

**USCIS Needs a Better
Approach to
Verify H-1B Visa
Participants**





DHS OIG HIGHLIGHTS

USCIS Needs a Better Approach To Verify H-1B Visa Participants

October 20, 2017

Why We Did This Audit

We conducted this audit to determine whether the U.S. Citizenship and Immigration Services' (USCIS) Administrative Site Visit and Verification Program (ASVVP) and targeted site visits are safeguarding the integrity of the H-1B Program. The H-1B is a non-immigrant visa that allows U.S. employers to temporarily employ foreign workers in "specialty occupations."

What We Recommend

We made four recommendations that, when implemented, should help USCIS improve the H-1B site visit program.

For Further Information:

Contact our Office of Public Affairs at (202) 254-4100, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

USCIS site visits provide minimal assurance that H-1B visa participants are compliant and not engaged in fraudulent activity. These visits assess whether petitioners and beneficiaries comply with applicable immigration laws and regulations. USCIS can approve more than 330,000 H-1B petitions each year and, as of April 2017, reported more than 680,000 approved and valid H-1B petitions. USCIS conducts a limited number of visits and does not always ensure the officers are thorough and comprehensive in their approach. Further limiting the site visits' effectiveness, USCIS does not always take proper action when immigration officers identify potential fraud or noncompliance. USCIS also uses targeted site visits to respond to indicators of fraud; however, the agency does not completely track the costs and analyze the results of these visits.

These shortfalls exist for various reasons. USCIS does not ensure that petitioners who previously abused the program are denied new petitions. USCIS could also do more to prevent approving petitions for recurring violations and collaborate more with external stakeholders. Additionally, the agency does not provide comprehensive guidance for how USCIS personnel resolve site visit findings. It does not have a process to collect and analyze key data elements to help guide the H-1B site visit program. Lastly, the agency lacks performance measures to show how site visits contribute to improving the H-1B Program.

Without addressing the challenges, USCIS site visits do not fully safeguard the H-1B Program, and the agency misses opportunities to ensure funds are put to better use through more robust site visits.

USCIS Response

USCIS concurred with all four recommendations and has begun corrective actions to address the findings in this report.




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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

OCT 20 2017

MEMORANDUM FOR: James McCament
Deputy Director
U.S. Citizenship and Immigration Services

FROM: John E. McCoy II 
Acting Assistant Inspector General for Audits

SUBJECT: *USCIS Needs a Better Approach to
Verify H-1B Visa Participants*

Attached for your action is our final report, *USCIS Needs a Better Approach to Verify H-1B Visa Participants*. We incorporated the formal comments from your office in the final report.

The report contains four recommendations aimed at identifying actions the U.S. Citizenship and Immigration Services can take to improve the Administrative Site Visit and Verification Program and targeted site visits to better safeguard the integrity of the H-1B Program. Your office concurred with all recommendations. Based on information provided in your response to the draft report, we consider all four recommendations open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions. Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Donald Bumgardner, Deputy Assistant Inspector General for Audits, at (202) 254-4100.

Attachment



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Abbreviations

| | |
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| ASVVP | Administrative Site Visit and Verification Program |
| CBP | U.S. Customs and Border Protection |
| CFR | Code of Federal Regulations |
| DOL | Department of Labor |
| DOS | Department of State |
| FDNS | Fraud Detection and National Security |
| GAO | Government Accountability Office |
| ICE | U.S. Immigration and Customs Enforcement |
| IO | Immigration Officer |
| LCA | Labor Condition Application |
| OIG | Office of Inspector General |
| SCOPS | Service Center Operations |
| USCIS | U.S. Citizenship and Immigration Services |
| VIBE | Validation Instrument for Business Enterprises |



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Background

The H-1B is a non-immigrant visa category authorized under the *Immigration and Nationality Act* (Act). It allows U.S. employers (petitioners) to temporarily employ foreign workers (beneficiaries) in “specialty occupations.” The Code of Federal Regulations (CFR)¹ defines a “specialty occupation” as requiring theoretical and practical application of a body of specialized knowledge. The beneficiary usually requires a bachelor’s degree or higher in a specialty occupation (or equivalent) as a minimum requirement. U.S. Citizenship and Immigration Services (USCIS) approves each H-1B petition for up to 3 years.² However, the program does allow the beneficiary to stay beyond 3 years through extensions and exceptions. Even though legislation³ protects the H-1B non-immigrant workers, it also provides standards to protect similarly employed U.S. workers from being adversely affected by the employment of non-immigrant workers.

