed out of the accounts.

On the basis of our analysis, we determined that fiscal year 1992 expenditures seemed consistent with the purposes of the accounts, and management controls over fee revenue to prevent misuse appeared adequate for both fee accounts. However, INS did not properly account for fees that it collected for another Justice office. INS deposited those fees into the examination fee account, and procedures have not been established to make these funds available to that other Justice office.

Our analysis of INS' workload at its four largest districts showed that INS did not allocate its adjudications and naturalization staff in proportion to its estimated workload. Further, in some cases the processing time for the same application varied among those four districts. INS explained that

significant changes in district workloads are occurring as more work is shifted to the service centers. INS added that this causes temporary distortions in district staffing levels.

INS generally allocated staff who processed asylum applications and inspected air and sea passengers in proportion to workload.

Background

Two appropriation acts established INS' two major user fee accounts. The 1989 Department of Justice Appropriation Act established the Immigration Examinations Fee Account² and provided that the account was to be used to reimburse any appropriation for expenses in providing immigration adjudication and naturalization services. In 1990, Congress added a provision allowing the fees for providing adjudication and naturalization services to be set at a level that would ensure recovery of the full costs of providing all such services, including the cost of similar services provided without charge to asylum applicants or other immigrants.³ In addition, INS relies on 31 U.S.C. 9701, frequently referred to as the "user fee statute,"⁴ in setting fees. The statute provides the general authority for all agencies to assess fees.

The Immigration Examinations Fee Account contains revenues from the fees INS collects for processing 36 types of applications and petitions for immigration benefits, such as naturalization and permanent resident status. We refer to these fees as application fees throughout this report. The application fees range from \$30 to \$140. (See app. II.) Application fee revenues are to be used for expenses in providing immigration adjudication and naturalization services and in collecting, safeguarding, and accounting for fees. INS collects fees and processes applications at 4 regional service centers and 33 district offices. INS processes almost all applications that require an interview with the alien (e.g., naturalization) at its district offices. Generally, applications not requiring an interview are

²Public Law No. 100-459, 102 Stat. 2186, 2203 (1988).

³Department of Justice Appropriation Act, 1991, Public Law No. 101-515, 104 Stat. 2101, 2121 (1990).

⁴The statute provides for federal agencies to define special services provided to unique segments of the population and to charge fees for those services instead of supporting them through general tax revenues. Section 9701 of title 31 provides that "... each service or thing of value provided by an agency ... to a person ... is to be self-sustaining to the extent possible." In addition, the provision requires that each charge shall be (1) fair and (2) based on cost to the government, and other factors.

processed at its service centers. In addition, INS processes applications for asylum at seven offices nationwide.⁵

Justice's Executive Office for Immigration Review (EOIR) consists primarily of (1) immigration judges who conduct hearings to consider aliens' applications for relief from exclusion or deportation; and (2) the Board of Immigration Appeals, which hears appeals of decisions by immigration judges and INS district directors. EOIR charges aliens fees for adjudicating their applications, and INS collects these fees for EOIR and deposits them into the Immigration Examinations Fee Account. A House Report stated that it is appropriate to reimburse EOIR from the Immigration Examinations Fee Account for the costs associated with the adjudication and naturalization of aliens.⁶

The 1987 Department of Justice Appropriation Act established the Immigration User Fee Account.⁷ It authorized the Attorney General to collect a \$5 fee for inspection services from certain international travelers arriving at U.S. airports and seaports. Ticket issuers, such as commercial carriers and travel agents, are to collect the fees and remit the fees to INS quarterly. The fee proceeds are generally to be used to pay for the costs associated with inspecting arriving passengers.⁸ The 1994 Department of Justice Appropriation Act increased the fee to \$6.⁹ The conference committee expected the increase to result in an estimated \$50 million. It expected the Department to use the \$50 million to expand and improve its ability to prevent excludable aliens from entering the United States.¹⁰ We refer to these fees as inspection fees throughout this report.

In fiscal year 1992, INS collected about \$265 million from application fees and \$214 million from inspection fees, for a total of \$479 million. These fee revenues made up approximately one-third of INS' total budget of over \$1.4 billion.

⁵In October 1991, the Attorney General established a separate asylum officer corps to process asylum applications. The offices report directly to headquarters and, therefore, are not under the districts' direction.

⁶H.R. Rep. No. 102-918, 102d Cong., 2d Sess. at 32 (1992).

⁷Public Law No. 99-591, 100 Stat. 3341, 3341-53 (1986).

⁸Revenues may also be used for pre-inspection, overtime, debt recovery, information systems for nonimmigrant control, detection of fraudulent documents, and providing detention and deportation services for excludable aliens arriving on commercial aircraft and vessels.

⁹Public Law No. 103-121, 107 Stat. 1153, 1161 (1993).

¹⁰H.R. Conference Rep. No. 293, 103d Cong., 1st Sess. at 30, 31 (1993).

How Fees Were Established

In 1991 INS established most of its application fees on the basis of the estimated cost to process the applications. In January 1994 INS proposed to increase some of the fees. INS' inspection fee was statutorily set in 1986 and increased in 1993. INS reported to Congress on the adequacy of its inspection fee once in 1988.

Application Fees

INS established its current application fees in April 1991 by calculating and adding together three cost components: direct costs, indirect costs, and a surcharge. First, INS determined the direct labor cost using the average time to process a specific type of application. Second, INS added a \$43 charge to each application to cover such indirect costs as supervision, management and administration, general expenses, training, information systems, records management, and legal proceedings. Third, INS added a \$9 surcharge to each application to cover the cost of (1) processing refugee and asylum applications and (2) international operations.

In the case of certain naturalization-related fees, INS set the fees at a level lower than the original cost calculation. For example, INS determined the average labor cost to process an application for naturalization was \$62. Under its normal process INS would have added the indirect cost of \$43 and the \$9 surcharge for a total charge of \$114. However, INS set the fee at \$90. According to an INS official, while INS calculated its fees to recover full costs, it considered the fairness and equity of the calculated fee.¹¹ He added that in setting the fee for naturalization applications, INS believed that \$114 would not have resulted in a fair or equitable fee because it could discourage aliens from applying for naturalization. Accordingly, INS reduced the fee by \$24.¹²

INS did not prorate its indirect costs. Although direct costs varied among application types, INS applied the same indirect cost of \$43 to each type of

¹¹The individual requesting Members asked whether or not INS determined the impact of Executive Order 12606 (September 2, 1987) in setting naturalization fees. The order provides that when formulating and implementing policies and regulations that may have significant impact on family formation, maintenance, and general well-being, agencies must assess whether the proposed actions increase or decrease family earnings and whether the anticipated benefits justify the impact on the family budget. According to INS officials, this order was not explicitly considered when the fees were set in 1991. However, they said that INS considers the general impact of its fees on applicants and can reduce the fees to levels below full costs when it considers them to be unfair.

