Steven M. Mertens

07/13/98 03:32:39 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Theodore Wartell/OMB/EOP, Patricia E. Romani/OMB/EOP, Ingrid M. Schroeder/OMB/EOP
Subject: INS Exams Fee Account -- Increased Fee Regulatory Proposal

On July 8, the Department of Justice officially submitted INS' final rule to increase fees for immigration benefits. INS is seeking OMB's review and approval of the regulation in time for an August 1st publication in the Federal Register and an October 1, 1998, effective date. The interim rule was published on January 12 with comments accepted until March 13. INS received over 2,000 comments. In general, the comments were critical of the size of the fee increase and cited flaws in the benefit and adjudication process and quality of service as reasons why a fee increase was not justified. INS said they received a few comments that questioned the pricing methodology (33 comments) and made suggestions on ways to defray the fee increase (seek appropriations - 50 comments) or phase the increase in over time (over 3-years - 18 comments). INS made no changes to the final rule based on comments received on the interim rule.

I recommend that OMB clear the final immigration fee regulation by Friday, July 17 and forward an approved rule to the AG to publish in the Federal Register by August 1. DOJ publication should be coordinated with an INS presentation to the press and immigration groups that highlights improvements in the naturalization process and outlines INS' strategy to reduce the naturalization backlog.

Summary of Comments on the Rule:

INS received 2,033 comments (numbers don't add because some comments are included in two categories):

- 1,298 (64%) comments were received opposing the fee increase for naturalization benefit adjudication noting that the fee increase (from $94 to $225) could create a financial hardship for immigration families. INS responded that it has committed significant resources to improving the naturalization process and is developing an agency-wide fee waiver policy to address means-tested concerns.
- 719 (35%) comments were received by those involved in child adoption. The commenters complained that the fee increase (from $155 to $405) discriminated against American citizens who wish to adopted abandoned children living in orphanages. INS responded that child adoption is a very labor intensive adjudication function that generates considerable direct case interaction and correspondence. Since INS does not receive any appropriated funding, the increase is necessary to recover the full costs associated with processing international adoption applications.
- 121 (6%) comments noted the Commissioner's commitment of no fee increase until progress is made in the naturalization process. In the reg narrative, INS points to progress in four milestone areas: (1) case backlog begins to subside and applicant waiting times are reduced; (2) the Application Support Centers (fingerprint centers) are opened; (3) direct mail for naturalization applications is implemented; and (4) an automated naturalization tracking system (CLAIMS4) is being installed. The narrative concludes that "Given the substantial progress

achieved on these four milestones, and the announcement of a long-term blueprint transforming the citizenship program, the Attorney General believes the Commissioner has fulfilled her pledge."

- 51 (3%) comments opposed the use of fees to pay for unrelated expenses such as asylum, refugee and parole programs and humanitarian affairs. INS responded that Congress has authorized the use of fee receipts to fund these programs and provided no additional appropriation to support the programs.
- 33 (2%) comments objected to the fee methodology used to calculate the fee. They believe the modeling should reflect "as should be" rather than "as is" so that the model would be build upon the most efficient process. INS responded that the study and pricing methodology followed Federal accounting standards and the CFO Act requirements. INS also noted that the CFO Act requires a biennial review of user fees and it can readjust the fee as processes change and become more efficient.

If you have any questions on the above, please let me know. Thanks.

Message Sent To:

Michael Deich/OMB/EOP
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David J. Haun/OMB/EOP

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Office of Management and Budget
TCJS Division
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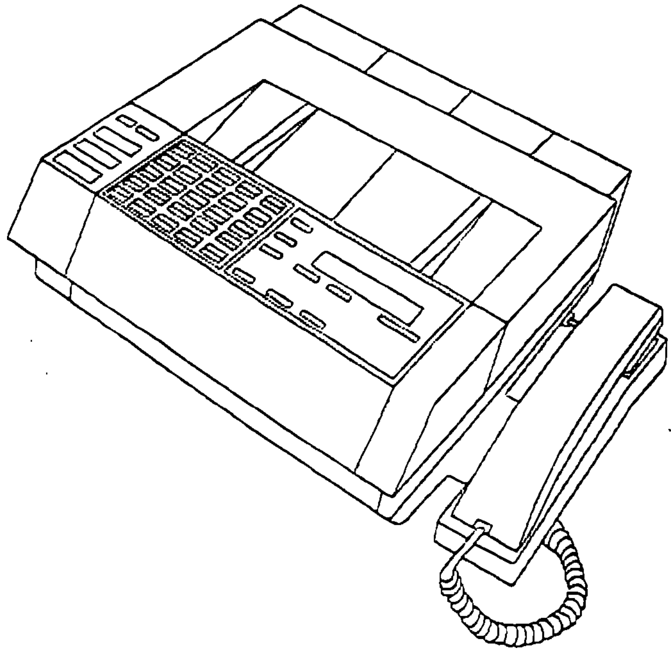

