



**USCIS Response to the
Citizenship and Immigration Services
Ombudsman's (CISOMB)
2019 Annual Report to Congress
January 24, 2020**



**Homeland
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*U.S. Citizenship and
Immigration Services*

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**USCIS Response to the Citizenship and
Immigration Services Ombudsman's
2019 Annual Report to Congress**

A Message from the Deputy Director

January 24, 2020

It is my pleasure to present the USCIS response to the Office of Citizenship and Immigration Services Ombudsman's (CISOMB) 2019 Annual Report to Congress. Our response addresses concerns raised in the Annual Report and highlights some of the agency's many accomplishments during the reporting period.

In the Annual Report, the Ombudsman notes many of our achievements in the past year, which includes:

- Our continued efforts to improve the H-1B program;
- Our modernization of applicant service via InfoMod;
- Our efforts to establish the Asylum Vetting Center; and
- Our modernization progress through the Transformation Program and eProcessing.



The Annual Report also notes areas within the agency where improvements are warranted, such as the processing times for Employment Authorization Documents; we are pleased to provide our plans for addressing these concerns. We remain committed to fulfilling our duties to our nation and to those persons seeking immigration benefits.

I am thankful for the Ombudsman's diligence in reviewing the work of USCIS. Through efforts like the Annual Report, we are given an opportunity to step back and consider our achievements while addressing areas that need improvement. This kind of careful self-reflection is essential to progress, and I thank the Ombudsman for her help. USCIS, as always, stands ready to work with the CISOMB to ensure we provide the best service possible to our applicants, stakeholders, and the American public.

Sincerely,

A handwritten signature in blue ink, which appears to read 'Mark R. Koumans'. The signature is fluid and cursive, with a large loop at the end.

Mark R. Koumans
Deputy Director

January 24, 2020



U.S. Citizenship
and Immigration
Services

Michael Dougherty
Citizenship and Immigration Services Ombudsman
U.S. Department of Homeland Security
Washington, DC 20528

Dear Mr. Dougherty:

Thank you for the information in the Citizenship and Immigration Services Ombudsman's 2019 Annual Report to Congress. I value your thoughtful and comprehensive assessment of U.S. Citizenship and Immigration Services' (USCIS) processes, policies, and operations.

I have reviewed the 2019 Annual Report and discussed your findings with my senior leadership team. We appreciate your analysis of the issues that affect our agency's work as we carry out our lawful mission. My team and I concur with many of the findings.

As the 2019 Annual Report details and our response confirms, we continue to take major strides to fortify USCIS programs, make our processes more efficient, and digitize agency resources the public uses. I truly appreciate your thorough coverage of the H-1B program and our efforts to improve it, our modernization of customer service processes via InfoMod, and the creation of the Asylum Vetting Center.

We are excited about the progress of our modernization efforts, which include both the Transformation Program and eProcessing, and agree with your suggestions to strengthen its implementation. USCIS will pursue continuous digital innovation while ensuring smooth rollouts of new capabilities.

I share your concerns about processing times for Employment Authorization Document applications, and we are taking the necessary steps to remedy this situation.

USCIS remains committed to modernizing our operations and streamlining adjudications processes to best fulfill our mission. Thank you again for your valuable feedback.

I am pleased to present USCIS's response to the Annual Report for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark R. Koumans".

Mark R. Koumans
Deputy Director

Table of Contents

I.	Legislative Requirement	1
II.	Introduction.....	1
III.	H-1B Program: Wages and Specialty Occupation.....	1
IV.	From Infopass to InfoMod: A Crossroads for Applicant Support Services.....	5
V.	Spotlight: Asylum Vetting Center	7
VI.	Transitioning from Transformation to eProcessing	8
VII.	Challenges Facing Timely Adjudication of Employment Authorization Documents	15
VIII.	Conclusion	17
IX.	Appendix A: Acronyms and Abbreviations.....	22

I. Legislative Requirement

This document responds to the reporting requirements set forth in the Homeland Security Act of 2002, codified at 6 U.S.C § 272, which provides in relevant part:

(f) Responsibilities of the Bureau of Citizenship and Immigration Services—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.¹

II. Introduction

U.S. Citizenship and Immigration Services (USCIS) thanks the Office of the Citizenship and Immigration Services Ombudsman (CISOMB) for the thoughtful, wide-ranging analysis found in its 2019 Annual Report to Congress. USCIS appreciates the Ombudsman’s review of our agency’s operations and welcomes the opportunity to respond to concerns and recommendations found in the annual report. Where appropriate, the response also raises several of USCIS’s accomplishments in improving procedures and applicant services from fiscal year (FY) 2018 and more recent accomplishments as well.

III. The H-1B Program: Wages and Specialty Occupations

The 2019 CISOMB Annual Report outlines the processes and difficulties the Departments of Labor, Homeland Security, and State face as they administer the H-1B program. Specifically, the CISOMB addresses the obstacles—and possible solutions—entailed in aligning the program with President Trump’s Buy American and Hire American (BAHA) Executive Order (EO) issued on April 18, 2017.

USCIS has taken various actions, both prior to, and after, the issuance of the BAHA EO, to strengthen the H-1B program. Those actions include the following Policy Memoranda (PM) and Adopted Administrative Appeals Office (AAO) Decisions:

- **Computer Programmer Rescission Memo**
On March 31, 2017, USCIS issued “Rescission of the December 22, 2000 ‘Guidance memo on H-1B computer related positions’” (PM-602-0142), which clarifies existing policy and legal requirements for evaluating a petitioner’s claim that a position qualifies as a specialty occupation.

¹ Pub. L. No. 107-296, 116 Stat. 2135 (2002), Homeland Security Act of 2002, online at http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf

The memo discusses the weight officers should apply to the Occupational Outlook Handbook (OOH) as they review a proffered position to determine whether the petitioner has established that the position is a specialty occupation, when the OOH indicates that those with less than a bachelor's degree in the specific specialty (or its equivalent) may enter the occupation. It also reminds officers that the Labor Condition Application must "correspond to and support" the position in the petition, to include the wage level selected.

- **The American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) Memo**

On August 9, 2017, USCIS issued "Definition of 'Affiliate' or 'Subsidiary' for Purposes of Determining the H-1B ACWIA Fee" (PM-602-0147). It clarifies policy to ensure consistency in adjudication and collection of the ACWIA fee.

The memo provides the agency's definitions of "affiliate" and "subsidiary" that officers should use to determine the appropriate ACWIA fee, and instructs officers that H-1B employees of the parent company should not be counted toward the total number of full-time equivalent employees for purposes of determining the ACWIA fee.

