



USCIS Fiscal Mismanagement

How the Trump Administration's Xenophobic Ideology Created a Financial Crisis at USCIS

By Ur Mendoza Jaddou, Director

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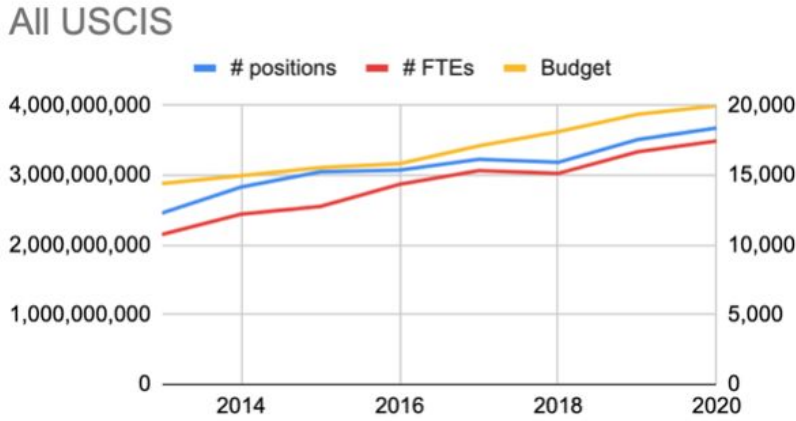
According to the Trump administration, U.S. Citizenship and Immigration Services (USCIS) is facing a [\\$1.2 billion deficit](#) which will require the furlough of two-thirds of its staff by the [end of August](#). The administration claims it is due to the [pandemic](#), but the real culprit is an unprecedented number of xenophobic policies and actions on immigration that have served to lock immigrants and Americans-in-waiting out of the system. The result is critical losses in revenue and significant increases in costs creating a major deficit. Had these policies not been implemented, USCIS would have been in a much stronger financial position to weather the pandemic.

We know that the COVID pandemic is not the culprit of this financial crisis because pre-pandemic, in November 2019, the Trump administration issued a [proposal](#) for public notice and comment to significantly increase USCIS processing fees based upon a projected annual deficit of \$1.2 billion and a [negative carryover balance](#) of \$1.5 billion in fiscal year 2020. Just two years ago, USCIS had projected a positive carryover balance of \$800 million, according to the fee rule. It should be noted that a different story was being told in Trump administration budget documents delivered to Congress in February [2019](#) and [2020](#) where USCIS was projecting positive carryover balances.

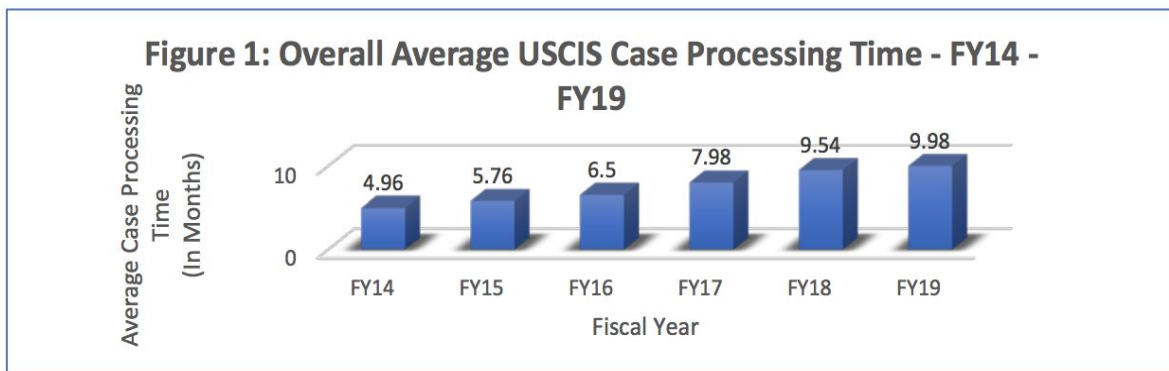
A review of the Immigration Policy Tracking Project¹ reveals a web of 182 actions that the Trump administration had taken, an unprecedented number. Together these actions made more people ineligible to apply, made it more difficult to apply and be granted a benefit and, introduced a web of extreme vetting with little to no justification other than to slow things down. The result has been significant losses in revenue and increased costs. Many of these policies require more staff to adjudicate, all the while there have been fewer and fewer applications to cover all of the new costs. The need for more staff and supporting resources at USCIS ballooned the budget to almost \$4 billion. The xenophobic red tape grew causing each

¹ Guttentag, *Immigration Policy Tracking Project* (entries updated as of April 30, 2020).

adjudication to take more time, but even with new staff USCIS has unable to keep up, so [backlogs](#) have exploded.



