



USCIS Response to the Citizenship and Immigration Services Ombudsman's (CISOMB)

2020 Annual Report to Congress
December 04, 2020



Homeland
Security

*U.S. Citizenship and
Immigration Services*

For Official Use Only



**USCIS Response to the Citizenship and
Immigration Services Ombudsman's
2020 Annual Report to Congress**

A Message from the Deputy Director for Policy

December 04, 2020

It is my pleasure to present the USCIS response to the Office of Citizenship and Immigration Services Ombudsman's (CISOMB) 2020 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 discusses many topics of public interest, which includes:

- The impact of COVID-19 on immigration benefits;
- The current naturalization and asylum backlogs;
- Our efforts to maintain the integrity of the naturalization program;
- A risk analysis of the Optional Practical Training program; and
- An update on year two of InfoMod.

The Annual Report also notes areas within the agency where improvements are warranted. 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 his 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, appearing to read 'J. Edlow', with a long horizontal flourish extending to the right.

Joseph B. Edlow
Deputy Director for Policy



December 04, 2020

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 2020 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 2020 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 2020 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 the 2020 Annual Report acknowledging the immediate action USCIS took to continue processing applications during the COVID-19 pandemic. It has been challenging, but our dedicated workforce has met the challenge in a professional and safe manner.

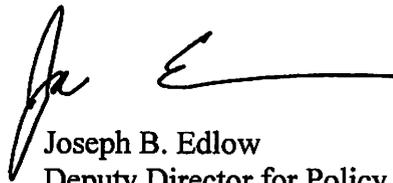
Regarding maintaining the integrity of the Naturalization Program, USCIS appreciates CISOMB's recommendation to provide transparency regarding the Benefits Integrity Office (BIO)'s purpose and work. USCIS will consider better ways to inform the public about BIO's standards and review process; we will examine ways to effectively communicate BIO's purpose, work, and processes in a manner that is appropriate for public consumption.

I share your concerns about processing times for Naturalization and Asylum applications, as well as the ongoing threats from the Optional Practical Training Program. As our response details, we are taking the necessary steps to address all three.

I agree that the rollout of InfoMod did not go as smooth as we'd hope, however, we are excited about the results InfoMod has produced so far. USCIS continues to look at ways to modernize our operations. We have addressed your long term and short-term recommendations in our response. 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 black ink, appearing to read 'J. Edlow', followed by a long horizontal line extending to the right.

Joseph B. Edlow
Deputy Director for Policy

Table of Contents

- I.** Legislative Requirement1
- II.** Introduction.....1
- III.** Immigration Benefits in the Age of COVID-191
- IV.** The Geometry of the Naturalization Backlog.....4
- V.** Denaturalization: Maintaining the Integrity of the Naturalization Program6
- VI.** The Challenge of Decreasing USCIS’ Affirmative Asylum Backlog8
- VII.** Foreign Students and the Risks of Optional Practical Training.....18
- VIII.** InfoMod (Year two): Accomplishments, Lessons Learned and Current Challenges.....19
- IX.** 2019 Recommendation Update.....22
- X.** Conclusion24
- XI.** Appendix A: Acronyms and Abbreviations.....28

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 2020 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 highlights several of USCIS’ accomplishments in improving procedures and applicant services from Fiscal Year (FY) 2019 and more recent accomplishments as well.

III. Immigration Benefits in the Age of COVID-19

The 2020 CISOMB Annual Report details the immediate actions taken by USCIS. Those actions were: to suspend in-person appointments temporarily; reuse biometrics when possible; provide flexibility for required responses; amend certain H-2A and H-2B requirements and add temporary flexibility to extensions of stay. The report expresses concerns with USCIS’ lack of changes to established policies or regulations (in addition to those already mentioned) and transparency on whether USCIS has yet to adopt a safe and timely way to collect, process, and adjudicate paper filings in a COVID-19 environment. CISOMB offered recommendations on how to address these concerns.

USCIS provided clarification and guidance on several issues of immediate concern such as evidentiary response times and in-person interviews. USCIS has issued public announcements on policy and program changes during the pandemic through its website, through its social media channels, including Twitter and Instagram, and congressional and stakeholder messages.

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

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

1. The Ombudsman recommends that USCIS publicize its workforce plans going forward to inform the public and highlight continuity of services.

In response to the COVID-19 crisis, USCIS coordinated a national public engagement initiative to support the agency's reopening efforts. To date, the agency has hosted more than 70 sessions for over 5,000 individuals. While national in scope, the initiative emphasized local outreach to ensure local stakeholders knew what to expect as USCIS offices reopened and to allow stakeholders to provide targeted feedback. The agency also coordinated a national public engagement via YouTube for more than 2,500 individuals and joined a similar session hosted by the CISOMB.

2. The Ombudsman recommends that USCIS issue policy or program statements on certain critical status questions, including those submitted through the Ombudsman's office which include the following:

a. How does USCIS intend to meet statutory and regulatory obligations respecting the processing of naturalization applications?

USCIS continues to explore long term solutions to meet the needs of the agency, while following the Centers for Disease Control and Prevention (CDC) and local guidelines to ensure the safety at all USCIS facilities. Upon reopening to the public, USCIS has prioritized administrative naturalization ceremonies in an abbreviated manner that incorporates social distancing and other COVID-19 mitigation efforts, including modifying the number and size of naturalization ceremonies, as needed to protect the health and safety of USCIS employees and members of the public. Along with that, USCIS continues to explore ways to gain efficiencies in how naturalization interviews are conducted at USCIS field offices. Specifically, USCIS continues to consider options for shifting to a more virtual setting for conducting naturalization interviews and administering the naturalization examination while still adhering to statutory and regulatory obligations regarding naturalization applications. USCIS remains committed to protecting the health and safety of all USCIS employees and members of the public.

b. What actions is USCIS taking to respond to individuals with emergency needs, including those seeking temporary proof of lawful permanent resident status, advance parole, etc.?

USCIS is providing in-person appointments for applicants who can establish an emergent need, including for those seeking proof of lawful permanent resident status and advance parole. Applicants who establish that they have an emergent need will be priority scheduled for in-person services.

In addition, requests for humanitarian parole continue to be processed, as well as requests for refugee travel documents for applicants who are located overseas. Our

international field offices that remain open continue to provide emergency services. Where USCIS does not have a field office, USCIS related inquiries are handled either by the local Embassy/Consulate Consular Section or domestic USCIS offices.

c. How is USCIS managing benefits applications from vulnerable populations (such as victims of human trafficking), where prolonged waiting periods could potentially endanger the applicant's safety?

USCIS continues to adjudicate refugee resettlement cases that have been interviewed by USCIS officers and are awaiting a final decision, including those that can be completed by tele-video.

USCIS also continues to adjudicate other humanitarian-based applications and petitions for relief or protection. The rate at which these are being adjudicated varies depending on the particular application or petition and whether the adjudication requires an interview. There have been some operational challenges due to the pandemic but USCIS has worked to make appropriate adjustments (for example by increasing telework options for employees to ensure social distancing).

USCIS has extended a number of flexibilities during the pandemic to assist applicants and petitioners, including flexibilities in submitting required signatures and responding to agency requests, as well as providing guidance for special circumstances. For policy updates, operational changes (including the implementation dates), and COVID-19 information, please visit uscis.gov/coronavirus.

d. What is USCIS planning to do with adjustment applications where it has the authority to waive the in-person requirement?

USCIS continues to follow the Interview Guidelines set forth in the USCIS Policy Manual. On a case-by-case basis, USCIS may waive an interview outside of the General Waiver Categories.

3. The Ombudsman recommends that USCIS reinstitute its national stakeholder meetings for its directorates to maintain communication with the public.

USCIS public engagement activities were significantly affected by the pandemic, much like other operations in the agency. Nevertheless, during this time, agency staff have successfully transitioned to virtual outreach using webinar and virtual meeting platforms. Despite the slowdown, USCIS was able to coordinate several successful engagement opportunities and we expect to keep adding more opportunities.