- **Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status**

Under updated guidance published October 23, 2017, "Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status" (PM-612-0151), USCIS instructed its officers to apply the same level of scrutiny to both initial petitions and extension requests for nonimmigrant visa categories. The guidance applies to all nonimmigrant classifications filed using Form I-129, Petition for Nonimmigrant Worker.

- **Contracts and Itineraries Memo**

On February 22, 2018, USCIS issued "Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites" (PM-602-0157), which provides clarifying guidance particularly relevant to third-party worksite cases.

The memo emphasizes the importance of documentary evidence that a petitioner may submit to establish that non-speculative specialty occupation work exists and an employer-employee relationship will exist/continue; reiterates the regulatory itinerary requirement; and clarifies that officers may limit the validity period to the time for which eligibility has been established (as opposed to previous practice of limiting to one year at a minimum).

- **Adopted Decision Prohibiting Multiple Cap Filings**

On March 23, 2018, USCIS issued the *Matter of S- Inc., Adopted Decision 2018-02* (Administrative Appeals Office Mar. 23, 2018), which addresses the regulatory prohibition on multiple H-1B cap-subject filings by related entities (such as a parent company, subsidiary, or affiliate).

This adopted decision clarifies that USCIS interprets the term “related entities” to include petitioners, whether or not they are related through corporate ownership and control, who file cap-subject H-1B petitions for the same beneficiary for substantially the same job. Absent a legitimate business need to file multiple cap-subject petitions for the same beneficiary, USCIS will deny or revoke the approval of all H-1B cap-subject petitions filed by “related entities” for that beneficiary.

This decision allows USCIS greater ability to address companies that, though not directly related through corporate ownership or control, appear to be working together to undermine the random lottery process’s purpose.

In addition to the guidance USCIS issued above, on January 31, 2019, the Department of Homeland Security (DHS) published a final rule amending regulations governing H-1B cap-subject petitions, including those that may be eligible for the advanced-degree exemption from the cap. The final rule reverses the order by which USCIS selects H-1B petitions under the H-1B regular cap and the advanced degree exemption, and introduces an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions. This rule went into effect on April 1, 2019, though the electronic registration requirement was suspended for the FY 2020 cap season.

The CISOMB acknowledged some of the steps USCIS has taken to fortify the H-1B program. It also cited the need for additional reform regarding wages offered and the skill requirements of specialty occupations, and offered remedies toward these concerns. Some of the offered remedies, however, would require statutory changes.

These recommendations, along with USCIS’s response to them, are provided below:

- 1. Defining “Highly Specialized Knowledge” and Incorporating Wages as a Factor.**

Under the Unified Agenda, there is proposed a regulation titled “Strengthening the H-1B Nonimmigrant Visa Classification Program.”

DHS will propose to revise the definition of “specialty occupation” to increase focus on obtaining the best and brightest foreign nationals via the H-1B program, and define “employer-employee relationship.” These proposed changes will better protect U.S. workers and wages. In addition, DHS will propose additional requirements designed to ensure employers pay appropriate wages to H-1B visa holders.

2. Prioritizing Wages and Skill Level in H-1B Lottery.

On January 31, 2019, DHS published a final rule amending regulations governing H-1B cap-subject petitions, including those that may be eligible for the advanced degree exemption. This final rule reverses the order in which USCIS selects H-1B petitions under the H-1B regular cap and the advanced degree exemption, and introduces an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions.

Changing the order in which USCIS counts these allocations has increased the number of petitions for beneficiaries with a master's or higher degree from a U.S. institution of higher education selected under the H-1B numerical allocations. Specifically, the change will result in an estimated increase of up to 16 percent (or 5,340 workers) in selected petitions for those beneficiaries.

Although USCIS has authority to reverse the order in which it selects H-1B cap-subject petitions, USCIS believes prioritizing cap numbers based on wages offered and job skill levels would require statutory changes.

3. Revising Degree Equivalency Criteria.

USCIS has not published any recent rules or PMs on this topic, and does not anticipate doing so in the near future.

IV. From Infopass to InfoMod: A Crossroads for Applicant Support Services

For many years, USCIS allowed applicants and their representatives seeking to speak with agency staff at local field offices to schedule their own appointments, via the online service called InfoPass.

InfoPass required USCIS to dedicate valuable resources on a daily basis to ensure all scheduled appointments were met in a timely manner. Unfortunately, data reveals that InfoPass appointments were an inefficient use of these resources: 70 to 80 percent of scheduled appointments were used for case status inquiries not requiring in-person interaction, and 25 percent of scheduled applicants failed to appear for their appointments.

In 2018, USCIS took important steps toward allocating more resources to the increased adjudicative workload across the agency when it introduced the Information Services Modernization Program (InfoMod). With InfoMod, USCIS now centralizes the public's information service needs via the USCIS Contact Center, while allowing field offices to divert previous InfoPass resources to adjudicating cases.

From March to May 2018, USCIS piloted InfoMod at five field offices: El Paso, Hartford, Jacksonville, Sacramento, and San Francisco. In November 2018, USCIS began to expand InfoMod to all field offices. As of August 2019, all USCIS field offices have transitioned from InfoPass to InfoMod.

Although InfoMod's rollout has already shown positive results, USCIS acknowledges there is more to be done to ensure the transition from InfoPass to InfoMod is as efficient as possible. In its Annual Report, the CISOMB expresses concerns with the transition, including callers having difficulty connecting to a live representative or holding for long periods of time, calls not being transferred to Tier 2 when appropriate, and quality assurance monitoring standards.

Along with its concerns, the CISOMB offers the following recommendations. USCIS's responses to these recommendations are included here:

- 1. Enhance quality assurance monitoring standards to include a higher level of substantive review to inform InfoMod enhancements.**
USCIS agrees and is reviewing escalated InfoPass calls between Tiers 1 and 2 to streamline the work between the Tiers and make this a more efficient process for callers.
- 2. Work toward a convenient window of time to call back individuals to limit missed calls.**
USCIS acknowledges this need, but emphasizes that addressing it requires substantial technological modifications to agency systems. USCIS is reviewing options for new technology and expects to have it in place in FY 2020.

3. Educate potential users on the continued improvements to *myUSCIS*, especially its multiple benefits, such as communicating with the Contact Center through electronic messages.

USCIS has updated its Interactive Voice Response (IVR) system to provide more information to callers; its hold messaging where callers are reminded they can use self-service options; and its landing pages where users navigate USCIS's website to find self-service tools.

