

**Congress of the United States**  
**Washington, DC 20515**

April 15, 2015

The Honorable Gene Dodaro  
Comptroller General of the United States  
Government Accountability Office  
441 G Street, NW Washington, D.C. 20548

Dear Comptroller General Dodaro:

As you know, on November 20, 2014 the Secretary of the Department of Homeland Security (DHS), Jeh Johnson, issued a series of memoranda affecting federal immigration law. Included in the new DHS policy directives was an order to extend and expand the existing Deferred Action for Childhood Arrivals (DACA) program, as well as an order to establish a new program that provides work authorization permits to an estimated five million undocumented immigrants residing in the United States. This new program was termed, "Deferred Action for Parents of Americans and Lawful Permanent Residents," or DAPA.

U.S. Citizenship and Immigration Services (USCIS) is the federal agency that adjudicates applications for immigration benefits. This agency's website claims a workforce of 19,000 people operating throughout 223 offices worldwide with an annual operating budget of \$4 billion. This agency is very unique from many other agencies. According to its own FY16 USCIS Budget Request, 96.8% of the agency's annual operating budget comes from fees collected from applicants for most types of immigration benefits, from petitions to sponsor relatives or employees, to replacement green cards, to naturalization applications. These fee-based revenues appear to be considered "permanently appropriated" mandatory funds compared to annual discretionary appropriations which apply to most federal agencies. As a result, this permanently appropriated mandatory spending allotment for USCIS falls outside the annual appropriations process.

While Congress determines the categories of aliens that are to be admitted to the United States, it does not always set the fees USCIS charges or constructively control how USCIS allocates its resources. This fee-generated portion of its annual budget, translating to \$3.874 billion in FY16, appears to be completely fungible. That is, this money, raised for one purpose can perhaps be used for other purposes. This arrangement creates the potential for USCIS to, in effect, create slush funds and skim off congressionally authorized fees imposed on legal immigrants and their sponsors in order to fund programs that may not be specifically authorized by Congress. Mr. Joseph Moore, the Chief Financial Officer of USCIS, testified in a Senate hearing on March 3, 2015, that the agency determines the fees it charges based on a practice known as activity-based costing. Thus, transaction fees are proportional to the amount of time and resources to fulfill that transaction. However, records indicate that USCIS has a carry-over balance from excess revenues at the end of FY14 of

approximately \$1.27 billion. Mr. Moore claimed that he seeks to maintain a rolling reserve balance of about \$600 million to cover unexpected costs and surge activity. He further stated that funds from this account helped USCIS handle early spending in response to the executive actions. Eventually, new fees paid by illegal immigrant applicants are intended to replenish that account, plus cover all the new costs. What is not clear is why or how this agency has built up reserves of more than twice the amount it says it aims to keep for contingency requirements. This draws scrutiny as to how long this practice has occurred, for what reasons, what can or cannot be done with that money and, ultimately, how Congress can effectively conduct oversight.

Experts refer to this arrangement where an agency can skim off, or “tax,” certain types of applications in order to fund others as “cross-subsidization.” Currently, fees from legal immigrants and their sponsors subsidize refugee and asylum applications, military naturalizations, the anti-fraud division, and other activities — with “other activities” being very broadly defined. Experts also indicate that this “cross-subsidization” surcharge has been around 15 percent, or \$72 on each fee-paying applicant. It is unclear if this practice is appropriate or authorized within DHS or USCIS and, if so, what could be the problems and liabilities associated with or resulting from such practices.

Within discretionary spending, two major legal provisions that concern appropriations law are (1) the Misappropriation Act (also known as the “purpose statute”) and (2) the Anti-deficiency Act. United States Code, Title 31, Section 1301, also referred to as the Misappropriation Act or the purpose statute, speaks to the application or use of monies appropriated by Congress. It “requires that appropriations may only be used for their intended purposes.” Congress also established the Anti-deficiency Act (ADA), 31 USC § 1341, which “provides that agencies may not spend, or commit themselves to spend, in advance of or in excess of an amount available in an appropriation or fund.” In short, “[t]he ADA prohibits the federal government from entering into a contract that is not ‘fully funded’ because doing so would obligate the government in the absence of an appropriation adequate to the needs of the contract.” It is unclear as to how these elements of appropriation law on the discretionary side of federal spending apply to USCIS with its large proportion of permanent appropriations.