In the weeks early in the pandemic, as meetings and events nationwide were being cancelled or postponed, USCIS hosted a series of successful webinars and information sessions on the new H-1B registration system, including a session with the CISOMB. USCIS also joined the American Immigration Lawyers Association (AILA) Continuing Legal Education (CLE) conference using a virtual platform.

Public engagement activities are not limited to virtual meetings or sessions. During the COVID-19 crisis, the agency handled or responded to a record number of inquiries, recommendations, and requests for information. This feedback was helpful as the agency considered certain flexibilities in response to COVID-19. While agency staff is not able to respond to every single inquiry, it does review public feedback carefully.

USCIS will continue outreach efforts in support of the COVID-19 crisis as reopening efforts continue growing and evolving during this time.

IV. The Geometry of the Naturalization Backlog

In its 2020 Annual Report, the CISOMB provides an in-depth analysis on the backlog² for Form N-400, Application for Naturalization. The analysis details the possible causes of the backlog as well as efforts made by USCIS to reduce the backlog. In addition, the CISOMB offers recommendations to help reduce the backlog.

The report attributes the backlog to an unanticipated increase in receipts, increased workloads at field offices, insufficient staffing levels and facilities, increased completion rates, a proposed fee rule, budgetary constraints, lags in hiring, and the continued unpredictability and additional challenges brought by the COVID-19 national emergency. Additionally, the report lists the efforts made by USCIS to reduce the backlog. Those efforts include workload shifts, the use of the Electronic Immigration System (ELIS), the Formalized Check-In process (FCI), and the Form N-400 automated interview assessments.

CISOMB recommendations, along with USCIS' response to them, are provided below:

1. Improve Concurrent Processing of Form I-751/N-400

As part of implementing the FCI project, the Field Operations Directorate (FOD) developed assessments of complexity, eligibility, and security check factors in ELIS for ELIS N-400 cases. An assessment level is assigned to a case based on the presence of factors in a case that allows USCIS to customize interview time and adjust the resources it applies to the interview. The N-

² For the purpose of this report, the CISOMB defined “backlog” as total pending cases as opposed to the way USCIS defines “backlog” (cases outside of processing times that do not have pending RFEs and/or re-exams).

400 Assessment uses data submitted with case filings and available in Systems of Record to identify if known factors exist that may require more time for processing during interviews. The assessment levels are visible to field office schedulers in the National Appointment Scheduling System (NASS) prior to scheduling cases at the field offices, and the presence or absence of the specific factors are visible to the officers in ELIS. An N-400 with an associated pending I-751 is one of these factors. In addition, USCIS is reviewing current processes and systems capabilities to increase efficiencies when both Forms I-751 and N-400 remain pending to ensure that both applications are scheduled concurrently for interview and decision.

2. Improve N-648, Medical Certification for Disabilities, Processing

Form N-648 is used by aliens who are applying for U.S. citizenship and need to request an exception to the English and civics testing requirements for naturalization because of physical or developmental disability or mental impairment. USCIS is currently reviewing regulations to improve Form N-648 processing and adjudications. In addition, as part of implementing the FCI project, FOD developed assessments of complexity, eligibility, and security check factors in ELIS for ELIS N-400 cases. An assessment level is assigned to a case based on the presence of factors in a case that allows USCIS to customize interview time and adjust the resources it applies to the interview. The N-400 Assessment uses data submitted with case filings and available in Systems of Record to identify if known factors exist that may require more time for processing during interviews. The assessment levels are visible to field office schedulers in the NASS prior to scheduling cases at the field offices, and the presence or absence of the specific factors are visible to the officers in ELIS. An N-400 with an associated N-648 is one of these factors.

USCIS appreciates the CISOMB encouragement to move forward with proposing a process to designate or revoke the status of medical professionals authorized to complete N-648s and is in the process of doing so. At the same time, USCIS will consider the CISOMB recommendation to have NBC pre-adjudicate concurrently filed N-648s prior to transferring the file to the field for an interview.

3. Expand Remote Capabilities

To enhance field office capability, efficiency, and flexibility, potentially saving time and office space, FOD has a strategic interest in exploring virtual interview options. The timeline to explore these options has been accelerated, due to the spread of COVID-19 and a need to practice social distancing. Field offices have begun testing and implementing video interview options for N-400 cases to achieve FOD's top priority of keeping FOD employees and the public safe, while also achieving FOD's goals of efficiency and flexibility and without compromising the ability of officers to effectively adjudicate cases and detect fraud. Using video interview procedures offers Office leadership a second safe interview procedure, to be used as and when needed. The options being tested and implemented were developed in partnership with the

Refugee, Asylum & International Operations (RAIO) Directorate through collaboratively exchanging best practices and lessons learned regarding processes and technology. FOD anticipates having initial video interviewing capabilities which will allow the applicant and officer to be in different interview rooms within a single field office, deployed to all field offices in the immediate future. Future expansions and enhancements, including having the applicant and interviewing officer located in different field offices, are actively being examined.

V. Denaturalization: Maintaining the Integrity of the Naturalization Program

The 2020 CISOMB Annual Report outlines the processes and difficulties regarding maintaining the integrity of the Naturalization Program in denaturalization cases. USCIS has worked to increase and centralize its denaturalization operations and referrals to take appropriate and timely action against individuals who naturalized unlawfully. Revocation of naturalization under section 340 of the Immigration and Nationality Act (INA) is pursued when there is clear, convincing, and unequivocal evidence that an individual's naturalization was illegally procured or obtained by concealment of a material fact or by willful misrepresentation. In January 2018, USCIS created the Historical Fingerprint Enrollment (HFE) Unit, renamed the Benefits Integrity Office (BIO) in November 2019, to review a population of naturalization cases identified by the DHS Office of Inspector General's report on Operation Janus. BIO's workload has since expanded to include potential denaturalization cases identified through other DHS initiatives.

USCIS has continuously worked to improve its process and learn from gaps identified in Operation Janus and other denaturalization caseloads. We continue to analyze these cases in an effort to implement front-end measures that mitigate fraud and the erroneous naturalization of ineligible applicants. USCIS expects to close gaps in biometric collection and strengthen screening and vetting processes, which should result in a decrease in the overall number of new cases referred for denaturalization. USCIS has taken the following actions to mitigate the risk of naturalizing ineligible applicants:

- Increased biometric collection at various points in the immigration lifecycle to ensure appropriate identity verification;
- Enrollment of legacy Immigration and Naturalization Services (INS) historical paper-based fingerprint records into the DHS Automated Biometric Identification System (IDENT), a data system that is accessible across all DHS components and works with other federal agencies;
- Electronic collection of USCIS fingerprints as well as digital upload into IDENT; and
- Increased biometric-based screening and background checks to detect multiple identities and additional potentially derogatory information earlier in the adjudicative process.

Separately, USCIS continues to make efforts to increase its access to law-enforcement databases. If successful, this will allow USCIS to obtain real-time updates of an applicant's criminal history and ensure that USCIS has a current and complete criminal history record before completing an adjudication. This could also mitigate the need to pursue denaturalization on individuals who did not disclose their criminal history during the naturalization process.

While USCIS invests resources into investigating and referring cases for possible denaturalization, such efforts improve the overall integrity of the immigration system by detecting and deterring fraud. Moreover, such efforts have helped to identify fraud patterns and information gaps and to develop measures to prevent the naturalization of ineligible aliens contrary to law. The CISOMB acknowledged that BIO's augmented denaturalization-review process also has the potential to reduce resources dedicated to future denaturalization proceedings. It also acknowledged that the limited number of referrals that have resulted from BIO's denaturalization process is insufficient to make conclusions about its efficacy. CISOMB will continue to monitor USCIS' denaturalization efforts and its impact on the denaturalization process and on stakeholders.