¹²INS does have discretion in setting fees. Section 1356(m) of title 8 indicates that fees for providing adjudication and naturalization "may" be set at a level that will ensure recovery of full costs of providing such services. INS is not mandated to set the fees at such a level. In addition, the user fee statute, 31 U.S.C. 9701, requires that user fees be "fair." Therefore, the setting of such fees is not based solely on the cost to the government. As the U.S. District Court for the District of Columbia stated in *Ayuda v. Attorney General*, 661 F. Supp. 33, 36 (D.D.C. 1987), a user fee need only bear a reasonable relationship to the cost of the services rendered by the agency.

application. In our view, INS' use of the fixed-dollar method to allocate indirect costs to different types of applications may not have resulted in an optimum measure of the total application processing costs. According to the Cost Accounting Standards Board's principles, indirect costs should be prorated to cost objectives (e.g., an application fee) in proportion to the resources consumed (i.e., direct costs).¹³ For example, INS could use direct labor costs as the basis on which to prorate indirect costs. Thus, applications with higher direct labor costs would bear a larger proportion of indirect costs than applications with lower direct labor costs. The reallocation of indirect costs could reduce or increase individual application fees. Further, this could also result in changes to the total amount of application revenue collected. The Department of Justice's guidance,¹⁴ which was issued subsequent to INS' April 1991 fee schedule, suggests that indirect costs be allocated on the basis of relative labor costs.

As shown in table 1, prorating indirect costs using direct labor costs would change some individual application fees significantly. Since there are various ways to prorate indirect costs, we do not know specifically what the fees would have been if they had been prorated. However, we present these examples to show how the fees established in 1991 could have changed if total indirect costs were allocated in proportion to the direct labor cost for each application.

¹³Federal Cost Accounting Standards, developed by the Cost Accounting Standards Board under the purview of OMB's Office of Federal Procurement Policy, apply only to federal negotiated contracts. However, we believe they are relevant by analogy to determining indirect costs for the INS fees here involved.

¹⁴U. S. Department of Justice, Justice Management Division, User Fee Programs, April 1993.

Table 1: Revised Application Fees Based on Prorating Indirect Cost in Relation to Direct Cost

Application (form number)	Fee as of Jan. 1994	Revised fee ^a	Difference
Extend or change nonimmigrant status (I-539)	\$70.00	\$80.00	\$10.00
Status of alien relative (I-130)	75.00	100.00	25.00
Nonimmigrant worker (I-129)	80.00	110.00	30.00
Permanent resident status (I-485)	120.00	195.00	75.00
Naturalization (N-400)	90.00	195.00	105.00 ^b
Employment authorization (I-765)	60.00	55.00	(5.00)
Replace certificate of naturalization (N-565)	50.00	45.00	(5.00) ^b
Replace alien registration receipt card (I-90)	70.00	60.00	(10.00)
Re-entry permit (I-131)	65.00	50.00	(15.00)

^aRounded to the nearest \$5.00.

^bDifferences were determined on the basis of the charged fee, not on INS' calculated costs. As previously discussed, the INS charges for some applications are lower than the calculated costs.

Source: GAO analysis of INS data.

In discussing a draft of this report, INS officials agreed that INS needs to reexamine the method it uses to allocate its indirect costs. According to INS officials, INS plans to revise its fee-setting methodologies to ensure that fees are set fairly and reasonably.

Proposed Application Fee Increase

In January 1994 INS proposed changes for 30 application fees to cover the costs of providing services.¹⁵ It determined that generally a 7.5-percent increase is needed. For 15 fees, including naturalization, the proposed increase is \$5. The largest proposed increase of any of the fees is \$25. Subsequently, a Department of Justice official said that INS will propose a fee for asylum applications.

INS pointed out that future adjustments will reflect efforts to refine direct and indirect cost definitions and measurements and will address alternative approaches to the allocation of indirect costs among applicants for services.

¹⁵Federal Register, Vol. 59, No. 6, Monday, January 10, 1994, 1308.

Inspection Fee

The 1987 Department of Justice Appropriation Act established a \$5 inspection fee for individuals aboard commercial aircraft and vessels who arrive at a port of entry in the United States or who are inspected outside the United States prior to their arrival.¹⁶ The legislation requires the Attorney General to report to Congress concerning the adequacy of the fee every 2 years and to recommend to Congress any adjustments to ensure that receipts equal as closely as possible the cost of providing the services.

INS first reviewed the Immigration User Fee Account in 1988 and published its report in the *Federal Register*.¹⁷ However, according to INS officials, INS did not conduct the 1990 and 1992 biennial reports for the Immigration User Fee Account. The administration proposed raising the fee to \$6 on the basis of a 1993 recommendation by the Attorney General. Justice Management Division (JMD) officials we spoke with were unaware of the requirement for a biennial report. JMD guidance on user fees issued in April 1993 requires JMD to review all Department fees at least once every 2 years.

Fees May Not Cover All Costs of Providing Services

The user fee statute, as well as OMB and Justice Department guidance, states that user fee programs are intended to be "self-sustaining."¹⁸ The general policy is that fees should be set at levels to recover full costs to the federal government of rendering a service that provides specific benefits to an identifiable recipient above and beyond those that accrue to the public at large. However, the user fee statute also requires the fees to be fair to the recipients.

We could not determine the extent to which INS application and inspection fees reflected the relevant costs of providing services because INS had not clearly defined the specific activities that should be funded by the fee accounts. For example, INS had not determined which types of enforcement activities and associated costs should be funded by the Immigration Examinations Fee Account. Enforcement-related expenditures had been approved on a case-by-case basis, but INS had not defined the specific types of enforcement activities that are properly funded by the fee account.

¹⁶The 1994 Department of Justice Appropriation Act increased the fee to \$6.

¹⁷The 1988 INS report stated that the \$5 fee was adequate.

¹⁸31 U.S.C. 9701, OMB Circular A-25, *User Charges*, July 1993; and *User Fee Programs*, Justice Management Division, April 1993.

INS and OIG studies have stated that user fees were not adequate to recover full costs and should be raised. A 1992 INS study estimated that in fiscal year 1993, \$35 million in costs that should have been funded by application fees would instead be funded by INS' basic appropriation. The study recommended increases in application fee revenues to cover program costs. The study also estimated that an additional \$11 million would be needed to cover inspection fee program costs and recommended a \$1 increase in the inspection fee. A December 1992 OIG report recommended that INS identify all user fee program costs to be charged to the fee accounts and revise fees to recover the full costs of providing services.¹⁹ The inspection fee was increased to \$6 by Justice's 1994 Appropriation Act.

In addition, some INS managers told us that their units provided more fee-related services than were funded from the fee accounts. For example, an official in the Administrative Services Unit estimated that about 35 percent of its costs were related to application or inspection fee programs and therefore properly chargeable to the fee accounts. However, only 17 percent of the unit budget was funded by the fee accounts.