Additionally, section 145 of OMB Circular No. A-11 (2014) entitled, “Requirements For Reporting Anti-deficiency Act Violations,” clearly explains what the ADA is within the confines of discretionary spending, what constitutes a violation, and how agencies are to self-report any suspected violations to both the Director of OMB and the President. This document further provides sample letters to the Director and the President when potential violations are discovered. However, it is important to notice that reporting violations of this important aspect of fiscal law is highly dependent on the honor code. Agency leaders must first discover the errors, investigate themselves and then self report their findings to OMB and to the President. Outside of that, there is reliance upon GAO to help monitor, verify and report the remaining discrepancies not previously detected, reported and corrected by the agencies.

It is interesting that short of GAO investigating and reporting ADA violations, it is unclear how Congress can have high confidence that it is adequately informed in a robust, timely and consistent way when agencies commit these infractions. By example, Secretary of Transportation Ray LaHood, submitted letters to OMB and the President on July 6, 2012 reporting multiple ADA violations of the Maritime Administration (MARAD). According to Secretary LaHood’s letter, the U.S. Merchant Marine Academy, a component of MARAD, is authorized by statute to collect fees from its students, and internal audits revealed unintentional overcharges. Given the aforementioned \$1.27 billion in reserves, which is more than twice their own target for contingencies, it is unclear as

to whether ADA applies to USCIS in the same manner and, if so, should their internal audits and financial management procedures trigger this same requirement for reporting.

In response to Secretary Johnson's memorandum to implement the executive actions of November 2014, USCIS released a Request For Proposal (RFP) via the Federal Business Opportunities (FBO) website ([www.fbo.gov](http://www.fbo.gov)), the portal whereby Government organizations post their procurement needs and objectives, on January 23, 2015 with a due date for proposals from industry due on February 23, 2015. This RFP appears to be distinctly for the purpose of expanding the agency's capabilities to incorporate this significant portion of added scope to the current DACA program and the proposed new DAPA initiative. Within that RFP, the address of 2200 Crystal Drive, Arlington, VA was referenced as the "Place of Performance." The contents of this RFP revealed that USCIS was swiftly moving forward with plans to begin processing millions of additional work authorization permits, with work performed under this contract to be conducted in multiple shifts between the hours of 6:00 a.m. to 11:30 p.m.

Regarding facility capacity, the RFP stated there would be seating for several hundreds of contractor personnel. It is important to note the uniqueness of this RFP: (1) by comparison, this RFP appears abnormally dissimilar than the agency's routine procurements; (2) USCIS advertised the planned use of a newly acquired very large facility to host this massive auxiliary scope of work, (3) they planned to hire many hundreds of employees and contractors to work around the clock in multiple shifts to process as many applications as possible in the shortest amounts of time; (4) despite being one of the largest and most sophisticated RFP's issued by USCIS, it appeared to be fast-tracked on an unusually aggressive schedule for such a proportionately complicated undertaking; and (5) Congress has not authorized any of these activities, neither the funding to be used for the building, or the actual scope of work to be performed.

On February 20th, three days before the proposals were due to the Government, USCIS announced the cancellation of this RFP. No explanation was provided, nor was there any insight as to whether this procurement might re-surface in the future. Despite the cancellation of the RFP, it does not change the fact that the agency was in the process of accelerating the incorporation of certain new activities related to the RFP, while the source of the authorization of these new activities and its funding remains unclear.

The above-information raises very serious concerns about the legal and fiscal details related to the implementation of the Secretary Johnson's November 2014 memoranda and whether or not this agency has violated the Misappropriation Act or potentially breached the Anti-Deficiency Act throughout the course of its dealings. Also, if a potential ADA violation did occur, there is no record that indicates DHS self-reporting the violation.