Before addressing CISOMB's recommendations, USCIS would like to address inaccuracies found within this section of the 2020 Annual Report.

CISOMB 2020 Annual Report, page 37, states in part:

"In February 2019, BIO established Operation Prison Outlook, which reviewed the naturalization applications of naturalized citizens meeting the following criteria: convicted of certain sex offenses, naturalized more than 10 years ago, and currently in prison. It reviewed these files because the individuals' criminal history may have rendered them ineligible to naturalize if the charge and conviction dates took place while their naturalization applications were pending. BIO identified 935 naturalized citizens who met these criteria, and thus far, have identified 27 as referrals to DOJ for denaturalization."

USCIS provides the following corrections:

- The name of the operation is Operation Prison Lookout (OPL), not Operation Prison Outlook.
- OPL is a Bureau of Prisons (BOP) and DOJ-led operation in which a list of naturalized individuals convicted of certain sexual offenses are sent to USCIS to review for possible denaturalization. The BOP and DOJ established this operation in conjunction with USCIS.

To date, BIO has received a list of 273 naturalized individuals for further analysis under OPL and has referred three cases to DOJ for civil denaturalization action. The remaining cases are in the preliminary stages of the investigative process. It is anticipated that USCIS will refer additional cases once investigations and internal processes are complete.

Also, USCIS would like to clarify that USCIS did not initiate the enrollment of legacy INS historical paper-based fingerprint records into IDENT. This was initiated and completed by DHS.

CISOMB recommendations regarding denaturalization, along with USCIS' response to them, are provided below:

1. Inform the public of BIO's standards and review process.

USCIS will consider ways to better inform the public about BIO's work, as appropriate. BIO has developed detailed processes for the intake, review, investigation, and referral of cases to the Department of Justice (DOJ) Office of Immigration Litigation. These processes are designed and implemented to identify and refer to DOJ potential denaturalization cases that have been thoroughly vetted and properly assessed for denaturalization action. BIO consists of Fraud Detection and National Security (FDNS), Field Operations Directorate (FOD), and Office of Chief Counsel (OCC) components in order to investigate the case, conduct a merits review, and develop the "Affidavit of Good Cause" that is required to be filed with DOJ when referring a case for denaturalization. The government must provide clear, convincing, and unequivocal evidence to sustain its burden of proof for civil denaturalization.

BIO's processes involve agency investigative practices, which are law-enforcement sensitive and therefore cannot be shared with the public. BIO is also mindful of its responsibilities towards protecting Personally Identifiable Information and evidentiary rules that may apply as these cases proceed to litigation. USCIS is and will continue to be consistently responsive to Congressional inquiries specific to BIO's work. Nevertheless, we appreciate CISOMB's recommendation to provide transparency regarding BIO's purpose and work. We will examine ways to effectively communicate BIO's purpose, work, and processes in a manner that is appropriate for public consumption.

2. Inform the public of the results BIO's denaturalization cases are having on fraud prevention, thereby mitigating the need to refer denaturalization cases to DOJ.

USCIS respectfully disagrees with this recommendation at this time. The primary objective of this effort is for the U.S. Government to revoke U.S. citizenship from individuals where there is clear, convincing, and unequivocal evidence that the person committed fraud in order to obtain U.S. citizenship through naturalization. While fraud prevention may eventually deter aliens from committing acts of fraud to secure U.S. citizenship, it is critical that the agency must revoke unlawfully obtained citizenship in order to uphold the integrity of the immigration system. As such, the U.S. Government must ultimately refer denaturalization cases to DOJ when we have clear, convincing, and unequivocal evidence the individual committed fraud to secure U.S. citizenship.

Secondarily to this, many USCIS efforts have an impact on overall fraud prevention activities. BIO's caseload cannot be considered individually when assessing USCIS' overall fraud prevention protocols. USCIS has implemented and continues to enhance security and vetting procedures to identify potentially derogatory information earlier in the adjudicative process

across all form types. Once BIO's efforts related to the 2017 OIG Report (OIG-17-111) are complete, USCIS may be in a better position to consider this recommendation.

VI. The Challenge of Decreasing USCIS' Affirmative Asylum Backlog

The USCIS Asylum Division oversees the affirmative asylum application process and conducts all fear screenings for aliens apprehended at or near the U.S. border who are subject to expedited removal proceedings. Since 2014, high volumes of fear screenings at the Southern border and affirmative asylum receipts have placed great strain on the resources of the USCIS Asylum Division and presented a number of challenges. USCIS has managed these challenges through staffing adjustments, policy updates, and proposed regulations. Despite many efforts, the affirmative asylum backlog remains above 350,000 as of the publication of the CISOMB Annual Report. According to CISOMB, USCIS could publish processing times for long-pending asylum applications and could triage pending applications to determine ineligible cases that may be removed from the queue.

Despite USCIS' adoption of a national interview scheduling priority, both legal representatives and individuals have expressed to CISOMB that highly variable and unpredictable processing times for pending applications between asylum offices have made it difficult to determine when USCIS might schedule an applicant for an interview and to plan accordingly. Stakeholders have suggested that USCIS resume using national and local engagement and outreach mechanisms to explain agency policies and programmatic changes that could affect processing times.

The CISOMB's casework and stakeholder engagements have highlighted the need to review USCIS' affirmative asylum backlog. From 2013 to 2019, CISOMB saw a 30% increase in case assistance requests for affirmative asylum applications.

Additionally, CISOMB received numerous stakeholder inquiries surrounding USCIS' plans to leverage its skilled workforce in lieu of conducting in-person interviews during the COVID-19 pandemic. CISOMB is accordingly reviewing USCIS' affirmative asylum backlog to assess how the agency can reduce the time it takes to address long-pending affirmative asylum applications while supporting the administration of U.S. immigration laws and treaty obligations.

The report highlights the many reasons the affirmative asylum backlog has grown to over 350,000 cases waiting disposition and the factors that played a significant role in the agency's backlog numbers:

- Migration surge and the fear screening process;
- Exponential growth in USCIS affirmative asylum receipts;
- USCIS Asylum Division staffing challenges;

- Additional DHS programs obligating USCIS Asylum Division resources; and
- COVID-19 and the suspension of in-person interviews.

Over the last few years, USCIS has taken several measures to address its backlog, which has reduced incoming receipts but not the number of pending cases. The report highlights the following measures taken to address the backlog and reduce processing delays:

- Last-in, First-out (LIFO) Processing. USCIS returned to the LIFO workflow process in January 2018. This allowed the agency to identify frivolous, fraudulent, or otherwise non-meritorious asylum claims earlier and place those aliens into removal proceedings. USCIS started scheduling asylum interviews using the following order of priority for those cases that fall under the jurisdiction of the nine primary asylum office locations:
 - First Priority – rescheduled interviews
 - Second Priority – applications pending 21 days or less
 - Third Priority – all other pending affirmative asylum applications are scheduled for interviews starting with new filings and working back toward older filings
 - Fourth Priority – all pending affirmative asylum applications that are over 100 days old.
- Expand Hiring Opportunities. USCIS has exercised every opportunity to hire new asylum officers. The Asylum Division has more than doubled its staffing allocations from 2012 to 2020. USCIS has allowed each asylum office to prioritize its workforce, leverage skillsets and strategize how best to attend to its workload.
- Asylum Vetting Center (commonly referred to as “ZGA”). ZGA will eventually perform as the receipting center for all affirmative I-589 filings, replacing Service Centers in that capacity. The full functioning of ZGA has not been achieved due to construction delays for its physical premises. ZGA will lift much of the administrative burden from asylum officers, giving them more time to focus on adjudicating the merits of each application. These advancements are on hold while USCIS awaits the standing up of this center.
- DHS Regulatory and Asylum Program Changes. DHS has proposed or implemented several regulations to address the flows of aliens seeking relief at the border, as well as to eliminate any incentive to file a non-meritorious, frivolous, or fraudulent affirmative asylum application to obtain an employment authorization document (EAD). The report notes that these proposed rules have the potential to significantly change the inflow of affirmative applications but may not impact the pending caseload with USCIS. The report highlights the following regulatory and/or program changes:
 - Modification of Asylum Eligibility and Procedural Requirements. In July 2019, DOJ and DHS implemented an interim final rule³ that requires aliens, with certain limited exceptions, to seek protection in a third-party country through which they transited en route to the United States in order to be eligible for asylum in the

³ This rule has since been vacated, but during the period of its implementation, it had a significant impact on the outcomes of credible fear determinations. See *Capital Area Immigrants’ Rights Coalition (CAIR) v. Trump* (1:19-cv-2117).