TO: Julie

FAX NUMBER: 65581

PHONE NUMBER:

FROM: Martens

PHONE NUMBER: 202/395-

FAX NUMBER: 202/395-0850

COMMENTS: FJ1 - Magnuson request

Date: *Time:*

Number of Pages (including this page) -

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GRATION AND NATURALIZATION SERVICE – USE OF FEE FUNDS

Subcommittee: Commerce/Justice/State

Ranking: High X Medium ___ Low ___

1999 Budget Policy: The President's 1999 request recommended $827 million in funding from the Examination Fee Account and $486 million from the User Fee Account dedicated to providing immigration benefit and inspection services. A reestimate of INS fee receipts has resulted in a significant reduction in anticipated fee revenue to support the Examination Fee Account and insufficient resources to address the citizenship application backlog. As a result, the Administration is seeking an infusion of $171 million in additional resources ($25 million in Exams Fee Account carryover, $25 million from the Breached Bond/Detention Account, and $121 million from prior year unobligated balances available through the Departments Working Capital Fund) to support naturalization activities.

Latest House Action: (pg 38 House Committee Report) House report language recommends the full amount of the Administration's request and additional enhancements totaling $80 million, which were not requested and are based on receipt projections higher than those projected in the FY 1999 budget (which we now know to be too high). Based on INS' current receipt projections, the House proposed enhancements are unrealistic and could not be funded with fees projected to be available.

Latest Senate Action: (pg 36, 39- 40 of Committee Report 105-235)The Senate report language drains $166 million fee account revenue ($155 million to the Exams Fee and $11 million to the User Fee) to fund Border Patrol and other INS discretionary account activities. This would exacerbate the already identified funding shortfall and eliminate the effect of the $171 million reprogramming.

Solution/Options:

- Do not accept the Senate's report language draining $166 million from the INS mandatory fee accounts – funds which would otherwise be used for expediting citizenship application processing.
- Obtain CJS Conference approval for the INS reprogramming of an additional $171 million in Departmental resources to supplement the Exams Fee Account and support naturalization backlog reduction and process reengineering.
- See funding one-pager regarding INS discretionary funding.

Justification: Fee funding should be used to support immigration service or naturalization related activities. Using fee funds for other than immigration service and naturalization purposes depletes resources available for citizenship processing and will compound the funding shortfall in the Exams Fee Account. An additional $171 million is necessary for the INS to begin to reduce the citizenship application backlog and achieve a reduction in the current 18 to 24 month wait-time, to an acceptable wait-time of 6 to 8 months in FY 2000.

FY 1998 Appropriations Action: The Senate attempted to fund discretionary program costs through report language from the fee accounts in FY 1998. The House did not. The Administration's objections, combined with the House action, prevailed and the Senate restored fee funding for immigration service and inspection responsibilities and added appropriated funding for discretionary programs.

Prepared By/Date: Steve Mertens (5-4935), 10/5/98

IMMIGRATION AND NATURALIZATION SERVICE -- LIMITATION ON NON-CAREER APPOINTEES

Subcommittee: Commerce/Justice/State

Ranking: High ___ Medium ___ Low _x_

1999 Budget Policy: The President's FY 1999 request recommended that the Congressionally imposed limitation on INS non-career appointees (capped at 4 plus the Commissioner) be removed from appropriations language. Prior to the limitation, which took effect on July 1, 1998, INS had 11 non-career appointees.

Latest House Action: The House-passed bill continues language stating "...that the number of positions filled through non-career appointment at the Immigration and Naturalization Service, for which funding is provided in this Act or is otherwise made available to the INS, shall not exceed 4 permanent positions and 4 full-time equivalent workyears..." The Administration unsuccessfully objected to this provision in FY 1998, but has not raised the issue in FY 1999 appropriation letters or SAPs. INS has asked us to raise this issue with the conferees.

Latest Senate Action: The Senate-passed bill includes the same language.

Solution/Options: Remove the objectionable provision. As a fall back position, seek a compromise that would allow three additional non-career appointments for the heads of the following offices: International Affairs, Intergovernmental Affairs, and Programs. This would permit a total of seven non-career positions. Under this option, the language should be modified to read as follows: "...that the number of positions filled through non-career appointments at the Immigration and Naturalization Service, for which funding is provided in this Act or is otherwise made available to the INS, shall not exceed 7 permanent positions and 7 full-time equivalent workyears..."

