

Supplemental Statement for the Record of  
Doug Rand  
Senior Fellow, [Federation of American Scientists](#)

For a Hearing of the Subcommittee on Immigration and Citizenship  
U.S. House Committee on the Judiciary

“Oversight of U.S. Citizenship and Immigration Services”

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9:30am ET

*Submitted to the Subcommittee on Aug. 3, 2020 as a supplement to initial written testimony*

## Supplemental Statement for the Record

Chair Lofgren, Vice Chair Jayapal, Ranking Member Buck, and members of the Subcommittee on Immigration and Citizenship, thank you again for the honor of appearing before you on July 29, 2020 to address the oversight of U.S. Citizenship and Immigration Services (USCIS).

I submitted my first statement for the record two days prior to this hearing, per the Subcommittee's instructions. Since then, new written and oral testimony was provided to the Subcommittee by Mr. Joseph Edlow, USCIS Deputy Director for Policy, in addition to the publication of a [new USCIS fee schedule](#).

I am submitting this supplemental statement for the record, again in my personal capacity, in order to respond to the latest assertions made by USCIS leadership.

### **1. Trump administration mismanagement and policy choices are the fundamental cause of the USCIS insolvency crisis.**

During the July 29 hearing, Mr. Edlow repeated his frequent claim that the COVID-19 pandemic is solely responsible for USCIS facing its current insolvency crisis. At the same time, however, he made the following contradictory statement:

“Prior to COVID we were operating at a deficit. Frankly we’ve been operating at a deficit for the last several years, but we were no way in a budget shortfall that was going to cut into our mission and potentially bring about furloughs.”

If USCIS has been “operating at a deficit for the last several years,” then it was in fact *inevitable* that the agency would face a budget shortfall that would “cut into our mission and potentially bring about furloughs,” even under business as usual—absent a new fee rule, which by the agency’s own accounting is two years overdue. USCIS was already skirting dangerously close to insolvency, and the COVID-19 pandemic only made this fiscal reckoning happen some months sooner.

### **2. The Trump administration squandered the USCIS budget surplus that it inherited from the Obama administration.**

In the [2016 USCIS fee rule](#) that was finalized on Oct. 25, 2016, USCIS projected about \$2.5 billion in annual revenues and about \$3 billion in annual costs, averaged between FY 2016 and FY 2017. This rule raised user fees enough to cover this anticipated deficit of about \$500 million per year.

Table 3—IEFA Cost Baseline and Revenue Comparison  
[Dollars in thousands]

Fiscal year	FY 2016	FY 2017	FY 2016/2017 Average
Non-Premium Revenue	\$2,507,683	\$2,448,596	\$2,478,139
IEFA Cost Baseline	\$3,009,024	\$3,066,548	\$3,037,786
Difference	(\$501,341)	(\$617,952)	(\$559,647)

Just four years later, in the [2020 USCIS fee rule](#) that was just finalized on Aug. 3, 2020, USCIS projected over \$3.4 billion in annual revenues and about \$4.4 billion in annual costs, averaged between FY 2019 and FY 2020. This rule would raise user fees high enough to cover an alleged anticipated deficit of over \$1 billion per year.

**Table 2: Revised IEFA Non-Premium Cost and Revenue Projections Comparison**

IEFA Non-Premium Cost and Revenue Projections Comparison			
Comparison	FY 2019	FY 2020	FY 2019/2020 Average
Non-Premium Revenue	\$3,408,233,376	\$3,408,233,376	\$3,408,233,376
Non-Premium Budget	\$4,331,978,119	\$4,556,386,463	\$4,444,182,291
Difference	(\$923,744,743)	(\$1,148,153,087)	(\$1,035,948,915)

This means that, by collecting higher fees under the Obama-era fee rule, USCIS projected nearly \$1 billion more in revenues for FY 2019 (\$3.4 billion) than just two years earlier in FY 2017 absent these fee increases (\$2.5 billion).

Meanwhile, under Trump administration policies, USCIS projected over \$1.3 billion more in costs for FY 2019 (\$4.3 billion) than just two years earlier in the FY 2017 Obama-era cost projection (\$3 billion).

It is abundantly clear that the Trump administration inherited a fiscally sound USCIS, but then burdened the agency with skyrocketing costs that put it on the path to insolvency well before the COVID-19 pandemic.

### 3. USCIS has made highly inconsistent estimates of its budget needs.

The new USCIS fee rule projects an average annual budget (i.e. costs) of \$4.4 billion, but the [DHS Congressional Budget Justification for FY 2021](#) tells a different story. Here USCIS informed Congress that its average *enacted* annual budget for these same two fiscal years was only \$3.9 billion.

