



Section-by-Section Summary of Case Backlog and Transparency Act of 2020 (H.R. 5971)

Sec. 1 – Short Title

- Case Backlog and Transparency Act of 2020

Sec. 2 – Purposes

- Amends 8 U.S.C. § 1571 by substituting Department of Homeland Security for Immigration and Naturalization Service and eliminating outdated reference to November 25, 2002 case backlog (note: this legislation references DHS rather than USCIS because USCIS has not been codified in statute).

Sec. 3 – Definitions

This section amends 8 U.S.C. § 1572 by revising certain definitions and adding new definitions:

- Adds the definition for “active suspense” to describe circumstances in which DHS cannot adjudicate an immigration benefit application due to factors outside of the Department’s control. This provision lists one example of an active suspense category as “applications for which a visa number is unavailable” (note: this definition is substantially consistent with USCIS’s existing definition, though USCIS has defined active suspense cases as those pending due to factors outside of USCIS’s control rather than DHS’s).¹
- Revises the definition of “backlog” from “the period of time in excess of 180 days that such application has been pending” to “the existence of a number of cases pending before the Department outside of applicable processing time goals, minus cases in an active suspense category. Clarifies that “backlog” may also be referred to as “net backlog” (note: this amendment aligns the statutory definition of “net backlog” with the definition employed by USCIS at present and since at least 2006²).
- Prohibits the assignment of USCIS processing time goals longer than a maximum processing timeframe established by statute or regulation or longer than 180 days—whichever period is shorter (note: this is consistent with section 202 of the American Competitiveness in the Twenty-First Century Act of 2000 (codified at 8 U.S.C. § 1571(b)), which explains that it is the sense of Congress that the “processing of an immigration

¹ See, e.g., “Fiscal Year 2011 Highlights Report;”

<https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Budget%2C%20Planning%20and%20Performance/USCIS%20Fiscal%20Year%202011%20Highlights%20Report.pdf>.

² See USCIS, “Backlog Elimination Plan: Fiscal Year 2005, 4th Quarter Update” (Apr. 7, 2006);

<https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/BEPQ4FY2005.pdf>.

benefit application should be completed not later than 180 days after the initial filing of an application.” USCIS has historically assigned processing time goals of 180 days or fewer³).

- Defines “case completion per hour rate” as the average amount of adjudicative time, as measured in hours, that it takes DHS to complete processing of an immigration benefit application form type (note: this definition is substantially consistent with USCIS’s existing definition, though USCIS has defined case completion rates as the adjudicative time it takes USCIS, rather than DHS, to complete processing).⁴
- Defines “gross backlog” as the number of immigration benefit applications pending outside of applicable processing time goals irrespective of whether those cases are in an active suspense category (note: this definition is consistent with USCIS’s definition of “gross backlog” provided in a 2017 DHS report to Congress).⁵
- Expands the definition of “immigration benefit application” to include any application or petition for an immigration benefit.

³ See, e.g., USCIS response to June 11, 2019 letter from Sen. Van Hollen (Jul. 25, 2019); https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_delays_-_Senator_Van_Hollen.pdf. The response listed the processing time goal for I-130s as 150 days, for I-140s as 120 days, for I-765s as 90 days; for I-485s as 120 days, and for N-400s as 150 days. The existing statutory definition of “backlog”—tied to a monolithic 180-day timeframe for all application and petition types—is unworkable for many reasons, not least because: (1) USCIS has historically processed numerous benefit application types in far shorter periods; and (2) U.S.C. § 1571(b) reflects the sense of Congress that a nonimmigrant visa petition should be processed not later than 30 days after filing. During a July 16, 2019 congressional hearing, USCIS outlined prongs of a backlog reduction plan, one of which is to “Redefine Processing Time Goals to Better Reflect True Cycle Times.” See “Policy Changes and Processing Delays at USCIS,” before the House Committee on the Judiciary, Subcommittee on Immigration and Citizenship, 116th Cong. 2nd Sess. (2019) (joint statement of Don Neufeld, Associate Director, Service Center Operations Directorate, Michael Valverde, Deputy Associate Director, Field Operations Directorate, and Michael Hofer, Chief, Office of Performance and Quality); <https://www.uscis.gov/tools/resources-congress/testimonies-and-speeches/hearing-policy-changes-and-processing-delays-uscis-house-committee-judiciary-subcommittee-immigration-and-citizenship-july-16-2019>. As part of its testimony, USCIS cited a July 2018 report in which DHS’s Office of Inspector General found that the 120-day green card application processing time goal was “unrealistic.” DHS OIG, “USCIS Has Unclear Website Information and Unrealistic Time Goals for Adjudicating Green Card Applications” (Mar. 9, 2018); <https://www.oig.dhs.gov/sites/default/files/assets/2018-03/OIG-18-58-Mar18.pdf>. But the report based this conclusion on USCIS adjudications as they are currently administered without meaningfully assessing their efficiency or determining what the processing time goal should if USCIS adjudications were more efficient. Given that USCIS calculates its “net backlog” based principally on the number of cases pending outside of processing time goals, lowering those goals could vastly reduce the backlog without actually improving processing times. USCIS has subsequently confirmed that it has “updated processing time goals to better reflect operational realities,” though the agency has not publicly disclosed the new benchmarks. See USCIS response to July 10 letter from Harvard University (Sep. 19, 2019); https://www.uscis.gov/sites/default/files/files/nativedocuments/Optional_Practical_Training_-_Bacow.pdf.

