

Congress Just Authorized USCIS to Raise Over \$1 Billion Fees from Business Users

How long will the immigration agency leave this money on the table?

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Background

As the primary federal agency responsible for legal immigration, U.S. Citizenship and Immigration Services (USCIS) is almost entirely funded by user fees rather than appropriations from Congress. In May 2020, USCIS claimed that, due to a lower volume of fee collections caused by the COVID-19 pandemic, the agency would have to furlough over 13,000 of its employees absent a \$1.2 billion bailout. [Analysis of public documents](#) by the Federation of American Scientists (FAS), however, demonstrated that USCIS was on the path to insolvency long before the COVID-19 pandemic, as a result of questionable management and policy choices.

Rather than accepting USCIS leadership's demand for \$1.2 billion in appropriated funds recoupable against an across-the-board 10% user fee increase, Congress opted to expand the agency's ability to collect "premium processing" fees from those users willing to pay for faster service. For the better part of the past two decades, USCIS has provided a guaranteed 15-day turnaround for most employment-based green card petitions (Form I-140) and temporary work status petitions (Form I-129), in exchange for a special \$1,440 premium processing fee. These extra fees could only be spent on the premium processing program itself, or on "infrastructure improvements in the adjudications and customer-service processes"—typically large information technology (IT) projects.¹ In recent years, USCIS has enjoyed more than \$600 million of extra cash on hand thanks to its premium processing program.

On August 22, 2020, the House of Representatives unanimously passed the Emergency Stopgap USCIS Stabilization Act, which was later included in the fiscal year (FY) 2021

¹ 8 USC 1356, as enacted in 2000: "The Attorney General [now the Secretary of Homeland Security] is authorized to establish and collect a premium fee for employment-based petitions and applications. This fee shall be used to provide certain premium-processing services to business customers, and to make infrastructure improvements in the adjudications and customer-service processes. For approval of the benefit applied for, the petitioner/applicant must meet the legal criteria for such benefit. This fee shall be set at \$1,000, shall be paid in addition to any normal petition/application fee that may be applicable, and shall be deposited as offsetting collections in the Immigration Examinations Fee Account. The Attorney General may adjust this fee according to the Consumer Price Index."

[Continuing Appropriations Act](#) signed into law on October 1. This update to Section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)) gives USCIS the authority to take three major revenue-raising actions:

- Immediately raise the premium processing fee for most I-140 and I-129 petitions from \$1,440 to \$2,500 (which USCIS has proceeded to do, [effective](#) Oct. 19, 2020).
- Immediately extend premium processing services to employment-based green card petitions for multinational executives (Form 140 for EB-1C), employment-based green card petitions for individuals of exceptional ability with with a National Interest Waiver (Form 140 for EB-2 with “NIW”), applicants for a change or extension of nonimmigrant status (Form I-539), and applicants for an employment authorization document (Form I-765). (USCIS has declined to take such actions thus far.)
- Issue new regulations to extend premium processing services to “any other immigration benefit type that the Secretary [of Homeland Security] deems appropriate.” (USCIS has not announced any such rulemaking plans thus far.)

These authorized fee and service changes are summarized in Figure 1 below.

Figure 1: Changes in Authorized Fees, Timeframes, and Eligibility for Premium Processing²

Before Oct. 1, 2020			Authorized as of Oct. 1, 2020		
Form Type	Fee	Processing Timeframe ³	Form Type	Fee	Processing Timeframe
I-140 (except EB-1C and EB-2 NIW)	\$1,440	15 days	I-140 (except EB-1C and EB-2 NIW)	\$2,500	15 days
I-129 (H-2B)	\$1,440	15 days	I-129 (H-2B)	\$2,500	15 days
I-129 (R)	\$1,440	15 days	I-129 (R)	\$1,500	15 days
I-129 (except H-2B and R)	\$1,440	15 days	I-129 (except H-2B and R)	\$1,500	15 days
			I-140 (EB-1C)	\$2,500	45 days
			I-140 (EB-2 NIW)	\$2,500	45 days
			I-539 (extend/change status)	\$1,750	30 days
			I-765 (employment authorization)	\$1,500	30 days

In addition, the new law allows USCIS to use premium processing revenue for much more than just IT projects, including “the provision of information and services to immigration and naturalization benefit requestors,” reducing backlogs, and “otherwise offset[ting] the cost of providing adjudication and naturalization services.” (See Appendix B for the full text of the legislation.)

This means that USCIS immediately has extra funds available to mitigate its fiscal issues.