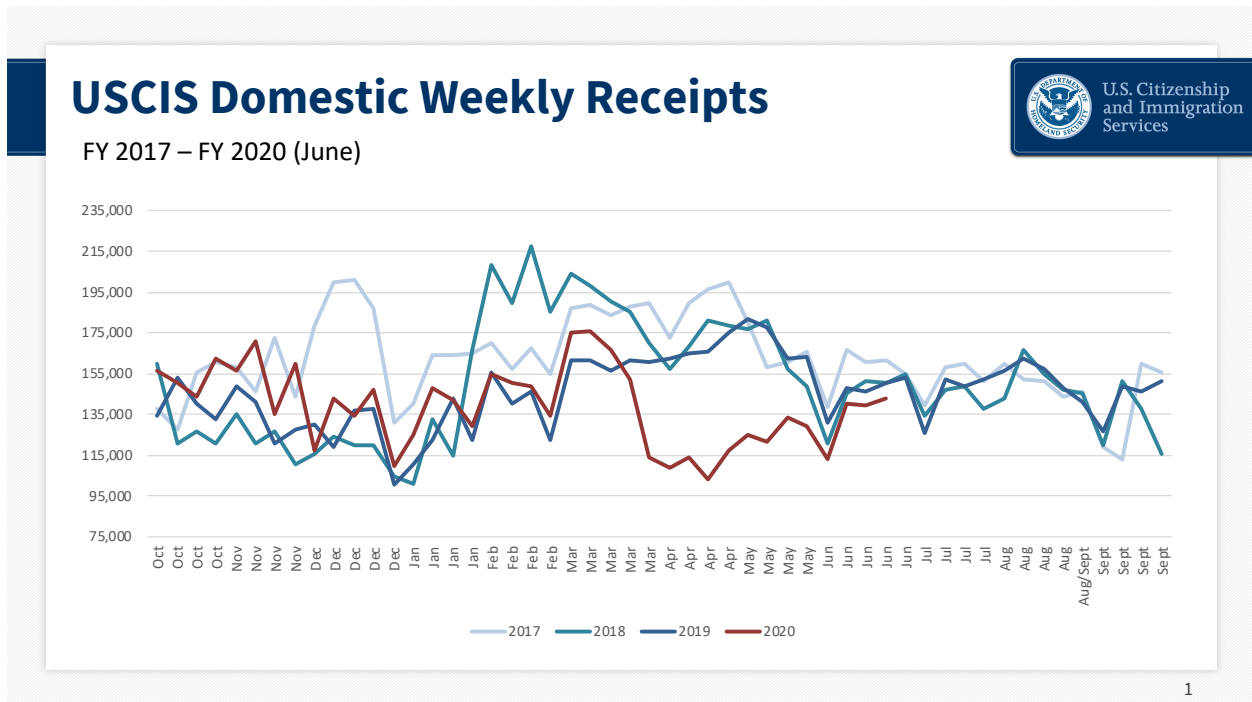
This suggests that the new USCIS fee rule will extract \$500 million per year from the agency's users based on inflated budget needs alone.

**USCIS Budget in Fee Rule vs. Congressional Budget Justification**  
*(IEFA Total budget minus Premium Processing budget equals IEFA Non-Premium budget.)*

	Fee rule projection	Enacted budget	Difference
<b>FY 2019</b>	\$4,331,978,119	3,876,847,000	\$455,131,119
<b>FY 2020</b>	\$4,556,386,463	3,997,176,000	\$559,210,463
Average	\$4,444,182,291	3,937,011,500	\$507,170,791

**4. USCIS cannot justify a \$1.2 billion bailout based on the far lesser revenue shortfall documented in its testimony.**

Accompanying its written testimony, USCIS provided the following chart documenting its weekly receipts (apparently based on the number of forms filed) over the past four fiscal years:



Clearly, receipts began to decline in mid-March 2020, coinciding with the temporary closure of USCIS field offices in response to the COVID-19 pandemic. Receipts began to pick up in late April, however, and were back to near-normal levels as USCIS reopened field offices in early June.

Notably, during nearly every week of FY 2020 prior to mid-March, weekly receipts were *higher* than during the same week in FY 2019. This presumably would have generated surplus cash, making it easier for USCIS to absorb the temporary decline in receipts that ensued between March and June.

How much surplus cash? While USCIS does not provide this highly relevant information, we can estimate revenues based on an average revenue per customer of \$507 in FY2019.<sup>1</sup> The following table uses the weekly receipts data from the above USCIS chart, and multiplies these receipts by \$507 to estimate both weekly and cumulative revenues.

- As of the third week of March 2020, weekly receipts were still higher than the same week during 2019, and USCIS had generated approximately \$138 million in extra cumulative revenue since the start of the fiscal year.
- Starting with the fourth week of March 2020 through the third week of June 2020, weekly receipts were lower than the same period during 2019, and USCIS accumulated approximately \$252 million less in revenues.
- We can only extrapolate from the fourth week of June 2020 until the end of September 2020 (the conclusion of FY 2020), but if weekly receipts remain only 4.8% below last year's level, then USCIS will have accumulated approximately \$303 million less in revenues than during mid-March through September 2019. (If one assumes an average 10% shortfall in weekly receipts, the accumulated revenue shortfall only increases to \$357 million.)