- United States. Until the rule was vacated, asylum officers applied the third-county transit bar when conducting fear screenings.
- Removal of the 30-Day Processing Provision for Asylum Applicant Work Authorizations. In September 2019, USCIS issued a proposed regulation to remove the agency’s 30-day processing requirement for asylum-based EADs. The elimination of the 30-day timeframe would provide flexibility for “DHS to meet its core missions of enforcing and administering our immigration laws and enhancing security.”
 - Adjustments to the Asylum Application, Interview Process, and Employment Authorization. In November 2019, USCIS proposed a regulation to extend the time asylum applicants must wait to apply for an EAD, along with other changes regarding EAD eligibility. USCIS proposed actions to deter illegal entry, dangerous criminal behavior, and the filing of frivolous, fraudulent, or otherwise non-meritorious asylum applications to obtain an employment authorization document:
 - Extend the waiting period from 150 days to 365 calendar days before an applicant could apply for employment authorization;
 - Eliminate the issuance of recommended approvals for a grant of affirmative asylum;
 - Revise the eligibility for employment authorization;
 - Revise the provisions for EAD termination;
 - Change provisions for filing an asylum application;
 - Limit EAD validity periods;
 - Incorporate biometrics collection requirements into the employment authorization process for asylum seekers; and
 - Clarify employment authorization eligibility for those who have been paroled after being found to have a credible or reasonable fear of persecution or torture.
 - Procedures for Asylum and Withholding of Removal, Credible Fear and Reasonable Fear Review. DHS and DOJ published a proposed rule to amend the regulations governing credible fear determinations. The rule proposed changes to the procedures for handling asylum, statutory withholding of removal, and withholding and deferral of removal under the Convention Against Torture regulations, proposes new bars to asylum eligibility, seeks to limit frivolous or otherwise non-meritorious asylum applications, and raises the legal standard used in fear screenings for statutory withholding of removal and withholding or deferral of removal under the CAT regulations.
 - USCIS Fee Rule. In November 2019, DHS published a new proposed fee rule that would establish, for the first time, a \$50 fee to file a Form I-589 with USCIS. DHS cited the continuous, sizeable increase in affirmative asylum filings, and the growing processing backlogs as the primary reason for instituting a fee. The fee would alleviate the pressure that the greatly increased asylum workload places on the administration of other immigration benefits and would mitigate the fee increase of other immigration benefit requests. The final rule, which included the asylum filing fee, was published in the Federal Register on Aug. 3, 2020, with a

60-day effective date. USCIS updated its policy manual with guidance on the final fee rule on September 2, 2020.⁴

- Implementing Bilateral and Multilateral Asylum Cooperative Agreements. In November 2019, DOJ and DHS issued an interim final rule to provide for the implementation of Asylum Cooperative Agreements (ACAs) between the United States and transit countries. ACAs provide the Department the authority to remove aliens to a third country in which they can apply for protection. The rule establishes a screening mechanism to evaluate whether an alien who would otherwise be removable can establish that it is “more likely than not” he or she would be persecuted on account of a protected ground or tortured in that third country of removal. The rule applies to all ACAs in force between the United States and countries other than Canada, including bilateral ACAs recently entered into with El Salvador, Guatemala and Honduras. There is ongoing litigation on the ACA that may interfere with the enforceability of some of the agreements in prohibiting asylum applications from being filed in the United States.
- U.S. Customs and Border Protection (CBP) Officers Conducting Credible Fear Screenings. Under delegated authority from USCIS, CBP officers were trained by the Asylum Division to conduct credible fear screenings. The CBP officers forward their screening assessments to a USCIS Supervisory Asylum Officer (SAO) to review and finalize the screening determination. At present, it is not clear what long-term impacts these temporary assignments might have on reducing USCIS resource demands for border support operations. This remains the subject of ongoing litigation.

Changes in DHS policies and proposed regulations may decrease the in-flow of affirmative asylum applications, but results stemming from these changes will be slow moving. USCIS should consider alternatives to effectively reduce the pending backlog, while carefully monitoring the impact of the recent program changes. Although USCIS has developed strategies to reduce and ultimately eliminate the backlog of pending affirmative asylum cases, gains on reducing the affirmative asylum backlog are yet to be seen.

Currently, USCIS does not post processing times for scheduling or issuing decisions on affirmative asylum applications. Those wanting to learn the processing time for affirmative asylum case are directed to a USCIS Affirmative Asylum Interview Scheduling webpage.

USCIS strategies to reduce and eliminate the backlog of pending affirmative asylum cases is of concern to aliens, legal service providers and Congress.

⁴On Sept. 29, 2020, the U.S. District Court for the Northern District of California, in *Immigration Legal Resource Center et al., v. Wolf, et al.*, 20-cv-05883-JWS, preliminarily enjoined DHS from implementing or enforcing any part of the final fee rule.

Some USCIS asylum offices maintain local email addresses and communication lines for the community to submit questions, requests for expedites and concerns with cases, while other USCIS asylum offices rarely hold engagements and are not regularly engaging the public. Consistent information regarding particularly substantive issues may result in more coherent and professional filings with fewer questions or issuance of a request for evidence (RFE). Operational information disseminated broadly may in turn generate fewer calls to the USCIS Contact Center, fostering greater understanding to inform. Entrusting public engagements entirely to the local asylum offices, however, may hamper the offices' ability to adjudicate affirmative asylum applications and result in inconsistent services to the public.

The challenge of the backlog is not only its size, but the number of meritorious claims that are in the backlog and remain unadjudicated. If reducing the backlog will assist USCIS in prioritizing potentially meritorious claims for interview, there is value in determining what kinds of cases should be removed from the backlog due to an actual or near-term change in status. Such activities would allow for immediate processing of some cases due to a change in status (such as a family-based adjustment), and presumably be less resource intensive (requiring system-wide queries of USCIS databases) than planning to interview all backlog cases. By removing cases through system-wide queries and expedited processing, full case processing following an interview could be reserved for meritorious claims.

Regulations require an interview for an affirmative asylum application. For FY 2019, USCIS conducted an average of 5,133 interviews a month. While the COVID-19 pandemic persists, USCIS' capacity to interview affirmative asylum applicants is limited due to office capacity restrictions and procedural changes necessary to comply with health, safety, and social distancing protocols. In order to safely resume affirmative asylum interviews after offices re-opened to the public, USCIS implemented video interviewing at asylum offices, with individuals participating in the interview from separate rooms within the building. This innovation has allowed USCIS to continue conducting affirmative asylum interviews throughout the pandemic, but the backlog of cases is growing due to the reduced interview capacity.

Despite the many program and policy changes USCIS has made to address the affirmative asylum backlog, existing data collection and reporting do not appear to measure the impact of such changes. USCIS should review its authorities, workforce capabilities, and workload to identify how to maintain continuity if directed to suspend in-person interviews in the future.

USCIS would like to provide additional clarification to the following sections:

- “Procedures for Asylum and Withholding of Removal, Credible Fear and Reasonable Fear Review”. USCIS would like to clarify that the rule proposed raises the legal standard used in fear screenings for statutory withholding of removal and withholding or deferral of removal under the CAT regulations.

