

USCIS should complete cases as rapidly as possible while maintaining the system's integrity. However, USCIS' definition of backlog results in the agency falling short of this goal. In its June 16, 2004 Backlog Elimination Plan (BEP), at p. 4, USCIS described its backlog calculation as follows:¹⁶

The new definition in [USCIS' Backlog Elimination Plan] quantifies the backlog by basing the figure on the number of receipts during the previous number of months that corresponds with target cycle time (usually six) and the current pending count for a given application type. This calculated amount can then be used to assess and determine concrete production targets for backlogged application types and the resources necessary to meet those targets. Therefore, backlog is defined as the difference between pending and receipts for the number of months of target cycle time. (Backlog = Pending – Last Six Months' receipts). This new definition of backlog better reflects the idea that as long as USCIS is processing its receipts within the designated target cycle time, there is no backlog for those applications as the pending count only reflects cases within [USCIS] target cycle time.

The following month, in July 2004, USCIS reported 1.5 million backlogged cases, which was an apparent reduction from the 3.5 million backlogged cases in March 2003. However, the agency also reclassified 1.1 million of the 2 million cases eliminated, as described below:¹⁷

During July, USCIS distinguished in its calculation of 'backlog' those cases that were ripe for adjudication, where a benefit was immediately available through the approval of an application or petition, and those that were not ripe, where even if the application or petition were approved today, a benefit could not be conferred for months or years to come. [Unripe cases] were excluded from the number of cases in the backlog but remain in the pending.¹⁸

The DHS Inspector General (IG) noted that:

Such reclassifications, as well as the strategy of relying upon temporary employees, may benefit USCIS in the short-term. However, they will not resolve the long-standing processing and IT problems that contributed to the backlog in the first place. Until

¹⁶ USCIS publishes its backlog elimination plans on the agency's website <http://www.uscis.gov/graphics/aboutus/repstudies/backlog.htm>.

¹⁷ See DHS Office of the Inspector General (IG) Report, "USCIS Faces Challenges in Modernizing Information Technology," OIG-05-41 (Sept. 2005) at 28; http://www.dhs.gov/interweb/assetlibrary/OIG_05-41_Sep05.pdf.

¹⁸ USCIS Backlog Elimination Plan (BEP), 3rd Quarter FY 04 Update (Nov. 5, 2005), at 4.

these problems are addressed, USCIS will not be able to apply its resources to meet mission and customer needs effectively.¹⁹

USCIS' most recent BEP, 4th quarter update for FY 05 dated April 7, 2006, at p. 1, again redefined the backlog:

USCIS removes from the calculated backlog total those pending applications that it is unable to complete due to statutory caps or other bars and those cases where a benefit is not immediately available to the applicant or beneficiary (such as "non-ripe" Form I-130, Relative Alien Petitions where a required visa number is not available) Our initial sense was to immediately factor all these cases into the backlog, increasing the backlog in June by 174,000. After further evaluation, USCIS has modified this conclusion. The number of applications freed for processing is so large that, combined with a 6 month production cycle, USCIS could not complete these cases in this timeframe without significantly affecting production and processing time for other products.

After the redefinition, the backlog supposedly declined from 1.08 million cases to 914,864 cases at the end of FY 05. Yet, individuals whose cases were factored out of the backlog still awaited adjudication of their applications and petitions.

USCIS clearly signaled its intention to continue using such periodic backlog redefinitions in FY 06:

Over [FY 06] USCIS will continue to quantify those cases but will remove from the calculated backlog work it cannot complete because of factors outside its control, such as cases awaiting customer responses to requests for information, cases in suspense to afford customers another opportunity to pass the naturalization test, cases awaiting an FBI name check or other outside agency action, or where USCIS has determined a naturalization case is approvable and the case remains pending only for the customer to take the oath.²⁰

The Ombudsman shares the IG's concern that these definitional changes hide the true problem and need for change. To permit accurate assessment of backlog elimination progress, USCIS should provide alongside its "redefined backlog numbers" the total numbers without such recalculations. Only when USCIS provides such similarly defined data can true progress be evaluated. Although redefinition may provide a new and different measure of backlog elimination progress, and be partly the result of advice to separate out delayed cases beyond

¹⁹ See DHS IG Report "USCIS Faces Challenges in Modernizing Information Technology," at 28.

²⁰ See USCIS BEP, 4th quarter FY 05 (Apr. 7, 2006), at 5.