Therefore, even setting aside the prior cash surplus that USCIS had at the onset of the COVID-19 pandemic and the closure of USCIS field offices in mid-March, the expected cumulative revenue shortfall between mid-March and September is only about \$300-350 million—far less than the [\\$1.2 billion bailout](#) that USCIS first demanded in May, reiterated in late June, and has not adjusted even now.

This Subcommittee deserves a full reckoning from the Trump administration as to why its demand for \$1.2 billion has not been modified downward in light of new—and better than anticipated—receipts and revenue data.

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<sup>1</sup> Doug Rand & Lindsay Milliken, [The Case of the Insolvent Federal Agency: A Forensic Analysis of Public Data on U.S. Citizenship & Immigration Services](#), N.Y.U. J. Legis. & Pub. Pol'y Quorum (2020).



## **5. USCIS must be transparent with Congress about its transfer of resources internally and to other agencies.**

In his response to questioning at the July 29 hearing, Mr. Edlow stated that “[p]utting a lot of our officers dealing with credible fear cases along the southern border, that has pulled away from our ability to handle some of the backlog in the affirmative asylum cases.”

USCIS has not been fully transparent about any of the following matters:

- How many USCIS officers, and from which directorates, have been transferred to the southern border to conduct credible fear interviews, what staff outside of USCIS has been tasked with performing these functions, and what were the associated costs?
- How long were these officers transferred before returning to their usual lines of work?
- Which case backlogs and processing times were affected by these transfers, and to what precise extent?

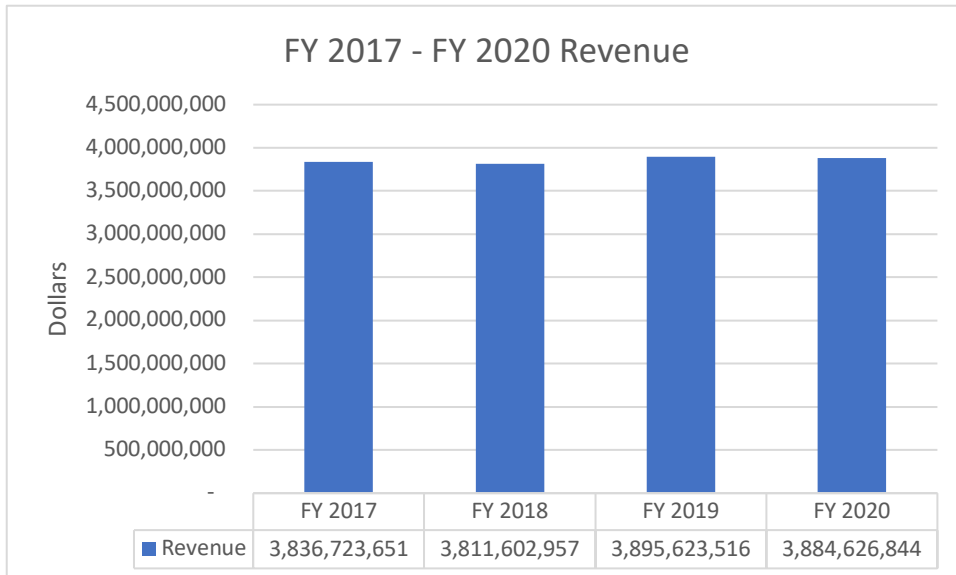
Mr. Edlow also stated, “My understanding is that there has not been a single dollar transferred from USCIS to ICE in at least the last two fiscal years, if not before that too,” and further, “I do not believe any money has been transferred to ICE for the hiring of any agents or for any other purposes.”

These statements do not inspire confidence. USCIS must be completely forthcoming and unequivocal with the Subcommittee about whether *any* USCIS funds *or* other resources have been transferred to or otherwise used by ICE or CBP since the first day of the Trump administration, including any reimbursable agreements with such agencies for any core mission work performed.

## **6. There is ample evidence that the Trump administration’s policies have caused a reduction in USCIS revenues.**

The USCIS testimony includes a highly misleading chart intended to rebut criticism that Trump administration policies have driven a decline in revenue:

“Importantly, there are no data or evidence to suggest that the Administration’s policies have caused a significant reduction in revenue. In fact, the chart below depicts relatively flat revenue from FY 2017 – FY 2020 (note: FY 2020 revenue is pre-COVID-19 estimate):”



The above chart directly contradicts prior data provided by USCIS to Congress and to the public, and raises several important questions:

- 1) This chart appears to present *total* Immigration Examinations Fee Account (IEFA) revenue, instead of isolating only *non-premium* IEFA revenue. (According to a [recent USCIS report to Congress](#), total FY 2019 IEFA revenue collections were \$3,896,000,000—\$3,318,000,000 non-premium and \$578,000,000 premium.) Premium IEFA revenue is largely at the discretion of USCIS, which frequently (and unpredictably) turns its Premium Processing service on and off. Therefore only non-premium IEFA collections are relevant to whether administration policies have resulted in a decline in revenue. Why is USCIS presenting the Subcommittee with data that cannot establish a valid trendline?
- 2) “Flat” revenues are nothing to brag about if USCIS revenues would have been even higher absent adverse administration policies. Has USCIS made any attempt to model the impact of administration policies on revenues, either before or since enactment?
- 3) Does the USCIS FY 2020 revenue estimate include the projected effects of President Trump’s April and June Proclamations that will dramatically reduce application volume for the remainder of the fiscal year, across a wide range of immigrant and nonimmigrant visa categories?
- 4) There does exist, in fact, “data or evidence to suggest that the Administration’s policies have caused a significant reduction in revenue.” For example, as documented in a [study of 182 USCIS policies from DHS Watch](#), since the first year of the Trump administration, USCIS has lost almost \$600 million annually in fees from the highest-volume forms (N-400: Naturalization; I-765: Employment Authorization; I-485: Adjustment of Status; I-90: Replacement of Permanent Resident Card; I-130: Petition for Alien Relative; and I-129: Petition for Nonimmigrant Worker). How does USCIS respond to this specific data-driven evidence?



Indeed, there is additional evidence that, contrary to the USCIS testimony, agency revenues have suffered due to Trump administration policies. To account for variables beyond the administration’s direct control over revenue, the following form types are excluded in the table below:

- N-400 (naturalization applications) and I-130 (family green card sponsorships): These forms likely increased in volume *in anticipation* of adverse policies, even prior to January 2017, based on a general uneasiness about future changes in the immigration system.
- I-765 (work authorization applications): These forms follow an erratic pattern that may be an artifact of internal USCIS accounting changes.
- I-589 (asylum applications): While asylum applications have certainly decreased, this does not affect revenue because these forms do not (at present) require a fee.

Excluding all of the above form types, and summing up all other forms [provided by USCIS in its quarterly reports](#), a clear trend emerges: By FY19, form receipts—and likely revenue as well—were well below FY15 and FY16 levels.

**USCIS Form Receipts (excluding N-400, I-130, I-765, and I-589)**

FY15	FY16	FY17	FY18	FY19
3,993,413	4,010,356	4,171,834	4,000,362	3,788,080

(Note that FY 2017 includes Oct. 2016 through Jan. 2017, prior to the Trump administration.)

USCIS must provide the Subcommittee with an honest and thorough explanation of such trends, not simply wave them away.

**7. The Trump administration is treating USCIS employees with barely-concealed apathy or worse.**

It is surely difficult for career USCIS employees, now threatened with furloughs or even layoffs through no fault of their own, to read the following passage from Mr. Edlow’s testimony:

“Nothing is more important to me than the men and women of USCIS who continue to perform our agency’s critical mission. They have successfully adjusted to doing business in the unprecedented times of this pandemic, but they now face this financial uncertainty, which is beyond their control. The dedication and commitment of the USCIS workforce is inspiring, and the agency has achieved numerous accomplishments over the past few fiscal years because of their tireless efforts. I am committed to working with you to avert catastrophic furloughs.”

If USCIS employees are so valued, why did USCIS leadership provide them with so little transparency about furlough plans?

In May, an agency spokesperson [told the press](#) that furloughs would begin “on approximately July 20.” Furlough notices did not go out [until late June](#), with a furlough start date of Aug. 3. In [late July](#), the furlough start date was extended to Aug. 30, following pressure from Congress that the agency had sufficient balances to fully fund its workforce for at least another month, if not into fiscal year 2021.

Moreover, why is the furlough date still set at Aug. 30, when the agency’s own data—provided to this Subcommittee as part of the USCIS testimony, as described in detail above—show that revenues are back up to near-average levels since early June?

Since May, USCIS employees have been scrambling to find alternative employment, and many have been forced to consider [raiding their own retirement accounts](#).

This is no way to treat people whom USCIS leadership allegedly admires and is committed to helping.

## **8. USCIS case completion volume reveals nothing about the metrics that actually matter to the agency’s users.**

In its written testimony to the Subcommittee, USCIS leadership trumpeted the following statistic, and not for the first (or last) time:

“In FY 2019, USCIS naturalized 834,000 new U.S. citizens, an 11-year high.”

While this may be so, the following is also true about FY 2019:

- USCIS ended the year with a backlog of over 647,000 naturalization applications, which would have been a 12-year high—but for the prior two years of the Trump administration, which were even worse.
- The average 10-month processing time was twice as long as compared to FY 2016.
- In some parts of the country, people were forced to wait well over two years for their naturalization applications to be processed.

(For source data, see the [2020 State of New American Citizenship Report](#) from Boundless.)

USCIS also attempted to impress the Subcommittee with these data points in its testimony:

“[In FY 2019,] USCIS granted lawful permanent residence to nearly 577,000 individuals and processed more than 2.1 million employment authorization applications. We also verified more than 40 million new hires through E-Verify.”

This may be so, but the [average processing times](#) for many permanent residence applications are nearly double what they were in 2016, while the processing time for employment authorization is up 73%.