Source: “The Case of the Insolvent Federal Agency: A Forensic Analysis of Public Data on U.S. Citizenship and Immigration Services,” Doug Rand and Lindsay Milliken, June 15, 2020, N.Y.U. Journal of Legislation & Public Policy, (last accessed July 28, 2020) <https://nyujlpp.org/quorum/the-case-of-the-insolvent-federal-agency-a-forensic-analysis-of-public-data-on-u-s-citizenship-immigration-services/>

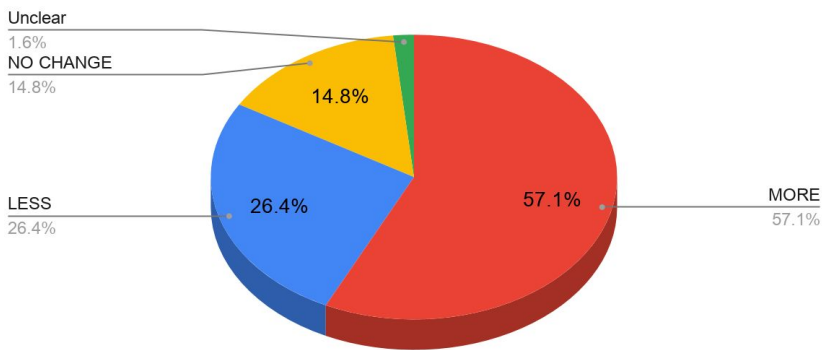


Source: AILA analysis of data from USCIS webpage, “Historical National Average Processing Times for All USCIS Offices” (last accessed February 21, 2020); <https://egov.uscis.gov/processing-times/historic-pt>

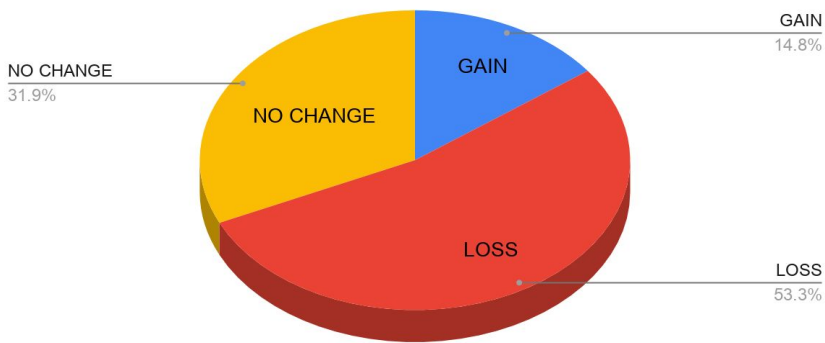
Review of 182 Trump Immigration Policy Changes Affecting USCIS

The following tables and charts represent the results of DHS Watch’s review of 182 Trump Administration immigration policies affecting USCIS prior to April 30, 2020. More than half of the policy changes caused revenue loss, almost 60 percent of the changes cost the agency more to implement, and more than 62 percent of the changes made fewer people eligible for USCIS programs.