The number of initial H-1B petitions filed and approved annually exceeds 85,000. The *Immigration Act of 1990* initially limited the number of beneficiaries who obtain new visas or otherwise provided H-1B status each fiscal year to 65,000 visas. Extensions of the initial visa for an additional 3 years, or an amendment, for reasons such as change of employer, are not counted against the limit. Additionally, the *H-1B Visa Reform Act of 2004* allowed for up to 20,000 more visas for beneficiaries with a master’s degree or higher from an American institution of higher education.⁴ As of April 2017, USCIS reported more than 680,000 approved and valid H-1B petitions. Table 1 provides the number of H-1B petitions filed and number approved in fiscal years 2014–16, based on USCIS reported data.

Since the H-1B Program’s inception in 1990, statutory changes raised the number of H-1B visas allowed several times; however, in FY 2004, the limit reverted to the original limit.

¹ 20 CFR 655.715, Specialty occupation. Other categories of temporary workers under an H-1B classification include Department of Defense cooperative research and development project workers and fashion models (8 CFR 214.2(h)(4)).

² USCIS is largely funded by immigration and naturalization benefit fees from individuals or organizations filing immigration benefit requests.

³ Section 212(n) of the Act and 20 CFR Part 655, subparts H and I

⁴ Individuals being hired by institutions of higher education, as well as non-profit and government research organizations are also exempt from the annual limit.



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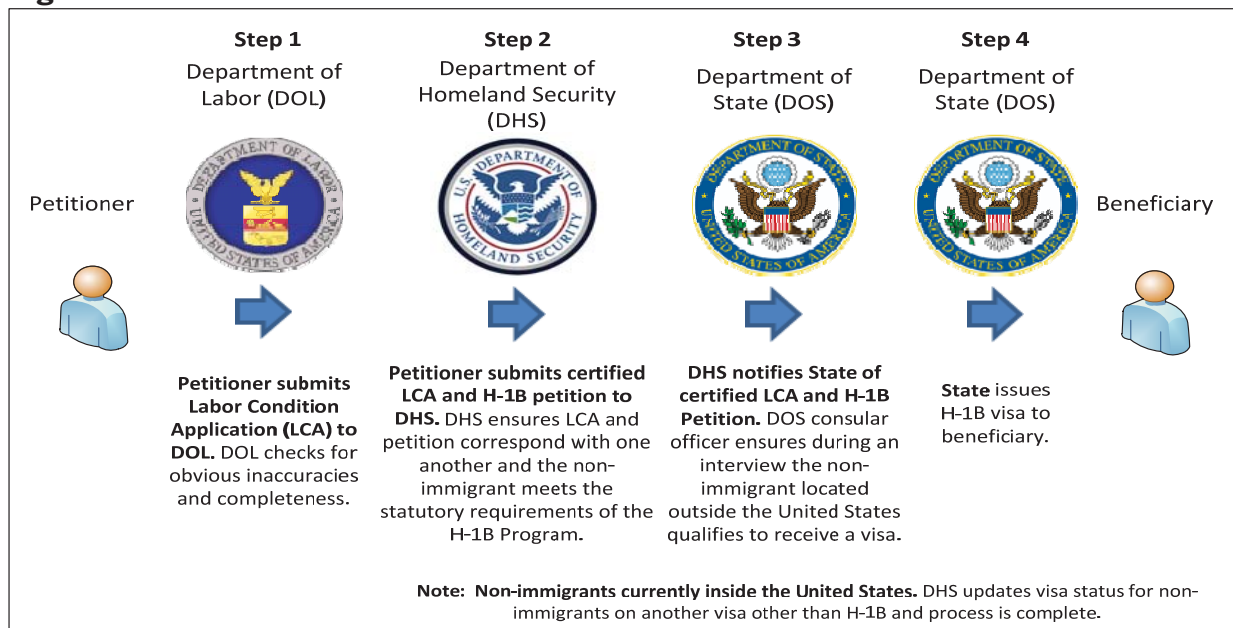
Table 1. Total H-1B Petitions Filed and Approved

| Fiscal Year | Petitions Filed | Petitions Approved |
|-------------|-----------------|--------------------|
| 2014 | 325,971 | 275,080 |
| 2015 | 368,852 | 251,380 |
| 2016 | 399,352 | 333,104 |

Source: USCIS data as of June 2017.