Expected Revenue from Premium Processing Expansion

If USCIS expanded its premium processing services only to the extent authorized by Congress for immediate execution, *without* the need for new regulations, the agency could increase its annual revenue by some \$685 million to \$1.06 billion.

Figure 2 below demonstrates that \$300–434 million of this annual revenue increase could come from the action USCIS has already taken to raise premium processing fees on forms that have been included in the program for years (Forms I-140 and I-129).

USCIS could raise an additional \$385–626 million in annual revenue by expanding premium processing to only those forms authorized for immediate eligibility by Congress. Most of this additional revenue would come from applications to change or extend nonimmigrant status (Form I-539) and applications for employment authorization by international students who have recently graduated and seek on-the-job training through the Optional Practical Training (OPT) program (Form I-765).

These forecasts are based on publicly available data and informed estimates about how many users would opt to take advantage of expanded premium processing, as explained in detail in the Methodology section below (Appendix A).

Note that Congress has also authorized USCIS to expand premium processing to users above and beyond the employment-based immigration system (e.g. family-based immigration and naturalization), but such changes would require new regulations and “a detailed methodology supporting the proposed premium fee amount.”

² For definitions of the forms and immigration statuses in this table, please refer to the glossary in the Methodology section (Appendix A).

³ If the 2019 fee rule that is currently enjoined were to go into effect, USCIS would change its timeframe from 15 calendar days to 15 business days.

**Figure 2: Expected Revenue Increase for USCIS
from Expanded Premium Processing⁴**

Higher fees for already eligible forms	Total form volume					Fee change	Lower bound (status quo utilization)			Upper bound (always-on premium processing)		
	(FY) 2019	2018	2017	2016	Average		Exp. utilization	Est. premium volume	Add'l revenue	Exp. utilization	Est. premium volume	Add'l revenue
<i>Form</i>						<i>Net fee increase</i>						
I-140 (except EB-1C and EB-2 NIW)	114,634	109,913	112,312	118,762	113,905	\$1,060	45%	50,733	\$53,776,481	65%	73,514	\$77,924,383
I-129 (H-2B)	7,460	6,148	6,112	6,527	6,562	\$60	45%	2,923	\$175,353	65%	4,235	\$254,094
I-129 (R)	8,908	8,481	8,366	8,207	8,491	\$60	45%	3,782	\$226,896	65%	5,480	\$328,782
I-129 (excluding H-2B and R)	534,833	536,392	511,957	494,902	519,521	\$1,060	45%	231,391	\$245,274,239	65%	335,295	\$355,412,691
Total	665,835	660,934	638,747	628,398	648,478			288,827	\$299,452,969		418,523	\$433,919,951
New fees for newly eligible forms	Total form volume					Fee change	Lower bound (status quo utilization)			Upper bound (always-on premium processing)		
	(FY) 2019	2018	2017	2016	Average		Exp. utilization	Est. premium volume	Add'l revenue	Exp. utilization	Est. premium volume	Add'l revenue
<i>Form</i>						<i>New fee</i>						
EB-1C (I-140)	22,688	21,753	22,228	23,505	22,543	\$2,500	45%	10,041	\$25,101,670	65%	14,549	\$36,373,376
EB-2 NIW (I-140)	5130	4919	5026	5314	5,097	\$2,500	45%	2,270	\$5,675,570	65%	3,290	\$8,224,140
I-539 (extend/change status)	221,566	230,975	233,430	214,785	225,189	\$1,750	35%	78,816	\$137,928,263	55%	123,854	\$216,744,413
I-765 (employment auth) for:												
Post-completion OPT	151,200	157,488	166,418	158,026	158,283	\$1,500	45%	70,498	\$105,747,107	75%	118,712	\$178,068,375
STEM OPT	61,963	65,119	57,214	51,809	59,026	\$1,500	45%	26,290	\$39,434,779	75%	44,270	\$66,404,531
Pre-completion OPT	2,119	2,693	3,345	3,636	2,948	\$1,500	45%	1,313	\$1,969,693	75%	2,211	\$3,316,781
H-4 (spouses of H-1B)	62,148	54,945	52,253	42,040	52,847	\$1,500	45%	23,537	\$35,306,157	75%	39,635	\$59,452,313
L-2 (spouses L-1)	29,337	27,803	27,266	26,008	27,604	\$1,500	45%	12,294	\$18,441,591	75%	20,703	\$31,053,938
J-2	10,905	10,244	9,996	10,091	10,309	\$1,500	45%	4,592	\$6,887,328	75%	7,732	\$11,597,625
E-1/E-2 spouses	9,876	9,840	9,229	8,884	9,457	\$1,500	45%	4,212	\$6,318,283	75%	7,093	\$10,639,406
G dependents	2,310	2,442	2,295	2,485	2,383	\$1,500	45%	1,061	\$1,592,056	75%	1,787	\$2,680,875
A dependents	1,236	1,300	1,329	1,707	1,393	\$1,500	45%	620	\$930,648	75%	1,045	\$1,567,125
Total	580,477	589,521	590,029	548,290	577,079			235,545	\$385,333,145		384,880	\$626,122,897
Grand total	1,246,312	1,250,455	1,228,776	1,176,688	1,225,558			524,373	\$684,786,114		803,403	\$1,060,042,847