In March 2015, your agency released a formal report to Congress entitled, "*DHS Should Better Define Oversight Roles and Improve Program Reporting to Congress*," which is a timely validation for the mounting range of concerns. The report points to a relatively unmethodical leadership environment whereby the involvement and relationships between components and designated officials varies significantly. Further, the report states that the department does not have a reliable structure in place for overseeing the costs of more than 40 major programs currently underway. In fact, critical acquisition documentation requirements for these programs were waived in 2013.

Given the enormous scale, complexity and sensitivity of national responsibilities levied upon DHS, it is very important that we ensure that every organization within the department is not only well managed but suitably outfitted to fulfill its assigned role. Therefore, we call upon the Government Accountability Office (GAO) to immediately investigate, analyze, and opine on the following issues on or before May 15, 2015:

1. The Government Performance and Results Act (GPRA) of 1993 requires federal agencies to set strategic goals, measure performance and report on the degree to which goals are met. Please verify that USCIS has complied with this act since January 1, 2009 and to what degree it has succeeded or failed accordingly.
2. It appears that the USCIS enterprise experienced growth between 2009 and 2014, while it was operating under a Continuing Resolution. Assuming additional personnel and resources were needed in response to meet increased demand for services, how does one reconcile this under the circumstances where there was no authorization from Congress for new work?
3. Since the issuance of a stay on the executive actions imposed by Judge Hanen on February 16, 2014, please verify USCIS has not used funds, either discretionary, mandatory or otherwise, to fund the implementation of the executive actions on immigration as announced in the November 20, 2014 memoranda by Secretary Johnson, including the plans to extend DACA and establish DAPA, the purchase or lease of commercial property, including the property located at 2200 Crystal Drive, or the hiring of employees or contractors.
4. Whether the funds, discretionary, mandatory or otherwise, used to fund the implementation of the executive actions on immigration as announced in the November 20, 2014 memoranda by Secretary Johnson violates the Misappropriation Act or the Anti-deficiency Act.
5. Whether the Misappropriation Act or the Anti-deficiency Act apply to the agency's permanent appropriations with respect to their contracts and financial obligations.
6. Whether USCIS imposes any internal monitoring, reporting and corrective responsibilities for addressing potential ADA violations.
7. At the end of FY 2014, the carry-over balance of excess revenue's was approximately \$1.2 billion. In order to create the \$1.2 billion excess revenue, whether USCIS established fees in excess of what was actually needed to pay for the expenses of processing the applications filed with its agency.
8. In accordance with Section 145 of OMB Circular No. A-11 (2014), whether USCIS, committed any violations of the ADA since January 1, 2009. This includes both self-reported and GAO reported violations, plus any others. If such violations exist, please provide copies of all reported ADA violations, including the date the violation was reported, information that describes the suspected violation reported by the agency, the correspondence that was sent to OMB or the President reporting the violation, and any additional relevant information.
9. Whether USCIS violated the Misappropriation Act or the Anti-deficiency Act by establishing fees for the processing of applications that would create a carry-over balance of excess revenues amounting to \$1.2 billion.

10. Whether there exists any limitation on the use of monies raised by fees assessed by USCIS, in order to prevent “cross-subsidization.”
11. Please provide any information on the amount of money from each application that is used to pay for activities other than processing the application.
12. Whether USCIS anticipated the changes to immigration law announced in the November 20, 2014 memoranda and possibly started posturing and preparing for the added surge to their organization before it was publicly announced.
13. Please examine the projected portfolio of financial impacts to all other pertinent federal agencies related to USCIS that would need to make material modifications to their organizations, enterprise operations and policies if the Secretary’s November 20, 2014 memoranda are implemented, particularly the extension of DACA and the establishment of DAPA.
14. Please examine and provide information on how DACA has been funded to date. It is our understanding the Government, in the past, charged a fee for DACA that was equal to the processing cost of two forms (Employment Authorization Document [EAD] and biometrics check) but the process actually involved processing three forms (DACA eligibility, EAD and biometrics).
  - a. If true, exactly how did USCIS finesse that?
  - b. If true, is it possible USCIS processed the DACA applications using a system designed for a different “low-risk” application stream, and basically the DACA application approvals were automated?
  - c. And if so, how far back has this approach occurred, how many people were processed this way and who within DHS oversaw and authorized this practice over time?
15. Please determine how USCIS is going to cover the costs of the new CAM Program (Central American Minors). Basically, any Central American illegal alien who has come to the attention of a DHS agency and has been here for at least one year can apply to bring in their family from Central America. We understand there is no fee charged for this.