The H-1B Program relies on efforts from many Federal agencies (see figure 1). The Department of Labor (DOL) ensures that foreign workers do not displace or adversely affect wages or working conditions of U.S. workers by certifying Labor Condition Applications (LCA). Employers submit LCAs attesting to various requirements to protect both U.S. and temporary workers. The Department of Homeland Security includes USCIS, U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP), which all have enforcement roles in the program. ICE detects, deters, and conducts criminal investigations of immigration benefit fraud. CBP officials determine whether H-1B workers can be admitted into the United States upon arriving at a port of entry. The Department of State (DOS) issues visas through U.S. embassies and consulates. The Department of Justice investigates complaints made by U.S. workers alleging that they have been displaced or otherwise harmed by the H-1B Program. (Appendix D provides more details about each agency’s role.)

Figure 1. H-1B Visa Issuance Process



Source: DHS Office of Inspector General (OIG) analysis of CFR and program information.



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USCIS is responsible for adjudicating the validity of H-1B petitions. Prospective employers submit H-1B petitions on behalf of foreign workers to USCIS. USCIS' Service Center Operations (SCOPS) Directorate is responsible for processing and adjudicating the petitions. However, if fraud indicators exist, USCIS' Fraud Detection and National Security (FDNS) Directorate may conduct an administrative investigation, which could include a targeted site visit.

USCIS FDNS employs nearly 600 Immigration Officers (IO), most of whom conduct site visits. FDNS IOs conduct site visits to verify information and identify fraud issues pertaining to various visa classifications, including the H-1B. USCIS primarily uses the Administrative Site Visit and Verification Program (ASVVP) to assess whether petitioners and beneficiaries comply with applicable immigration laws and regulations. More than 80 IOs are assigned to the program. While on site, IOs may verify H-1B petition information and supporting documents, verify the organization exists, visit the beneficiary's workstation, take photographs, and interview personnel to confirm information about the beneficiary's position. Each site visit focuses on one petition and beneficiary. The IOs determine whether the H-1B petition information can be verified or not. Although ASVVP site visits are compliance-based and random, USCIS also uses targeted site visits to respond to indicators of fraud. USCIS reported spending approximately \$8 million in 2016 for ASVVP site visits alone; however, the agency does not track the specific costs associated with all site visit activities.

The H-1B Program has been subject to criticism regarding allegations of improper use or fraud by individuals and companies. The program's purpose is to help employers recruit highly-skilled foreign workers when they cannot hire qualified workers from the United States. Nevertheless, companies such as Disney and Hewlett Packard have been criticized for replacing qualified American workers through this program. The program has regulations built in to protect American workers from displacement by H-1B beneficiaries. Site visit programs are a tool USCIS uses to ensure H-1B participants are complying with the program's requirements and to prevent fraud.

Results of Audit

USCIS site visits provide minimal assurance that H-1B participants are compliant and not engaged in fraudulent activity. These visits assess whether petitioners and beneficiaries comply with applicable immigration laws and regulations. USCIS can approve more than 330,000 H-1B petitions each year, which could include extensions and amendments. As of April 2017, USCIS reported more than 680,000 approved and valid H-1B petitions. However, during FYs 2014–16, USCIS conducted an average of 7,200 ASVVP site visits annually. For the limited number of visits conducted, USCIS does not always



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ensure the IOs are thorough and comprehensive in their approach. Further limiting the site visits' effectiveness, USCIS does not ensure the agency always takes proper and timely action when IOs identify potential fraud or noncompliance. USCIS also uses targeted site visits to respond to indicators of fraud; however, the agency does not completely track the costs and analyze the results of these visits.

USCIS could do more to prevent approving petitions for recurring violations and collaborate more with external stakeholders. The agency does not provide comprehensive guidance for how USCIS personnel resolve site visit findings. USCIS does not have a process to collect and analyze key data elements to help guide the H-1B site visit program. The agency lacks performance measures to show how site visits contribute to improving the H-1B Program. Without addressing the challenges, USCIS site visits do not fully safeguard the H-1B Program, and the agency misses opportunities to ensure funds are put to better use through more robust site visits.