Most Trump USCIS Policy Changes Cost MORE to Implement

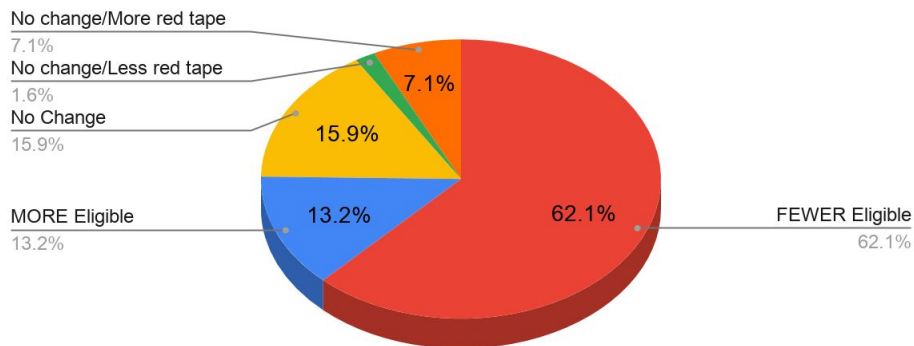


Most Trump USCIS Policy Changes Caused Revenue LOSS



Most Trump Policies Made Fewer People Eligible for USCIS Programs

Even where no change in eligibility, some policies created more red tape



Case Example: Naturalization

New Costs = \$105 Million Annually

While the number of naturalization applications did not decrease outside of historical norms, except for military naturalization which decreased by more than half,² our review found 17 different policies related to naturalization since January 20, 2017, most of which created more red tape and extreme vetting, costing the agency much more in resources to adjudicate forms. For example, on [July 26, 2017](#), USCIS expanded fingerprint requirements to applicants over 75. On [November 1, 2018](#), USCIS began requiring biometric information for applicants seeking naturalization/citizenship replacement documents. On [December 13, 2019](#), USCIS tightened the definition of “good moral character,” a factor considered in naturalization applications, thereby adding new requirements for adjudicators to consider. As a result of these and other policy changes,³ the USCIS calculation of cost to adjudicate a specific form, or model output, for most forms related to naturalization increased, resulting in additional annual costs for the agency of \$105 million.

Case Example: Deferred Action for Childhood Arrivals (DACA)

Lost Revenue = \$36 Million Annually

On September 5, 2017, the Trump administration terminated DACA. While courts ordered renewals for DACA to continue, the initial applicant program has remained rescinded over the last three years. In fiscal year 2016, 73,347 people applied for initial DACA. At \$495 per application, that is a loss of \$36 million to USCIS annually. Furthermore, recent data from the [Center for American Progress](#) shows that 300,000 people may be eligible to apply for DACA, representing \$148.5 million in lost revenue.

Case Example: Temporary Protected Status (TPS)

Lost Revenue = \$199 Million Every 18 Months

By mid-2018, the Trump administration had ended six TPS programs, terminating TPS for [402,195 individuals](#), or 98% of all current TPS recipients. Although TPS termination is on hold due to court order, the regular process for renewing TPS status (generally every 18 months which generated millions in application fee revenue for USCIS) is gone, now replaced with [automatic](#) free-of-charge renewals by Federal Register. The lost revenue is \$199,086,525 every 18 months.

Case Example: Family-Based Immigration

² Volume decreased from 11,199 in FY 17 to 3,598 in FY19.

³ Additional naturalization policy changes listed in Appendix A.

New Costs = \$158 Million Annually

Lost Revenue = \$89 Million Annually

Costs for family-based forms increased by \$158 million annually since 2016. Revenue also decreased for the key family-based form since fiscal year 2017 with a total lost revenue of \$89 million annually. The total cost increase and lost revenue is \$218 million annually. Key family-based immigration policy changes that increased cost and caused revenue loss include the [May 15, 2018](#) policy decision to no longer waive interviews for fiance-based petitions, requiring many more interviews in marriage petitions. Although USCIS has rarely coordinated with ICE to conduct law enforcement actions, in 2018 USCIS began frequently [coordinating with ICE](#) to arrest spouses of U.S. citizens attempting to follow the law at USCIS interviews, costing the agency more in resources. Other policy changes are included in Appendix A.