⁴ See, e.g., USCIS, Unpublished proposed rule, “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements;” (Nov. 8, 2019); <https://www.federalregister.gov/documents/2019/11/14/2019-24366/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>.

⁵ See DHS, “Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security” (Apr. 13, 2018); <https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS.pdf>.

- Defines “processing time” as the time from the filing of an immigration benefit application until the completed processing of that application.
- Defines “processing time goal” as the goal for a processing time established by the Department as an appropriate processing time for an immigration benefit application form type. DHS’s processing time goal for an immigration benefit application form type (note: this definition is consistent with USCIS’s existing definition).⁶ Precludes the assignment of USCIS processing time goals longer than a maximum processing timeframe established by statute or regulation or longer than six months—whichever is shorter (note: see above for further background on this provision).

Sec. 4 – Immigration Services and Infrastructure Improvements Account

- Amends 8 U.S.C. § 1573 by substituting Department of Homeland Security for Immigration and Naturalization Service, substituting Department of Homeland Security and Secretary of Homeland Security for Department of Justice and Attorney General, and eliminating outdated reference to Nov. 25, 2002 case backlog.

Sec. 5 – Reports to Congress

This section amends 8 U.S.C. § 1574 by including reporting requirements from 6 U.S.C. § 298 and : (1) establishing a quarterly backlog reporting requirement; (2) consolidating and substantially strengthening DHS’s existing annual reporting requirements; and (3) establishing a biennial GAO reporting requirement.

Mandates that DHS and GAO publish these reports on their websites (note: under existing law, there is no requirement that DHS post its annual reporting on its website). DHS and GAO must submit these reports to the Committees on the Judiciary, Appropriations, and Oversight and Government Reform of the House of Representatives, and to the Committees on the Judiciary, Appropriations, and Homeland Security and Governmental Affairs of the Senate (note: under existing law, there are discrepancies between the Immigration and Infrastructure Improvements Act and Homeland Security Act with regard to the committees of receipt).

- **Establishment of quarterly backlog reporting requirement.** Requires DHS, at the end of each of the first three quarters of each fiscal year, to publish on its website, and submit to designated Congressional committees, a report on the case backlog. The quarterly report must:
 - Identify the number of pending immigrant benefit applications, the net backlog, and the gross backlog;
 - Describe the active suspense categories and the number of cases pending in each category; and
 - List the average processing time for each benefit application form type along with any change in that time relative to the prior quarter.

⁶ See *id.*

- **Consolidation and expansion of DHS annual reporting requirements.** Consolidates and significantly strengthens USCIS’s annual reporting requirements (note: under current law, these requirements are divided between the Immigration Services and Infrastructure Improvements Act of 2000 and the Homeland Security Act of 2002). Moves various requirements from the Homeland Security Act, in existing or modified form, under the Immigration Services and Infrastructure Improvements Act. Eliminates some annual reporting requirements from the Homeland Security Act and Immigration Service and Infrastructure Improvements Act. Requires DHS, at the end of each fiscal year, to publish on its website, and submit to designated Congressional committees, a report on the case backlog.

Reporting requirements highlighted below in green are new under this legislation. Reporting requirements highlighted below in blue are existing requirements or modified versions of existing requirements.

- **Analysis and planning and requirements.** The annual report must include:
 - A detailed analysis of factors contributing to the net and gross backlogs, including a detailed assessment of the impacts of Department policies on the net and gross backlogs;
 - A detailed description of existing and planned processes for assessing the impacts of Department policies on the net and gross backlogs. A detailed evaluation of the agency’s adherence to those processes;
 - A description of existing efforts to eliminate the net backlog and minimize the gross backlog (note, existing legislation does not distinguish between the net and gross backlog);
 - A detailed plan to eliminate, then prevent the recurrence of, the net backlog, and to minimize the gross backlog;
 - A description of existing and planned quality controls for ensuring fair, accurate, and consistent adjudications of immigration benefit applications;
 - Information on relevant Department funding, including:
 - An assessment of to what extent funding, both from fee accounts and appropriations, was and will be allocated toward backlog elimination (Note – existing statute calls only for a detailed plan on the use of any funds in the long-dormant Immigration Services and Infrastructure Improvements Account);
 - Identification of any transfers of funds between fee accounts and between Department components;
 - A description of whether immigration-related fees were used consistent with legal requirements regarding such use;
 - An estimate of the amount of appropriated funds that would be necessary to eliminate the net backlog;
 - Information on whether immigration-related questions conveyed by customers to the Department were answered effectively and efficiently; and
 - A description of the additional resources and process changes needed to eliminate the backlog for: (1) naturalization applications and (2) all