Site Visits Have Limited Impact on H-1B Program Integrity

Site visits, whether ASVVP or targeted, are USCIS' primary method to assess compliance with applicable laws and requirements once the petition has been approved.

ASVVP Site Visits

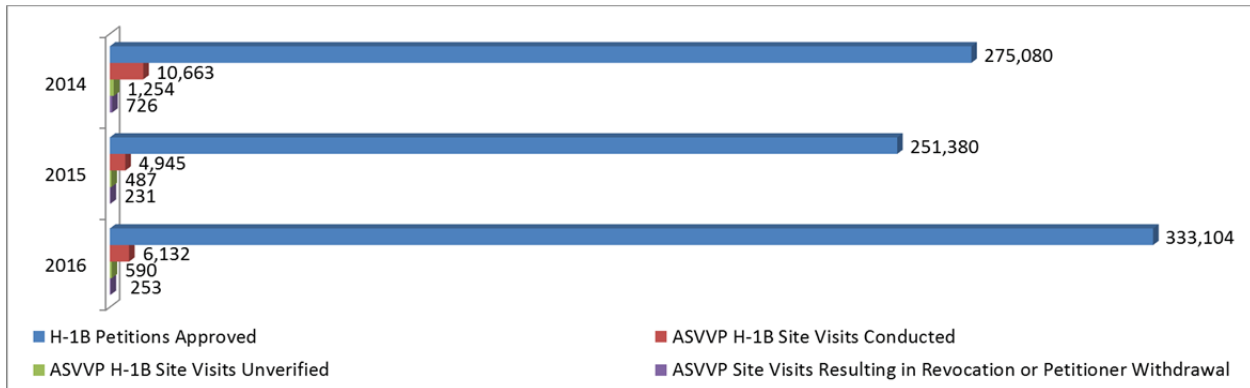
For FYs 2014–16, FDNS conducted ASVVP site visits on approximately 3 percent of all approved H-1B petitions. Just a fraction of these site visits resulted in revocation or petitioner withdrawal of the H-1B visa when the site visits identified noncompliance or fraud. During FYs 2014–16, FDNS conducted an average of 7,200 of these site visits annually. This was based on an agency goal of completing 9,000 in FY 2014 and 10,000 in FY 2016, covering multiple visa categories. According to USCIS officials, the agency did not set a goal in FY 2015 because policy and program staffing changed. These site visits are compliance based, and participation by both the petitioner and beneficiary is voluntary. Figure 2 shows the disparity between H-1B petitions approved, ASVVP H-1B site visits conducted, the number of unverified site visits, and the ASVVP H-1B site visits resulting in revocation.



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Figure 2. Limited Impact of ASVVP



Source: DHS OIG analysis of data from multiple USCIS databases.

During ASVVP site visits, IOs use general criteria, which provide the main requirements that must be verified. Some of these requirements include salary, job duties, presence of an organization, and the beneficiary. The IO documents the results in a Compliance Review Report after completing the site visit. The report results are a collective determination based on all resources, including Headquarters FDNS, Service Centers, regional and field offices.

Targeted Site Visits

Targeted site visits are generated in one of three ways:

1. Site Inspection and Evaluation of Validation Instrument for Business Enterprises (VIBE) Entities — the VIBE system⁵ identifies potentially fraudulent entities.
2. External Source Site Visit Program — the DOS Consulate Offices refer fraud concerns.
3. Administrative Investigations — USCIS adjudicators who find fraud indicators in benefit applications and petitions make referrals for investigations to FDNS. Law enforcement entities, the public, or other government agencies may also provide tip letters and referrals.

USCIS was unable to provide complete and accurate records for the total number of H-1B targeted site visits conducted during FYs 2014–16 because it does not systematically track site visits resulting from administrative investigations. During FYs 2014–16, USCIS tracked 577 targeted site visits — 433 visits conducted for the State Consulate Offices and 144 based on the Site

⁵ The VIBE system is a tool that allows USCIS to verify petitioners' business information.



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Inspection and Evaluation of VIBE Entities. USCIS was unable to quantify the total number of targeted site visits based on administrative investigations.