4. Allow attorneys and accredited representatives in the same law firm or organization to engage with the agency.

USCIS disagrees with this recommendation. We will only communicate with the benefit requestor and the attorney or accredited representative of record, as established through a properly completed and filed Form G-28, Notice of Appearance as Attorney or Accredited Representative. The purpose of the Form G-28 is to establish the eligibility of a particular attorney or accredited representative to represent the requestor in an immigration matter before DHS. Furthermore, Form G-28 allows USCIS to protect the requestor's information from unauthorized disclosure as required by the Privacy Act, the Fair Information Practice Principles (FIPPs) adopted by DHS as a matter of policy, and rules regarding the attorney-client relationship. Should a requestor intend to add additional attorneys or accredited representatives to a particular case or matter, additional Forms G-28 may be filed for that purpose with the requestor's signed consent.

5. Update the InfoPass appointment guidance to the Contact Center to include procedures for escalating an individual's call that requires immediate attention due to exigent circumstances.

The USCIS and Operations Office Directorate meet weekly and coordinate frequently to address specific inquiries and update protocols as needed. The guidance on when to schedule appointments is updated on an ad hoc basis to address the handling of both urgent and non-urgent inquiries. The appointment guidance contains procedures to identify circumstances that require immediate attention and escalate directly to the field office with jurisdiction over the request via a "hotline" staffed by Immigration Officers who can quickly assist in scheduling an emergency appointment. Further, Contact Center personnel meet regularly with agency partners in the Field Office Directorate to manage both the urgent and non-urgent appointment requests.

6. Conduct a strategic evaluation of applicant support services every three years to make sure the methods continue to be efficient and effective, and that new technology is incorporated as appropriate.

USCIS agrees. We consistently seek user feedback and conduct user group studies to ensure USCIS is in touch with its user audience. USCIS will use an omni-channel survey tool that should help it gain quick and efficient feedback across its channels.

V. Spotlight: Asylum Vetting Center: USCIS Centralizes Asylum Screening Operations

USCIS appreciates the CISOMB's efforts to highlight the Asylum Vetting Center (AVC). We anticipate that, once fully operational, the AVC will help reduce the backlog of affirmative asylum cases through streamlined processing. Moreover, the AVC should allow trained officers to focus on identifying fraud issues and trends.

In addition, the Refugee, Asylum, and International Operations Directorate (RAIO) has accomplished other goals aimed at reducing the affirmative asylum case backlog and combatting fraud. Those accomplishments include:

- **A Memorandum of Understanding (MOU) with the United Nations High Commissioner for Refugees (UNHCR).** On January 9, 2019, DHS, acting through USCIS, signed an MOU with UNHCR instituting a process that allows USCIS to verify refugee applicants' identities against UNHCR biometric encounters.
- **The transition to the Global system.** During FY 2019's first quarter, RAIO modernized its case processing with a full transition to Global, its case management system for affirmative asylum, Section 203 of the Nicaraguan Adjustment and Central America Relief Act (NACARA 203), and asylum pre-screening processing. Global makes it easier to connect with DHS systems and uses enterprise solutions. RAIO continues to make changes to improve Global's notice generation, case tracking, and reporting functionality.
- **Providing the Asylum Division with staff support.** RAIO has embarked on a hiring surge effort to fill existing vacancies. Also, RAIO has solicited and is training volunteers from throughout USCIS for temporary assignments to assist the Asylum Division with its heavy workload. This workload includes timely case determinations for the high volume and an increased number of credible fear receipts received in FY 2019. Those being solicited and trained include refugee officers and immigration services officers who are former USCIS refugee and asylum officers.

In addition, USCIS continues to collaborate with U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) to combat fraud in the asylum process. Following a joint investigation this year, the U.S. Government successfully prosecuted an attorney who perpetrated a scheme involving more than 900 fraudulent asylum filings for Romanian nationals. The attorney was sentenced to five years in prison, was ordered to forfeit \$157,500, and lost her license to practice law. This guilty verdict and sentencing sent a strong message of deterrence to others involved in, or considering, asylum fraud schemes.

VI. USCIS Continued Modernization: Transformation and eProcessing

Initiative to Modernize

USCIS has embraced a modernization initiative to transition our legacy paper-based operations to a digital business model. By using both the custom-developed USCIS ELIS (or “ELIS”) platform, and the linking of existing agency systems under the eProcessing approach, users participate in a fully digital experience, from applying for a benefit, to communicating with USCIS, through receiving a decision on a case.

USCIS Challenges

Our current inventory of records contains over one hundred million A-Files, T-files, and other official records. We receive more than eight million requests for immigration benefits every year, a number that steadily increases our inventory of paper immigration records. Applications submitted by mail may take longer than eight days to reach USCIS. When we send paper records between USCIS offices, they may take as long as two weeks to retrieve, send, and receive. Receiving requested evidence to complete the adjudication of a pending case may take more than a month from date of request. Operations to sustain the receipt, data entry, and transfer of this paper are costly for USCIS and ultimately, applicants. Furthermore, during these transfers of paper files, a small percentage can be damaged or lost.

Expected Gains

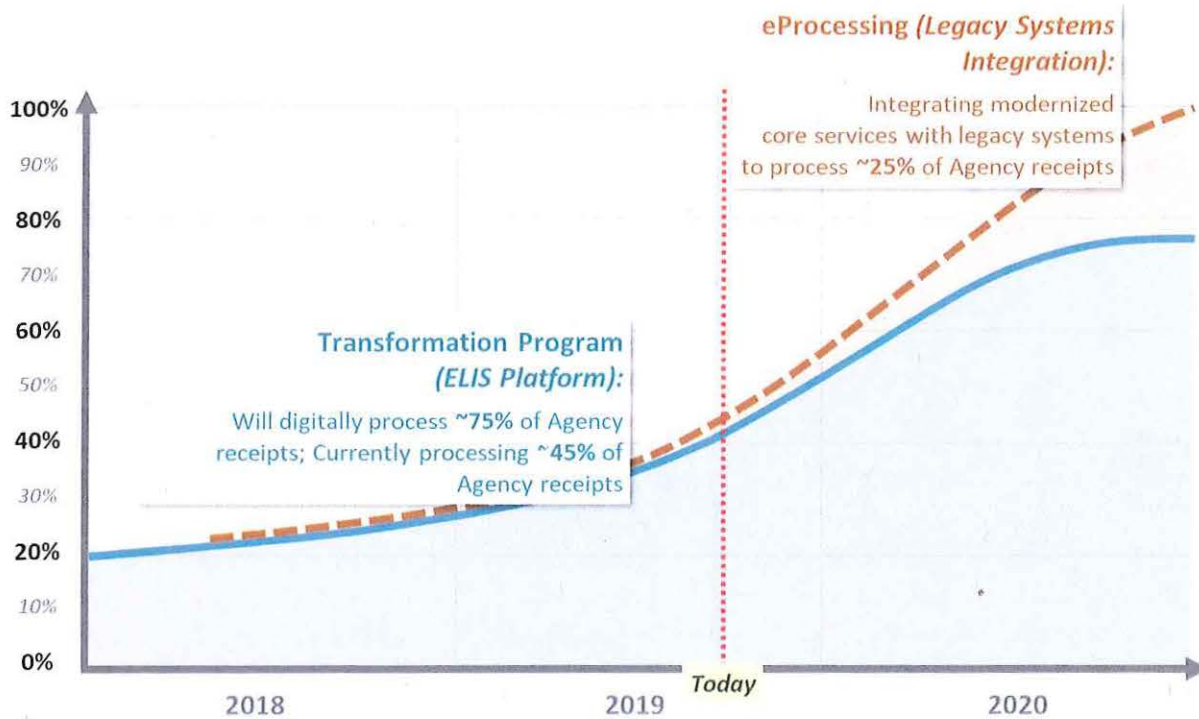
The current status of the USCIS modernization initiative has already presented a number of gains, including improved decision timeliness, increased transparency during the application process, and acceleration of the availability of online filing for all immigration benefits. Through both ELIS and eProcessing, applicants and petitioners may directly submit electronic filings, and so their data is not subject to any additional data-entry errors that may occur when information is transferred from paper to various USCIS case management systems. Our modernization strategy has reduced filing rejections for missing signatures or incorrect fee amounts, requests for additional evidence, and denials that are due to missing information or evidence.