⁴ For definitions of the forms and immigration statuses in this chart, please refer to the glossary in the Methodology section.

Conclusion

USCIS should take full advantage of its newly expanded premium processing authority as soon as possible. This course of action would allow the agency to more quickly dig itself out of its self-imposed fiscal hole, while providing a valuable service to many of its users.

In fact, boosting revenue through expanded premium processing is fiscally superior to the alternatives previously proposed by the agency. If Congress had authorized USCIS to impose an indiscriminate 10% across-the-board fee increase, this would have raised only about \$400 million per year (given that USCIS’ annual non-premium fee collections are about \$4 billion.)

Separately, USCIS has attempted to finalize a [new fee schedule](#) that would impose unprecedented burdens on applicants for naturalization, permanent residence, asylum, and many other users, both by dramatically raising fees and effectively eliminating fee waivers for lower-income applicants. Even stipulating that USCIS requires an extra \$1 billion in annual revenue to stay solvent—a claim made in the fee rule that does not withstand [empirical scrutiny](#), as discussed at a recent [House Judiciary Committee hearing](#)—the agency would almost certainly not generate that level of revenue by seeking to extract it from those least able to pay. Although USCIS protested in its [final rule](#) that the agency “does not know the price elasticity of demand for immigration benefits,” it stands to reason that dramatic fee increases on price-sensitive users will lead to lower-than-expected volume.

Congress has handed USCIS a golden opportunity to generate a significant amount of new revenue in exchange for the provision of valuable new services. The agency should quickly proceed with the authorized non-regulatory expansion of premium processing to all employment-based users who want it. This would enable USCIS to alleviate its insolvency crisis, remove the threat of a furlough from its embattled employees, and fund better services for all those who rely on the legal immigration system.

Appendix A: Methodology

This methodology section makes frequent reference to the following form types and immigration statuses.

Figure 3: Glossary of Premium Processing-Eligible Forms and Immigration Statuses

Form	Immigration status	Definition
I-129		Petition for a nonimmigrant worker ⁵
	H-2B	Temporary non-agricultural workers
	R	Person who works in a religious occupation (also includes spouses and dependents)
I-140		Immigrant petition for foreign workers ⁶
	EB-1C	First preference employment-based permanent residency for certain multinational managers or executives
	EB-2 with or without NIW	Second preference employment-based permanent residency, with or without a National Interest Waiver
I-539		Application to extend or change nonimmigrant status ⁷

⁵ This [form](#) must be filed for several temporary immigration statuses, including H-1B, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, Q-1, and R-1.

⁶ This [form](#) is for employers to sponsor their workers to become permanent residents of the U.S. This includes EB-1, EB-2, and EB-3 permanent resident status.

⁷ This [form](#) is for certain nonimmigrants to extend their stay or change to another nonimmigrant status, apply for an initial grant of status (if a Commonwealth of the Northern Mariana Islands resident), apply for reinstatement (if F or M nonimmigrant), and apply for status or extension as a V nonimmigrant.

I-765		Application for employment authorization ⁸
	A	Ambassadors, public ministers, career diplomats, consuls, and immediate family
	E-1	Individuals or employees from countries with which the U.S. maintains commerce treaties who carry out international trade (including spouses and dependents)
	E-2	Individuals or employees from countries with which the U.S. maintains commerce treaties who invest a substantial amount of money in a U.S. business (including spouses and dependents)
	G	Diplomats, government officials, and international organization employees visiting the U.S. for a governmental purpose (including immediate family and attendants or servants)
	H-4	Spouse or child of an H-1B, B-1, C, H-2A, H-2B, or H-3 visa holder
	L-1	Intracompany transferee, including executive, managerial, or specialized personnel continuing their employment in the U.S. with an international firm or corporation
	Post-completion OPT	Optional Practical Training after the completion of an undergraduate or graduate degree
	Pre-completion OPT	Optional Practical Training prior to the completion of an undergraduate or graduate degree
	STEM OPT	Optional Practical Training extension for graduates with a science, technology, engineering, or mathematics (STEM) degree

