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United States Government Accountability Office
Washington, DC 20548

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June 15, 2007

The Honorable Patrick J. Leahy
Chairman
The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary
United States Senate

The Honorable John Conyers, Jr.
Chairman
The Honorable Lamar S. Smith
Ranking Minority Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Homeland Security: Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Homeland Security, entitled "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule" (RIN: 1615-AB53). We received the rule on June 1, 2007. It was published in the *Federal Register* as a final rule on May 30, 2007. 72 Fed. Reg. 29,851.

The final rule adjusts the fee schedule for the United States Citizenship and Immigration Services' (USCIS) immigration and naturalization benefit applications and petitions, including nonimmigrant applications and visa petitions. According to USCIS, it is revising these fees because the current fee schedule does not adequately reflect current USCIS processes or recover the full costs of services provided by USCIS. In addition, the revised fees will eliminate USCIS's dependency on revenue from interim benefits, temporary programs, and premium processing fees. This final rule also merges fees for certain applications and petitions so applicants and petitioners will only have to pay a single fee.

Enclosed is our assessment of the USCIS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that USCIS complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Norman Rabkin, Managing Director, Homeland Security and Justice. Mr. Rabkin can be reached at (202) 512-8777.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Richard A. Sloan
Chief, Regulatory Management Division
Office of the Executive Secretariat
Department of Homeland Security

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOMELAND SECURITY
ENTITLED
"ADJUSTMENT OF THE IMMIGRATION AND NATURALIZATION
BENEFIT APPLICATION AND PETITION FEE SCHEDULE"
(RIN: 1615-AB53)

(i) Cost-benefit analysis

USCIS estimates that the increases in fees from this final rule will provide the agency with an additional \$1.081 billion in fiscal years 2008 and 2009. USCIS will use these funds to support its mission. According to USCIS, if it does not increase its fees, the necessary significant spending reductions will have a negative impact on the agency's mission.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

According to USCIS, this final rule will affect a substantial number of small entities, but the economic impact of the rule on these entities will be negligible. USCIS performed a statistically valid sample analysis and determined that, on average, the overall impact of this final rule on small entities would be 0.063 percent of sales revenue for those entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

USCIS concluded that this rule does not contain any federal mandates because the payment of application and petition fees arises from participation in a voluntary federal program, namely applying for immigration status in the United States.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

USCIS promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. USCIS published a notice of proposed rulemaking on February 1, 2007. 72 Fed. Reg. 4888. USCIS received more than 3,900 comments to which it responded in the final rule. 72 Fed. Reg. 29,854–29,870.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

According to USCIS, this final rule does not impose any new reporting or recordkeeping requirements under the Act.

Statutory authorization for the rule

USCIS promulgated this final rule under section 286(m) of the Immigration and Nationality Act of 1952, as amended. 8 U.S.C. § 1356(m). The Act provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services. *Id.*

Chief Financial Officers Act of 1990, 31 U.S.C. §§ 901-903

Under this Act, USCIS's Chief Financial Officer is required to review on a biennial basis fees collected by the agency and make recommendations on revising those changes to reflect costs incurred by the agency. 31 U.S.C. § 902(a)(8). This final rule reflects the recommendations of USCIS's Chief Financial Officer as required by the Act.

Executive Order No. 12,866

The Office of Management and Budget has reviewed this rule under the Order. USCIS estimates that the increases in fees from this final rule will provide the agency with an additional \$1.081 billion in fiscal years 2008 and 2009. USCIS will use these funds to support its mission. According to USCIS, if it does not increase its fees, the necessary spending reductions will be significant and have a negative impact on the agency's mission.

Executive Order No. 13,132 (Federalism)

According to USCIS, this rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.