Applicants who file online have instant, direct communication through their online accounts, a process that will reduce questions and misunderstandings. We expect online accounts to reduce mail handling and mailing costs, as well as incidents of missing applications, appointment notices, and responses to requests for evidence (RFEs).

Transitioning from Transformation to eProcessing

USCIS is not relying on a single program or initiative to accomplish the strategic modernization objective, and it has not abandoned the Transformation Program. USCIS is executing a strategy of continuous innovation that involves all systems and services in the USCIS technology inventory. With this multi-pronged approach to digital innovation, USCIS introduced eProcessing to augment the Transformation Program, with both working to accelerate the agency’s transition to a digital business model.

Figure 1: Realizing the USCIS Digital Vision through Transformation and eProcessing



Difference between eProcessing and Transformation

The Transformation Program is a DHS Acquisition Level 1 Program of Record and continues to represent the agency’s highest priority investment to transition USCIS from paper-based business processes to an integrated electronic operating environment that offers end-to-end digital processing of immigration benefits. Transformation continues to streamline and enhance USCIS’s case processing operations by offering full digital processing services through the ELIS platform.

Starting in 2017, while continuing to deliver new product lines to support business operations, Transformation began refactoring ELIS from a single “monolithic” system to a modern digital platform offering a suite of loosely coupled services that could be deployed and scaled independently to meet evolving business needs. Today, ELIS remains the agency’s premier digital processing platform, offering USCIS employees a seamless user experience with all of the digital products and tools needed to perform highly complex processing and adjudicative tasks. The ELIS platform is currently used to digitally process more than 45 percent of the agency’s entire annual workload for its most complex and highest-volume workloads within the immigrant, citizenship, and humanitarian lines of business.

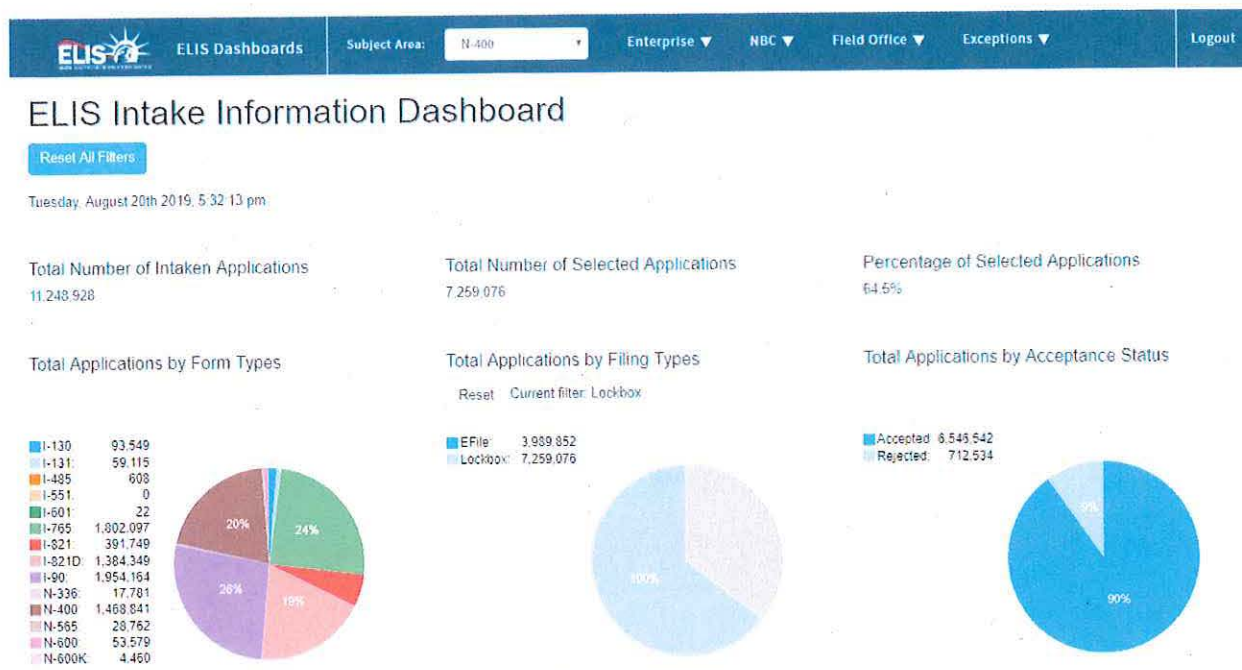
eProcessing is a modernization initiative focused on integrating and enhancing existing legacy systems and services to facilitate electronic ingestion and processing of the remaining USCIS workloads outside the scope of the Transformation Program. The core purpose of eProcessing is applying existing technologies and reusing business capabilities to expand online electronic filing (e-filing) to include more forms. eProcessing embraces a hybrid model of case processing

that uses paper A-Files in combination with digital records, specifically PDF renderings of e-filed data. The idea is to expand the e-file intake channel that currently exists through the myUSCIS external-facing web portal, while closing gaps in legacy case processing capabilities to enable adjudication of workloads not digitally processed through the ELIS platform.