Justification:

- The Administration's objection in FY 1998 was that limiting non-career appointments will adversely affect INS' ability to provide executive leadership.
- In FY 1998, this issue was of concern to Presidential Personnel.

FY 1998 Appropriations Action: Over Administration objection, Congress included appropriations language that limited non-career appointments within the INS to four.

Prepared By/Date: Steve Mertens (5-4935), 9/21/98

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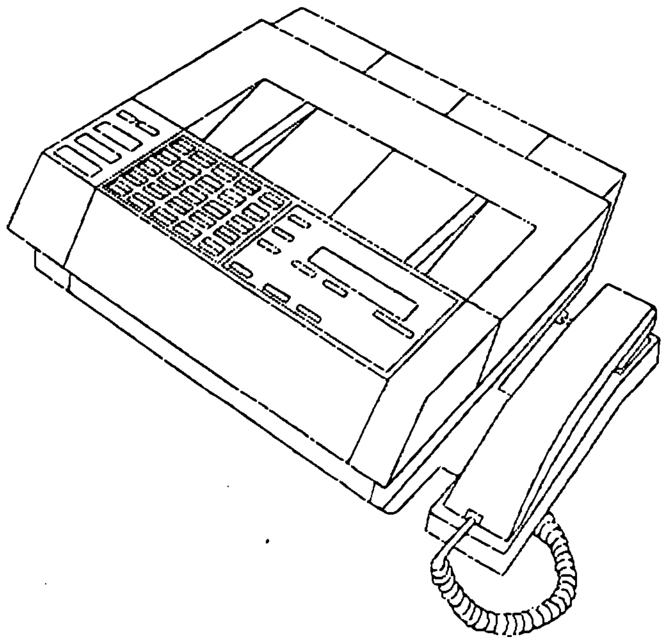

TO: Julie

FAX NUMBER: 65581

PHONE NUMBER:

FROM: Martin

PHONE NUMBER: **202/395-**

FAX NUMBER: **202/395-0850**

COMMENTS: More INS budget

Date: *Time:*

Number of Pages (including this page) _

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SEP 02,98 13:37 No.002 P.01 ID:

Immigration and N tur lization Service
FY 1999 Appropriations Action
(Dollars in thousands)

	Request	House Subcommittee Mark	Senate Subcommittee Mark
Salaries and Expenses	$1,867,320	$1,619,514	$1,169,317
Violent Crime Reduction Programs	738,000	866,490	1,099,667
Subtotal, S&E and VCRP	2,605,320	2,486,004	2,268,984
Construction	118,170	81,570	110,251
Subtotal, Appropriated	2,723,490	2,567,574	2,379,235
Examinations Fee	826,402	906,000 + 97M	905,700
Legalization	998	998	998
Subtotal	827,400	906,998	906,698 79298
User Fee	486,071	486,071	444,290
Enforcement	3,800	3,800	4,050
Land Border Inspection Fee	3,275	3,275	3,275
Breached Bond/Detention	129,500	169,870	201,995
Subtotal, Fee Accounts	1,450,046	1,570,014	1,560,308
Total, INS	4,173,536	4,137,588	3,939,543

Summary of Senate Appropriations Committee
Recommendations on
INS' FY 1999 Budget Request

General Comment Regarding Committee's Recommendations

Information has been obtained regarding Senate Appropriations Committee action on the Immigration and Naturalization Service (INS) FY 1999 budget request. For FY 1999, the budget request totaled $4.189 billion. The Senate Committee mark is $3.940 billion, $249.4 million below the request. (The House Appropriations Committee has also conducted its mark up. However, information regarding their actions has not been made available to us for analysis.)

The Senate Committee's recommendations for FY 1999 contain a number of base reductions as well as transfers between INS' budget accounts, as well as transfers to other accounts within the Department of Justice. These are noted in the summary material which follows. Enhancements are extremely limited and are funded mostly from these base transfers. If the Senate mark stands, it will be devastating for the continuing viability of the fee accounts.

Last year's Senate Committee mark also contained a number of transfers between accounts that were not included in the final Congressional actions on the FY 1998 appropriation. It is not known whether the House Committee's mark contains similar transfers.

The Committee recommends including bill language (under General Provisions) which would reauthorize the Adjustment of Status provisions contained in Section 245(i) of the Immigration and Nationality Act. The resources gained as a result of this action would be used for reduction of the naturalization backlog and construction of a detention facility in San Francisco, CA.