Case Example: High-Skilled Immigration

New Costs: \$159 Million Annually

Lost Revenue: \$235 Million Annually

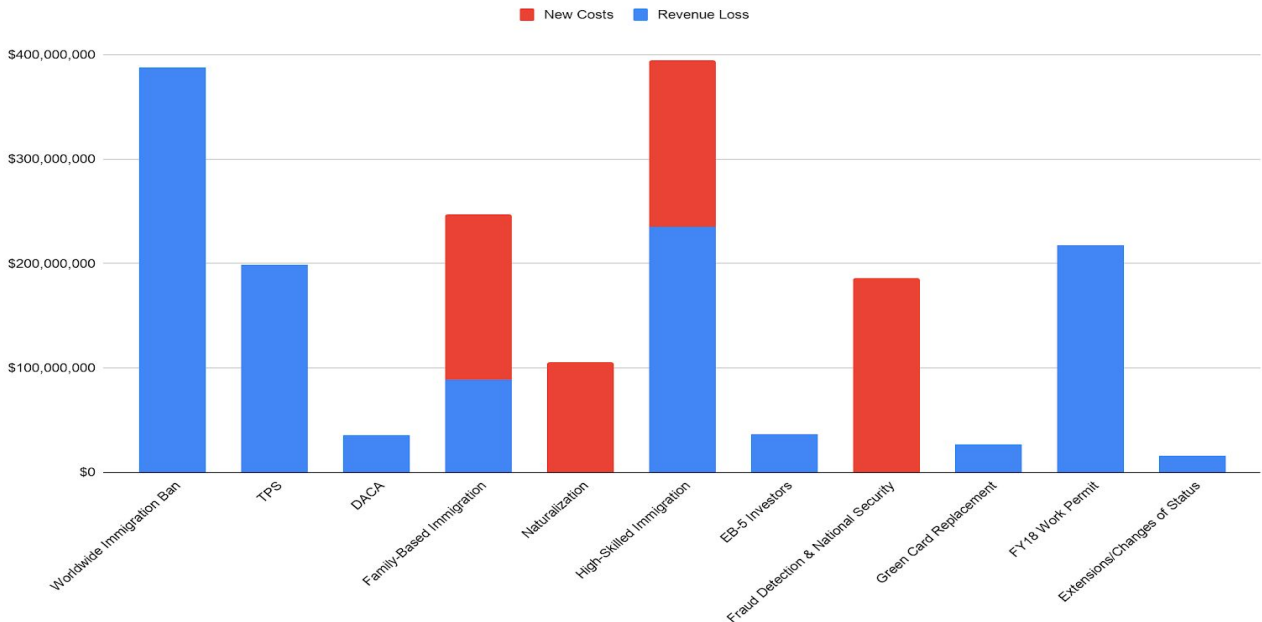
The high-skilled immigration arena has arguably seen the greatest number of policy changes that have resulted in major new agency costs and lost revenue. The long list of policy changes is attached in Appendix A. All of these high-skilled policies led to major increases in denials and extremely time-consuming and resource-intensive requests for evidence (RFE), thereby costing the agency more. The [National Foundation for American Policy](#) analysis of USCIS data found that the H-1B RFE rate increased by 33% between fiscal year 2015 and the second quarter of fiscal year 2019. The denial rate quadrupled from six percent (6%) to 24 percent (24%) between fiscal year 2015 and fiscal year 2018. As a result, costs to adjudicate the main form used by employers for high-skilled foreign workers, Form I-129, increased by \$146 million annually and by \$13 million for the employment-based adjustment form.

Chief among revenue loss has been the unexplained decisions to close premium processing services for unprecedented periods of time -- six months each year in 2018 and 2019. At \$1,440 and an average of about a quarter million forms with this fee each year, this service is a major revenue source for USCIS. Each year the agency suspended premium processing for six months, the agency lost \$189 million. In addition, USCIS saw a decrease in the number of employment-based adjustment forms, costing the agency \$46 million annually.

In Total, USCIS Has Lost Hundreds of Millions in Revenue & Created Major New Costs Across Multiple Areas of Immigration

Trump USCIS Policies Create New Costs & Lost Revenue

All costs are annual, except TPS (every 18 months) & high-skilled (suspension of premium processing showing for 6 months)



USCIS Loses Hundreds of Millions in Revenue from High Volume-High Revenue Forms

Historically, the forms that generated the highest receipt volumes and associated revenue are:

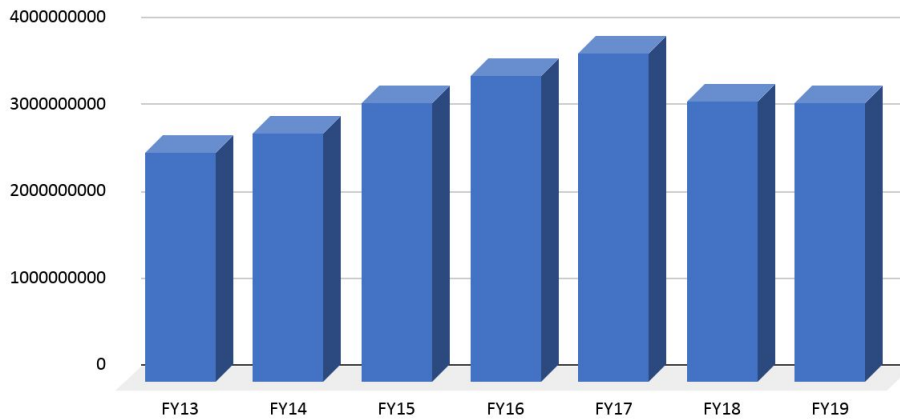
- N-400, the application for naturalization;
- I-765, the employment authorization;
- I-485, the adjustment of status;
- I-90, the replacement of permanent residence card;
- I-130, the petition for alien relative; and,
- I-129, the petition for nonimmigrant worker.