INS Working Towards Identifying Full Program Costs

INS plans to determine the full cost of providing fee-related services. In October 1992, INS established a Fee Analysis and Operations Branch within its Office of Finance. Its primary mission is to develop policies and procedures to ensure that fees are sufficient to cover associated costs. Its responsibilities also include developing policy guidance for INS program managers on preparing budgets for fee-supported activities; developing policies for measuring the cost of fee-supported activities; and establishing cost accounting, workload, and performance measures for fee-related activities. As of December 1993, this office was working with INS program managers to determine methods to identify and measure the specific costs to be charged to the fee accounts.

Fee Account Budgets Have Grown Since Fiscal Year 1990

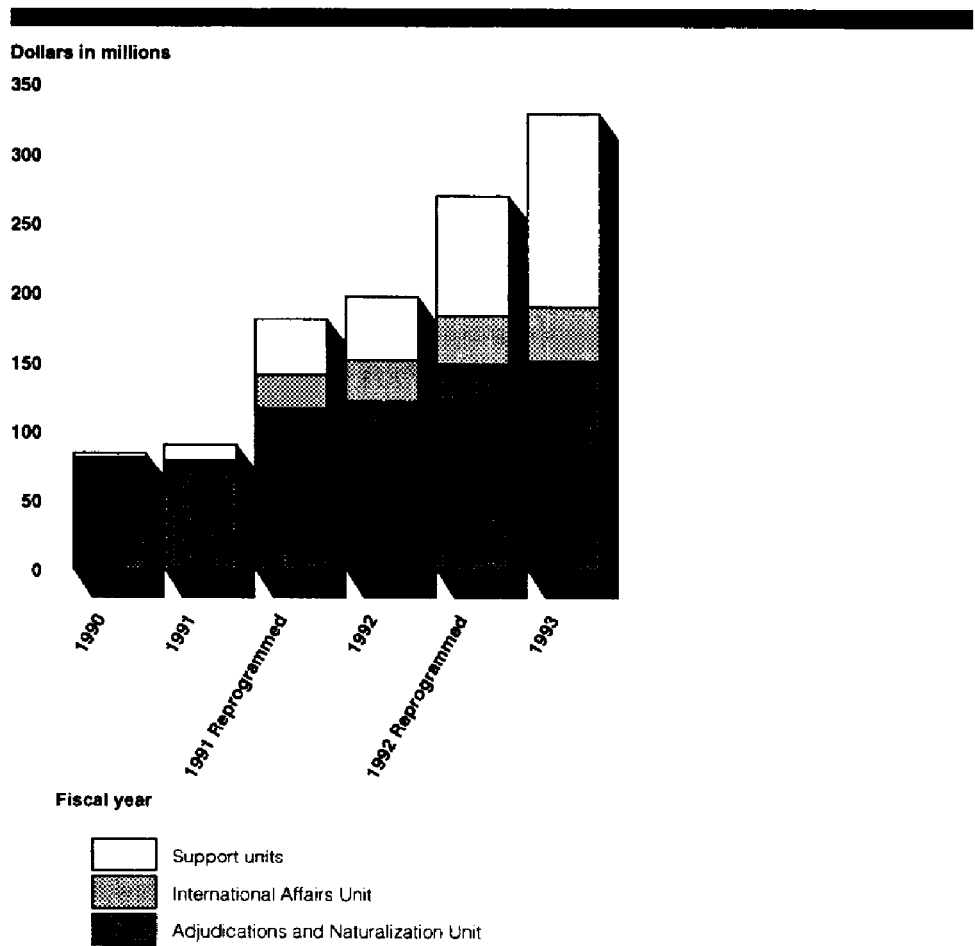
The budgets for both fee accounts have grown significantly over the past 3 fiscal years. Appendix III presents both fee account budgets by INS unit from fiscal year 1990 to 1993.

¹⁹Department of Justice, Office of Inspector General, Audit Division, Controls Over Established User Fee Accounts in the Immigration and Naturalization Service, December 1992.

**Support Costs in the
Immigration Examinations
Fee Account Have Grown**

Each year, support unit costs have made up a larger portion of the Immigration Examinations Fee Account budget. Figure 1 illustrates the growth in support unit costs budgeted to the fee account. This growth is due to (1) the identification of additional support costs that should be paid out of the account; (2) increases in program costs, including support costs; and (3) the policy not to charge asylees and refugees for their initial applications but to pay for the costs out of the account. For example, in fiscal year 1990, the Information and Records Management Unit accounted for about 2 percent of the budget. In 1993, this unit accounted for 17 percent of the budget. The budget for the Adjudication and Naturalization Unit, the primary unit responsible for application processing, has grown at a much smaller rate.

Figure 1: Support Units Made Up a Larger Portion of the Examinations Fee Account Budget Each Year



Note: Support units include Administrative Services, Executive Direction, Field Management and Support, Intelligence, Legal Proceedings, Investigations, Training, Data and Communications, Information and Records, and Construction and Engineering.

Source: GAO analysis of INS data.

INS officials told us that since implementing the user fee programs, INS has identified additional support costs that are more properly charged to the Immigration Examinations Fee Account rather than to INS' basic appropriations. For example, INS began charging the costs associated with training adjudications and naturalization personnel to the Immigration Examinations Fee Account in fiscal year 1992. However, INS has not

completely identified all of the costs that are properly chargeable to the fee account, according to INS officials.

In addition to support unit costs growing, the asylum and refugee programs have increased program costs. In fiscal year 1991, at congressional committee direction, INS began charging all costs for the International Affairs and Outreach Unit's program, which processes asylum and refugee applications, to the Immigration Examinations Fee Account rather than to appropriations.²⁰ In fiscal year 1991, the unit's budget was about \$25 million from this account; in fiscal year 1992, its budget grew to over \$35 million. For both years the unit's budget accounted for about 13 percent of the Immigration Examinations Fee Account budgets.

In connection with a 1992 review of the fee accounts, INS program officials asked the INS Office of General Counsel whether the unit's program expenses other than those associated with adjudication or naturalization could be reimbursed from the Examinations Fee Account under 8 U.S.C. 1356(n).²¹ The Office of General Counsel concluded that such expenses are not reimbursable under the terms of 8 U.S.C. 1356(n), even though committee report language indicated an intent that the full costs of the unit's program be funded by the Examinations Fee Account.

On the basis of the advice of the INS Office of General Counsel, INS plans to analyze the expenses incurred by the unit to determine if any expenses are outside the scope of those properly reimbursable under the statute. If so, INS plans to seek an amendment to section 1356(n) to authorize reimbursement from the fee account for all the unit's activities.

On July 27, 1993, the President announced his intention to increase the number of asylum officers and to expedite the asylum process. As of December 1993, INS did not know what impact this decision might have on program costs and other application fees.

Immigration User Fee Account

The budget associated with the Immigration User Fee Account increased about \$137 million between 1990 and 1993, from \$104 million to

²⁰S. Rep. No. 515, 101st Cong., 2d Sess. at 50 (1990).

²¹The statute provides that the Examinations Fee Account may be used to reimburse costs associated with "adjudication and naturalization services" and "similar services provided without charge to asylum applicants or other immigrants." The statute also provides for reimbursement of expenses associated with administration of the fees collected. 8 U.S.C. 1356(m) and (n).

