

Remaking USCIS: Supplementing a Fee-Funded Agency

Background

U.S. Citizenship and Immigration Services (USCIS) is the federal agency, under the Department of Homeland Security (DHS), that processes green cards, visas, and employment authorization documents for immigrants. Unlike most other agencies, USCIS is “[fee-funded](#),” meaning that its funding comes primarily from fees charged to those applying for immigration or naturalization benefits, not taxpayers. Due to this, its funding stream is relatively [insulated from the federal appropriations process](#), but is highly sensitive to shifts in demand by those who the agency serves. Accordingly, it was [hit particularly hard](#) by the decline in immigration applications during the Trump administration, and then by the onset of COVID-19 in 2020. That decline in fee collection, along with cascading impacts of operating during COVID-19 and the growing demands being placed on the agency, have posed new challenges to USCIS. In response, the agency has relied on federal appropriations to cover the shortfalls and better carry out its many functions. These changes are remaking USCIS, and those changes could be permanent.

2020 USCIS Budget Shortfall

In May 2020, USCIS [notified](#) Congress of an impending budget shortfall that it said was due to COVID-19 and its detrimental operational impact. The shortfall, which [analysts noted](#) also, was caused by a decline in immigration petitions that followed restrictive Trump administration policies on legal migration and naturalization, and contributed to undermining the fiscal stability of the agency. Facing a severe funding shortfall, the agency requested \$1.2 billion from Congress to maintain the agency’s functions through the end of the fiscal year. [USCIS issued furlough notices](#) to a large percentage of its employees, providing a 30-days’ notice as required under federal law. USCIS stated that approximately 13,400 employees would be furloughed on August 30, 2020 if supplemental funding was not provided to the agency.

A mass furlough of more than two-thirds of USCIS employees would have halted U.S. immigration processing, negatively impacted families, U.S. businesses, educational institutions, medical facilities, and churches. This would have had far-reaching implications for both those already in the U.S. waiting for various immigration services, as well as those waiting to have applications approved from outside the country. Had USCIS gone through with this step, immigration to the U.S. would have been effectively crippled. In addition, it would have precluded those engaged in the naturalization process from registering to vote, prevented DACA recipients from renewing their benefits, and further delayed relief for deserving asylum applicants.

Research conducted by the Migration Policy Institute [found](#) that for each month of a furlough 75,000 applications for various immigration benefits would not be processed. Had it not been averted, growing backlogs at USCIS, which had reached more than 8 million pending applications by mid-2020, would have only worsened.

USCIS Furlough Averted

On August 18, 2020, shortly before the announced furlough was to go into effect, Senator Patrick Leahy (D-Vermont), the Vice Chairman of the Senate Appropriations Committee, [called](#) on USCIS to delay it. He [noted](#) that, despite fiscal challenges, the agency had more than enough funding to pay all of its employees through September 30, 2020, the end of fiscal year (FY) 2020, and committed to addressing the projected FY2021 deficit before October 1, 2020. In fact, Leahy noted, revised estimates indicated that USCIS was projected to end the year with a surplus of more than 230 million dollars, instead of a deficit. Leahy's letter raised important questions, both about the degree of the financial shortfall, and the true motive for issuing the furlough notifications in the first place.

In response, on August 25, 2020, five days before the [furlough of nearly](#) 70 percent of its workforce was to take effect, [USCIS announced](#) that it had changed its plans. The agency asserted that it continued to face financial distress, underscoring that alternative spending cuts and additional backlogs were likely to follow as a result.

Introduction and House Passage of the Stabilization Act

On August 22, 2020, shortly before the announcement of the furlough delay, The Emergency Stopgap USCIS Stabilization Act ([H.R. 8089](#)) was introduced (hereafter "Stabilization Act"). A bipartisan bill sponsored by Representative Zoe Lofgren (D-California), the Stabilization Act sought to shore up the financial health of USCIS through expanding premium processing. The bill [passed](#) the House without objection the day it was introduced and then moved to the Senate to await action.