All except the I-129 show decreases in volume since President Trump took office. Indeed, not all saw huge decreases, but even a small decrease means millions of dollars for the agency.

Combined, it is detrimental to the agency -- almost \$600 million lost in annual revenue which is almost half of the USCIS request to Congress.

Revenue From High Value Forms: N-400, I-765, I-485, I-90, I-130, I-129

FY17 vs. FY19 = **-\$570 million (LOSS)**



Conclusion

With fewer and fewer applicants and rising costs to adjudicate form-by-form, USCIS is now in a financial crisis. But this is not the pandemic's doing, as the Trump administration wants the public to believe. Instead, it is the Trump administration's almost singular focus on xenophobic immigration policy that resulted in an unprecedented number of policies that drove up costs and have locked more and more immigrants and Americans-in-waiting out of the legal immigration and naturalization system. With fewer applications and higher costs, USCIS is now in a serious financial crisis. Though the pandemic has created new financial concerns for USCIS, had the agency been more fiscally responsible in its policy choices, it could have been in a much stronger financial position prior to the pandemic and potentially able to ride out the financial effects of the pandemic.

Congress should ask critical questions to get to the bottom of USCIS accounting:

- Does USCIS really need \$1.2 billion?
- Exactly where did all the money go?
- Why does the proposed fee rule seem to paint a much more dire financial picture than what was reported to Congress in budget documents?
- Which parts of USCIS will experience the greatest furloughs and why?
- How do those furlough decisions help or continue to harm USCIS' financial situation?
- What additional policy changes are being contemplated that will continue to harm the USCIS financial situation?

Congress should also rescue USCIS from the Trump administration and avoid furloughs of federal workers in the middle of a pandemic by providing USCIS the funding it needs to avoid furloughs, reversing the actions that created the financial crisis, preventing more costly actions in the future, and ensuring that the rescue money is spent in ways that reflect the values of the nation, not the xenophobic views of Stephen Miller, President Trump, and the rest of the administration that have locked people out of the immigration system based upon wealth, race, over-zealous enforcement, and bureaucratic red tape.

APPENDIX A

Naturalization policy changes increasing costs

- **July 26, 2017:** USCIS expands fingerprinting requirements to applicants over 75.
- **October 13, 2017:** DOD increases naturalization requirements for military service. Volume decreases from 11,199 in FY 17 to 3,598 in FY19.
- **April 18, 2018:** USCIS updates policy to implement *Sessions v. Morales Santana* ruling, choosing a more restrictive policy than necessary to clarify that the same physical presence requirement applies to a child born out of wedlock outside of the U.S. to a U.S. citizen parent regardless of the gender of the U.S. citizen parent (applying the higher standard applicable to fathers).
- **June 11, 2018:** USCIS launches a large-scale denaturalization operation.
- **October, 12, 2018:** Applicant spouse and his or her U.S. citizen spouse must have been living in marital union for at least three years immediately preceding the date of filing for naturalization and that termination of the marriage at any time before the applicant takes the Oath of Allegiance for naturalization makes the applicant ineligible.
- **November 1, 2018:** USCIS begins requesting biometric information for Form N-565 applicants seeking Naturalization/Citizenship replacement documents.
- **December 12, 2018:** USCIS tightens procedures for approving Form N-648, the Medical Certification for Disability Exceptions to the civics and English requirements for naturalization.
- **April 19, 2019:** USCIS clarifies that marijuana offenses remain a conditional bar to establishing good moral character for naturalization applications.
- **October 24, 2019:** Fee waiver form updated making it more difficult to obtain fee waiver.
- **December 10, 2019:** USCIS implements Attorney General decisions tightening naturalization requirements.
- **December 13, 2019:** USCIS tightens and clarifies good moral character definition.
- **February 26, 2020:** USCIS now requires applicants for naturalization that are absent from U.S. for more than 6 months to overcome presumption that continuous presence has been broken instead of 1 year.