Accomplishments

USCIS has continued to expand e-filing from myUSCIS into the ELIS platform, which currently provides applicants, petitioners, and their representatives direct communications through a secure, person-centric account via myUSCIS (an interactive web-based portal for information collection), while enhancing the accuracy, quality, and completeness of submitted benefit requests. More specifically, e-filing has reduced USCIS rejections for missing signatures or incorrect fee amounts, requests for additional evidence, and denials due to filing deficiencies (for example, missing information and required evidence). Figure 2 shows the current production intake results for the ELIS platform since it moved to the cloud.

Figure 2: USCIS ELIS Lockbox Intake Summary

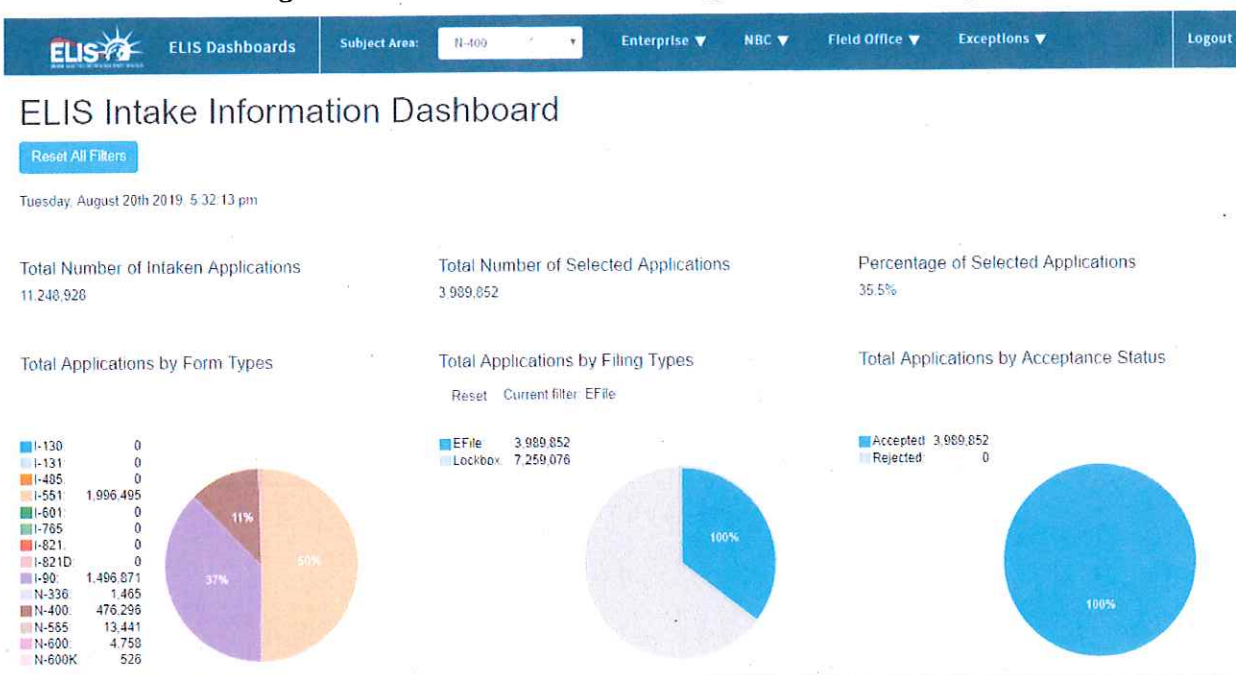


As shown in Figure 2, of the 7.26 million paper cases filed on paper via the Lockbox that transmitted to ELIS, over 700,000 were rejected due to requestor error. In general, a Lockbox is a secure facility used by governments and private organizations to accelerate the collection and deposit of receipts.

The USCIS Lockbox is our agency’s intake channel for paper-filed applications. Lockbox services are provided through an agreement with the Department of Treasury and the financial agent they have designated. The Lockbox service provider manages the intake of USCIS benefit applications and the collection of associated fees submitted directly by mail.

In FY19, the USCIS Lockbox processed nearly 9.5M applications and deposited over \$2.2B. The reject rate in FY19 was 7.1%. However, with the capability to digitally ingest cases into the ELIS platform through the e-filing intake channel, applicants and their representatives have e-filed nearly 4 million cases across the application types that are currently supported by myUSCIS, with zero rejections (see Figure 3 below).

Figure 3: USCIS ELIS E-Filing Intake Summary



Through e-filing, applicants, petitioners, requesters, and their representatives enter their own information into the online intake system. This direct data capture escapes common data-entry errors, such as data that is illegible, incomplete, or non-compliant (for example, incorrect A-Number format, undeliverable mailing addresses, etc.) that can be experienced through the paper intake channel “Lockbox”. Although applicants cannot be entirely protected from their own data entry errors, the e-filing experience significantly improves the quality of case filings, avoids missing evidence, and ensures signature and payment are received prior to submission into ELIS.

As a result of increased quality and completion of data fields at the time of e-filing, the steps for case pre-processing are significantly accelerated due to systematic processing offered when using the ELIS platform. E-filing also reduces the overall lead time for cases due to the elimination of using a third-party delivery and document scanning service.

In its 2019 Annual Report to Congress, the CISOMB expressed concerns with potential technology failures, making e-filing mandatory prior to demonstrating its capabilities to handle multiple forms and multiple user environments, the need for robust technical support, third party integration, public engagement, and systems maintenance.

USCIS acknowledges that the risk of failure is always a concern for any technology. However, by leveraging a distributed micro service architecture, USCIS is better able to ensure that the end-to-end experience of the applicant is less affected by an outage in any one system in the chain. Additionally, queuing capabilities built into each of the component systems will provide the ability for systems to resume processing from the last point in time, eliminating data loss.

Ultimately, USCIS’s goal is to continue building on demonstrated technology to enable the complete transition to digital operations, increasing efficiency, promoting the integrity of the

immigration system, and reducing the waste attributable to paper and manual processes. The current inventory of online forms and services are used by a diverse cross-section of public users and USCIS operations. The eProcessing form-factory concept will use proven, existing technology to accelerate the development of additional online forms and services and further realize the benefits of electronic processing already experienced through USCIS ELIS.

USCIS is creating an outreach plan to engage immigration-law service providers as more of our technical approach and early attempts are available to demonstrate. We are conducting an online filing campaign and regularly promote each form type released. We will augment this campaign with public engagements focused on immigration stakeholders as additional benefit requests are made available to file online. In addition to addressing CISOMB's concerns, USCIS will also take this opportunity to respond to the CISOMB recommendations below:

1. Conduct public-user feedback sessions and publish summaries on a rolling basis as each new benefit product is released.