Appropriated Accounts

Salaries and Expenses/Violent Crime Reduction Programs

Request: $2,605,353,000 Recommendation: $2,268,984,000

Base Adjustments

- Denies base transfer of $50.938 million for the Detention and Deportation program from the Breached Bond/Detention Fund.
- Delays helicopter purchases pending a study of aerial border surveillance requirements (-$4.873 million).
- Downsizes the Offices of Congressional Relations and Public Affairs (-$2.573 million). Recommends bill language limiting the Offices to no more than 20 positions.

- Eliminates the Office of Internal Audit (-$8.440 million).
- Recommends a general base reduction of $23.808 million "... aimed at structural inefficiencies and duplications".

Transfers from Salaries and Expenses to Fee Accounts

- Transfers $11 million for ENFORCE and IDENT to the Immigration User Fee account and the Examinations Fee account.
- Transfers $53 million for data processing, legal proceedings, information and records management to the User Fee account and the Examinations Fee account.
- Transfers $52.106 million in Detention and Deportation program base funding to the Breached Bond/Detention Fund.

Increases

- Increases received total $117.718 million:

  Border Management - increase only for Border Patrol of $103 million and 1,140 positions (1,000 Border Patrol Agents, 140 support personnel)

  Interior Enforcement - $10.118 million and 100 positions for anti-smuggling and interdiction operations along the Denver, CO, and Houston, TX, smuggling corridors.

  Law Enforcement Support Center - $3 million, with the understanding that the resources will add Nebraska to the Center's coverage. **(This increase was not requested.)**

  Dedicated commuter lane funding - $1.6 million for equipment, modifications, personnel for four dedicated lanes on the Washington-Canada border. **(This increase was not requested.)**

- Increases requested and **not received** total $134.198 million:

  Improving Institutional Infrastructure - $32.5 million and 126 positions.

  Improving Professionalism - $16.2 million and 81 positions.

  Border Management - $23.616 million and 101 positions.

  Interior Enforcement - $61.882 million 453 positions.

Recommendations for Earmarking and Reporting Requirements

- Directs the Border Patrol Academy report directly to the Assistant Commissioner, Border Patrol, to be made effective no later than January 1, 1999.

- Study and report on the cost and capabilities of a mixed fleet of unmanned aerial vehicles, helicopters, and fixed-wing aircraft for border surveillance capabilities. Report by March 1, 1999.

- Border Patrol deployment - Continues to require consultation with the Congress regarding deployment of new positions. Committee "... expects the INS to begin deploying Border Patrol agents to the northern and southeastern United States, as well as continuing to augment its presence on the southwest border."

- Border Crossing Cards - Directs the Department of State to propose, within 90 days of enactment, a revised fee structure to reduce the fee for border crossing cards with a shorter term of validity.

- Illegal Alien Interdiction - Based on a proposal developed by the Denver District Office, directs INS to implement expansion of the Grand Junction, CO, duty station and open new duty stations in Alamosa, Glenwood Springs, Craig, Durango, and Greely, CO. In addition, "the Committee expects the INS to man and equip the offices by redeploying agents and materiel from overstaffed offices on both coasts." The Committee earmarks $632,000 for office space and related costs for duty stations which are part of this initiative.

  Directs INS to establish a "field office" in Southwest Utah to address illegal alien and criminal alien problems along the I-15 corridor.

- Targeting Magnet Industries - Requests INS to give special consideration to placing additional agents in Nebraska where a number of magnet industries are located, and where the employment of significant numbers of illegal aliens is a problem.

  Directs INS to increase personnel in Kansas City, MO, to address growing problems with illegal immigrants.

- Detention Space Shortfall - Directs INS to designate Salt Lake City, UT, as a hub location for the criminal alien county jail removal program, and to establish at Salt Lake City a temporary holding facility for criminal aliens.

  Directs INS to report to Congress by January 31, 1999, regarding: (1) the feasibility of establishing a permanent detention facility at Salt Lake City, UT, and (2) the resources and training needed to address the overall INS mission in Utah.

- Refugees - Directs INS and the Department of State to report to the Congress by March 1, 1999, on no-cost or low-cost options for improving refugee processing in Russia and the New Independent States.

- Casework - Directs INS to reassign three personnel currently assigned at Headquarters to the Boston District Office to address casework backlogs and expanded workload.

<u>Construction</u>   Request: $118,170,000   Recommended: $110,251,000

- Provides $110,251,000 and 54 positions for the Construction account, $7,919,000 less than the FY 1999 request level. The Committee did not fund many of the requested projects and also included items that were not part of the request.

- Border Patrol Construction Projects - provides funding for all of the projects except the Falfurrias, TX (-$4.625 million) and Yuma, AZ (-$6.75 million) Border Patrol Stations.