Nobody who depends on USCIS is enthusiastic about how many applications the agency has processed, *unless it's enough to bring down backlogs and wait times.*

## **9. USCIS is heedlessly disenfranchising future Americans.**

In both written and oral testimony to this Subcommittee, USCIS leadership sought accolades for administering the oath of citizenship to all 110,000 individuals who had only this last step left at the moment that field offices temporarily closed in late March.

While this is certainly a welcome development, USCIS has made no mention of the estimated [315,000 naturalization applicants](#) who would normally have become citizens in time for the general election but have not yet been *interviewed*.

It does not inspire confidence that USCIS [secretly suspended green card application processing](#) between April and June, and only [resumed](#) once Congress and the press caught on.

USCIS must inform this Subcommittee how it plans to deal with this looming naturalization crisis of its own making. Mr. Edlow stated in his oral testimony that catching up on naturalization interviews “will take some time.” This is an unacceptably vague and noncommittal response.

Unless USCIS immediately expedites naturalization interviews and administers same-day or remote oath ceremonies, then by the time most state voter registration deadlines occur in October, these 315,000 citizenship applicants — some of whom have been [in line for nearly two years](#) — will be effectively disenfranchised.

## **10. USCIS has no legitimate reason to refrain from conducting naturalization interviews and oath ceremonies remotely.**

The USCIS testimony states:

“In March, we temporarily paused in-person services to mitigate the spread of COVID-19. USCIS continued to conduct limited naturalization ceremonies, taking precautions to prevent the spread of COVID-19. USCIS used innovative strategies to conduct these ceremonies in a manner that ensured the safety of our employees and the public while also in full compliance with statutory and regulatory requirements.”

This evades the urgent question of why USCIS leadership still refuses to even contemplate remote oath ceremonies, let alone naturalization interviews. Nearly every other business, nonprofit, and government entity has adapted to the COVID-19 pandemic by using virtual

meeting technology. Indeed, it is currently possible to appear in a federal court hearing, [take the oath of office](#) for a Trump administration political position, or be [evicted from one's home](#) through an online videoconference.

Yet USCIS refuses to implement a remote solution for the 40-second naturalization oath ceremony, claiming that such ceremonies would run afoul of statute, regulation, and logistical hurdles. The Immigrant Legal Resource Center (ILRC) has [comprehensively demonstrated that all such claims by USCIS leadership are false](#).

In light of these facts, it is astonishing that USCIS further states in its testimony:

“Further, to facilitate the reopening of in-person services at asylum offices in June 2020 while protecting applicant and employee safety during the ongoing COVID-19 pandemic, USCIS began conducting video-facilitated asylum interviews using available technology, including mobile devices provided by USCIS, to ensure that the asylum officer, applicant, interpreter, and representative can fully and safely participate in the interview while maintaining social distancing.”

If USCIS can conduct video-facilitated asylum interviews in an office environment, why can't naturalization applicants and USCIS officers do the same thing from the safety of their own respective homes?

## **11. The Trump administration has severely damaged the integrity of our nation's immigration system.**

Echoing frequent claims by Trump administration officials, the USCIS testimony states that “USCIS plays a key role in safeguarding our nation's immigration system and ensuring that only those who are eligible for a benefit receive one.”

Nowhere does USCIS leadership emphasize the agency's no less important role in ensuring that all those are eligible for a benefit duly receive it. The integrity of our immigration system is severely damaged when a significant number of people who are eligible under the law for citizenship, permanent residence, and other immigration services are routinely and illegitimately denied.

Since the beginning of the Trump administration, USCIS has implemented [over 80 new policies](#) transforming how it administers the legal immigration system, the vast majority in a more restrictive manner. Just a few of the most egregious examples include:

- The [public charge rule](#), which guarantees that many thousands of people will be denied green cards based on wealth, health, and a host of other arbitrary factors, even if they satisfy the statutory requirement of not being “likely” to use public benefits in the future.
- The so-called “[N/A policy](#)” of rejecting U visa and other applications whenever a field is left empty, or includes the notation “NA” or “not applicable,” instead of the strict

formulation “N/A.”

- The denial of [EB-1 “genius visa” applications](#), which has gone up 26 *percentage points* since 2017, even in the absence of any official policy change. For example, a Nobel laureate was rejected because USCIS demanded more information on the interpreter translating the Nobel citation.

These are not the actions of an administration with true reverence for the integrity of the nation’s immigration system or fidelity to the law.

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*Supplemental materials attached below:*

- [USCIS Fee Hike: How Immigrants Are Affected](#). Boundless (updated July 31, 2020).



U.S. Citizenship and Immigration Services (USCIS) plans to enact its **second ~20% fee increase in four years**, [paid for](#) primarily by U.S. citizens, U.S. businesses, and citizenship applicants—with **over 60% of its new expenses unexplained**. Where will the money come from, and where will it go? This report explores the data in depth.