A key feature of the Stabilization Act was the expansion of premium processing, with the additional revenue generating going to help stabilize the agency. Historically, premium processing was a procedure by which a petitioner, attorney, or representative of a beneficiary could expedite his or her application in 15 days in exchange for an additional fee. Premium processing fees typically range from \$1,500 to \$2,500 and are assessed on top of regular filing fees. Prior to the introduction of the Stabilization Act, [USCIS](#) limited premium processing to [Form I-129](#) (petition for a nonimmigrant or temporary worker) and [Form I-140](#) (petition for a permanent resident immigrant worker).

The Stabilization Act sought to [expand premium-processing](#) services to additional case types, with the expedited period for the various case types varying between [15 and 45 days](#). For example, the bill would expand service to [Form I-765](#) (application for employment authorization), and [Form I-539](#) (application to extend/change nonimmigrant status), allowing both types of petitions to be completed within 30 days. The bill would also allow for the adjustment of premium processing fees every other year.

Under the Stabilization Act, USCIS would receive immediate access to existing premium processing funds to cover operating expenses, and be authorized to expand premium processing to additional form types. The expansion of premium processing to additional form types was important because it would increase USCIS's annual revenue by millions of dollars. Additionally, it would provide faster service for petitioners willing and able to pay for it, improving operational efficiencies.

Passage of the Stabilization Act

While the August 2020 furlough was averted, USCIS's fiscal health remained unsettled. Despite passing the House soon after its introduction, weeks later the Stabilization Act still awaited action in the Senate. Ultimately, rather than moving on a standalone basis, the Senate folded the Stabilization Act into 2021 appropriations, where it finally passed the Senate (and the House a second time) as part of [H.R. 8337: Continuing Appropriations Act, 2021 and Other Extensions Act](#), on September 30, 2020. Former President Trump signed H.R. 8337 into law on October 1, 2020.

The Stabilization Act did the following:

- Provided immediate access to existing premium processing funds to cover operating expenses.
- Expanded premium processing to additional form types.
- Enabled USCIS to increase the premium-processing fee, within certain guidelines, thus increasing revenue.
- Enabled DHS to biennially adjust premium fees to reflect inflation without following certain rulemaking requirements.
- Obligated the DHS Secretary to submit to Congress, within 180 days of enactment, a 5-year plan with cost estimates, strategies, and a project schedule. It also required a semi-annual briefing be made to the appropriate committees.

Recent Developments

On September 7, 2021, after missing the statutorily required deadline of March 30, 2021, (180 days following enactment of the Stabilization Act), DHS Secretary Alejandro Mayorkas belatedly presented a 5-year [plan](#) on USCIS operations to Congress. The plan delineated how DHS and USCIS would move toward the goals of enabling “electronic filing for all applications and petitions for immigration benefits, accept[ing] electronic payments at all filing locations, issue correspondence electronically, and improv[ing] processing times for all immigration and naturalization benefit requests.” The report outlined USCIS’s progress in moving to electronic processing, building up capacity to process 100% of citizenship benefits, 34% of all applications for benefits, and 69% percent of its case workload electronically, as of the time of the report. The plan’s goal was to move completely to electronic processing by FY2026, in line with congressional expectations to improve agency performance and efficiencies.

Yet, despite these developments, backlogs persisted. In a December 2021 [letter](#) to USCIS, a coalition of organizations described the impact of processing delays on U.S. businesses. The signatories also expressed their concern at the slow pace at which

USCIS was expanding premium processing to additional form types, undermining an important revenue stream provided in the Stabilization Act.

While the Stabilization Act helped put USCIS back on a more stable footing, the agency continues to face fiscal challenges. In February 2022, while noting that the agency's financial situation had improved, USCIS Director [Ur Jaddou urged](#) Congress to appropriate additional funds to the agency to address the growing backlogs, stating that the agency needs "additional resources to decrease processing times and to tackle the unprecedented backlog and our ever-growing humanitarian mission."

