



Testimony

Before the Subcommittee on Commerce, Justice, State, the
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INS BUDGET

Overhiring and Decline in Revenues Have Created Fiscal Stress

Statement for the Record by
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Mr. Chairman and Members of the Subcommittee:

I am pleased to submit this statement for the record as you consider the fiscal year 2000 budget request for the Immigration and Naturalization Service (INS). In your letter requesting that we examine INS budget issues, you noted a concern that “INS has incurred budget shortfalls” for fiscal year 1999. We have sought to determine (1) INS’ overall fiscal condition in fiscal year 1999, and (2) how factors such as overhiring and a decline in Examinations Fee applications have affected INS’ fiscal situation.

After discussions with officials in INS, the Department of Justice (DOJ), and the Office of Management and Budget (OMB), and based on our analysis of INS budget documents, we concluded that INS is not experiencing an overall budget shortfall at this time. The hiring policy that INS followed in fiscal year 1998 in an attempt to meet congressional and administration expectations resulted in INS having to commit a greater share of its fiscal year 1999 budget to salaries and benefits than in prior years. Overall, however, INS currently has more discretionary funds than it had in fiscal year 1998. With respect to the Examinations Fee account, INS overestimated the number of applications it would receive and did not detect the consequent revenue shortfall for months because of computer programming errors. When it became apparent that the anticipated revenues would not be realized, INS decided to seek reprogramming of funds from other accounts to cover the costs. The overhiring and reduced Examinations Fee revenues contributed to most INS programs having less discretionary funding in fiscal year 1999 than in fiscal year 1998.

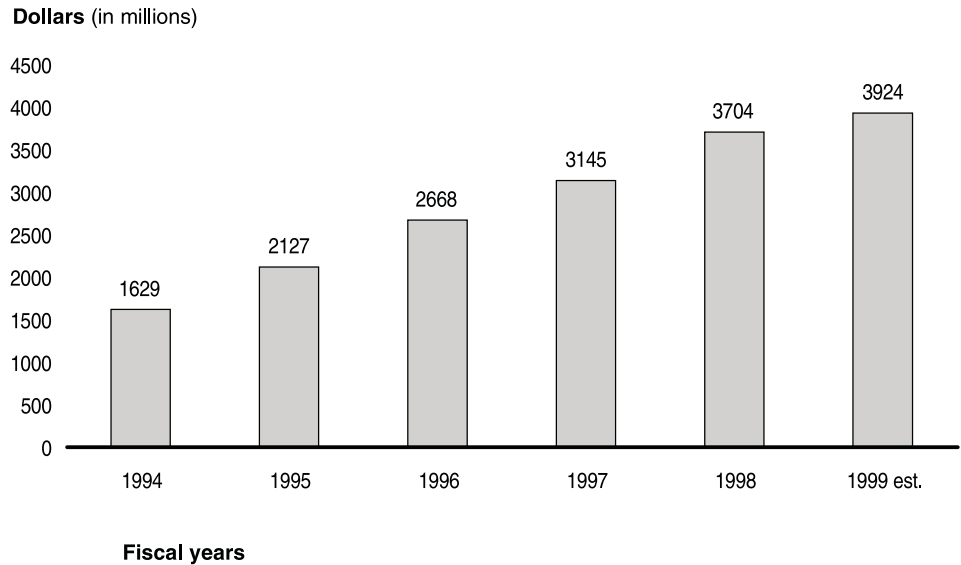
Although INS has not experienced an overall budget shortfall, the combination of higher personnel costs, declining Examinations Fee revenues, and the resultant need to reduce discretionary funding allocations to most programs has created fiscal stress for the agency.

Background

As shown in figure 1, INS has benefited from significant increases in its regular appropriations and appropriations from its fee accounts.¹ Funding increases have continued in fiscal year 1999 with Congress providing over \$3.9 billion. When funding from the Working Capital Fund, carryover balances, and certain reimbursements are added to this figure, INS’ operating budget totals approximately \$4.0 billion for fiscal year 1999.

¹ INS fees are appropriated from special fund receipt accounts to provide reimbursement to INS’ Salaries and Expenses account for certain expenses. Fees can only be used for purposes as authorized.