- “Implementing Bilateral and Multilateral Asylum Cooperative Agreements”. USCIS would like to clarify that we only screen aliens who would be amenable to ACAs to ensure we fulfil our non-refoulment obligations that the aliens' life and freedom will not be threatened in the third country.
- “U.S. Customs and Border Protection (CBP) Officers Conducting Credible Fear Screenings”. USCIS would like to clarify that this was actually a Credible Fear Task Force which included both CBP officers and agents.

CISOMB recommendations regarding the asylum backlog, along with the USCIS responses are below:

1. Provide estimates of affirmative asylum application processing times.

USCIS agrees with the CISOMB’s recommendation that processing timeframes for all benefit programs – including those administered by asylum offices – should be made public. Asylum office workloads are subject to the ongoing USCIS initiative to improve processing time accuracy in public reporting and to improve the timeliness of releasing reports to the public. Posting current processing times continues to be an immediate priority of USCIS. USCIS plans to add and update forms on the public-facing website, including those adjudicated by the asylum offices. New reports will be made public in the reporting tool available on the USCIS website during FY2021.

For reporting processing times, USCIS has developed statistically based methods for calculating timeframes modified as necessary for the individual adjudication process. The statistical methods account for any delays or additional required processing steps such as RFEs, Notice of Intent to Deny, background and security checks, and other activities that impact processing times. The ultimate goal is to provide applicants with a range of processing times for their pending applications or petitions based on a consistent statistical method that accounts for events that may cause case processing to be longer than average.

2. Make public USCIS strategies to reduce the affirmative asylum backlog.

The Asylum Division’s strategy to reduce and ultimately eliminate the backlog of pending affirmative asylum cases is part of the USCIS Backlog Reduction Plan. The plan combines strategic staffing increases with a broad range of efficiency measures. The most recent Backlog Reduction Plan was completed in July 2019, which includes a comprehensive description of these efforts, including those specific to the asylum backlog, is publicly available on the USCIS website here: <https://www.uscis.gov/tools/hearing-on-policy-changes-and-processing-delays-at-uscis-before-the-house-committee-on-the-judiciary>. As of October 1, 2020, the USCIS Backlog Reduction Plan is being updated to account for the impact of the pandemic response and of the budget shortfalls at USCIS.

A key component to eliminating the affirmative asylum backlog has been a surge of staffing at USCIS asylum offices. In FY2019, the Asylum Division was authorized 1,710 total positions, including 769 total asylum officers. To fill as many of these authorized positions as possible, USCIS surged recruitment resources to the asylum offices, enabling the hiring of 865 new Asylum Division employees through more than 1,500 recruitment selections between June 2019 and March 2020. This level of hiring was only made possible through the concentration of USCIS hiring resources in support of the effort. USCIS offices responsible for hiring actions, the federal employee security clearance process, and DHS training each prioritized Asylum Division hiring to quickly accomplish the necessary recruitment and onboarding. This effort lowered the Asylum Division vacancy rate from approximately 25% in November 2019 to a 0% vacancy rate in March 2020.

At the time of the recruitment actions, Asylum Division credible fear workloads were at, or very near, monthly and annual highs, and affirmative asylum receipts remained at an elevated level. In the prior five years, the asylum offices have been at risk of missing critical targets established for Southwest border screenings, and the pending affirmative asylum caseload continued to rise. With the increased staffing in FY20, asylum offices have been positioned to begin a steady reduction of the affirmative asylum backlog. Starting in January 2018, asylum offices have been able to process nearly all new affirmative asylum receipts, and after the FY20 hiring surge, affirmative asylum production increased by 25%.

Even with the improved position of asylum offices following the hiring surge, there are several significant challenges that may cause the backlog to increase further in FY20 Q4 and in FY21. The closure of USCIS offices to in-person services from March to June 2020 due to COVID-19 lowered affirmative asylum completions by as much as 50% to 5,071 completions in April and 3,013 completions in May. Potential additional office closures during a new surge in pandemic cases or in response to a local outbreak may cause further slowdowns in affirmative asylum case completions. Operations under social distancing practices have lowered the capacity to maximize affirmative asylum processing. The limited use of available space has reduced program efficiencies, and the Asylum Division is examining steps that may be taken to increase production as much as possible.

3. Increase National Outreach Efforts.

The Asylum Division will continue its efforts to provide outreach, opportunities for engagement, and information sharing with its stakeholders, as appropriate. These efforts include enhancing the publicly available reporting on semi-monthly “credible fear” and “reasonable fear” receipts and decisions through a newly developed section of the public website, located at: <https://www.uscis.gov/semi-monthly-credible-fear-and-reasonable-fear-receipts-and-decisions>; engaging stakeholders as e-processing is developed for the Form I-589; and working with

myUSCIS to coordinate systems interaction and optimize the experience for applicants and representatives. Further, after working closely with partners at U.S. Digital Service and engaging with stakeholders on how applicants and representatives interact with USCIS-issued receipt and interview notices, the Asylum Division is on track to revise Form I-589 receipt notices and interview appointment notices to make them more user-friendly and provide as much useful information as possible for applicants, dependents, and representatives in advance of an interview.

4. Conduct triage on backlogged cases to determine whether they should remain in the backlog.

The Asylum Division continues to engage in a comprehensive, proactive strategy to identify and triage cases in the backlog that fall into certain categories making it more likely they could be closed or actionable. These efforts are concentrated at the Asylum Vetting Center in Atlanta, GA. The strategy includes identifying cases that fall into one of the triage categories, locating the asylum office with jurisdiction, providing the case information to the identified offices for action, and reporting the progress of those case completions. In addition, the asylum offices proactively review reports of the triage categories to remove cases from the backlog and complete them. Examples of categories of cases in the backlog being triaged include applicants that have been granted Lawful Permanent Resident (LPR) status, applicants with approved immigrant visa petitions, and applications over which USCIS lacks jurisdiction.

5. When available, provide public information on impacts of COVID-19 limitations to set expectations and assist stakeholders.

The Asylum Division has provided detailed, and current information to the public on the impacts of COVID-19 limitations on interviews and scheduling. This information can be found under the “Asylum Appointments” section of the USCIS Response to COVID-19 website here: <https://www.uscis.gov/about-us/uscis-response-to-covid-19>. Additionally, the Asylum Division made updates to its interview appointment notices to include information on what applicants should know before their interview, evidence submission, what to expect at the office, instructions for rescheduling, and other relevant information to provide applicants as much information related to the impacts of COVID-19 as possible in order to set expectations and assist stakeholders prior to their scheduled interview.

6. Improve USCIS data to support the integrity of the affirmative asylum program and decisions being made about program and policy concerns.

The CIS Ombudsman’s Office has recommended a refined quantitative analysis of the production impact of changes to adjudication programs. USCIS shares the Ombudsman’s Office interest in expanding the quantitative analysis to monitor the production impact of policy

changes. Such analysis informs planned program changes by predicting future workload impacts, estimating associated costs, and, following implementation, by providing an assessment the actual effect of any change. While analysis of this kind is being performed by the Asylum Division currently for nearly every major programmatic change, the review is now conducted as a one-time analysis completed during the planning process and assessed as needed following programmatic changes to inform workforce planning and workload projections. There is currently no systematic way to monitor production impacts of particular programmatic changes.

Since 2011, many streamlining practices have been introduced in response to the increase in asylum office workloads. Between 2011 and 2018, due in significant part to these streamlining efforts, total credible fear completions have increased nine-fold - from 11,529 total completions in 2011 to 97,928 in 2018, and affirmative asylum completions have more than doubled - from 34,667 in 2011 to 80,566 total completions in 2018. During the same period, the onboard asylum officer staff has grown by approximately 125% from 239 Asylum Officers in 2011 to 542 in 2018. This growth in production equates to a two-to-one increase of case completions to staffing growth. The programmatic changes made to achieve this production increase were selected based on the likely efficiencies that would be achieved. USCIS continues to seek methods to streamline asylum offices' processes and work more efficiently in order to maximize resources and increase affirmative asylum adjudications. At the same time, USCIS reviews expected programmatic change for potential impacts to production, cost, and staffing requirements.