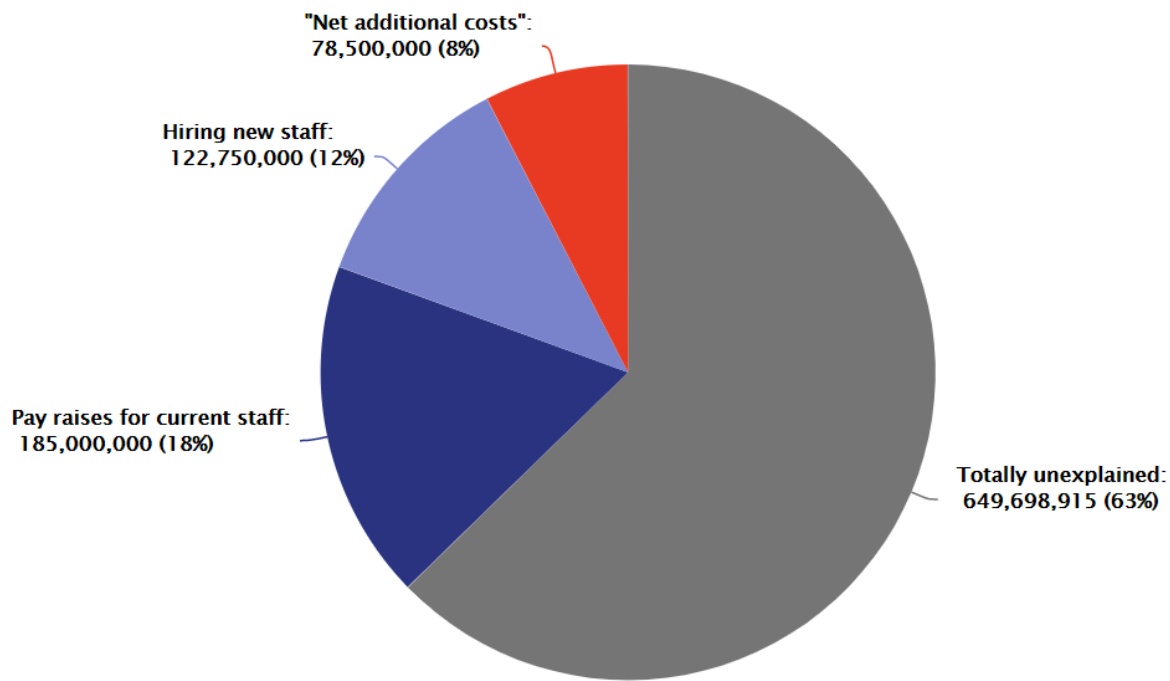
**U.S. Citizenship and Immigration Services (USCIS)** is the federal agency primarily in charge of legal immigration to the United States. Part of the Department of Homeland Security (DHS), this agency handles most visa applications, green card applications, and naturalization, and provides many other immigration services. USCIS currently employs about 19,000 workers and has around 90 field offices across the country. USCIS—distinct from Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP)—is charged with the administration of immigration applications, not deportations or border security.

Unlike most government agencies, USCIS is funded almost entirely through **user-paid fees**, not taxpayer dollars. Every two years, USCIS is required to reevaluate their current fees and make appropriate adjustments. The last fee adjustment in 2016 increased fees by an average of 21%. The **new rule** would hike fees by another 20% overall, beginning on October 2, 2020. USCIS estimates that the status quo, with no fee increases, would leave the agency underfunded by about \$1 billion dollars annually.

# Why does USCIS claim to need this additional revenue?

This pie chart displays how USCIS claims it will spend the new revenue it generates from higher fees.

## Planned Expenses (\$)



USCIS plans to use the extra fees for new hires, pay raises, and “net additional costs” (including non-pay general expenses associated with onboarding staff, secure mail shipping, increased background investigations, headquarters consolidation, and other “additional resources to sustain current operations necessary for achieving USCIS’ strategic goals”).

Remarkably, the allocation of about 63% of new revenue is completely unexplained in public documentation about the new fee rule.

USCIS has also publicly stated that this increased revenue will not decrease immigration application backlogs nor decrease application wait times any time soon. From

the **proposal**: "USCIS does not believe the level of effort for future adjudications will decrease ... USCIS estimates that it will take several years before USCIS backlogs decrease measurably."