Figure 1: INS Funding for New Budget Authority, Fiscal Years 1994-1999 (est.)



Note: Includes reimbursements in the Salaries and Expenses account. Does not include appropriations to the Immigration Emergency Fund.

Source: OMB, Budgets of the United States Government, fiscal years 1996 - 2000

INS divides its operating budget into four categories of spending: (1) mandatory expenses, e.g., rent; (2) personal salaries² and benefits; (3) set-asides, such as employee relocations, vehicle acquisitions, and background investigations; and (4) discretionary funding. For purposes of this review, the first three categories can be grouped together as expenses that either have first claim on a budget because they must be paid or are considered integral to an agency's operations. Although many of these expenses directly benefit field operations, most are centrally-funded at headquarters. The last category—discretionary funding—funds personnel costs for other-than-permanent employees; discretionary overtime; travel; cash awards; some types of procurements; and day-to-day operating expenses, such as equipment maintenance and lease of copiers. Table 1 shows data provided by INS on its end-of-year allocation for fiscal year 1998 compared with its current allocation for fiscal year 1999, by spending categories.

² INS refers to salaries and benefits for its personnel as "personal salaries and benefits."

Table 1: INS Allocations for Fiscal Years 1998 and 1999 (in Millions of Dollars)

Fiscal year	Mandatory expenses	Personal salaries and benefits	Set-asides	Discretionary funding	Total
1998	\$252.1	\$1,800.7	\$299.4	\$1,515.7	\$3,867.9
1999	304.6	1,816.9	363.0	1,545.6	4,030.2

Source: INS, Office of Budget.

Scope and Methodology

To determine (1) INS' overall fiscal condition, and (2) how factors such as overhiring and a decline in Examinations Fee applications have affected INS' fiscal situation, we interviewed officials in INS' Offices of Budget, Personnel, Facilities, and Field Operations. To get additional perspectives on INS' funding status, we interviewed officials in DOJ's Justice Management Division and OMB's Justice and General Services Administration Branch. We reviewed INS budget documents prepared for fiscal year 1999 that were submitted to the Justice Department, OMB, and Congress, as well as those prepared for internal use, to document and analyze changes in funding. In addition, INS provided memorandums and briefing documents relevant to our work and additional supporting material prepared specifically for our review. Our work was performed in Washington, D.C., during February and March 1999, in accordance with generally accepted government auditing standards.

Overhiring Policy Created Fiscal Stress

Since 1996, INS has been making a concentrated effort to fill both its existing vacancies and many new positions authorized by Congress each year. However, throughout this period, attrition of staff already on-board and reported difficulties in hiring new staff have impeded INS from filling many positions. In an attempt to remedy this situation, INS allowed field offices to hire 4 percent more than their number of funded positions during fiscal year 1998. As discussed below, this policy, combined with other fiscal pressures, resulted in most INS programs having less discretionary funding in fiscal year 1999 than in fiscal year 1998.

Between the end of fiscal years 1995 and 1998, INS' on-board staff increased from 18,823 to 27,941. INS anticipates adding another 3,000 staff by the end of fiscal year 1999. However, according to INS officials, throughout this period, the number of staff on board generally lagged behind authorized levels. INS officials attribute the lag to (1) significant new authority to hire provided by Congress each year, (2) high rates of attrition of on-board staff throughout the year, and (3) difficulty in recruiting and retaining a group of qualified candidates from outside of INS to fill vacancies as they arise.

Since 1996, INS has taken several steps to overcome these difficulties. First, to ensure that its workforce would expand rather than shift internally, INS directed field staff to hire for only entry level positions. Second, INS allowed field managers to select a larger pool of candidates to consider for employment than they were authorized to hire³ because it was anticipated that a number of candidates would (1) not make it through the pre-appointment process, or (2) no longer be available by the time INS could make an offer of employment. Third, with approval, field managers were permitted to hire 2 percent more than their number of funded positions. The over-hiring was supposed to occur in field offices where attrition or new hiring authority was anticipated. The over-hired positions were supposed to be used to fill vacancies as soon as they occurred so that field office hiring would not exceed funded levels for the year. At the start of fiscal year 1998, regional directors requested, and the Commissioner approved, an increase in the over-hire authority to 4 percent. During fiscal year 1998, the number of INS staff on board increased from 86 to nearly 97 percent of INS' funded level.