USCIS does not have a reliable and comprehensive system to track all three types of its targeted site visit activities. The agency uses spreadsheets to manually track site visit work resulting from the Site Inspection and Evaluation of VIBE Entities and the DOS Consulate Offices. However, for tracking targeted site visits resulting from administrative investigations, USCIS relies on the FDNS-Data System. The system's current capabilities are unable to identify whether a targeted site visit was for an H-1B visa or another visa⁶ because multiple visas could be involved in these types of site visits. Therefore, we were unable to identify how many of these visits focused solely on H-1B petitions.

FDNS-Data System is USCIS' case management system to record, track, and manage immigration inquiries, investigative referrals, law enforcement requests, and case determinations involving benefit fraud, criminal activity, public safety, and national security concerns.

According to USCIS officials, as a result of Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*, signed January 25, 2017, the agency has recently implemented plans to increase targeted site visits. This will include:

- a greater focus on cases in which the employer's basic business information cannot be verified through commercially available data;
- H-1B dependent employers who have a high ratio of H-1B workers compared to U.S. workers; and
- employers petitioning for beneficiaries who work offsite at another company or organization's location.

USCIS has also created an email inbox to report suspected H-1B fraud and abuse and plans to issue a public report on H-1B petition data submitted for FY 2018.

Limited Effort to Prevent Recurring Violators

USCIS could do more to prevent recurring violations with H-1B petitioners. According to the CFR,⁷ DHS (USCIS) has authority to approve or deny a petition. USCIS' *Adjudications Field Manual* also states that even if adjudicators have some doubt as to the petition's validity, if the claim is probably true

⁶ Targeted site visits are also conducted on other benefit types, including L-1A Intracompany Transferee Executive or Manager or R-1 Non-immigrant Religious Workers.

⁷ 20 CFR 655.705, What Federal agencies are involved in the H-1B and H-1B1 programs, and what are the responsibilities of those agencies and of employers?



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(greater than 50 percent), the petition cannot be denied or revoked. Despite this important function, USCIS does not always ensure that petitioners who were recurring violators are not approved for new petitions or that USCIS is, at a minimum, using all site visit data during the adjudication process. USCIS may use information on matters such as whether the business is in operation, has committed fraud, is under investigation by a law enforcement agency, or was debarred by DOL. However, the data we reviewed shows the agency does not adequately use revocations resulting from ASVVP site visits to further assist during adjudications to eliminate recurring violators.

According to DHS officials, adjudicators do not consider unverified results and revocations from ASVVP site visits when approving or denying H-1B petitions. Accordingly, USCIS reviews each petition to ensure that the information provided satisfies the criteria for approval. This includes determining whether an LCA supports the petition, the occupation is a specialty occupation, and the non-immigrant's qualifications meet the H-1B Program's statutory requirements. It does not consistently consider material information about the petitioner beyond what is provided on the form, including whether the petitioner previously demonstrated non-compliance with program rules and regulations. Thus, USCIS has approved petitioners from certain industries that have high rates in which IOs were unable to verify petition information during site visits. For example, USCIS and CBP officials reported that many information technology consulting petitioners regularly submit petitions for beneficiaries with the intent of contracting them out to third-party clients. Additionally, in many cases, the projects provided within the petition are non-existent. This allows beneficiaries to arrive in the country and not work in accordance with the H-1B agreements.

Table 2 illustrates two information technology consulting petitioners with the most ASVVP site visits over the past 3 years. In these two examples, USCIS approved between 31,000 and 57,000 petitions for petitioners for which petitions were previously revoked due to an unverified site visit (i.e., the site visit confirmed that the petitioners were noncompliant in some material respect with H-1B program rules and regulations). Although USCIS conducted site visits on only 1–2 percent of the approved petitions submitted by these two entities, these relatively few site visits yielded unverified rates of 14–16 percent. The firms continue to file numerous petitions, which USCIS continues to approve despite the heavy pattern of violations.



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**Table 2. ASVVP Results - Information Technology Consulting Industry
FYs 2014–2016**

| Petitioner | Information Technology Industry Firm A | Information |
|------------------------------|---|--------------------|
| Total Petitions Submitted | 68,579 | 37,193 |
| Total Petitions Approved | 56,707 | 31,771 |
| Total ASVVP Site Visits | 1,351 | 499 |
| Total Unverified Site Visits | 214 | 71 |
| Total Petitions Revoked | 85 | 30 |

Source: DHS OIG analysis of data from multiple USCIS databases.