\$241 million (see app. III). Nearly two-thirds of this increase was due to growth in the Inspections Unit budget, which increased \$87 million over this 3-year period. Over 80 percent of the remaining increase of \$50 million was due to growth in the budgets of three other INS units—Detention and Deportation (\$25 million), Data and Communications (\$11 million), and Administrative Services (\$6 million). In fiscal year 1993, these four units made up 94 percent of the Immigration User Fee Account budget.

Expenditures Seemed Appropriate and Management Controls Generally Appeared Adequate

For both fee accounts, INS expenditures seemed consistent with the purposes of the accounts, and management controls over fee revenue to prevent misuse generally appeared adequate. However, INS has not properly accounted for fees that it collected for EOIR.

In December 1992, the OIG reported that adequate controls were in place to ensure that only valid program costs were charged to the user fee accounts.²² The OIG reviewed selected fiscal year 1991 expenditures and determined that INS used the fee revenues for their intended purposes. In addition, we reviewed all fiscal year 1992 expenditures from both fee accounts. Our review did not reveal any expenditures that were inconsistent with the purposes of the funds. In doing our review, we asked INS to explain the basis for some of its expenditures. In those cases, INS' rationale seemed reasonable.

To evaluate the management controls, we followed up on fee-related weaknesses discussed in our prior report.²³ We found that INS improved its fee collection and deposit procedures. For example, INS revised its procedures to prohibit INS staff from sending cash through the mail. Procedures now require that application fee deposits be made daily through commercial lockboxes. Our review of application fee revenue collection and deposit procedures at INS' Los Angeles and Washington Districts and Western Service Center indicated these procedures were being followed. With regard to inspection fees, beginning in fiscal year 1992, INS and the U.S. Customs Service instituted joint audits of commercial carriers to ensure they remit the proper amount of inspection fee revenue.

²²Department of Justice, Office of Inspector General, Audit Division, Controls Over Established User Fee Accounts in the Immigration and Naturalization Service, December 1992.

²³Financial Management: INS Lacks Accountability and Controls Over Its Resources (AFMD-91-20, Jan. 24, 1991).

Improvement Needed in Accounting for EOIR Fees

One area needing improvement is INS' collection and disbursement of EOIR fees. In the conference report for the 1993 Justice Appropriations Act, the conferees stated that it is appropriate to reimburse EOIR from the Examinations Fee Account for the cost associated with the adjudication and naturalization of aliens.²⁴

INS does not identify the fees it collects for EOIR but deposits them with its own fee receipts in the Immigration Examinations Fee Account. Once deposited, the EOIR fees cannot be separately identified. Consequently, INS cannot determine the amount of EOIR's fees it collected and the amount that it can make available to EOIR.

Our analysis of completed cases for fiscal years 1989 through 1992 indicated that EOIR could have received more funds from INS than it actually did. We estimated EOIR's fee revenue using a schedule of EOIR completed applications for this period. The total applications by type were multiplied by the fee in effect for each year. Adding the total annual revenue for those years indicated that INS collected about \$9 million in EOIR fees. In April 1993, when we did our analysis, INS had reimbursed EOIR \$615,000 for those years.²⁵

In addition, INS and EOIR do not have policies or procedures for managing these funds. For example, there are no policies or procedures for identifying all EOIR fees when they are received, when and how often INS should transfer these funds to EOIR, or whether INS should charge EOIR an administrative fee for collecting the funds and expenses associated with INS trial attorney functions performed in connection with EOIR adjudication and naturalization activities.

Allocation of Staff

INS did not allocate its adjudications and naturalization staff in proportion to its estimated workload at its four largest districts. In addition, expected application waiting times varied among districts in some cases. Generally, INS allocated staff who process asylum applications in its seven offices and staff who inspect air and sea passengers in seven districts in proportion to workload.

²⁴H.R. Rep. No. 102-918, 102d Cong., 2d Sess. at 32 (1992).

²⁵In fiscal year 1993, INS reimbursed EOIR \$550,000.

Adjudication and Naturalization Staff

INS used a staffing model to determine the appropriate number of adjudication and naturalization staff for each district. The staffing model determines the needed staff to process application workload using such factors as estimated workload and application processing times. However, some districts received a greater percentage of their staff on the basis of the model than others. As shown in table 2, for the four districts we reviewed, funded positions ranged from 71 percent to 92 percent of the staffing model.

Table 2: Staffing Model and Funded Staff at the Largest Four Districts in Fiscal Year 1993

District	Staffing		Funded as percent of model
	Model	Funded	
Los Angeles	237	211	89%
New York	237	168	71%
Miami	153	140	92%
San Francisco	137	115	84%

Source: GAO analysis of INS data.

An INS official told us that INS does not want to fund the model number of positions at districts in all cases because it is planning to reduce district workload. According to the official, once staff are assigned to a location, it is difficult to transfer them should the workload decrease. The official added that INS is working towards centralizing its application processing operations at the four large service centers. INS is shifting most of its application processing workload from the districts to the service centers, and in doing so changing the district workloads significantly. This shift, according to INS, is causing distortions in district staffing levels.

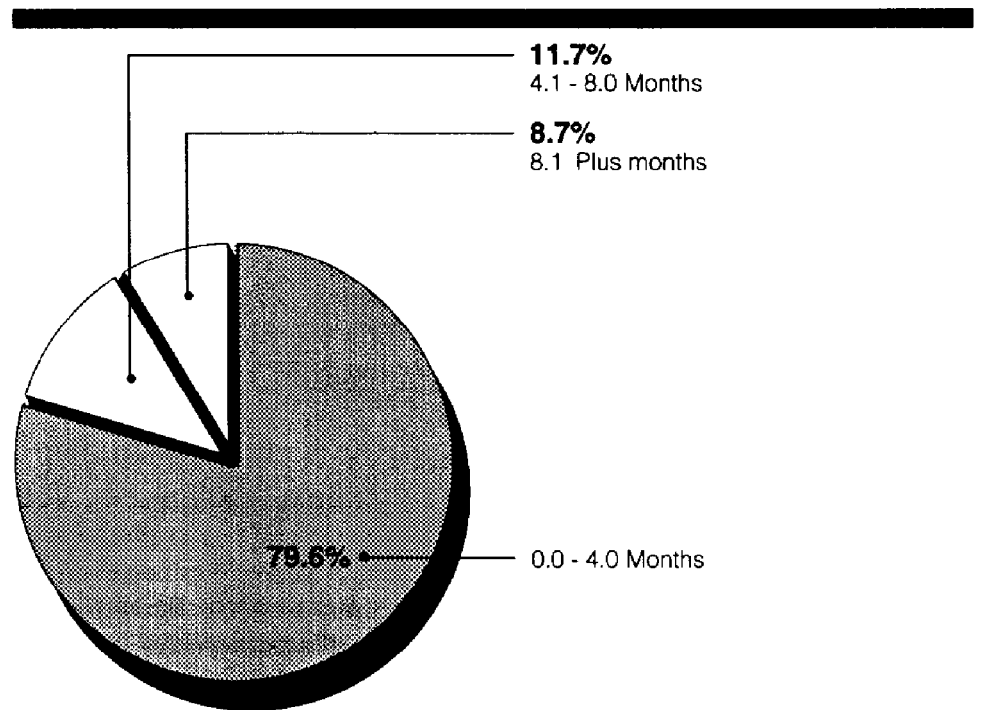
On February 3, 1994, the INS Commissioner announced efforts to promote naturalization through education and to streamline INS' procedures and processes. Appropriated funds of \$30 million have been requested for these efforts.

