

# The U.S. Postal Service and U.S. Citizenship and Immigration Services: Similar but Unequal

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In early August 2020, U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), announced a final rule significantly raising the fees associated with certain immigration and naturalization benefit requests – by a weighted average of around 20 per cent.<sup>1</sup> The agency included the decision to charge asylum seekers a \$50 fee to submit an application. The agency, in its justification of the fee hikes, claimed that it did so on the basis that,

As required by federal law, USCIS conducted a comprehensive biennial fee review and determined that current fees do not recover the cost of providing adjudication and naturalization services. DHS is adjusting USCIS fees by a weighted average increase of 20% to help recover its operational costs. Current fees would leave the agency underfunded by about \$1 billion per year.<sup>2</sup>

USCIS is under the direction of DHS, the secretary of which holds a Cabinet post. As a fully-fledged department of the U.S. government, DHS has the authority to change the fees under section 31 of the U.S. Code as long as it goes through the process outlined in the Administrative Procedure Act (APA).<sup>3</sup>

Such was the case before 1971 for the United States Postal Service (USPS). Prior to that year, USPS was just another government department with a Cabinet position, charging fees for services and funding its own operations. Yet, in 1971, Congress decided that the services that the then-United States Post Office Department (USPoD) provided were akin to a business. Thus, Congress transformed it into a new independent agency and required it to “pay for itself” — meaning the agency would receive no tax

dollars and instead fund itself directly through the sale of its postage, products, and services.<sup>4</sup> Yet, unlike a market business, USPS has limited authority to set its own prices and Congress has oversight over how much the agency can charge for services. Further, Congress may set mandates that USPS must follow that are binding, unlike any other government agency. Principles of this model have contributed to USPS’ debt and funding issues in recent years.

In this brief, we explore the similarities and differences between USCIS and USPS and present the argument that treating the agencies similarly in relation to Congressional controls on fees of services and funding could improve both agencies.

## A Brief History of the Pony Express

The history of an American postal service goes back to before independence, where Great Britain oversaw the creation of a postal service in the Colonies in 1691 under the joint rule of William III and Mary II.<sup>5</sup> After the American Revolution (1765-1783), George Washington officially established the postal service as an official government department –

The United States Post Office Department (USPoD) – in the newly independent country in 1792.<sup>6</sup> However, it would not be until 1872 that the department would be elevated to Cabinet status.<sup>7</sup> For the next nearly 100 years, USPoD would operate as a regular government department, funded out of general government revenue, charging fees for its services, and adding to said revenue.

In 1971, this would change. In light of postal workers’ strikes and demands for higher pay and bargaining rights, Congress began to view USPoD as closer to a business rather than a government department. Instead of conceding and negotiating directly with the government employees, Congress

negotiated agreements with unions and decided to reorganize USPoD so that it could function as a business rather than a public service.<sup>8</sup> Then-president Richard Nixon signed the Postal Reorganization Act, which went into effect in 1971, turning USPoD into USPS, an agency rather than a department.<sup>9</sup> As a result, Congress requires USPS to fund its operations entirely with its own revenue, much like a private business that is a market participant.

However, unlike a private business, USPS is required to provide mail service to every corner of the country, unlike its private market competitors such as FedEx and UPS. Even in areas where it is a greater financial burden to provide mail services than the revenue coming in, USPS is required to operate there. Furthermore, unlike a private business, Congress has a lot of control over USPS' operations, fees, and organization. First, Congress set up the Postal Regulatory Commission (PRC), making it virtually impossible for USPS to set its own prices, as would a private business. Instead, Congress made ratemaking more complicated by including in the law various non-economic pricing provisions. Postage rates were to be "reasonable and equitable," and rates for letters must be uniform – meaning the postage paid bears no relation to how far the mail must travel.<sup>10</sup> Second, in 2006, Congress passed a law requiring USPS to fund its likely pension costs for the next 75 years.<sup>11</sup> Such a requirement is an enormous financial burden that no other entity, government or private, imposes on itself because it makes no economic sense.

As a result, USPS is in debt. There are many other issues in addition to the main two described above, but in sum, USPS is treated as a business providing services without being given the rights to make its own decisions to function properly; and it is tightly controlled by Congress.

### **INS to USCIS**

Unlike an American postal service, the first body regulating immigration into the United States would

come almost toward the turn of the 20<sup>th</sup> century and come under the control of several different departments. In 1891, the government decided that immigration was a federal matter, and in response to states passing their own separate immigration laws, passed the Immigration Act of 1891.<sup>12</sup> This Act established the first immigration regulatory body in the United States as the Office of the Superintendent of Immigration under the Treasury Department.<sup>13</sup> In response to the growing number of immigrants after World War I, a more comprehensive agency, the Immigration and Naturalization Service (INS) was established under the Department of Labor in 1933.<sup>14</sup> In 1940, INS was transferred to the Department of Justice and further expanded with the wave of immigrants after World War II.<sup>15</sup>

In response to the post-9/11 shift in overall policy, the Department of Homeland Security (DHS) was formed, and under its purview, three agencies relating to immigration: Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) – INS' successor.<sup>16</sup>

Under DHS, USCIS derives funding from both congressional appropriations and the revenue it derives by charging for services. Much like USPS, USCIS has struggled to fund itself, most recently asking Congress for \$1.2 billion in emergency funding or face furloughs.<sup>17</sup>

### **USPS vs. USCIS**

USPS and USCIS have many similarities, but are treated quite differently by Congress. Treating them similarly in certain respects could lead to improvements for both agencies.