USCIS frequently conducts early stage user research through in-person and virtual interviews. These interviews inform USCIS design and technical decisions. Additionally, we aim to conduct usability sessions to obtain public user feedback approximately every six weeks. Feedback from these sessions inform our external digital experience, including the USCIS website, online filing, and account services.

USCIS also receives feedback on current production issues or bugs through the agency's public email addresses and outreach sessions. USCIS technical teams review each reported issue and prioritizes the bugs to be resolved in a timely manner. In many instances, the issues are resolved within one business day. The complexity of the issue may require longer time to fix, but we aim to diligently respond to or address each issue as quickly as possible.

2. Expand and fully staff an IT support office that external users can access specifically for technical assistance.

OIT has a fully functioning Enterprise Operations Center (EOC) that is staffed 24/7 by federal and contract employees. The EOC has the ability to address all infrastructure outages and application problems as needed. USCIS and the contact technicians are prepared to handle increases in work volume, and may modify development contracts to include 24/7 support as needed.

The vendor handling the helpdesk is recruiting and hiring staff in anticipation of increased demand. USCIS renewed the contract with this vendor in July 2019 and will continue to work closely with the vendor as new forms are made available to file online.

3. Clearly identify, track, and measure system disruptions.

USCIS is maturing its proactive monitoring environment to provide continuous monitoring of application performance and infrastructure stability. USCIS will integrate alerts and monitoring with the existing Critical Incident Response process to provide targeted root-cause analysis of errors, alerts, and downtime. USCIS performance monitoring teams will work with development teams to ensure deployment markers are

used across the enterprise to enable more rapid troubleshooting of system disruptions, allowing for automated and continuous deployment.

4. Accelerate the engaging of immigration forms/case management vendors whose systems are used by immigration service providers.

USCIS is creating an outreach plan to consult immigration-law service providers. We will increase outreach to these audiences as more of our technical approach and early attempts are available to demonstrate.

VII. Challenges Facing Timely Adjudication of Employment Authorization Documents

USCIS strives to adjudicate all cases as efficiently and as timely as possible. Unfortunately, there are circumstances beyond the agency's control that create backlogs and extend processing times. Concerning Form I-765, Application for Employment Authorization, and the issuance of Employment Authorization Documents (EADs), the CISOMB 2019 Annual Report details such circumstances that include, but are not limited to, increased filings, lack of staffing, and technological issues.

USCIS identifies staffing levels needed to meet processing time goals. These estimates are based on historical receipts. As noted in the CISOMB 2019 Annual Report, EAD receipts have increased in an unprecedented way. We have made every effort to staff workloads to meet processing time goals. However, the increased filings, insufficient staffing resources, and delays in onboarding have contributed to longer processing times. Moreover, outdated fees and the large number of fee waivers have prevented USCIS from having sufficient resources to hire additional staff and pay for staff overtime.

The CISOMB also has concerns with EADs being produced with errors, as well as with mailing issues specific to EADs.

USCIS responses to the CISOMB's recommendations regarding EADs are provided below:

1. Augment USCIS's staffing resources to enable the NBC and Service Centers to devote more production hours to EAD processing.

USCIS actively recruits and hires to maintain the highest possible levels of staffing, and implements alternative work schedules and telework programs to boost the capacity of its offices. The agency consistently seeks to expand its technological capabilities and implement business process efficiencies, and allocates adjudicators to workloads in a manner consistent with USCIS and departmental priorities. Due to these efforts, the growth rate of the backlog slowed between FY 2018 and FY 2019 to less than one percent. USCIS has also proposed new fees and a reduction in fee waivers so that USCIS has the resources it requires for additional staff and overtime.

2. Implement a public education campaign to encourage applicants to file I-765 renewal applications up to 180 days before the expiration of their current EAD.

USCIS concurs with this recommendation. We can raise awareness by using existing communication resources such as social media messages and Internet content, as well as web alerts and stakeholder messages via electronic communication platforms. USCIS can also incorporate this campaign within its national and local outreach.

3. In tandem with this public education recommendation, USCIS should also emphasize that petitioners and applicants verify the addresses provided (for all forms filed with USCIS).

USCIS agrees. This is one of the agency's top messages in many of its communications and outreach efforts. USCIS will keep reminding applicants of the importance of verifying and updating their address in all forms filed with the agency. The agency has made it possible for individuals filing online to select the U.S. Postal Service version of their address. For some filings, applicants can review and update this information in their account profile. USCIS hopes to make that capability available to more applicants over the coming year.

4. Consider establishing a uniform process to identify and expedite processing of Form I-765 resubmissions filed due to "service error," and operationalize the use of express mail courier service (e.g., USPS Express Mail, UPS, Federal Express, etc.) to speed up the delivery of corrected or replacement documents in such situations.

The instructions for Form I-765, Application for Employment Authorization, outline the process for requesting replacement or correction of an EAD under the heading "Replacement for Card Error." These instructions make it clear that applicants should not be resubmitting a Form I-765 when alleging a service error, but instead must "submit a letter explaining the error, along with the card containing the error to the service center or National Benefits Center that approved [the] Form I-765." The only instance in which an applicant is required to resubmit a Form I-765 is when an error is not attributable to USCIS.

Once we receive a letter explaining the error, we review the initial application. In the current processing environment, USCIS cannot flag Forms I-765 that are being reviewed due to allegations that their EAD either contains incorrect information or was not properly delivered due to a "service error" by USCIS. However, as USCIS expands eProcessing of applications in USCIS ELIS to include Form I-765, we will gain the ability to flag review tasks, which will allow USCIS to improve the response to these types of requests and to resolve systemic issues that may cause errors in the future. USCIS is not considering implementing a process that will expedite these kinds of submissions.

In an effort to provide consistency in expected processing times, USCIS generally adjudicates cases on a first-in first-out basis; however, USCIS provides for and considers requests for expeditious processing in accordance with USCIS Expedite Criteria posted on the USCIS website. As an example, an EAD that contains a "service error" by USCIS can receive expedited processing according to the USCIS Expedite Criteria.

In regards to express mail couriers, USCIS cannot use FedEx or UPS since they do not deliver to P.O. Boxes. USCIS could possibly use USPS Priority Mail Express overnight delivery, but it would cost four times as much as the Priority Mail service we currently use.

VIII. Conclusion

USCIS appreciates the Office of the Citizenship and Immigration Services Ombudsman's efforts in preparing its 2019 Annual Report and welcomes the opportunity to review our progress as an agency and identify further refinements we make to our operations. USCIS remains committed to both performing our lawful function of adjudicating benefits requests submitted by applicants and providing exemplary service to those applicants and their representatives, as well as internal and external stakeholders at all levels of government.