Application Processing Waiting Times

As a way of gauging the overall impact of staff allocations, we determined expected application waiting times on the basis of INS' workload and application processing times. INS' goal is to process all applications within 4 months. In our analysis of waiting times for selected applications and locations as of February 1993, we determined that about 80 percent of applicants could expect to wait 4 months or less for their applications to

be processed (see fig. 2). Our analysis included selected applications at the four service centers and the four districts receiving the most applications (Los Angeles, New York, Miami, and San Francisco.) See appendix I for the specific applications included in our analysis.

Figure 2: Most Applicants Would Wait 4 Months or Less



Note 1: This represents 55.5 percent of total INS initial application receipts in the first 5 months of fiscal year 1993.

Note 2: Our sample included 76.9 percent of the initial application receipts at the four service centers and the largest four districts. These entities received 72.1 percent of total INS application receipts.

Source: GAO analysis of INS data.

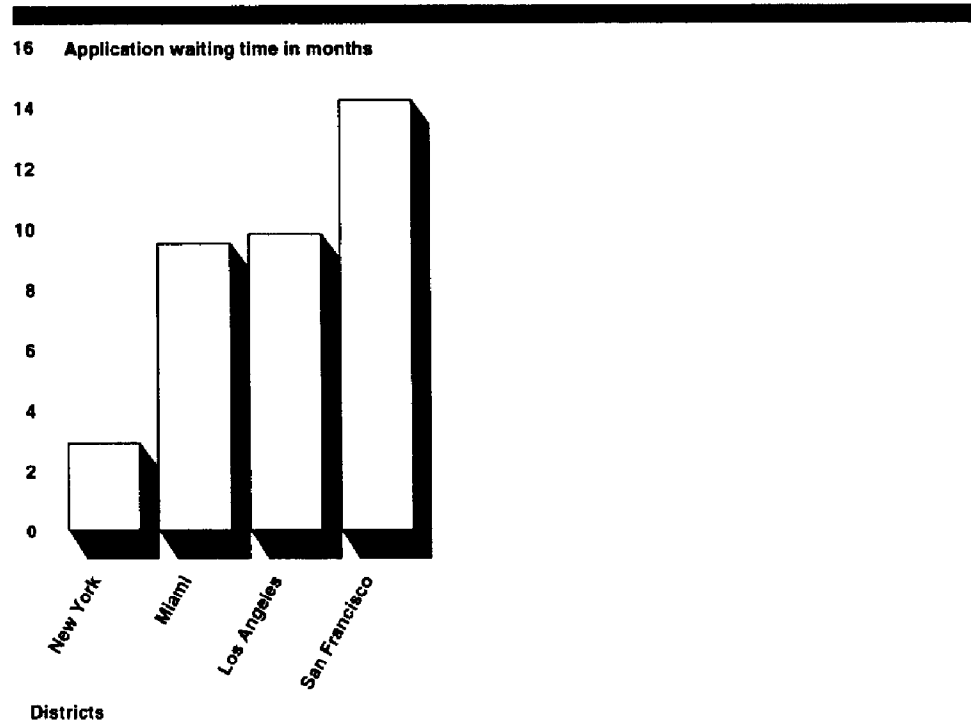
INS' use of the four service centers to process applications has helped it to meet its 4-month goal, and the centers are processing a larger proportion of applications. For example, in fiscal year 1990, service centers processed 31 percent of all new applications. As of February 1993, the service centers

received 48 percent of all new applications. On the basis of our analysis of selected applications, those applicants whose requests were processed by the service center as of February 1993 had expected waiting times of less than 4 months.

While a majority of all INS applicants in our analysis would expect to wait 4 months or less, expected waiting times for some district-processed applications were longer. Also, expected waiting times varied among districts for the same applications. For example, as of February 1993, expected waiting times for naturalization applications ranged from about 3 to 14 months at the four districts selected. Expected waiting times for permanent resident status applications ranged from about 5 to 10 months (see figs. 3 and 4).

INS officials told us that waiting times for naturalization applications had changed in two districts as of August 1993. In New York the waiting time increased from 3 to 7 months. In San Francisco, the waiting time decreased from 14 to 10 months. The waiting times did not change for Los Angeles and Miami.

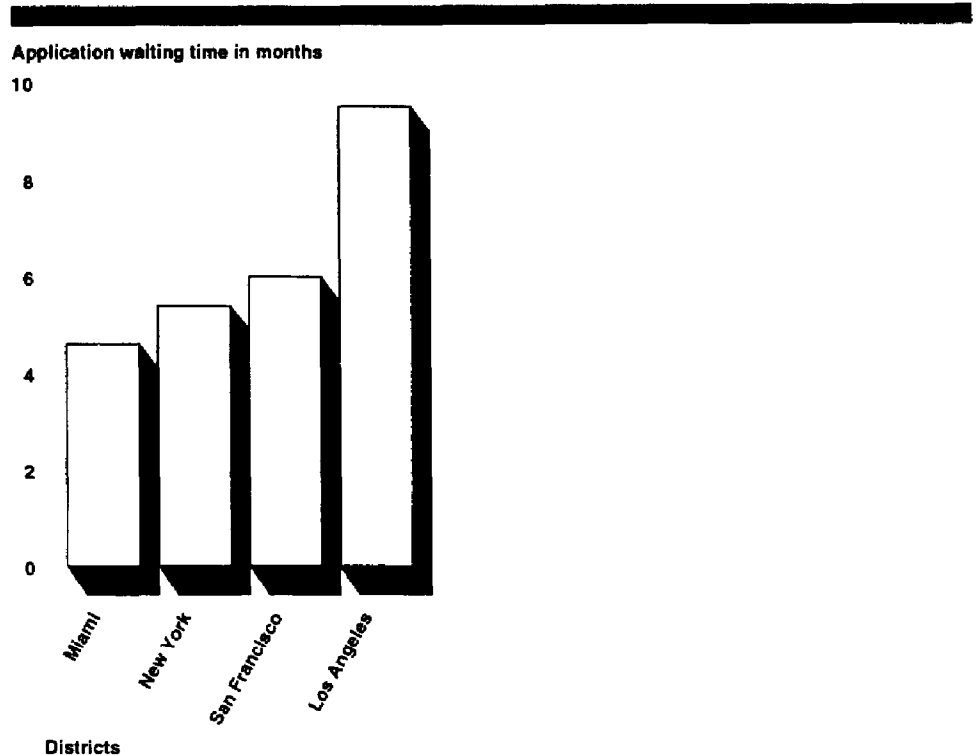
Figure 3: Naturalization Applications Would Take Generally Longer Than 4 Months but Varied Among Districts



Note: As of February 1993.