The large amount of fiscal year 1998 hiring created fiscal stress for the agency by increasing certain payroll costs beyond budgeted levels. According to INS officials, beginning in fiscal year 1998, there was a rapid acceleration in the on-board rate of Border Patrol agents, Investigators, and Detention and Deportation officers. These positions were over-hired for substantial periods during fiscal year 1998. This created a funding problem because INS allocated personal services and benefits (PS&B) for funded positions only—not over-hired ones. As of May of 1998, INS projected that the PS&B portion of one of its accounts—Salaries and Expenses—would have a deficit of \$16.1 million by the end of the fiscal year.⁴ The Border Patrol program accounted for most of the projected deficit. The nine other accounts that also provide funding for PS&B were projected to have surpluses or have negligible deficits.

INS officials attributed the deficit in part to previous and projected over-hiring by field offices. INS officials told us that some field offices would over-hire, but then not use the over-hired position to fill their vacancies. In some cases, they said this occurred because there was a mismatch between the positions that had been over-hired and the vacancies that

³ The overselection involved INS conducting such pre-hire activities as background checks and medical examinations for several candidates who were potentially eligible for a single position. By doing this, INS hoped that when a position became available, a candidate could be brought on board immediately.

⁴ INS' budget is funded in 17 separate accounts. Ten of these accounts provide funding for a variety of expenses including PS&B, which pays for the salaries and benefits of full-time permanent staff.

occurred. They said another reason for the deficit was a miscoding of \$2.5 million in obligations for newly hired personnel to the Salaries and Expenses account instead of the Violent Crime Reduction Trust Fund (VCRTF) account.

In response to the anticipated deficit, in May 1998, the Office of Budget issued guidance to executive staff. The guidance said the over-hire policy was not intended to permit field offices to remain up to 4 percent over the authorized number of positions for extended periods of time. The guidance listed four actions to be taken: (1) correct miscoding of new hires from the Salaries and Expenses account to the VCRTF account; (2) ensure all new hires are coded to the correct account; (3) manage subsequent hiring to resolve over-hiring of officer positions; and (4) redirect, by the Office of Budget, \$6.5 million to cover the remainder of the anticipated year-end PS&B deficit. The guidance warned that if hiring continued to exceed authorized levels, discretionary funds would have to be used to cover the projected deficit in PS&B funds.

However, as of August 1998, the projected deficit of PS&B funds in the Salaries and Expenses account had increased to \$20 million. To respond to this situation, according to budget officials, field staff were directed to reduce staff on board to funded levels. At the end of fiscal year 1998, however, certain enforcement positions were still over-hired. According to an INS budget official, the over-hired positions accounted for about \$12 million in PS&B deficits. Approximately 50 percent of that amount was covered by unobligated discretionary funds that were reallocated by INS regions to PS&B.

In the past, according to INS and Justice Department officials, PS&B funding that was not used to pay personnel costs was reallocated to help fund other spending. To successfully implement the policy of hiring up to funded levels during fiscal year 1998, INS had to commit a larger share of its budget to pay for personnel costs.⁵ This meant that a smaller share of funds would be available to address other needs. For example, to pay an \$80 million settlement with the Investigation Union, INS has been paying in annual \$10 million installments from its Investigations lapsed PS&B funds. As a result of the increased hiring in fiscal year 1998, the Investigations

⁵ Regardless of the number of vacancies that may exist at the beginning of the fiscal year, the Office of Budget allocates enough PS&B funds to pay for all on-board full-time permanent positions plus planned new hires, and attrition back-fills. Since fiscal year 1997, INS has been using a model to project PS&B funding needs by pay period through the end of the fiscal year. The model uses data on hiring, attrition, and actual spending. INS uses the output from the model in quarterly financial reviews to help assess its financial position.

program reportedly did not have sufficient lapsed dollars to fund the \$10 million installment. As a result, the Office of Budget set aside \$10 million of Investigations funding at the beginning of fiscal year 1999 to pay the current year installment. This meant that the Investigations program received substantially fewer dollars for discretionary spending.