Family-based immigration policy changes that increased costs and caused revenue loss

- **4/17/18:** When USCIS determines that primary evidence is unavailable or unreliable, USCIS may seek DNA test results as evidence of a full- or half-sibling relationship where sibling relationship is required to establish eligibility.
- **5/15/18:** USCIS no longer waives interviews for fiancé-based adjustment.
- **8/13/18:** USCIS coordinates with ICE to arrest spouses of U.S. citizens at USCIS interviews.
- **10/16/18:** A Form I-693 is now valid only when a civil surgeon signs it no more than 60 days before the date an applicant files the application for the underlying immigration benefit and USCIS adjudicates the application within 2 years from the date of the civil surgeon's signature.
- **11/30/18:** USCIS requires more interviews for I-751 removal of conditions by presuming interview unless there are specific factors. Under previous policy, no interviews were presumed unless there were certain fraud or other similar factors present.
- **2/15/19:** USCIS announces updated guidance for adjudicating spousal petitions involving minors. They may be denied where it violates state law or public policy interest in U.S.
- **4/12/19:** USCIS updates Adjudicator's Field Manual to include guidance on spousal petitions involving minors. Interviews will happen earlier in process.
- **8/14/18:** Wealth test rule finalized ("public charge" rule).

Employment-based immigration policy changes that increased costs and caused revenue loss

- **3/3/17:** Premium suspended for approximately five months.
- **3/13/17:** USCIS restricts H-1B eligibility for computer programmers.
- **4/3/17:** USCIS increases "targeting" of site visits to detect H-1B fraud.
- **4/3/17:** USCIS creates email address for reporting H-1B fraud.
- **5/23/17:** USCIS restricts H-1B visa "master's cap" to schools accredited at time degree was earned.
- **8/9/17:** USCIS redefines "affiliate" and "subsidiary" for ACWIA Fee so that more have to

pay much higher fees for H-1Bs.

- **10/12/17:** USCIS begins requiring I-129 applicants to file their petitions in the location of the company's primary office in an effort to prevent forum shopping in adjudications by USCIS processing centers that appear more favorable.
- **11/8/17:** USCIS adopts more restrictive test for identifying "function managers."
- **11/20/17:** USCIS restricts eligibility for TN economist visas to professional economists.
- **12/29/17:** USCIS tightens requirements for establishing qualifying relationship for L-1 visa.
- **1/24/18:** USCIS prohibits OPT work at third-party locations.
- **2/15/18:** USCIS restricts employers' outside counsel from signing H-1B applications.
- **2/22/18:** USCIS requires complete itineraries for H-1Bs petitions involving work at third-party locations.
- **3/19/18:** USCIS restricts one of three year work requirement in U.S. in multinational EB-1 cases.
- **3/20/18:** Premium processing suspended for six months.
- **3/23/18:** USCIS makes it clear that multiple H-1B filings by "related entities" for the same beneficiary is prohibited.
- **3/30/18:** USCIS and CBP establish pilot program to ease admission process for Canadian L-1 applicants.
- **5/15/18:** USCIS no longer waives interviews for employment-based and fiancé-based adjustment cases.
- **8/26/18:** Premium processing suspension extended and expanded.
- **8/31/18:** Premium processing fee increased from \$1225 to \$1410.
- **9/14/18:** Increased O visa scrutiny by allowing labor unions to submit negative consultation letters directly to the agency regarding an individual's eligibility for an O visa.
- **11/15/18:** USCIS clarifies L-1 one-of-three-year rule that will delay L-1 eligibility.
- **1/31/19:** USCIS changes sequence of H-B visa cap-subject lotteries to maximize

selection of advanced-degree holders.

- **4/25/19:** CBP further restricts Canadian L-1 applications at the border.
- **6/4/19:** USCIS begins rejecting H-1B petitions without petitioner's or applicant's name and primary U.S. office address.
- **10/24/19:** USCIS updates AFM to make technical corrections of sample notice of filing an Application for a Permanent Employment Certification.
- **10/31/19:** Premium processing fee increased from \$1410 to \$1440.
- **11/8/19:** USCIS publishes final rule requiring \$10 fee per registration for H-1B cap-selection process.
- **2/14/20:** USCIS announces it will use existing automated process for notification via first class mail instead of more time-consuming pre-paid mailers when sending out any communication or final notices for fiscal year 2021 cap-subject H-1B petitions.
- **3/20/20:** Premium processing suspended due to COVID.