The first section of our model (see Figure 2) estimates the expected revenue generated by increasing fees for forms that were already eligible for premium processing. This includes I-140s (except for EB-1C and EB-2 NIW) and I-129s. The total annual volume for these forms was derived from both USCIS data (2019–2016) and the Department of Homeland Security (DHS) lawful permanent resident data tables (Table 7d 2018–2016). The *net* premium processing fee increase for these forms types is based on the fee summary in Figure 1.

The precise percentage of forms that use premium processing versus regular processing is not publicly available. In its most recent [Federal Register notice](#) to increase the premium processing fee last year, however, USCIS published the annual volume of [Form I-907](#) (Request for Premium Processing Service). On average between FY 2016–2018, it appears that 45% of eligible I-140 and I-129 filers also filed an I-907. As a lower bound, it seems reasonable to expect that 45% of I-140 and I-129 filers will continue to

⁸ This [form](#) is filed to request an employment authorization document (EAD), which allows nonimmigrants to work in the United States.

opt into premium processing, given that business users are relatively price-inelastic.

The actual utilization rate may end up significantly higher, however, given that Congress has now constrained USCIS’ ability to turn off premium processing services. Over the past several years, USCIS has periodically suspended premium processing when the volume of forms in the program became too great for the agency to adjudicate within the required 15 calendar days. The length and frequency of these suspensions has been difficult to predict. In a world of always-on premium processing, more users are likely to take advantage of the program. While it is impossible to predict this upper bound with certainty, we added an additional 20 percentage points, for a maximum utilization rate of 65%.

The second section of our model (again, see Figure 2) estimates the expected annual revenue generated from new forms that USCIS has the authority to bring into the premium processing program immediately, without issuing a new regulation. These forms include I-140 for EB-1C and EB-2 NIWs; I-539; and I-765. We make the assumption that the main users who would take advantage of premium processing for employment authorization are those in the categories of pre- and post-completion Optional Practical Training (OPT); J-2; spouses of H-1B (H-4), L-1 (L-2), E-1, and E-2 visa holders; and dependents of G and A visa holders.

The total annual volume for these forms was derived from both USCIS data (2019–2016) and the Department of Homeland Security (DHS) lawful permanent resident data tables (Table 7d 2018–2016). The new premium processing fees for these forms types are based on the fee summary in Figure 1.

For EB-1C and EB-2 NIW petitions, we made the same assumptions of a 45–65% utilization rate as described above.

For I-539 applications, we assumed that both the lower- and upper-bound utilization rates would be 10 percentage points lower (35–55%), given that a comparable proportion of filers are in a humanitarian status category (e.g. U or T), and are less likely to be able to afford premium processing fees.

For I-765 applications, we assumed that the upper-bound utilization rate would be higher (75% rather than 65%), because the need for employment authorization is often acutely time-sensitive.

Appendix B: Premium Processing Expansion from FY 2021 Appropriations Act

SECTION 4102. EXPANSION OF PREMIUM PROCESSING.

(a) IN GENERAL.—Section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)) is amended to read as follows:

“(u) PREMIUM FEE FOR CERTAIN IMMIGRATION BENEFIT TYPES.—

“(1) IN GENERAL.—The Secretary of Homeland Security is authorized to establish and collect a premium fee for the immigration benefit types described in paragraph (2). Such fee shall be paid in addition to any other fees authorized by law, deposited as offsetting receipts in the Immigration Examinations Fee Account established under subsection (m), and used for the purposes described in paragraph (4).

“(2) IMMIGRATION BENEFIT TYPES.—Subject to reasonable conditions or limitations, the Secretary shall establish a premium fee under paragraph (1) in connection with—

- “(A) employment-based nonimmigrant petitions and associated applications for dependents of the beneficiaries of such petitions;
- “(B) employment-based immigrant petitions filed by or on behalf of aliens described in paragraph (1), (2), or (3) of section 203(b);
- “(C) applications to change or extend nonimmigrant status;
- “(D) applications for employment authorization; and
- “(E) any other immigration benefit type that the Secretary deems appropriate for premium processing.