To illustrate the impact of hiring up to funded levels on INS' budget, if INS remained at the 86 percent on-board level that existed at the beginning of fiscal year 1998, then about \$250 million in PS&B funds would have been available to spend on other needs. But, INS finished fiscal year 1998 with nearly 97 percent of its funded positions filled. If INS remained at the 97 percent on-board level throughout fiscal year 1999, it would have \$60 million in PS&B funds after meeting payroll costs. This would be \$190 million less than PS&B funds available with an 86 percent on-board level.

After meeting payroll expenses, mandatory costs, and other expenses set aside for centrally-funded items that support service-wide needs, INS currently had about \$71.8 million more in discretionary funds, overall, than it had in fiscal year 1998. Within INS, the Office of Field Operations, which distributes funding to field offices, had more discretionary funds than it had in fiscal year 1998, while all other headquarters offices received less discretionary funds.

Although, overall, the Office of Field Operations received more discretionary funds than in fiscal year 1998, some programs within the Office of Field Operations received less. Table 2 provides a breakdown of how the 11 programs under the Office of Field Operations fared. Initially, in December 1998, when the Office of Budget communicated to the Office of Field Operations how much it would have available in discretionary funds, the total amount appeared to be \$199 million less than was allocated in fiscal year 1998. However, according to INS officials, this amount did not yet include \$270.7 million that was available from Examinations Fee funds, Salaries and Expenses funds for Adjudications and Naturalization program initiatives, and Working Capital funds. The amounts available from these funds had not yet been allocated because detailed spending plans needed to be developed first. Including the \$270.7 million, the Office of Field Operations would have had \$71.7 million more in discretionary funds, overall. In January 1999, the \$270.7 million was allocated and, following feedback from the field about the inadequacy of the funds initially communicated, headquarters executive staff redirected \$47.7 million to field operations for discretionary funds. These actions resulted in a total allocation that was \$120.6 million more than in fiscal year 1998.

Five of the 11 programs under the Office of Field Operations had less discretionary funds than in fiscal year 1998.

Table 2: Discretionary Funding Allocations to Field Operations (Dollars in Millions)

Program	End of fiscal year 1998 allocation	Partial fiscal year 1999 allocation ^a 12/23/98	Increase/ (decrease) from fiscal year 1998	Fiscal year 1999 allocation 1/28/99	Increase/ (decrease) from fiscal year 1998	Percent change from fiscal year 1998
Inspections	\$109.5	\$99.9	(\$9.6)	\$103.3	(\$6.2)	-5.7
Border Patrol	86.5	57.4	(29.1)	89.5	3.1	3.5
Investigations	41.3	9.3	(32.0)	21.9	(19.4)	-47.0
Detention and Deportation	463.8	420.3	(43.5)	426.0	(37.8)	-8.1
Intelligence	0.5	1.4	0.9	1.9	1.4	309.6
Adjudications and Naturalization	38.7	6.7	(32.0)	176.2	137.4	355.0
International Affairs	46.6	7.0	(39.6)	35.0	(11.6)	-24.9
Training	0.5	0.4	(0.1)	0.5	0.0	0.3
Data and Communication	1.9	2.4	0.5	32.9	31.0	1,657.0
Information and Resource Management	12.3	0.2	(12.1)	38.4	26.1	211.5
Management and Administration	5.6	3.2	(2.4)	3.4	(2.2)	-39.7
Total	807.1	608.1	(199.0)	929.0	121.9	15.1

Note: Rounding may affect the calculation of percentages and totals.

^aExcludes \$270.7 million that was available, but had not yet been calculated and communicated to the field. This amount consisted of \$171.7 million in Examinations Fee funds, \$92.0 million in S&E funds for Adjudications and Naturalization program initiatives, and \$7.0 million in Working Capital funds.

Source: Immigration and Naturalization Service, Office of Budget and Office of Field Operations.