## Where would the extra revenue come from?

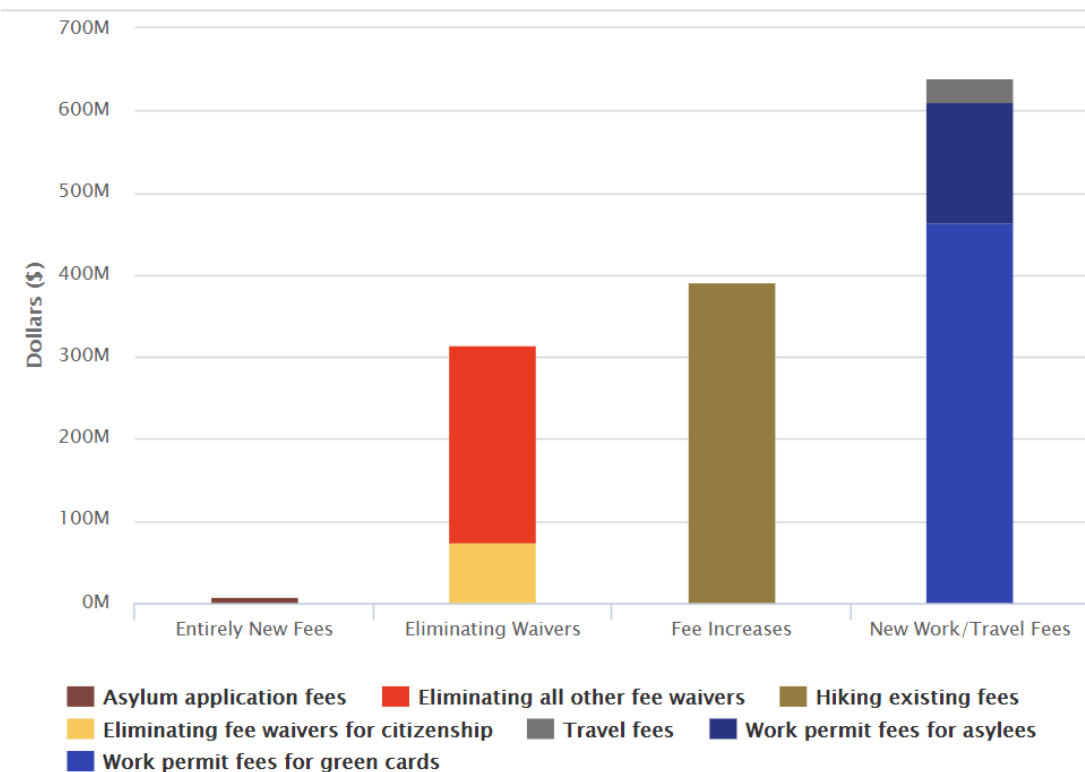
Some of this new revenue (just over \$8 million) would come from **entirely new fees** imposed on asylum applications.

Another big chunk of revenue (about \$300 million) would come from **eliminating fee waivers** for lower-income applicants, including immigrants applying for U.S. citizenship.

The next biggest revenue category (about \$400 million) would come from **hiking existing fees**—see specific examples in the section below.

By far the biggest new source of revenue (about \$640 million) would come from **new fees on travel and work permits** that are currently not subject to fees—including work permits for asylum-seekers and most green card applicants.

New Revenue Sources

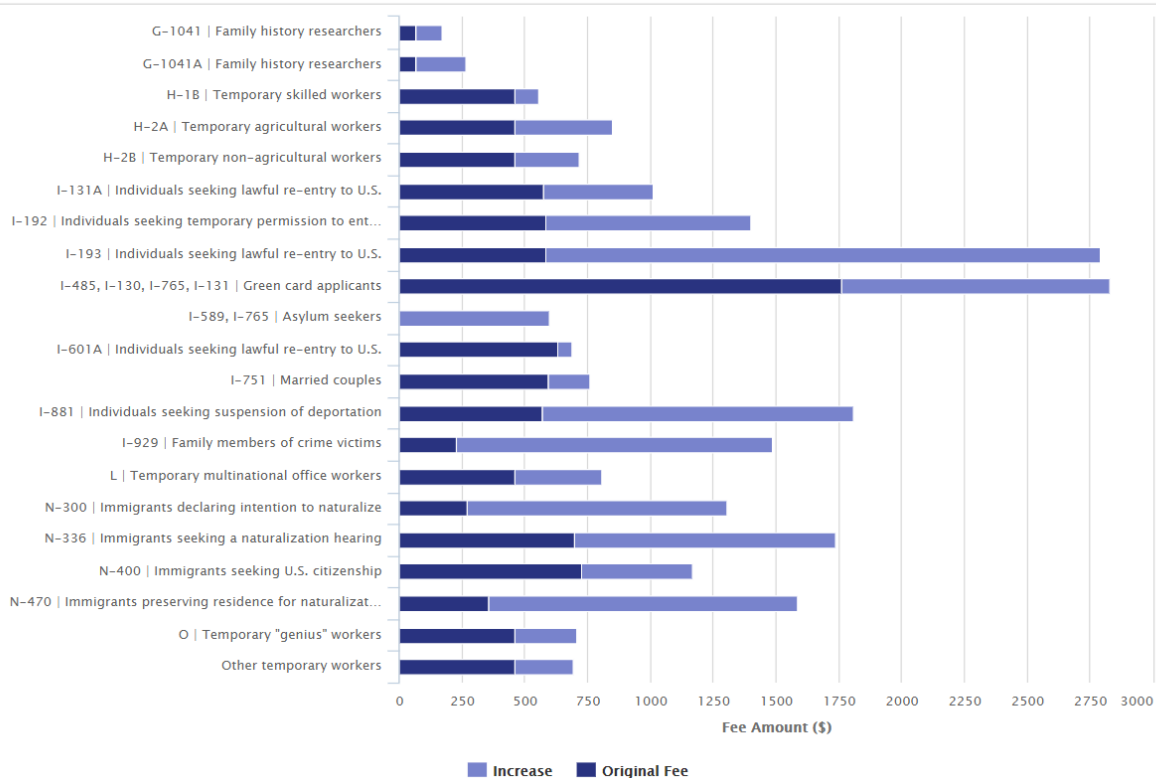




# Who would be affected by the fee increases?

While USCIS's fee rule would change fees for over 60 different form types, this chart focuses on the most dramatic fee increases for relatively high-volume cases.