other immigration benefit application form types (note: existing law requires reporting only on the additional resources and process changes needed to eliminate the backlog for naturalization applications, adjustment of status applications, nonimmigrant visas petitions, I-130 petitions for relatives, asylum applications, and TPS registrations).

- **Data requirements.** The annual report must include:
 - All information provided in the quarterly report but on a year-end basis:
 - Identification of the net backlog, gross backlog, and overall number of unadjudicated benefit applications;
 - A description of the active suspense categories and the number of cases pending in each category;
 - The average processing time for each benefit application form type along with any change in that time relative to the prior quarter;
 - Current processing time goals for each benefit application form type and the percentage of cases for which the Department completed processing within each goal;
 - Identification of any changes made to processing time goals in the prior two years and how those changes altered the net and gross backlogs;
 - Case completion rates per hour for each benefit application type;
 - The aggregate number of all immigration benefit applications received, and processed, by the Department;
 - Approval and denial rates for processed cases, disaggregated by immigration benefit application type (note: existing law requires annual reporting of region-by-region denial rates as disaggregated by benefit application type, but not of approval rates, and not on a nationwide basis);
 - State-by-state data on the number of naturalization applications, the number of adjustment of status applications, and the overall number of immigration benefit applications, pending for up to 6 months, 12 months, 18 months, 24 months, 36 months, and 48 months or more;
 - State-by-state data on the number of naturalization cases adjudicated each quarter, the average processing time for naturalization applications, and estimated processing times for newly submitted naturalization applications;
 - A status report on the processing of employment authorization applications and all other other immigration benefit application form types not already enumerated in this subsection (note – existing law requires a status report only on adjustment of status applications, nonimmigrant visas petitions, I-130 petitions for relatives, asylum applications, and TPS registrations);

The bill would eliminate from DHS's existing annual reporting requirements the following:

- An assessment of the data systems used in adjudicating and reporting on the status of immigration benefit applications, including—

- A description of the adequacy of existing computer hardware, computer software, and other mechanisms to comply with the adjudications and reporting requirements of this subchapter;
 - A plan for implementing improvements to existing data systems to accomplish the purpose of this subchapter, as described in section 1571(a) of this title;
 - The quantity of backlogged immigration applications and petitions that have been processed;
 - Various statistics disaggregated by USCIS region and USCIS district
 - An analysis of the appropriate processing times for naturalization applications, adjustment of status applications, nonimmigrant visa petitions, I-130 relative petitions, asylum applications, and TPS registrations;
 - Estimated processing times for newly submitted adjustment of status applications, nonimmigrant visas, I-130 relative petitions, asylum applications, and TPS registrations; and
 - The number of nonimmigrant visas, I-130 relative petitions, asylum applications, and TPS registrations pending for up to 6 months, 12 months, 18 months, 24 months, 36 months, and 48 months or more.
- **Establishment of biennial GAO reporting requirement.** Requires GAO, on a biennial basis, to publish on its website and issue to designated Congressional committees a report on the case backlog. The report must include:
 - A description of the status of the net backlog, gross backlog, and the overall number of unadjudicated immigration benefit applications;
 - An assessment of factors contributing to the net and gross backlogs, including a analysis of the impacts of Department policies on the net and gross backlogs and an analysis of the Department’s formal processes for qualitatively and quantitatively assessing the impacts of its policies on the net and gross backlogs;
 - An assessment of existing and planned Department efforts to eliminate the net backlog, to prevent recurrence of the net backlog after its elimination, and to minimize the gross backlog;
 - An assessment of existing and planned Department efforts to ensure fair, accurate, and consistent adjudication of immigration benefit applications; and
 - Recommendations for more expeditiously processing immigration benefit applications while ensuring fairness, accuracy, and consistency in processing

Sec. 6 – Immigration Functions

- This section amends 6 U.S.C. § 298 (section 478 of the Homeland Security Act of 2002) by striking paragraph (a) and incorporating certain reporting requirements into 8 U.S.C § 1574.
- It reiterates the existing sense of congress that “the quality and efficiency of immigration services ... should be improved” and that DHS should “guarantee that concerns regarding the quality and efficiency of immigration services are addressed.”