According to a DOJ official, these problems were not communicated to Congress until January 22, 1999. According to INS Office of Budget officials, the potentially difficult fiscal situation for fiscal year 1999 was conveyed internally at meetings with (1) resource management staff in July 1998, (2) executive staff and regional directors in August 1998 during the third quarterly financial review, and (3) INS managers in October 1998 at the annual Commissioner's conference. However, initial budget allocations were not made until December 11, 1998, nearly the end of the first quarter of fiscal year 1999. According to budget officials, the allocations were made in December because of the complicated nature of the appropriation.⁶ Office of Field Operations officials said they were surprised by the magnitude of the reductions in discretionary funds.

⁶ Office of Budget officials said this year's budget execution process was complicated by (1) the three-week delay in final appropriations, (2) numerous base transfers between appropriated and fee accounts, (3) the division of the S&E account into separate enforcement and benefits accounts, which also affected all fee accounts, reimbursable agreements, and transfers that reimburse the split S&E

INS continues to pursue the goal of hiring to its authorized level. However, as of January 6, 1999, the Executive Associate Commissioner for Field Operations cancelled the over-hire authority for all programs except, in certain circumstances, those funded by the Examinations Fee Account.

Declines in Examinations Fee Revenues and Delays in Detecting the Declines Added to INS' Fiscal Stress

In formulating its fiscal year 1999 budget, INS projected in November 1997 that it would receive 6.9 million Adjudications and Naturalization applications,⁷ and that these would produce \$862 million in revenues for its Examinations Fee account. In July 1998, INS was projecting 5.6 million applications and \$560 million in revenues for this account. INS overestimated the number of applications—in particular, the number of naturalization applications—that would be submitted to INS, and because of computer problems, it was not able to detect the downturn in applications in a timely fashion. In August 1998, DOJ submitted a reprogramming request for \$171 million, of which \$88 million was to help cover the decline in Examinations Fee revenues.

INS Erroneously Expected Examinations Fee Revenues to Continue Increasing in Fiscal Year 1999

INS uses statistical modeling methods to estimate anticipated applications and associated revenues. Based on receipts collected since October 1991, the statistical analyses forecast receipts for the coming year. For fiscal year 1999, the original forecasts were made in November 1997. Revisions were made in March, June, and July 1998. INS also has a working group, the Examinations Fee Working Group, that meets at least quarterly to review the statistical forecasts and decide whether to make adjustments to the statistical estimates. The working group is composed of representatives from the Offices of Budget, Policy and Planning (Statistics Branch), Field Operations (Immigration Services Division) and Programs (Adjudications and Naturalization Branch). The group's main responsibility is to formulate monthly and annual receipt projections for the Examinations Fee account. The Statistics Branch develops the statistical model for each of the applications based on workload and/or receipts. The working group uses this information to develop its projections for the Examinations Fee account. In addition, INS consults with community based organizations (CBOs) to obtain their input

accounts, and (4) the fiscal year 1999 reprogramming for naturalization initiatives that was submitted as a separate request in August.

⁷ The function of the Adjudications and Naturalization program is to process, adjudicate, and grant or deny applications for benefits provided under the immigration laws. Adjudication activities include, among other things, processing applications for permanent resident status, petitions for relatives, and workers' applications. Naturalization activities include, among other things, the examination of aliens to determine their qualifications for naturalization and issuance of citizenship documents.

concerning the activities of immigrant groups. None of these sources anticipated the decline in applications and revenues that occurred in fiscal year 1998.

A specific type of naturalization application, referred to as N-400 by INS, made up the single largest component, both in terms of the number of applications (estimated to be 21 percent in fiscal year 1999) and revenues generated (estimated to be 39 percent in fiscal year 1999), of the Examinations Fee account. INS projected in November 1997 that in fiscal year 1999, it would receive nearly 1.5 million N-400 applications, and that these would produce approximately \$334 million in Examinations Fee revenue. In June 1998, INS lowered its fiscal year 1999 projections to 700,000 applications and \$127 million in revenue.