A more standardized method for evaluating the production impact of programmatic changes would most appropriately be integrated in the case processing and reporting tools used by the Asylum Division. The Refugee, Asylum and International Operations Directorate's modernized case management system, Global, has been used for programs administered by the asylum offices since 2018. While USCIS is considering what new Global functionality may be used to track impacts of policy changes, Global is currently undergoing several significant improvement initiatives to increase functionality following its deployment. With initial deployment in February 2018, Global was developed and designed over a short period as part of the retirement of all USCIS systems at the DOJ Data Center.

With the deployment of Global, manual data entry was reduced by 70% over the prior systems. Automation of security and background checks was improved, with response times reduced by as much as 95%. Global also introduced significant cost savings. The retirement of the legacy systems eliminated \$10 million annual mainframe costs. The improved security check automation supported by Global has reduced costs by an estimated \$2.3 million annually.

Currently, system-development efforts are focused on a number of critical modifications that have taken priority over the development of more detailed, systematic, tracking of programmatic changes. Current projects include improving capability to support officer scheduling for

protection screening assignments and modifying the system to support the completion of cases subject to an ACA. New Global system development is underway to include all adjudicative programs administered by the USCIS International and Refugee Affairs Division. Other system improvements include additional fraud and risk assessment functionality, required contract monitoring, improved functionality for the service of decisions to applicants, paperless adjudications, and several other improvements. System modifications to implement this recommendation would need to be prioritized among these other critical system improvement goals.

7. Prepare for how to manage resources if faced with another suspension of in-person interviews, such as the one experienced during the COVID-19 national emergency.

During the COVID-19 national emergency, the Asylum Division has responded swiftly and innovatively to adapt and leverage existing systems and resources, in addition to creating new ways to accomplish mission critical work, in order to safely and efficiently conduct business. This included creating new database and system features to share working/pre-decisional documents associated with an affirmative asylum case between staff working remotely. After careful and efficient coordination between Asylum Headquarters, Office of Information Technology partners, and field offices, video interviewing was successfully deployed and is currently in use at offices across the country. Video interviewing has allowed our offices to conduct asylum interviews while maintaining social distancing for the safety of both the public and our asylum officers. Further, the Asylum Division quickly implemented expanded telework opportunities and supported its staff in completing administrative and adjudicative functions while teleworking. Since the beginning of March 2020, the Asylum Division has successfully completed over 20,000 Affirmative cases, despite the many challenges imposed by COVID-19, including the suspension of in-person interviews for several months. The majority of these cases were post-interview completions within the existing backlog of applications. Offices developed creative methods for managing A-files and processing administrative tasks with the majority of the workforce teleworking. The Global team has and continues to enhance Asylum's case management system with increased functionality and features that have widened the scope of work possible to complete remotely. These measures will now be in place in the event of another national emergency and will serve to enhance adjudications even in non-emergency times.

In addition to the above, the Asylum Division, together with OCC and Office of Policy and Strategy, has drafted a temporary final rule, which was published on September 23, 2020, to use the existing contract telephonic interpreter services as the primary interpreter for all affirmative asylum interviews, similar to the long standing practice in credible and reasonable fear interviews, in order to remove the need for an in-person interpreter to appear at the office and minimize person-to-person contact. The rule will apply for 365 days after publication in its current iteration, so it will be effective should another emergency occur within the year that would limit in-person interviews. Moreover, the operational architecture supporting the rule will

be in place in the event that such an emergency occurs at a later date and similar action needs to be implemented again.

Following the successful resumption of in-person services on June 4, USCIS is exploring new ways that asylum offices and other USCIS facilities open to the public can maximize case processing capacity while maintaining safe business practices. The primary changes currently being considered would reduce the number of people who need to appear at the office. The temporary final rule on interpretation is one example of these changes. New strategies to this end will be implemented if it can be demonstrated that the change may increase productivity and will neither compromise a safe environment for both employees and the public nor the integrity of the asylum system.

VII. Foreign Students and Risks of Optional Practical Training

The CISOMB 2020 Annual Report presents a detailed look at the Optional Practical Training (OPT) program. The report primarily focused on F-1 students seeking post-secondary education at the bachelor's, master's, or doctoral level, and after completion of that education seeking a course of practical, on-the-job training. The CISOMB examined how foreign students obtain practical training and, using open-source data, applies an analytical framework to the programs to determine potential risks to the security and prosperity of the United States.

Among many things, the report discusses what OPT is and isn't, the program's growth, the program's vulnerabilities, how students get cleared to work, and the risks and threats that the program presents and the potential resulting consequences. The report also reflects the CISOMB's concerns with OPT. Those concerns include the belief that OPT is vulnerable to exploitation by foreign governments with interests adverse to those of the United States. The CISOMB also adds that OPT is at high risk of being used as a means for strategic adversaries to conduct espionage and technology transfer from the United States.

The report did not offer recommendations for USCIS; however, it did offer mitigation strategies that could be accomplished through operational or administrative actions. Those included assisting designated school officials and securing the issuance of employment authorization documents.

USCIS agrees that there are areas of concern in the OPT program as outlined in the CISOMB report and concurs that steps should be taken to better ensure that OPT and science, technology, engineering, and mathematics (STEM) OPT participants are employed pursuant to the pertinent regulations. USCIS, in consultation with partners at ICE Student and Exchange Visitor Program, is also studying potential improvements to increase information sharing that will provide

enhanced visibility into the activities of this population and to improve vetting of OPT employers. We look forward to making progress on these important issues.

VIII. InfoMod (Year two): Accomplishments, Lessons Learned, and Current Challenges.

The CISOMB's Annual Report gives a brief introduction and background into the creation of InfoMod. Because of the limited data on InfoMod's impact of field offices, the report focuses on the USCIS Contact Center. The CISOMB states the initiation of InfoMod was "somewhat bumpy," which the report attributes, in part, to contract issues and reduced staff. However, the report also acknowledges both program times and response times have improved since InfoMod expanded nationwide. Data from 2019 seems to indicate the program has met its stated goal to free up adjudication resources.

As stated in the report, USCIS' FY 2020 objectives for InfoMod were as follows:

- Dedicate a team of employees to focus solely on information services;
- Provide efficiencies for the public by reducing wait times for information and reducing the need for travel to a field office;
- Reduce the amount of USCIS employee and contractor time and resources spent on information inquiries that can be answered online or should be directed to other agencies;
- Provide advance notice of requests for adjudication services such as advance parole and proof of status documentation, enabling field offices and Immigration Services Officers to organize their workdays more efficiently; and
- Reduce the number of officers needed to address in-person information requests and reallocate those resources to interviewing and adjudicating applications.

Despite the unprecedented impact of COVID-19, USCIS has been able to work toward meeting their FY 2020 objectives. However, according to the CISOMB's annual report, stakeholders continue to report dissatisfaction with the program because of long wait times to speak to a representative and the lack of knowledge from the initial representatives.

The CISOMB offered both near-term and long-term recommendations. Each, along with USCIS' response to them, is covered below:

In the Near Term:

- 1. Address the expected surge in demand for information and assistance by thousands of applicants and petitioners affected by the closure of USCIS field and asylum offices, Application Support Centers, and reduced operations caused by the COVID-19 outbreak.**

The Contact Center has remained fully operational through the COVID-19 pandemic. We continue to support emergency appointments and are partnered with the operational units of FOD, Service Center Operations (SCOPS), and RAIO to help triage inquiries.

- 2. Augment the Contact Center’s current “call back” routine by using email and/or phone texting to negotiate a narrow time window when the caller will be ready to take the return call.**

The Contact Center has implemented an auto-response email acknowledging receipt of requests and providing estimated response times. The text-ahead feature is something we are reviewing, but that will require a financial investment not currently available. We do intend to add that feature when we have the funds to support it.