Source: GAO analysis of INS data.

Figure 4: Permanent Resident Status Applications Would Take Longer Than 4 Months but Varied Among Districts



Note: As of February 1993.

Source: GAO analysis of INS data.

INS officials cited several reasons why district processing took longer than the service centers. Generally, service centers were more efficient because of enhanced automation and the economies of scale realized through centralized processing. Also, as INS shifted workload from the districts to the service centers, the districts were left with the applications that took longer to process, such as naturalization, which required applicant interviews. In addition, the New York and Los Angeles districts received a larger number of applications for special programs such as temporary protected status for El Salvadorans.²⁶

²⁶Nationals from certain countries with political or social unrest may apply for temporary protected status. An alien who qualifies may be granted a temporary stay of deportation and work authorization (8 U.S.C. Section 1254a).

Asylum Staff

Our review of INS staffing at its seven asylum offices showed that it allocated staff roughly in proportion to actual workload, as shown in table 3. As of March 1993, the seven offices had filled over 80 percent of their authorized positions.

Table 3: Comparison of Application Receipts and Authorized Asylum Staffing

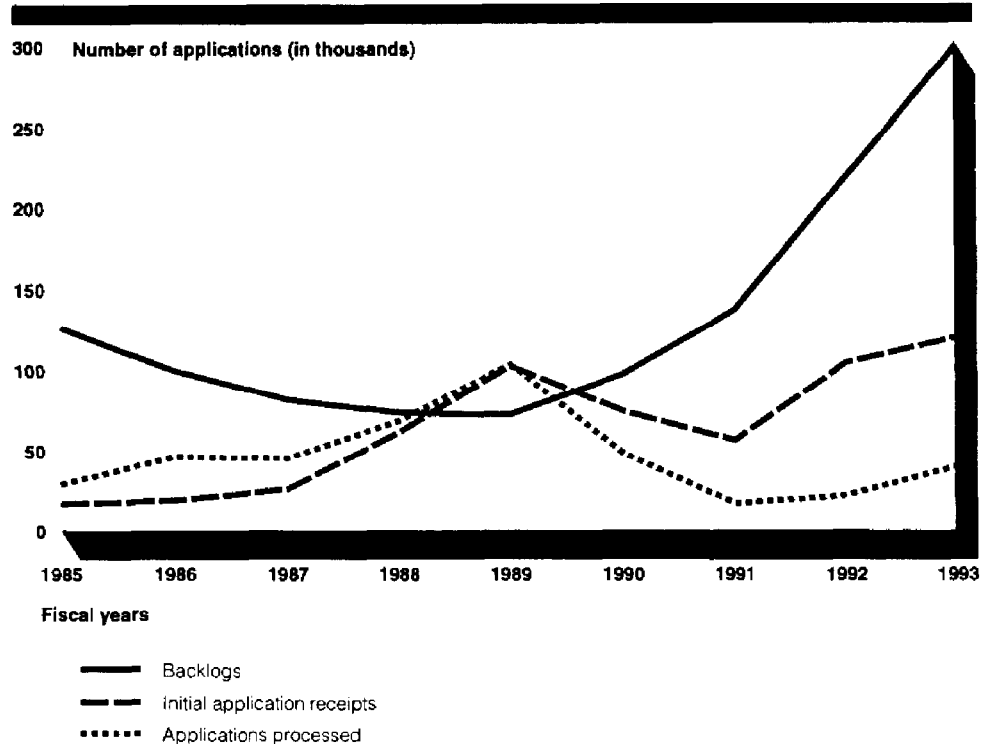
Offices	Percent of applications (FY 1992)	Percent of staff (as of 3/93)
Los Angeles	40	35
San Francisco	8	12
Houston	3	4
Chicago	4	5
Miami	15	15
Newark	23	15
Arlington	8	13

Note: Percents do not total 100 due to rounding.

Source: GAO analysis of INS data.

Since fiscal year 1989, application backlogs have increased dramatically while application processing has lagged (see fig. 5).

Figure 5: Asylum Application Backlog Has Increased Dramatically



Note: INS estimated 1993 data.

Source: GAO analysis of INS data.

An INS official told us that without any staff increase, INS expected to process about one-third of the total applications received in fiscal year 1993. Consequently, INS expected the asylum backlog to increase to nearly 300,000 by the end of fiscal year 1993, a threefold increase since 1990. At the fiscal year 1993 staffing level and completion rate of about 40,000 applications per year, INS would take over 7 years just to eliminate the existing backlog and not process any new applications.

On July 27, 1993, President Clinton announced that the Department of Justice and INS would develop a plan to reduce the asylum application backlog. On February 3, 1994, the Commissioner of INS announced a comprehensive reform of asylum. She said the soon-to-be published regulations, coupled with \$54.1 million in additional resources, will establish a fair, timely asylum decision system. The funds are to be used to

increase the number of asylum officers, immigration judges, and adjudication attorneys. According to INS, this will enable INS to become current with new applications and to handle the backlogged cases. The \$54.1 million is included in the fiscal year 1995 budget request.

Inspections Staff

INS used computer staffing models to determine the number of inspections staff needed at airports and seaports. The airport staffing model takes into account the number of anticipated passenger arrivals and the need to process passengers within 45 minutes, as required by law.²⁷

As shown in table 4, INS staffing and workload at airports and seaports in the seven INS districts that inspect the largest number of passengers showed that INS allocated its inspection staff approximately in proportion to its actual workload. During fiscal year 1992, INS' seven busiest districts performed about two-thirds of all air and sea passenger inspections. As of June 1993, these districts had about two-thirds of the authorized staff.

Table 4: Comparison of Inspections and Authorized Staff

INS district	Percent of air and sea inspections (FY 1992)	Percent of authorized staff (6/93)
Miami	20	16
New York	14	18
Los Angeles	10	9
Buffalo	8	6
Honolulu	7	8
Chicago	4	4
San Francisco	4	4

Source: GAO analysis of INS data.

According to an INS report, as of July 1993 airport inspectors were processing more than 98 percent of arriving passengers within the 45-minute standard.

Conclusions

We believe that INS could improve its method of allocating indirect costs in establishing its application fees. Individual application fees might better reflect actual processing costs if indirect costs were allocated in proportion to direct costs.

²⁷8 U.S.C. 1356(g).

We could not determine the extent to which the current application and inspection fees reflected the actual costs of providing services because INS had not identified all costs to be charged to the two fee accounts. INS is aware of this problem and is in the process of identifying and measuring the specific costs that should be charged to the fee accounts.

Management controls to prevent misuse of fee revenues appeared adequate. However, INS needs to account for the EOIR fee revenue it collects. To ensure EOIR fee revenues are appropriately made available to EOIR, the Department of Justice needs to develop procedures to reimburse EOIR.