INS officials have developed some hypotheses, including the following, to explain the unanticipated drop in applications:

- Based on contacts with several community based organizations (CBOs), INS believed that CBOs were stockpiling naturalization applications in an effort to help eligible aliens meet a January 1998 deadline for filing certain types of adjustment of status applications.⁸ INS officials expected that naturalization applications would surge after the deadline. However, it turned out that CBOs were not stockpiling naturalization applications, and the expected surge did not occur.
- Legislative changes restored some benefits for aliens, reportedly causing a reduction in the demand for naturalization.
- Naturalization applications have peaked from among the 2.7 million aliens who were granted amnesty by the Immigration Reform and Control Act of 1986. However, evidence of this did not become clear until well into fiscal year 1998.
- INS had a large backlog of N-400 applications, perhaps creating a disincentive for applicants to apply for naturalization.

⁸ In 1994, in P.L. 103-317, Congress enacted section 245(i) of the Immigration and Nationality Act, which allowed illegal aliens in the United States to adjust status once they, because of family relationships or job skills, became eligible for permanent residency, provided they paid a penalty fee. This section of the act was to sunset on September 30, 1997. There was debate on extending the provision, and the result was that the section was terminated in the fiscal year 1998 Commerce, Justice, State and the Judiciary Appropriations Act, P.L. 105-119. However, it included a grandfather clause that gave illegal aliens until January 14, 1998, to file the application for adjustment of status.

Computer Problems Prevented INS From Detecting Downturn in Naturalization Applications

INS did not have timely information to determine that the number of N-400 applications had begun to decline. The key reason for this was that computer programming errors were not detected and resolved for an 8-month period in fiscal year 1998. During this period, INS did not know how many N-400 applications were received.

In December 1997, INS tried to change its naturalization case processing and tracking system, the Redesigned Naturalization Application Casework System (RNACS), to show the date that naturalization applications were received at INS, not the date that they began to be processed by INS adjudicators. However, when INS began to use RNACS with the applications receipt date incorporated into it, the system only recognized those applications that were received and processed in the same month. If the application was received in one month and processed in another month, the end-of-month summary report produced by INS' Office of Information Resources Management did not capture the information on date of receipt.

INS headquarters officials were reportedly skeptical of the low naturalization numbers derived from RNACS. However, it took several months for INS officials to determine that there was a problem with RNACS because (1) it generally takes 5 to 6 weeks for INS field offices to generate statistical information for headquarters which, in turn, is compiled and reported by headquarters' Office of Statistics, and (2) INS headquarters officials were not certain whether the unexpectedly low numbers of naturalization applications represented real behavior or a reporting error. It then took several months to correct the computer problem and generate new reports. As a result, between October 1997 and May 1998, INS' Examinations Fee Working Group did not have reliable data on which to base revised estimates of N-400 applications for fiscal years 1998 and 1999.

GSA Rental Payment Was Higher Than Expected

We also examined whether and why INS' rental payment to the General Services Administration (GSA) for fiscal year 1999 may exceed INS' amount of appropriation identified for rent. We found that INS' rental payment is expected to exceed the amount appropriated by \$13.2 million. For several reasons, Justice officials said, it is difficult to accurately project rent costs, and the shortfall in INS' funds for rent is not inconsistent with what it has incurred in prior years.

As of March 1999, the anticipated GSA rental payment for INS for the current fiscal year is \$160.1 million. This is \$9.9 million above what was

requested in the President's Budget for rent and \$13.2 million higher than the \$146.9 million appropriated by Congress.

Arriving at an accurate projection of rental payments is difficult for INS and other Justice components, according to Justice officials. INS' GSA rental payment exceeded its appropriation by \$15 million in fiscal year 1998, \$9 million in fiscal year 1997, and \$5 million in fiscal year 1996. According to INS and Justice officials, year-to-year fluctuations in the accuracy of rent estimates could be caused by such factors as (1) the actual GSA rental payment for fiscal year 1999 being higher than that anticipated by INS at the time that it formulates its budget; (2) changes in INS programs after the end of the budget cycle (e.g., information on new projects requiring space become available after the budget cycle has ended); and (3) the difficulty of projecting requirements in an environment of high growth, such as that experienced by INS in recent years.

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