- 3. Explore ways to reduce caller-initiated disconnects, which may serve as an indicator of caller frustration with navigating the IVR system.**

Our new interactive voice response (IVR) system, Maximus Intelligent Assistant (MIA), is now operational and should enhance user experience navigating the IVR. We will continue to refine MIA’s capabilities, and the artificial intelligence will learn as it absorbs volume. Increased staffing at Tier 1 has coincided with lower wait times, and the abandonment rate (callers disconnecting) decreased in FY 2019 and has continued to decrease in FY 2020.

- 4. Assign a unique identifier that would allow callers to bypass the IVR to reach a Tier 2 representative under certain conditions (e.g., when an USCIS “call back” cycle did not result in a connection).**

In situations where the Contact Center attempted to call back an individual and we did not connect after two attempts, we are exploring ways to prioritize these callers, so that they do not have to start the process from the beginning.

In the Longer Term:

- 1. Adapt its Contact Center’s Tier 1 staffing to meet the anticipated demand.**

We are reviewing our call-intake process to better triage calls between live-service and self-help options. With the addition of MIA and with the Tier 1 contact-center staffing at around 700, we believe we are very close to meeting demand.

- 2. Through modification of its vendor contract requirements, impose more rigorous competency training and testing of individuals hired to fill Tier 1 representative positions.**

We monitor calls and have a quality assurance and training program in which we have a strong degree of confidence. Our Tier 1 and federal contact center staff work closely on training, and we have created avenues for Tier 1 to seek assistance with certain inquiry types.

3. Beyond its current offering of communications in English and Spanish, record Contact Center instructions and messaging in multiple foreign languages.

We will review the possibility of adding other languages to our instructional material and IVR messaging.

4. Consider providing limited live foreign language capacity beyond Spanish to individuals who call the Contact Center for information or services.

Given the complexity of call transfers and our call-back process, adding languages where we must seek language expertise outside of our contact center presents challenges. We are reviewing technology to add scheduled call backs where we may be able to utilize outside language experts, but that is a technology upgrade that will require a financial investment that is currently unavailable.

5. USCIS could commission an independent research company to create and manage a new Contact Center user-satisfaction survey.

We are in the process of finalizing our omni-channel survey, which will provide immediate, real-time responses to callers.

IX. 2019 Recommendation Update

The CISOMB's 2019 Annual Report made various recommendations for which the 2020 annual report provides updates. USCIS will take this opportunity to provide an update to those recommendations.

2019 CISOMB recommendation and USCIS Response:

1. CISOMB recommended that USCIS define “highly specialized knowledge” and incorporate wages as a factor.

Under the Unified Agenda, there is a proposed 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.”

2020 CISOMB Update and USCIS Response:

As we finalize this Report, USCIS has not yet published a proposed rule in the Federal Register. In order to ensure that the position requires a theoretical or practical application of a body of highly specialized knowledge, USCIS should consider defining the term “highly specialized knowledge” in its rulemaking.

On October 8, 2020, DHS published an interim final rule (IFR), “Strengthening the H-1B Nonimmigrant Visa Classification Program,” 85 FR 63918, amending certain DHS regulations governing the H-1B nonimmigrant visa program. Specifically, this IFR revised the regulatory definition and standards for a “specialty occupation” in a way that better aligns with the statutory definition and more clearly relates “specialty occupation” back to the body of highly specialized knowledge requirement referenced in the statute.

2019 CISOMB recommendation and USCIS Response:

2. CISOMB recommended that USCIS prioritize wages and skill level in the 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 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.

2020 CISOMB Update and USCIS Response:

On October 30, 2020, USCIS published a notice of proposed rulemaking, *Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions*, to revise the registration selection method. The proposed rule would amend DHS regulations governing the process by which USCIS selects H-1B registrations for filing of H-1B cap-subject petitions (or H-1B petitions for any year in which the registration requirement will be suspended), by generally first selecting registrations based on the highest Occupational Employment Statistics (OES) prevailing wage level that the proffered wage equals or exceeds for the relevant Standard Occupational Classification (SOC) code and area(s) of intended employment. In the limited instance where there is no current OES prevailing wage information for the proffered position, the registrant would follow U.S. Department of Labor guidance on prevailing wage determinations to determine which OES wage level to select on the registration, and USCIS would rank the registration by that prevailing

wage level. The proposed ranking method addresses CISOMB’s recommendation that USCIS prioritize wage and skill level.

Through a final rule amending regulations governing H-1B cap-subject petitions, DHS reversed the order in which USCIS selects H-1B petitions under the H-1B regular cap and the advanced degree exemption. Changing the order in which USCIS counts these allocations increased the number of petitions selected for beneficiaries with a master’s or higher degree from a U.S. institution of higher education by 11.8% for FY2020. In addition, USCIS continues to explore the possibility of making improvements to the selection process to the extent possible within the statutory framework.

2019 CISOMB recommendation and USCIS Response:

3. CISOMB recommended that USCIS revise degree equivalency criteria.

USCIS has not published any recent rules or updates to its Policy Manual on this topic and does not anticipate doing so in the near future.

2020 CISOMB Update and USCIS Response:

The CISOMB continues to support its recommendation that USCIS reevaluate its experience-to-degree equivalency formula to determine if it captures the realities of highly skilled experience. Given COVID-19’s adverse effects on the economy, it is more important than ever to protect the jobs of U.S. workers. The highly skilled business environment has evolved over the last decade with the introduction of new industries, advancement in technologies and shifts in global demands. In coordination with the Department of Labor, USCIS should reevaluate its current experience-to-degree equivalency formula to determine whether it needs improvement in light of the current business environment.

USCIS has not published any recent rules or updates to its Policy Manual on this topic and does not anticipate doing so in the near future. USCIS will continue to look for ways to improve the program to the extent permitted by the existing statute.

X. Conclusion

As noted in previous years, USCIS appreciates the Office of the Citizenship and Immigration Services Ombudsman’s efforts in preparing its Annual Report. USCIS is grateful for the

opportunity to review the areas where the agency is meeting or exceeding its intended goals and the areas where we can improve our operations. Even during these trying times, USCIS remains determined to lawfully and efficiently adjudicate the benefit applications received as well as continue to provide exceptional service to all our applicants, their representatives, and the internal and external stakeholders.

As this response notes, USCIS agrees with many of the concerns and recommendations found in the Annual Report and is in the process of implementing many of them.

Additionally, USCIS is proud of the recent agency accomplishments which include the following:

- In FY 2020, USCIS implemented an electronic registration process for the FY 2021 H-1B cap season. Employers seeking to file H-1B cap-subject petitions are now required to electronically register and pay the associated \$10 H-1B registration fee. The electronic registration process dramatically streamlined the H-1B cap selection process by reducing paperwork and data exchange. It also provided an overall cost savings to prospective petitioners and USCIS. Previously, employers filed complete, and often voluminous, petitions, after which USCIS would select petitions toward the numerical allocations, resulting in unnecessary paperwork and incurred mailing and processing costs for petitioners with petitions that were ultimately not selected.
- Introduction of USCIS SCOPS Validation Instrument for Business Enterprises (VIBE+). The VIBE+ system is an essential interagency data-sharing tool between DHS components, Department of State, and DOL that enhances the integrity of our legal immigration system. VIBE+ is a complex analytic system that analyzes the immigration petitioners'/employers' data using designed algorithms; acquires immigration data from USCIS systems, Permanent and Temporary Labor Certifications from DOL, petitioners'/employers' business information from an independent information provider, and street and satellite visualization of petitioners'/employers' address locations; and contains information on lookouts and alerts on suspected perpetrators of fraud. The VIBE+ system serves as an essential USCIS application with multi-faceted performance assisting ISOs with propriety technology to validate petitioners/employers and alerting them to suspected fraud.
- In response to COVID-19, FOD instituted electronic submission and filing of Satisfactory Departure requests for travelers using the Visa Waiver Program (VWP) which allows nationals of certain countries to travel to the U.S. for 90 days or less without obtaining a visa. Non-immigrants admitted under this program are not eligible to extend or change status. They can, however, request "satisfactory departure, i.e., an additional 30 days to depart, when an emergent circumstance prevents them from being able to depart the U.S. by the original expiration date of the VWP entry. In response to the COVID19 pandemic, USCIS authorized multiple grants of satisfactory departure and exercised flexibility with the requirement that the initial request be made prior to the

expiration of the admission under the VWP. In addition, USCIS modified the process to allow for electronic submission of requests and evidence and for notification to the requestor. Due to COVID-19 social distancing requirements and the national USCIS office closures, FOD worked with CBP to process these individuals remotely. FOD processed a record number of Satisfactory Departures (4,400) and continues to work to timely address outstanding requests as those requests remain high.