Although adjudications and naturalization staff allocations to the four largest districts were not in proportion to current estimated workloads, most applications in our analysis would be processed within INS' goal of 4 months. Generally, asylum staff at the seven asylum offices and inspections staff were allocated according to workload.

At fiscal year 1993 levels of asylum application receipts and resources, INS could take over 7 years to process the existing backlog. Since the asylum program was funded from application fee revenue, providing additional resources to reduce the existing backlog could contribute to an increase in the application fees. This increase could be offset if funds for additional resources were provided from other sources, such as appropriated funds or fees charged for asylum applications.

Recommendations

In order to improve the methods INS uses to set its applications fee schedule, we recommend that the Attorney General direct the INS Commissioner to select a method that allocates indirect costs among application types such as in proportion to direct costs rather than using the fixed-dollar method that INS presently uses.

We also recommend that the Attorney General establish policies and procedures for (1) accounting for the EOIR fee revenues INS collects and (2) making these funds available to EOIR, as appropriate.

Agency Comments

On March 7, 1994, we discussed a draft of this report with Department of Justice, EOIR, and INS officials, including two associate commissioners. They agreed with our findings, conclusions, and recommendations and provided clarifications and technical corrections, which we included in the

report. In a subsequent letter dated March 11, 1994, (see app. IV) the Commissioner of INS added that INS intends to procure an assistance and advisory services contract to address fee-setting and fee structures.

We are providing copies of this report to the Attorney General, Commissioner of INS, Director of OMB, and other interested parties. Copies will also be made available to others upon request. Major contributors to this report are listed in appendix V. If you need any additional information or have any further questions, please contact me on (202) 512-5156.



Henry R. Wray
Director, Administration
of Justice Issues

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Abbreviations

EOIR	Executive Office for Immigration Review
INS	Immigration and Naturalization Service
JMD	Justice Management Division
OIG	Office of Inspector General
OMB	Office of Management and Budget

Objectives, Scope, and Methodology

This report responds to 2 separate requests for information on INS user fees: 1 from 2 Judiciary Subcommittee Chairmen and 1 from 20 Members of Congress who were specifically interested in naturalization fees. Naturalization fee revenues are included in the Immigration Examinations Fee Account and are not accounted for separately. Therefore, we combined the request from the 20 Members into our review of the fee accounts. Throughout this report we provided examples using naturalization fees in instances where applicable. The 20 requesters agreed that this report would satisfy their request.

Our objectives were to determine (1) the method INS used to establish its fees, (2) whether fees reflected actual costs of providing services, (3) whether the expenditures from fee accounts were consistent with the purposes of the accounts and management and control of the fees were sufficient to prevent misuse of fee revenue, and (4) whether staff were allocated in proportion to workload among the districts providing services that were financed by the fees.

To meet the above objectives we did the following:

(1) We reviewed the methodology INS used to calculate the application fees in effect as of January 1994 (effective April 1991). Documentation for prior fee calculations was not available from INS. We reviewed the legislation establishing the application and passenger inspection fees. To determine how some application fees may have been affected if indirect costs were prorated, we used the direct salary cost for each application and total indirect costs determined by INS when it calculated applications fees in 1991. We divided total indirect costs by total direct salary costs to determine a rate for applying indirect cost to direct salary cost. The calculated rate was \$3.25. We then applied that rate (\$3.25 of indirect cost to each dollar of direct salary cost) to individual types of applications to arrive at the revised fees.

(2) We reviewed applicable legislation and guidance regarding the costs to be funded from the fee accounts. We reviewed a May 1992 INS study that estimated the costs properly chargeable to the fee accounts. We also reviewed relevant OIG reports and discussed the findings of one report with the auditors who performed the work.

(3) We determined if expenditures, in our view, were consistent with the purposes of the fee accounts on the basis of the criteria for acceptable expenditures set forth in the legislation and guidance governing these

accounts. We reviewed (a) the legislation governing the fee accounts to determine the criteria for acceptable expenditures and (b) all fiscal year 1992 expenditures for the fee accounts. Since INS had not clearly defined the specific activities that should be funded from the fee accounts, we used our own judgment. We asked INS to explain the basis for some expenditures and we analyzed its responses. In its report for fiscal year 1991 expenditures for both accounts, OIG did not question any of the expenditures.

We interviewed INS officials to determine procedures for authorizing expenditures from the fee accounts. We reviewed INS procedures for fee collection and deposit and observed application fee collections at the Washington District, the Los Angeles District (the largest district in terms of application receipts), and the Western Service Center.

At EOIR we obtained data on applications processed by EOIR and fee revenues reimbursed to EOIR by INS. We did not (a) review the basis on which EOIR's fees were set or (b) determine how EOIR used the funds that INS provided or the impact on its appropriations. This was not part of the request.

In addressing this objective, we also reviewed the same OIG reports and followed up on fee-related weaknesses discussed in our prior report.

(4) We collected and analyzed data on staffing and application inventories at the four INS districts receiving the most applications (Los Angeles, New York, Miami, San Francisco) and application inventories at the four service centers (Western Service Center in Laguna Niguel, CA; Northern Service Center in St. Paul, MN; Southern Service Center in Dallas, TX; and Eastern Service Center in Burlington, VT). These four districts and four service centers processed about 70 percent of all INS applications for the first 5 months of fiscal year 1993. We determined the expected waiting times for processing six types of applications at the districts (I-90, I-130, I-485, I-539, I-765, and N-400) and four types of applications at the service centers (I-90, I-130, I-140, and I-765). (See app. II for application descriptions and fees.) These applications represented over 90 percent of all applications filed at the four districts and about 70 percent at the four service centers.

We defined expected application waiting time as the number of months it would take to process the ending inventory on the basis of the average number of monthly completions for the first 5 months of fiscal year 1993.

For example, if the ending inventory for a particular application type was 10,000 and that district or service center was processing an average of 2,000 applications per month, we assumed it would take INS 5 months to complete the backlog. Our calculation assumed a steady stream of application receipts and that INS processed applications on a first-in, first-out basis. Individual application waiting times may have varied from our calculated expected waiting times. We categorized the number of applicants for each type of application as waiting 4 months or less, 4.1 to 8.0 months, and more than 8 months, on the basis of the expected waiting times we computed. We calculated the number of applicants in each category to arrive at an overall percentage for the category.

To analyze the staffing levels allocated to process application workloads, we compared the staffing levels, as determined by INS' staffing model, with funded positions in the four district offices. We did not evaluate the model because we were not asked to determine the accuracy of its staffing estimates.

For asylum processing, we compared the staffing for all seven offices (Los Angeles, San Francisco, Houston, Chicago, Miami, Newark, and Arlington, VA) with the number of applications received at each office. By doing this we could determine if INS allocated staff in relationship to workload. We also determined the changes in the inventory of unprocessed applications between fiscal years 1985 and 1993. We also computed the time needed to eliminate the application backlog at the March 1993 staffing level and completion rates.