USCIS conducted fewer ASVVP site visits for other industries in correlation to the total number of H-1B petitions approved. Site visits for these other industries resulted in a lower unverified outcome. Table 3 provides an illustration of two corporations operating in two separate industries that had site visits at their locations.

Table 3. ASVVP Results - Other Industries FYs 2014–16

| Petitioner | Manufacturing Industry Firm A | Financial Services Industry Firm B |
|------------------------------|--|---|
| Total Petitions Submitted | 2,429 | 4,115 |
| Total Petitions Approved | 2,289 | 3,922 |
| Total ASVVP Site Visits | 108 | 110 |
| Total Unverified Site Visits | 3 | 2 |
| Total Petitions Revoked | 0 | 0 |

Source: DHS OIG analysis of data from multiple USCIS databases.

By failing to take more proactive steps to identify petitioners with prior unverified site visit results and ensure that subsequent petitions submitted by these petitioners are not approved, USCIS permits noncompliance — including fraud — to perpetuate in the H-1B program. To the extent limited resources play a part in USCIS’ ability to detect and prevent program abuse, USCIS could do a better job of utilizing its information-sharing relationships with other agencies. Currently, USCIS and stakeholders, such as DOS, DOL, and ICE, have Memorandums of Agreement in place ensuring regular communication and information sharing regarding fraud. There is also a mechanism in place for USCIS to meet with other Federal agencies throughout the year specifically related to visa classifications like the H-1B visa. USCIS also informed us that they work with other stakeholders, such as State, local, and tribal partners. Leveraging these relationships would help USCIS better identify high-risk petitioners to target for site visits. It would also enhance USCIS’ ability to take



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action against petitioners who, because of demonstrated recurrent noncompliance, should not be permitted to participate in the H-1B program.

Even though the agencies have demonstrated some collaborative effort, additional cooperation and communication would help. For example, USCIS and DOL could share information to increase awareness regarding recurring violators identified through site visits post adjudication. DOL has the authority to debar petitioners for a period of time from filing new H-1B petitions when those petitioners have been found to be noncompliant or fraudulent with their LCA. By working more with DOL, debarment of petitioners submitting fraudulent H-1B petitions would help USCIS reduce H-1B Program noncompliance or fraud.

According to the Government Accountability Office's (GAO) *Framework for Managing Fraud Risks in Federal Programs*, results of monitoring such as the data collected during site visits should be used to improve fraud prevention and detection. After the collection of data and results, USCIS management should develop a plan describing how the program will respond to instances of noncompliance and fraud. Specifically, management should collaborate with external stakeholders and communicate quality information such as noncompliance and fraud data collected during site visits.

ASVVP Needs Improvement

Ineffective Sampling of Petitions for Site Visits

ASVVP site visit sampling methodology for H-1B petitions limits opportunities to identify potential noncompliance or fraud indicators. USCIS uses a random sampling methodology that does not consider other factors such as risk, size of organization, or history of petitioners' activities. For example, USCIS' ASVVP sampling also does not include the entire universe of approved H-1B petitions or consider additional factors in the selections, unlike targeted site visits, which are based on referral and identified risk factors.

In FYs 2014–2016, USCIS' sampling methodology for identifying H-1B ASVVP site visits excluded 61 percent, 59 percent, and 64 percent, respectively, of the entire H-1B population. According to USCIS' draft 2013 ASVVP Workload Balancer Database guide, which provides an overview of how the database generates a list of receipt numbers eligible for an ASVVP site visit, the sampling excludes amended petitions and approved petitions in which the beneficiary is



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located outside of the United States.⁸ According to USCIS officials, extended petitions for the same job and employer as initially approved, known as same/same, are also excluded manually outside of the Workload Balancer due to staffing limitations at one service center. USCIS plans to improve its sampling methodology by including amended petitions and same/same petitions in the sampling, but has not incorporated these changes as of May 2017. Table 4 shows the total H-1B approved petitions excluded based on USCIS’ methodology in FYs 2014–16.