- Introduction of video interviews. As of August 7, FOD completed the initial configuration of all field offices to enable them to conduct video interviews. An initial set of existing equipment has been reconfigured in these offices to work with video interviewing so that staff can be trained and begin conducting video interviews with applicants. As of August 5, 31 offices conducted approximately 3,500 live video interviews in which both the applicant and the interviewing officer were located in the same field office but in physically separate rooms. FOD will continue refining processes and technology based on feedback and lessons learned as this initiative moves forward. FOD is also exploring the potential for expanding this capability to include office-to-office use (the applicant is in one field office and the interviewing officer conducts the interview from another field office) and home-to-office use (the applicant is in a field office and the interviewing officer conducts the interview via telework from his/her residence).
- Naturalization Ceremony Accomplishments. As a result of office closures due to COVID-19, USCIS had 110,000 cases in which naturalization ceremonies had to be cancelled. USCIS continued to provide emergency oath ceremonies on a case-by-case basis even during the office closures, and prioritized naturalization ceremonies upon office reopening. By the end of July 2020, USCIS had administered the oath of allegiance to every naturalization applicant whose oath ceremony had been delayed due to COVID-19.
- Voice Enabled IVR. In May 2020, the USCIS Contact Center launched a new voice-activated IVR system, MIA, which is available in English and Spanish and allows callers to speak their questions instead of using touchtone. This new technology allows stakeholders to obtain a faster response to initial questions and gives them the option for follow-up text messages and emails containing web links and other requested information.
- COVID-19 Emergency Appointment Requests. The USCIS Contact Center supported the screening and processing of emergency inquiries during the agency's COVID-19 response. From March through July 2020, the Contact Center reviewed over 108,000 inquiries and coordinated the processing of Satisfactory Departure extensions or scheduling of in-person emergency ADIT appointments at field offices for over 33,000 people. Throughout the COVID-19 response, the Contact Center maintained timeliness with average response of no more than four business days and field offices accommodated emergency requests for in-person appointments in a timely manner.
- Website and Online Initiatives - In July 2020, USCIS launched an updated uscis.gov website designed with input from applicants, petitioners, and

stakeholders. In addition to leading efforts to unify the look and feel of all USCIS websites, the updated site facilitates navigation of existing tools and resources, including filing online and accessing multilingual resources. In March 2020, USCIS launched the first online H-1B registration tool to dramatically streamline the H-1B cap selection process by reducing paperwork and data exchange. Survey data reflected an average user satisfaction score of 4.8 out of 5.0.

- COVID-19 Relief Measures. - To reduce the impact from COVID-19, USCIS announced temporary final rules to change certain H-2A⁵ and H-2B requirements⁶. These temporary flexibilities help support the U.S. food supply chain and maintain essential infrastructure, but do not weaken or eliminate protections for U.S. workers. USCIS also provided temporary flexibilities for certain H-1B physicians such that they could more readily address the COVID-19 public health emergency.
- Fee Rule. USCIS [published a fee rule](#) to adjust fees for certain immigration and naturalization benefit requests to ensure that USCIS recovers its costs of services. Unlike most government agencies, USCIS is fee-funded. Fees collected and deposited into the Immigration Examinations Fee Account fund nearly 97% of USCIS' budget. The rule accounts for increased costs to adjudicate immigration benefit requests, detect and deter immigration fraud, and thoroughly vet applicants, petitioners, and beneficiaries.
- Asylum Work Authorization-Related Regulations. USCIS announced a regulatory change to deter aliens from illegally entering the U.S. and from filing frivolous, fraudulent, or otherwise non-meritorious claims for asylum to obtain an employment authorization document. In addition, USCIS removed a regulatory provision stating that USCIS has 30 days from the date an asylum applicant files an application for employment authorization to grant or deny that initial application.
- Affirmative Asylum Processing During the COVID-19 National Emergency. On March 18, 2020, USCIS closed all offices to the public. On June 4, 2020, offices reopened under strict social distancing protocols. Since the office closures, asylum offices have completed 16,455 affirmative asylum cases. That workload is approximately 65% of expected levels during normal operations. During the office closures, from March 18 to June 4, the asylum offices completed 10,268 affirmative asylum cases. That production level was 70% of expected levels.
- USCIS and DOL amended their standing Memorandum of Agreement (MOA). This MOA establishes the overarching arrangement by which the parties will provide access to and share information about employment-based petition records

⁵ See Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due to the COVID-19 National Emergency,” 85 Fed. Reg. 21739 (Apr. 20, 2020), and [Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due To the COVID-19 National Emergency: Partial Extension of Certain Flexibilities](#) (August 19, 2020).

⁶ See Temporary Changes to Requirements Affecting H-2B Nonimmigrants Due to the COVID-19 National Emergency,” 85 Fed. Reg. 28843 (May 14, 2020).

and data contained within labor certification and labor condition application databases. Appendices A – H of this Agreement describe the specific categories of data to be shared. This MOA also sets forth the basic mechanisms for the exchange of data as well as the responsibilities of the parties regarding the use, retention, maintenance, dissemination, destruction, and safeguarding of this data. This MOA also provides for the referral of suspected violations of the terms of labor condition applications (LCAs) by USCIS to WHD, consistent with section 212(n)(2)(G)(v) of the Immigration and Nationality Act (INA).

Below are some of the benefits to the amendments made to the MOU:

- Information sharing between the parties is intended to support the administration of U.S. immigration law, consistent with the parties' regulations and policies, and to combat fraud and abuse in the immigration system; and
- In addition, the MOA supports U.S. labor and immigration law enforcement, fair employment and policy objectives, and other relevant national interests.

Appendix A: Acronyms and Abbreviations

ACA	Asylum Cooperative Agreements
AILA	American Immigration Lawyers Association
AVC	Asylum Vetting Center
BIO	Benefits Integrity Office
CDC	Centers for Disease Control and Prevention
CISOMB	Office of the Citizenship and Immigration Services Ombudsman
CLE	Continuing Legal Education
DHS	Department of Homeland Security
DOL	Department of Labor
EAD	Employment Authorization Document
ELIS	Electronic Immigration System
FCI	Formalized Check-In
FDNS	Fraud Detection and National Security Directorate
FOD	Field Operations Directorate
FY	Fiscal Year
HFE	Historical Fingerprint Enrollment
IDENT	Automated Biometric Identification System
INA	Immigration and Nationality Act
ISO	Immigration Services Officer
IVR	Interactive Voice Response
LIFO	Last In, First Out
MIA	Maximus Intelligent Assistant
MOA	Memorandum of Agreement
NASS	National Application Scheduling System
NBC	National Benefits Center
NASS	National Appointment Scheduling System
OPT	Optional Practical Training
RAIO	Refugee, Asylum and International Operations Directorate
RFE	Request for Evidence
SAO	Supervisory Asylum Officer
SCOPS	Service Center Operations Directorate
USCIS	U.S. Citizenship and Immigration Services
VIBE+	USCIS SCOPS Validation Instrument for Business Enterprises