We compared the staffing levels at airports and seaports in the seven INS districts that inspect the largest number of passengers to the number of inspections carried out.

In addition, we interviewed INS officials at INS headquarters who were responsible for setting and managing the fees, as well as various unit program managers who were responsible for allocating fee revenues to the various districts and service centers providing services.

Subsequent to our review, INS proposed an increase to some of its application fees in January 1994. We did not evaluate the basis on which INS proposed to revise its fees. On February 1, 1994, the Department of Justice announced a reorganization proposal that affects some of the units discussed in our report. We did not revise the report to reflect this change because it does not affect our message.

Appendix I
Objectives, Scope, and Methodology

We did our work from October 1992 through January 1994 in accordance with generally accepted government auditing standards. We did not verify data we obtained from INS. After providing the Department of Justice a draft of this report for comments, we met with officials from the Department of Justice, including INS and EOIR, who provided oral comments. The INS officials included an Acting Associate Commissioner for Management, who is responsible for the fee accounts. Their comments have been incorporated into the report.

INS Application Fees Schedule

Application description	Form number(s)	Fee as of Jan. 1994
School approval	I-17	\$ 130.00
Replace alien registration receipt card	I-90	70.00
Replace arrival-departure record	I-102	50.00
Nonimmigrant worker petition	I-129	70.00
Classify nonimmigrant as fiancée or fiancé	I-129F	75.00
Classify status of alien relative for issuance of immigrant visa	I-130	75.00
Issuance of reentry permit	I-131	65.00
Classify preference status of an alien on basis of profession or occupation	I-140	70.00
Advance permission to return to unrelinquished domicile	I-191	90.00
Exercise of discretion	I-192	85.00
Waiver of passport and/or visa	I-193	90.00
Permission to reapply for excluded or deported alien	I-212	90.00
Appeal from decision	I-290A I-290B	110.00
Special immigrant petition	I-360	75.00
Permanent resident status	I-485 I-485A ^b	120.00 ^a
Alien entrepreneur	I-526	140.00
Extend or change nonimmigrant status	I-539	70.00
Issuance or extension of refugee travel document	I-570	45.00
Classify orphan as an immediate relative	I-600	140.00
Advance processing of orphan petition	I-600A	140.00
Waiver of ground of excludability	I-601	90.00
Waiver of foreign-residence requirement	I-612	90.00
Remove conditions on residence based on marriage	I-751	75.00
Waiver of requirement to file joint petition for removal of conditional basis of residency	I-752	85.00
Employment authorization	I-765	60.00
Voluntary departure under family unity	I-817	75.00
Temporary protected status	I-821	50.00 ^c
Action on an approved application or petition	I-824	30.00
Declaration of intention to naturalize	N-300	70.00
Request for hearing on a decision in naturalization proceedings	N-336	110.00
Naturalization	N-400	90.00
Benefits	N-470	90.00
Replace certificate of naturalization	N-565	50.00

(continued)

Appendix II
INS Application Fees Schedule

Application description	Form number(s)	Fee as of Jan. 1994
Certificate of citizenship	N-600	90.00
Certificate of citizenship on behalf of an adopted child	N-643	85.00
Posthumous citizenship	N-644	60.00

*\$95.00 for applicants under age 14.

°Cuban refugees file form I-485A.

°Nationals of El Salvador pay \$75.00. Family maximum of \$225.00.

Sources: Code of Federal Regulations, January 1, 1993, and INS.

Fee Account Budgets by Unit

Table III.1: Immigration Examinations Fee Account Budget, Fiscal Years 1990 to 1993

Dollars in Thousands

Unit	1990		1991		1992		1993
	Budget	Reprogrammed	Budget	Reprogrammed	Budget	Reprogrammed	Budget request
Adjudications and Naturalization	\$81,212	109,078	\$79,386	\$116,387	\$121,831	\$149,199	\$151,058
Information and Records Mgmt.	1,925	2,982	1,925	4,936	9,866	21,503	57,189
Data and Communications	1,189	4,500	8,689	31,900	31,744	40,342	49,916
Administrative Services		556		702	731	13,382	7,490
Legal Proceedings		1,779		2,379	2,477	2,477	3,071
Intelligence		200		338	352	654	539
International Affairs and Outreach				24,676	29,915	35,231	39,422
Inspections						2,436	8,685
Investigations						1,697	7,278
Training						2,363	3,070
Field Management and Support						850	1,399
Construction and Engineering						173	173
Executive Direction and Control						75	75
Total	\$84,326	\$119,095	\$90,000	\$181,318	\$196,916	\$270,382	\$329,365

Source: INS.

**Appendix III
Fee Account Budgets by Unit**

Table III.2: Immigration User Fee Account Budget, Fiscal Years 1990 Through 1993

Dollars in Thousands

Unit	1990		1991		1992		1993
	Budget	Reprogrammed	Budget	Reprogrammed	Budget	Reprogrammed	Budget request
Inspections	\$65,175	\$77,148	\$74,554	\$104,365	\$123,351	\$130,571	\$152,485
Detention and Deportation	12,309	12,723	12,892	21,946	30,282	33,882	37,607
Data and Communications	17,858	18,112	18,354	21,572	28,112	30,250	28,850
Administrative Services	1,701	1,046	1,060	3,277	3,878	6,649	8,118
Anti-Smuggling	1,526	1,244	1,377	1,240	1,720	2,072	3,481
Intelligence	1,237	400	405	365	1,588	1,709	1,821
Legal Proceedings	2,206	2,206	1,068	1,544	1,600	1,600	1,937
Information and Records Mgmt.	•	•	•	•	•	838	1,419
Investigations	889	736	912	566	1,005	1,005	1,414
Training	177	485	491	494	502	1,877	2,962
Field Management and Support	•	•	•	182	247	247	263
International Affairs and Outreach	247	250	255	226	•	•	255
Executive Direction and Control	106	50	51	146	200	200	211
Construction and Engineering	99	50	51	75	94	94	125
Total	\$103,530	\$114,450	\$111,470	\$156,000	\$192,579	\$210,994	\$240,948

Source: INS.

Comments From the Immigration and Naturalization Service



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 Eye Street N.W.
Washington, D.C. 20536

MAR 11 1994

Mr. Henry R. Wray
Director, Administration of Justice issues
General Government Division
U.S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Wray:

This letter responds to the General Accounting Office's (GAO) draft report, "INS User Fees: INS Working to Improve Management of User Fee Accounts." We appreciate the opportunity provided to us for commenting on the report. As discussed with your representatives, we are pleased with your recognition of the progress that the Immigration and Naturalization Service (INS) has made.

The INS is committed to continuous improvement in the management of the fee accounts and is in the process of procuring an assistance and advisory services contract to address many fee related areas including the fee setting process and fee structures. Over the course of several years, the work to be performed under the contract will result in continued progress in fee account management.

We commend the staff of the GAO for its professionalism in conducting the audit and drafting the report. The report is being used to continue highlighting the importance of fee account management.

Sincerely,

Doris Meissner
Commissioner

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