The agency's humanitarian mission particularly warrants attention, given the growing number of immigration applications that are free, such as applications for asylum, T visas, U visas, Special Immigrant Juvenile petitions, and Violence Against Women Act visas (VAWA), none of which generates revenue for the agency. Additionally, there are a number of applications for which a fee waiver can be requested, including work permits, some green cards, green card renewals, naturalization, Applications for Advance Permission to Enter as a Nonimmigrant (Form [I-192](#)), and Temporary Protected Status (TPS). These are rightfully zero cost applications, but they all have a negative consequence on USCIS's financial bottom line, necessitating additional fiscal support from Congress. Recognizing this reality, in the context of growing backlogs and continuing fiscal difficulties, Director Jaddou broke new ground in linking appropriations not only to the immediate needs of USCIS, but to the "long-term success of this agency."

The Stabilization Act was one of the initial catalysis to the transformation of USCIS. Three more recent events would suggest the Biden Administration has not only heard the request for long-term appropriations, but is also taking concrete steps to provide USCIS with the financial and regulatory authority needed to address the backlogs and help assure the agency can meet the growing demands being placed upon it.

On March 24, 2022, ahead of its official federal registry publication, the Biden Administration posted a [new interim final rule on asylum](#) that would grant USCIS asylum officers the authority to [consider the asylum applications](#) of those subject to expedited removal, something that had previously been reserved for immigration judges. The objective of this rule was to improve and expedite asylum claims. With an immigration courts backlog of over [660,000](#) asylum cases, and more than [430,000](#) pending asylum cases with USCIS, something needed to be done. The new rule, however, would require USCIS to hire as many as [800 hundred](#) new asylum officers to handle these new caseloads. Since asylum applications are free, they would not generate revenue to cover the cost of these asylum officers. Accordingly, additional funding streams would be necessary.

Less than a week later, on March 28, 2022, the Biden administration proposed such funding streams. In releasing President Biden's budget proposal for [FY2023](#), the administration called for significant appropriations to be made to USCIS to add needed personnel – including asylum officers – and address and reduce the persisting backlogs. Although Congress will ultimately determine FY23 funding levels, the Biden budget proposal called for significant funding increases to USCIS, more than [\\$449 million](#) above FY2022 levels. Included in the budget request was [\\$375 million](#) to make operational the new interim final rule on asylum.

The following day, on March 29, [USCIS announced three additional measures](#) it was taking to address backlogs, assure that immigrants retain work authorization between applications, and secure the agency's financial situation. The measures, which built off previous steps taken by the agency included:

1. Establishing new [internal cycle](#) time goals to shorten the time the agency takes to process cases and shorten backlogs. USCIS intends to achieve these goals through expanding staffing, increasing agency capacity, and better utilization of technology.
2. Expanding the use of premium processing by making more USCIS forms eligible for these services, as provided under the Stabilization Act. USCIS intends to carry out this expansion in phases while adhering to the congressional mandate that growth in premium processing cannot increase processing times for regular immigration applications.
3. Improve access to employment authorization documents (EAD) by streamlining EAD processes, expediting work authorization renewals for childcare and healthcare workers, and providing additional time on automatic extensions of work authorizations. The latter step, a new [temporary final rule](#) from USCIS, is intended to assure that certain immigrant workers will not lose their jobs while their applications are pending. Under current USCIS backlogs, work authorizations are taking up to [10 months](#) to be completed.

Conclusion

Remaking USCIS through supplementing its revenues via appropriations is necessary not only due to the agency's 2020 fiscal crisis and current growing backlogs, but also due to its important mission and future goals. With a growing humanitarian caseload, including processing [evacuated Afghans](#), ramping up [refugee resettlement](#), and [handling growing numbers of asylum petitions](#), USCIS is taking on more and more work that is not supported by applicant fees. If not provided necessary resources through congressional appropriations, USCIS will continue to face budget challenges and mounting backlogs, lacking the personnel, technology, and resources to carry out its crucial mission.

Special thanks to Ben Ginsburg Hix for his work on this paper.