Table 4. Total Approved Petitions Excluded from ASVVP Sampling FYs 2014–16

| Petition Population and Exclusions | FY 2014 | FY 2015 | FY 2016 | Total |
|---|---------|---------|---------|---------|
| Entire Population of Approved Petitions * | 281,461 | 260,650 | 346,709 | 888,820 |
| Total Excluded by FY | 171,280 | 154,448 | 222,492 | 548,220 |
| Total % Excluded from Population | | | | |

Source: DHS OIG analysis of USCIS data.

*Note: The entire population of approved petitions varies slightly from the numbers presented in table 1 based on revocations and the timing of when the data was run and provided.

ASVVP site visit sampling does not take a risk-based approach or differentiate between low- and high-risk petitioners. USCIS does not stratify and select H-1B ASVVP site visits to identify and review petitions for prior offenders. For example, if the recurring violators in the information technology industry discussed earlier file future petitions, they will have the same chance of being selected for an ASVVP site visit as those in compliance, such as the petitioners in the manufacturing and financial services industries. If there is no pattern of abuse found at those companies after multiple site visits, the agency could reduce resources spent by removing or limiting the reputable companies from their sampling selection. USCIS has recently identified risk factors to incorporate into their targeted site visit program. Nevertheless, USCIS has not shared evidence of plans to include these risk factors into sampling for the ASVVP. Although there is value in maintaining a random sampling, risk-based sampling could also be incorporated into the program.

⁸ An amended petition for a previously approved petition is filed due to a change of the employee’s work location or any other material change in the terms and conditions of employment. Same/same are petition extensions for the same job and employer, as initially approved. The other excluded category, beneficiary located outside the United States until they start work, represents petitions for beneficiaries residing outside of the United States at the time the petition is approved.

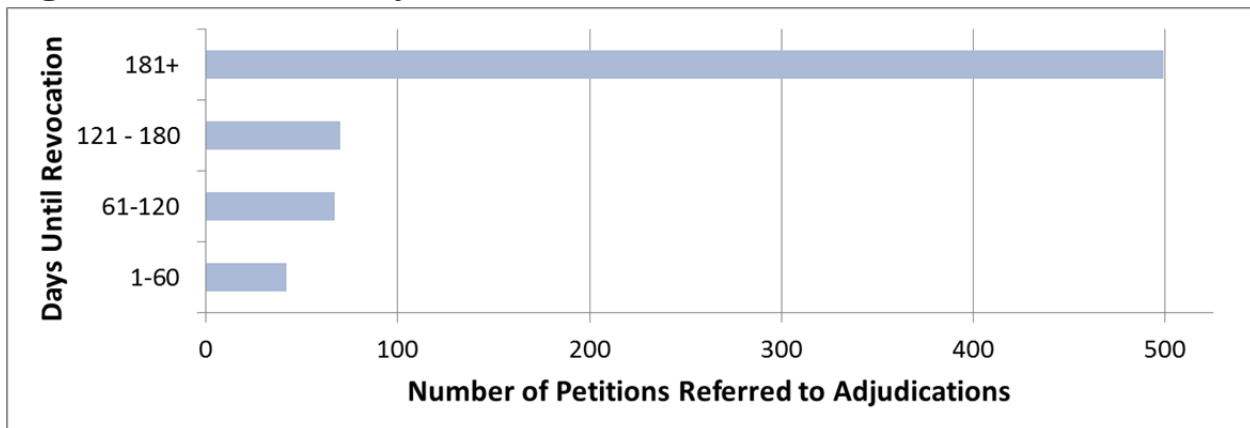


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Lack of Timely Adjudicative Action on Noncompliant ASVVP Site Visits

USCIS does not promptly take action and report resolution when H-1B ASVVP site visits identify potential fraud or noncompliance. Of the 2,331 site visits that FDNS determined were unable to be verified during FYs 2014–16, we identified 996 beneficiaries, or 43 percent, who showed an approved and active H-1B status as of April 2017. We reviewed all site visits unable to be verified in which USCIS processed a revocation for noncompliance or fraud for FYs 2014–16. The revocation process averaged 339 days from the time an unverified site visit was referred to adjudications (see figure 3). Without timely resolutions for site visit findings and with continued participation of violators in the program, ineligible participants may continue to abuse the program while working in the country.

Figure 3. Number of Days to Revoke Petitions in FYs 2014–16



Source: DHS OIG analysis of data from multiple USCIS databases.