As this response notes, USCIS agrees with many of the concerns and recommendations found in the Annual Report and has already taken action to address these issues. These actions include:

- Proposing and finalizing new regulations to strengthen the H-1B program,
- Updating the Contact Center technology to ensure call backs are during suitable timeframes for applicants,
- Providing Contact Center personnel guidance on escalating appointment requests for emergent circumstances,
- Conducting research with in-person and virtual interviews for eProcessing development,
- Creating an outreach plan to consult immigration law service providers in regards to online form filing, and
- Allowing individuals filing online the ability to select the USPS version of their address.

The following are accomplishments USCIS has recently achieved:

- **Publication of the Inadmissibility on Public Charge Grounds Final Rule.** USCIS defines in the Rule terms such as “public charge” and “public benefit” and establishes the totality of the circumstances criteria that DHS would use when determining whether an alien is likely at any time in the future to become a public charge under section 212(a)(4) of the INA and is thus inadmissible based on the public charge ground. The Rule makes certain nonimmigrants ineligible for extension of stay or change of status if they have received public benefits, as defined in the Rule, for more than 12 months, in the aggregate, within any 36-month period, since obtaining the nonimmigrant status they seek to extend or change. The Rule also addresses that USCIS, in its discretion, may permit an adjustment of status applicant who is inadmissible only on the public charge ground, to adjust status to lawful permanent resident upon the posting of a public charge bond, and sets a minimum public charge bond amount. The Rule ensures that aliens seeking to come or remain in the United States who are subject to the public charge inadmissibility ground do not depend on public resources to meet their needs but rather rely on their own capabilities, as well as the resources of family members, sponsors, and private organizations. DHS is currently awaiting resolution of nationwide injunctions regarding public charge rule.

- **Publication of the EB-5 Modernization Final Rule.** The Final Rule implements a number of changes to the EB-5 program regulations. Such changes include raising the minimum investment amount, allowing certain EB-5 petitioners to retain their original priority date, eliminating state designations and relying on limited census tracts to determine “high unemployment” targeted employment areas, and other miscellaneous changes and technical modifications to filing and interview processes.
- **U Visa Law Enforcement Resource Certification Guide.** We updated the U Visa Law Enforcement Certification Resource Guide to provide law enforcement and other certifying agencies with best practices for the U visa certification process. This guide will ensure that law enforcement and other certifying agencies, who play a critical role in the U visa petition process, have the resources they need to provide a certification.
- **Information Services Modernization Program (InfoMod).** InfoMod has transitioned hundreds of thousands of applicants from self-scheduling appointments that required an appearance and traveling to a USCIS office location into satisfying their inquiries via self-service, web form inquiries, and phone calls. This process provided a tremendous boost in efficiency for both the public and USCIS.

Under InfoMod, applicants still needing in-person appointment services for certain issues, such as emergency travel, are now able to schedule them without being turned away due to lack of available appointments. Previously, the InfoPass, office appointments would quickly fill up, causing individuals to repeatedly go back into the scheduling system over the course of multiple days or weeks to find an open appointment slot.

- **Online Self-Help Tools.** USCIS delivered a fundamental change in the way applicants seek information services. This change is evidenced by a 91 percent increase in the number of individuals using USCIS’s digital tools, with the number of myUSCIS sessions reaching 31,079,323 in FY 2018, compared with 16,299,316 in FY 2017.
- **Online Filing.** Expanding online filing was one of USCIS’s top priorities for FY 2018, with more than 553,728 applications filed online.

In May 2019, USCIS launched Form I-539, Application to Extend/Change Nonimmigrant Status, online for certain populations. This was the first form to be launched using the eProcessing IT architecture for end-to-end processing of benefits.

USCIS currently has eight forms (G-28, I-90, I-539, N-336, N-400, N-565, N-600/600K) available for online filing. As of August 31, 2019, 1,554,900 cases have been filed online since August 2016.

Appeals Process. One of the AAO’s primary goals has always been to issue precedent decisions to guide officers and the public on novel and complex matters of immigration law and policy. This effort requires shepherding candidate precedent decisions through the intra- and inter-departmental vetting process, including USCIS, DHS Office of the

General Counsel, and Department of Justice's Office of Legal Counsel. During FY 2019, the AAO has also pursued the process of publishing precedent decisions. The Executive Office for Immigration Review, in Volume 27 of *Administrative Decisions Under Immigration and Nationality Laws of the United States*, published *Matter of H-G-G-* as precedent (decided July 31, 2019). Precedent decisions are binding on all DHS employees.

Matter of H-G-G- addresses whether a special provision in section 244 of the Immigration and Nationality Act (INA), INA § 244(f)(4), deems recipients of Temporary Protected Status (TPS) "inspected and admitted" for purposes of eligibility for adjustment of status under section 245(a) of the INA. This decision reaffirms the long-standing position of DHS and the former Immigration and Naturalization Service that (1) TPS recipients are considered as being in, and maintaining, lawful status as a nonimmigrant only during the period that TPS is in effect; and (2) a grant of TPS does not confer an admission, constructive or otherwise, nor does it cure or otherwise impact any previous failure to maintain continuously a lawful status. *Matter of H-G-G-* further clarifies because the U.S. Courts of Appeals for the Sixth and Ninth Circuits have held that a grant of TPS supplies the requisite admission for purposes of adjustment, USCIS personnel will follow those decisions only in those jurisdictions, and on that discrete issue. However, on the question of whether a grant of TPS cures a prior unlawful status, USCIS personnel will apply the holding in *Matter of H-G-G-* universally.

The AAO also assisted in the issuance of guidance through the process whereby USCIS "adopts" AAO decisions to provide policy guidance to USCIS employees in making determinations on applications and petitions for immigration benefits. The process for USCIS to adopt an AAO decision requires the AAO to shepherd candidate adopted decisions through the intra-agency vetting process.

The AAO is considering proposing rule changes to improve the administration of USCIS appeals, motions, and certifications. The proposed changes would update and restructure the regulations in order to clarify and streamline the administrative review process, increase efficiency, and reflect the establishment of DHS and its components.

- **Fee Calculator.** USCIS launched the Fee Calculator, a tool created to help applicants quickly determine the correct fee, if required, to submit with their form or when filing for multiple USCIS benefits concurrently. This easy-to-use resource helps to ensure the correct fee is submitted, resulting in fewer rejections and more timely adjudication. On average, applicants access the fee calculator between 10,000 and 16,000 times weekly. Since the deployment of the Fee Calculator, there have been six updates to the tool based upon form revisions.
- **USCIS ELIS Enhancement.** USCIS continued enhancing USCIS ELIS through the Transformation Program, enabling end-to-end digital processing of the agency's high-volume, most complex applications and petitions. As of October 1, 2019, 12.6 million cases have been received in the USCIS ELIS platform for digital processing. These cases represent 40 percent of all USCIS receipts. USCIS ELIS is on schedule to reach full operational capability in March 2020.