Thank you very much for your prompt attention to this matter. If you have any questions, please do not hesitate to contact us.

Sincerely,



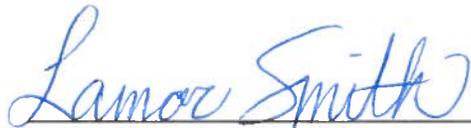
Louie Gohmert  
Member of Congress



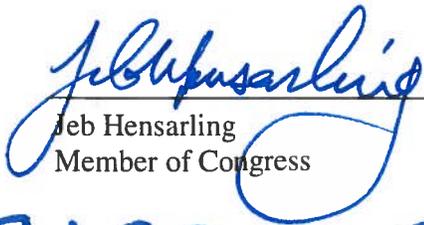
Jeff Duncan  
Member of Congress



Paul Gosar  
Member of Congress



Lamar Smith  
Member of Congress



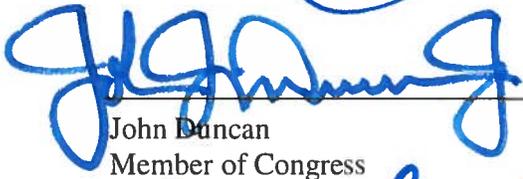
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Jeb Hensarling  
Member of Congress



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Trent Franks  
Member of Congress



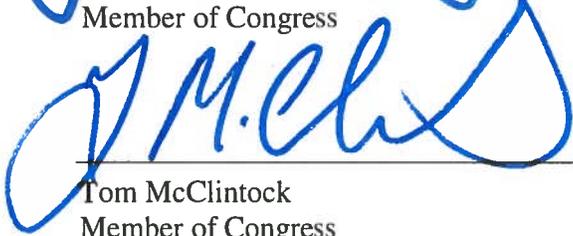
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John Duncan  
Member of Congress



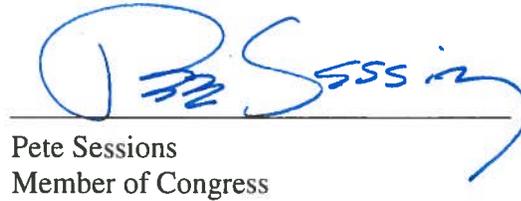
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Steve King  
Member of Congress



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Tom McClintock  
Member of Congress



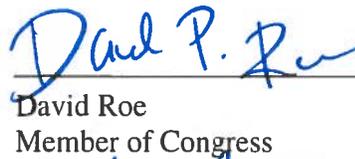
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Pete Sessions  
Member of Congress



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Pete Olson  
Member of Congress



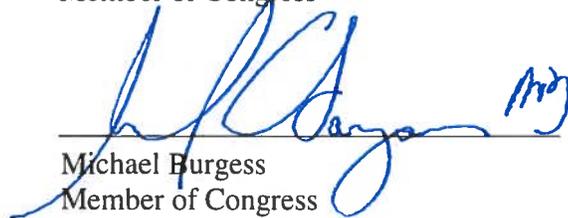
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David Roe  
Member of Congress



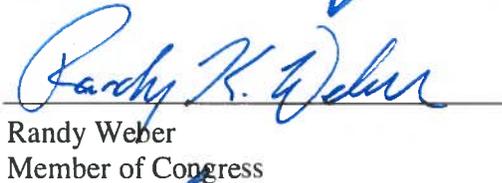
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John Fleming  
Member of Congress



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Michael Burgess  
Member of Congress



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Randy Weber  
Member of Congress



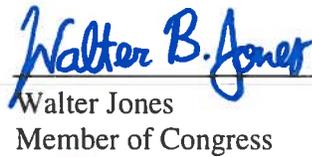
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Mo Brooks  
Member of Congress



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Andy Harris  
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Walter Jones  
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