First, both USPS and USCIS have a range of services that they charge for. And, these services fund each agency, either completely or in part. Second, both agencies serve particular services for U.S. citizens and immigrants alike. Third, both are mandated under federal law.

Yet, USCIS has the ability to regularly assess whether fees cover processing costs and change them accordingly, and quite easily, as long as APA requirements are met. USPS, on the other hand, must go through its own PRC process, under the control of Congress. USCIS does not have that level of congressional oversight. Further, USPS, with its services, is treated as a business and is expected to fully fund itself through its services. Meanwhile, USCIS, with its services, is not expected to fully fund itself through its services and does receive some congressional funding.

While these services are radically different, the “business model” is not dissimilar between the two agencies. While not a simple solution, USCIS should have more congressional oversight to help the agency to manage its budget. As it continually has

had to raise fees for vulnerable immigrants and U.S. citizens alike who need immigration-related services, even after taking into account inflation, USCIS appears to be unable to manage its own budget successfully. And, if USCIS receives some congressional funding with little oversight, USPS should be, at least in part, also funded by Congress, as it provides an invaluable service to all Americans (and immigrants).

<sup>1</sup> U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 Fed. Reg. 46788 (August 3, 2020).

<sup>2</sup> U.S. Citizenship and Immigration Services (USCIS), *USCIS Adjusts Fees to Help Meet Operational Needs*, NEWS RELEASES (31 July 2020), [www.uscis.gov/news/news-releases/uscis-adjusts-fees-to-help-meet-operational-needs](http://www.uscis.gov/news/news-releases/uscis-adjusts-fees-to-help-meet-operational-needs).

<sup>3</sup> 31 U.S.C. § 9701 (1982).

<sup>4</sup> Rebecca Burns, *In 1971, Nixon Passed a Rule to Doom the Post Office. Now, It's Finally Happening*, IN THESE TIMES (14 July 2020), [www.inthesetimes.com/article/us-postal-service-lawrence-swaim-covid-19-donald-trump-postal-clerks-union](http://www.inthesetimes.com/article/us-postal-service-lawrence-swaim-covid-19-donald-trump-postal-clerks-union).

<sup>5</sup> Francis C. Huebner, *Our Postal System*, 9 RECORDS OF THE COLUMBIA HISTORICAL SOCIETY, WASHINGTON, D.C. 126, 128 (1906).

<sup>6</sup> An Act to Establish the Post-Office and Post Roads within the United States, 1<sup>st</sup> Cong. § 7 (1792).

<sup>7</sup> The Post Office Act, Pub. L. 42-335 (1872).

<sup>8</sup> Burns, *supra* note 4.

<sup>9</sup> An Act to improve and modernize the postal service, to reorganize the Post Office Department, and for other purposes, Pub. L. 91-375 (1970) (codified as amended at 29 C.F.R. § 102.135).

<sup>10</sup> Kevin R. Kosar, *The Postal Regulatory Commission's \$50 billion decision*, BROOKINGS INSTITUTE (Oct. 25, 2016),

[www.brookings.edu/blog/fixgov/2016/10/25/postal-regulatory-commission/](http://www.brookings.edu/blog/fixgov/2016/10/25/postal-regulatory-commission/).

<sup>11</sup> Sarah Anderson, et. al., *How Congress Manufactured a Postal Crisis — And How to Fix it*, INSTITUTE FOR POLICY STUDIES (Jul. 15, 2019), [www.ips-dc.org/how-congress-manufactured-a-postal-crisis-and-how-to-fix-it/](http://www.ips-dc.org/how-congress-manufactured-a-postal-crisis-and-how-to-fix-it/).

<sup>12</sup> The Immigration Act of 1891, Pub. L. 51-551 (1891).

<sup>13</sup> National Archives, *Records of the Immigration and Naturalization Service [INS]*, 85.1 ADMINISTRATIVE HISTORY (2016), [www.archives.gov/research/guide-fed-records/groups/085.html](http://www.archives.gov/research/guide-fed-records/groups/085.html).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> U.S. Citizenship and Immigration Services (USCIS), *Overview of INS History*, USCIS HISTORY OFFICE AND LIBRARY at 11. (2012),

<https://www.uscis.gov/sites/default/files/document/fact-sheets/INSHistory.pdf>.

<sup>17</sup> Nicole Ogrysko, *USCIS cancels impending employee furloughs days ahead of deadline*, FEDERAL NEWS NETWORK (Aug. 25, 2020),

[www.federalnewsnetwork.com/workforce/2020/08/uscis-cancels-impending-employee-furloughs-days-ahead-of-deadline/](http://www.federalnewsnetwork.com/workforce/2020/08/uscis-cancels-impending-employee-furloughs-days-ahead-of-deadline/).