- **H-1B Employer Data Hub.** As part of BAHA EO compliance, USCIS launched an H-1B Employer Data Hub to provide information to the public on employers petitioning for H-1B workers. The data hub is part of our continued effort to increase transparency in employment-based visa programs by allowing the public to search for H-1B petitioners by fiscal year (back to FY 2009), North American Industry Classification System (NAICS) code, employer name, city, state, or zip code. This capability will allow the public to calculate approval and denial rates and to review which employers are using the H-1B program. Data for individual fiscal years is available to download on the H-1B Employer Data Hub Files page.
- **Targeted Site Visit and Verification Program.** In FY 2019, USCIS's Fraud Detection and National Security (FDNS) Directorate completed over 8,500 site visits as part of the Targeted Site Visit and Verification Program (TSVVP). Additionally, FDNS expanded the range of TSVVP visa classifications to include E-2 Treaty Investor, L-1A Intracompany Transferee Executive or Manager, and H-2B Temporary Non-Agricultural Workers. Referrals to FDNS from field offices for FY 2019 surpassed FY 2018 levels by 23 percent.
- **Screening and Vetting.** ATLAS, as the primary background screening system for USCIS, processed over 17.5 million screenings in FY 2019 through law enforcement and other federal databases, generating approximately 105,000 automated potential fraud, public safety, and/or national security detections to USCIS adjudicators for further analysis and investigation, helping to ensure the integrity of the immigration system.
- **Continuous Immigration Vetting.** In FY 2019, USCIS expanded Continuous Immigration Vetting (CIV), a response to Executive Order 13780, *Protecting the Nation from Foreign Terrorist Entry into the United States*, to include additional vetting for applicants filing Form N-400, Application for Naturalization. USCIS also launched CIV for applicants filing Form I-485, Application to Register Permanent Residence or Adjust Status, to include vetting through the duration of the lawful permanent resident status until a naturalization certificate is issued.
- **Electronic FOIA Requests.** USCIS established the new Freedom of Information Act (FOIA) Immigration Records System (FIRST), which allows applicants to submit FOIA requests electronically and avoid submitting a paper G-639. FIRST has leveraged the myUSCIS portal, enabling requestors to create a user account to submit, track, and manage their FOIA request(s) online.
- **H-1B Information for FOIA Requestors.** The USCIS National Records Center worked in coordination with the USCIS Office of Performance and Quality to make H-1B information available to FOIA requestors via the H-1B Employer Data Hub. FOIA requestors are able to self-service frequently-requested data sets (data by state, by company, by status, by year, etc.) through the Data Hub. The new tool has reduced FOIA requests for this type of information.

- **U.S.-Canada Biometrics as a Service.** In February 2019, USCIS and its Canadian counterpart, Immigration, Refugees, and Citizenship Canada (IRCC), finalized an MOU that addressed significant expansion of the U.S.-Canada Biometrics as a Service (BaaS) program. Initiated in 2012, the U.S.-Canada BaaS program enables applicants for Canadian immigration benefits who are physically located in the United States to have their fingerprints collected at USCIS Application Support Centers (ASCs) and sent electronically to IRCC for adjudication. In order to accommodate the anticipated increase in volume at ASCs as a result of Canada’s expanded biometrics collection requirement, IRIS worked closely with IRCC to enable use of the USCIS’s National Appointment Scheduling System (NASS) Scheduler. Previously, biometric collection for Canada was done by walk-in appointments only. Use of the NASS Scheduler—as required by the MOU—served to accommodate the anticipated increase in volume at ASCs, provide scheduling predictability to the ASCs, and improve ASC staffing efficiency and customer service.
- **Modernized SAVE Processing.** In September 2019, the Systematic Alien Verification for Entitlements (SAVE) Program completed deployment of modernized immigration status verification case processing to the more than 1,100 SAVE user agencies. Modernized case processing allows the user to enter all initial verification request information in a single screen, adds the ability to request review of a potentially fraudulent document on that screen, and eliminates the need for authorized users to specifically request certain data elements they need to adjudicate the benefits that their user agencies administer. By completing this deployment, SAVE also removed dependency upon legacy case processing, thereby allowing SAVE to more quickly deploy future enhancements.
- **Interactive Voice Response System for Verification Programs.** On August 6, 2019, the Verification Division streamlined the very complex and outdated Interactive Voice Response (IVR) system used by its E-Verify and SAVE customers. The prior version of the IVR had more than 20 exit points or options for customers to access and required Customer Contact Operations analysts to transfer calls to the Status Verification Operations (SVO) team. The simplified IVR now has two exit points (SVO and Case Resolution) and connects employees directly with the appropriate Verification personnel that can help resolve E-Verify Tentative Nonconfirmations and Final Nonconfirmations.

USCIS strives to administer our nation’s lawful immigration system with efficiency, innovation, and integrity, for both our nation and the people we serve. USCIS greatly appreciates the CISOMB’s comprehensive evaluation of our operations and thoughtful recommendations for improvements. We look forward to future collaborations with CISOMB.

Appendix A: Acronyms and Abbreviations

AAO	Administrative Appeals Office
AVC	Asylum Vetting Center
BAHA	Buy American and Hire American
CISOMB	Office of the Citizenship and Immigration Services Ombudsman
CIV	Continuous Immigration Vetting
DHS	Department of Homeland Security
EAD	Employment Authorization Document
ELIS	Electronic Immigration System
EO	Executive Order
FDNS	Fraud Detection and National Security Directorate
FOIA	Freedom of Information Act
FY	Fiscal Year
HSI	Homeland Security Investigations
ICE	Immigration and Customs Enforcement
InfoMod	Information Services Modification Program
IRCC	Immigration, Refugees and Citizenship Canada
IRIS	Immigration Records and Identity Services Directorate
IVR	Interactive Voice Response
MOU	Memorandum of Understanding
OIDP	Office of Intake and Document Production
RAIO	Refugee, Asylum and International Operations Directorate
SAVE	Systematic Alien Verification for Entitlements
SVO	Status Verification Operations
TSC	Texas Service Center
TSVVP	Targeted Site Visit and Verification Program
UNHCR	United Nations High Commissioner for Refugees
USCIS	U.S. Citizenship and Immigration Services