“(3) AMOUNT OF FEE.—

“(A) IN GENERAL.—Subject to subparagraph (C), with respect to an immigration benefit type designated for premium processing by the Secretary on or before August 1, 2020, the premium fee shall be \$2,500, except that the premium fee for a petition for classification of a nonimmigrant described in subparagraph (H)(ii)(b) or (R) of section 101(a)(15) shall be \$1,500.

“(B) OTHER IMMIGRATION BENEFIT TYPES.—With respect to an immigration benefit type designated for premium processing but not described in subparagraph (A), the initial premium fee shall be established by regulation, which shall include a detailed methodology supporting the proposed premium fee amount.

“(C) BIENNIAL ADJUSTMENT.—The Secretary may adjust a premium fee under subparagraph (A) or (B) on a biennial basis by the percentage (if any) by which the Consumer Price Index for All

Urban Consumers for the month of June preceding the date on which such adjustment takes effect exceeds the Consumer Price Index for All Urban Consumers for the same month of the second preceding calendar year. The provisions of section 553 of title 5, United States Code, shall not apply to an adjustment authorized under this subparagraph.

“(4) USE OF FEE.—Fees collected under this subsection may only be used by U.S. Citizenship and Immigration Services to—

- “(A) provide the services described in paragraph (5) to premium processing requestors;
- “(B) make infrastructure improvements in adjudications processes and the provision of information and services to immigration and naturalization benefit requestors;
- “(C) respond to adjudication demands, including by reducing the number of pending immigration and naturalization benefit requests; and
- “(D) otherwise offset the cost of providing adjudication and naturalization services.

“(5) PREMIUM PROCESSING SERVICES.—The Secretary—

- “(A) may suspend the availability of premium processing for designated immigration benefit requests only if circumstances prevent the completion of processing of a significant number of such requests within the required period; and
- “(B) shall ensure that premium processing requestors have direct and reliable access to current case status information as well as the ability to communicate with the premium processing units at each service center or office that provides premium processing services.”.

(b) EXPANSION TO NEW BENEFIT REQUESTS.—

(1) IN GENERAL.—Notwithstanding the requirement to set a fee by regulation under section 286(u)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1356(u)(3)(B)), as amended by subsection (a), the Secretary of Homeland Security may set a fee under that section without regard to the provisions of section 553 of title 5, United States Code, if such fee is consistent with the following:

- (A) For a petition for classification under section 203(b)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(1)(C)), or a petition for classification under section 203(b)(2) involving a waiver under section 203(b)(2)(B) of such Act, the fee is set at an amount not greater than \$2,500 and the required processing timeframe is not greater than 45 days.

(B) For an application under section 248 of the Immigration and Nationality Act (8 U.S.C. 1258) to change status to a classification described in subparagraph (F), (J), or (M) of section 101(a)(15) of such Act (8 U.S.C. 1101(a)(15)), the fee is set at an amount not greater than \$1,750 and the required processing timeframe is not greater than 30 days.

(C) For an application under section 248 of the Immigration and Nationality Act (8 U.S.C. 1258) to change status to be classified as a dependent of a nonimmigrant described in subparagraph (E), (H), (L), (O), (P), or (R) of section 101(a)(15) of such Act (8 U.S.C. 1101(a)(15)), or to extend such classification, the fee is set at an amount not greater than \$1,750 and the required processing timeframe is not greater than 30 days.

(D) For an application for employment authorization, the fee is set at an amount not greater than \$1,500 and the required processing timeframe is not greater than 30 days.

(2) CLARIFICATION.—The required processing timeframe for each of the applications and petitions described in paragraph (1) shall not commence until the date that all prerequisites for adjudication are received by the Secretary of Homeland Security.

(c) OTHER BENEFIT REQUESTS.—In implementing the amendments made by subsection (a), the Secretary of Homeland Security shall develop and implement processes to ensure that the availability of premium processing, or its expansion to additional immigration benefit requests, does not result in an increase in processing times for immigration benefit requests not designated for premium processing or an increase in regular processing of immigration benefit requests so designated.

Appendix C: List of Sources for Data Model

- USCIS budget documents:
 - [FY 2021](#)
 - [FY 2020](#)
 - [FY 2019](#)
 - [FY 2018](#)
- Premium processing fee increases over time (Federal Register notices):
 - [2019](#)
 - [2018](#)
 - [2016](#)
- DHS data on [lawful permanent residents](#) (Table 7d)
- USCIS data on I-765 [employment authorization applications](#)
- USCIS forms data
 - [FY 2019](#)
 - [FY 2018](#)
 - [FY 2017](#)
 - [FY 2016](#)