USCIS Forms: 2020 Fee Increases



**Family history enthusiasts** would pay \$200 more for genealogy records— more than three times as much as currently—and they are **not pleased**.

**Businesses** would pay higher fees for all categories of temporary workers, including skilled workers (H-1B), agricultural workers (H-2A), and non-agricultural seasonal workers (H-2B).

**Green card applicants** would pay much higher fees, since work and travel permits would now require separate fees. For a spouse seeking a marriage-based green card, the total expenses for the process would **increase by over a thousand dollars**, from \$1,760 to \$2,830. Recently married couples would have an extra fee hike of \$165 to obtain permanent green cards.

**Citizenship applicants** would pay much higher fees, with the main application for naturalization (N-400) going up by \$530—nearly twice as much as its current cost (although applicants would no longer have to pay a separate \$85 biometrics fee).

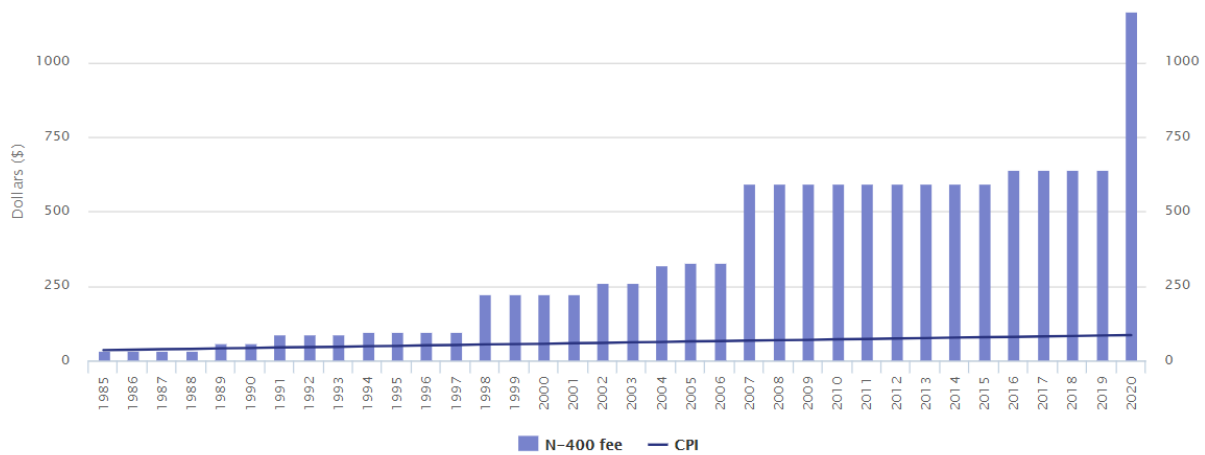
**Asylum seekers** would have to pay an unprecedented new \$50 application fee, as well as the full work permit fee. There would be significant burdens on other humanitarian programs as well, including the **unlawful presence waiver** (applied for using I-601A) that allows permission to return to the United States after applying for a green card.

The largest percentage fee increase is for the I-929, which grants a temporary visa for **family members of a crime victim**. Applicants will now pay \$1,255 more, making the form over 5 times as expensive as its current cost.

## How have USCIS fees changed over time?

The chart below shows how the price for the N-400, the naturalization form required for citizenship, has changed over time compared to the Consumer Price Index (CPI). Here we use the CPI—which tracks how the weighted average price of U.S. goods changes over time—pegged to an initial value of \$35, to match the N-400 form's cost in 1985.

Naturalization Form Fee vs. Consumer Price Index



The N-400 fees have increased much more than the CPI. USCIS is supposed to reevaluate their fee structure every two years, but does not always opt to change fees. The most notable fee increases were in 2007 and now the anticipated increase in 2020.

## Additional Resources

[The State of New American Citizenship](#) | This report from Boundless Immigration explains the citizenship process and the worrisome national trends among processing times, application backlogs, and application denials.

[LiveStats: Immigration and Citizenship](#) | A comprehensive data hub for immigration statistics, available for every state, county, and city in the United States.

## About the Data

Boundless aggregated and analyzed data that [USCIS released to the public](#) in its proposed fee rule, final fee rule, and related documents. CPI values were generated via the Bureau of Labor Statistics' [CPI Inflation Calculator](#).