- Adds $5,525,000 to reimburse the law enforcement training center in Artesia, NM, for Border Patrol advanced training and $10,900,000 for the Border Patrol academy in Charleston, SC.

- JTF-6 Construction Projects - Funds all JTF-6 projects and adds $600,000 for fencing in Santa Theresa, NM.

- Planning, Site and Design Projects - Provides no funding for these projects. ($5,113,000 was requested for Border Patrol projects and $1,949,000 was requested for Detention and Deportation program projects).

- Detention and Deportation Program Construction Projects - Provides funding for the El Centro, CA, Service Processing Center. Provides no funding for the Port Isabel Service Processing Center, Phase II of the Florence Service Processing Center, or the Varick Street project.

- "One-Time" Construction Projects - Provides the full request ($26,405,000 and 5 positions) for new office "one-time" construction, as well as $10,195,000 and 43 positions for maintenance and repair of INS-owned facilities.

- Provides the $20,300,000 of base funding requested, including an earmark of $4,300,000 for fuel storage tank upgrade and repair and $4,488,000 for program execution. The Committee recommendation also includes $388,000 and 6 positions in the program execution earmark for facilities program specialists to support INS' construction projects.

Fee Accounts

Examinations Fee Account Request: $827,400,000 Recommended: $905,700,000

- The Committee recommendation maintains current services and on-board staffing until the assumptions underlying the FY 1999 request "... come into clearer focus." This is contrary to the recommended transfers, totaling $155.4 million, which seriously affect this account. **The account will be in a severe deficit in the future if the Senate mark stands.**

- Transfers $53 million base funding for data processing, legal proceedings, and information and records management from the Salaries and Expenses Account to the User Fee account and the Examinations Fee Account.

- Transfers $5 million to General Administration to cover Justice Management Division expenses associated with INS oversight.

- Transfers $97.4 million to Administrative Review and Appeals to cover Executive Office for Immigration Review expenses.

- Reauthorization of Section 245(i) is recommended by the Committee. Part of the funds generated are to be used to reduce the naturalization backlog. (Section 110, General Provisions - Department of Justice)

- Merges the Immigration Legalization account with the Examinations Fee account, as requested in the FY 1999 Appropriations language. (Section 107, General Provisions - Department of Justice)

User Fee Account Request: $486,071,000 Recommended: $444,290,000

- The Committee noted that the User Fee account "faces a crisis" due to costs exceeding receipts, the need to use carryover to meet requirements, and the need to address long-term resource requirements. Until resources are assured, recommends maintaining current services. This is contrary to transfers into this account from the Salaries and Expenses account.

- Base reduction of $11 million for departure management. Committee recommendation is based on the view that this activity is not as critical as assuring "swiftest possible" inspections for legal entrants and detection, detention and deportation of illegal entrants.

- Transfers $11 million for ENFORCE and IDENT from the Salaries and Expenses account to the User Fee account and the Examinations Fee account.

Land Border Inspection Fee Request: $3,275,000 Recommended: $3,275,000

- Recommends approval at level requested.
- Advisory language: To match Canadian program enhancement to the Peace Arch Crossing Program (PACE), Committee recommends that 75 percent of the funds collected locally by the PACE Program should be directed to the Northwest region.

Breached Bond/Detention Fund Request: $144,870,000 Recommended: $201,995,000

- Recommends a higher resource level as a result of reauthorization of Section 245(i).
- Additional resources from Section 245(i) penalties to be used for construction of a new joint INS/Marshals Service detention facility in San Francisco, CA.
- Transfers of $52.106 million detention and deportation base resources from S&E account to BB/DF account for detention of criminal and illegal aliens.
- Video Conferencing - Earmarks $1.026 million for acquisition and installation of video conferencing equipment at 20 Institutional Hearing Program sites. Expects INS to consult with the Congress prior to final determination of sites.

Enforcement Fines Request: $3,800,000 Recommended: $4,050,000

- Recommends a slightly higher resource level to support border enforcement activities. Additional funding to be used to install at least one remote video surveillance system and associated sensors in Santa Theresa, NM.

Appropriation Language

Bill Language Regarding Political Appointees - The Committee continues to limit the number of political appointees INS-wide to four.

Repeal of Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) - DOJ General Provision 116 repeals Section 110 of IIRIRA which requires an automated entry-exit control system. The provision also extends the schedule for the issuance of new border crossing cards.

The Committee recommended the other items contained in the proposed bill language regarding confidential expenditures, reception and representation funds, the annual overtime ceiling, resources for research and development, and payments to State and local law enforcement agencies engaged in cooperative activities related to immigration.