USCIS makes the adjudication of new petition filings a priority over resolving issues identified during ASVVP site visits. ASVVP site visits in which IOs were unable to verify petition information focus on previously approved petitions and are not subject to internal processing timeframes. According to USCIS officials, adjudicative action on these site visit cases can be suspended to complete higher priority tasks. They also explained that revocations can take longer for reasons such as the complexity of the case, which requires more analysis.

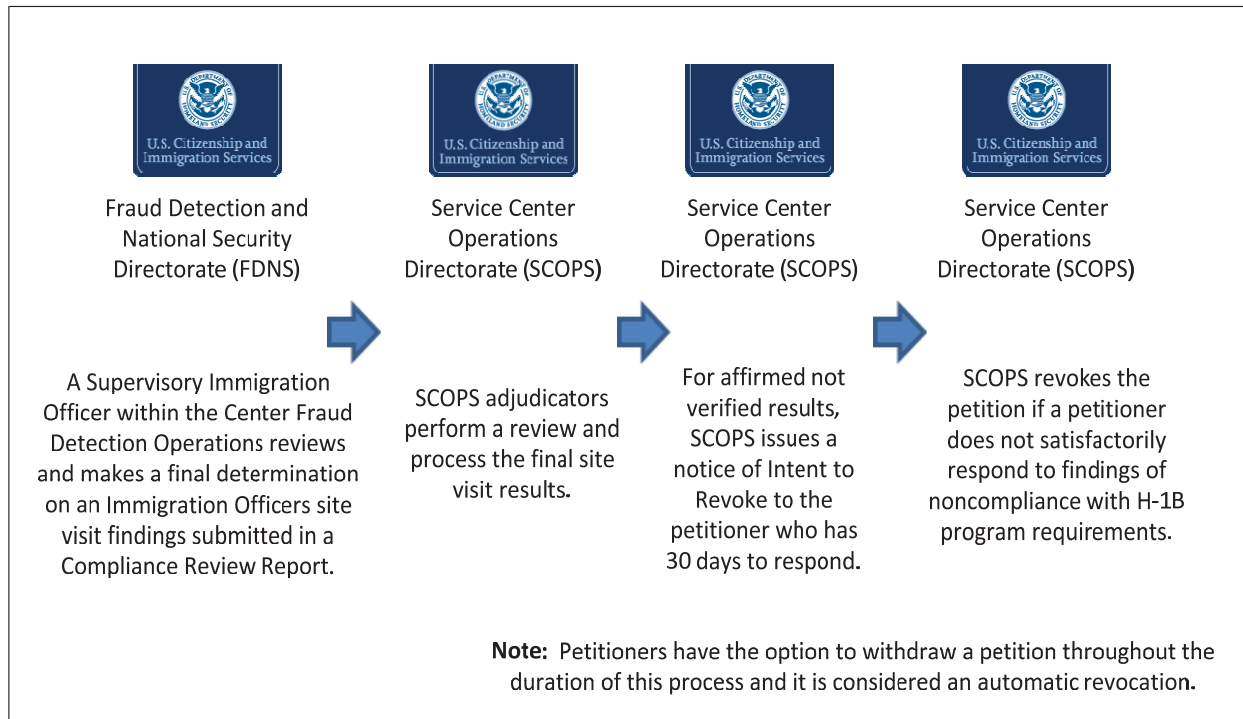
USCIS does not always take timely action on unverified site visits. At one location, an IO provided three examples of unverified site visits that were currently in approved status. We followed up with USCIS on the status of these site visits, and learned that the SCOPS had not reviewed or taken action on two of the three files. The files were erroneously shipped to a storage facility in Virginia, where USCIS stores files after they have been closed. Subsequent to our inquiry, USCIS retrieved the files from storage and began the revocation



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process by issuing Notices of Intent to Revoke. Figure 4 shows the revocation process.

Figure 4. Revocation Process after Unverified ASVVP Site Visits



Source: DHS OIG analysis of USCIS policies.

USCIS does not have policies or procedures to ensure proper actions are taken timely in response to the site visit process from initiation to adjudicative action. We identified H-1B petitions reported as noncompliant or fraudulent are in approved status for an average of approximately 415 days, or almost half of the petition’s 3-year validity period.

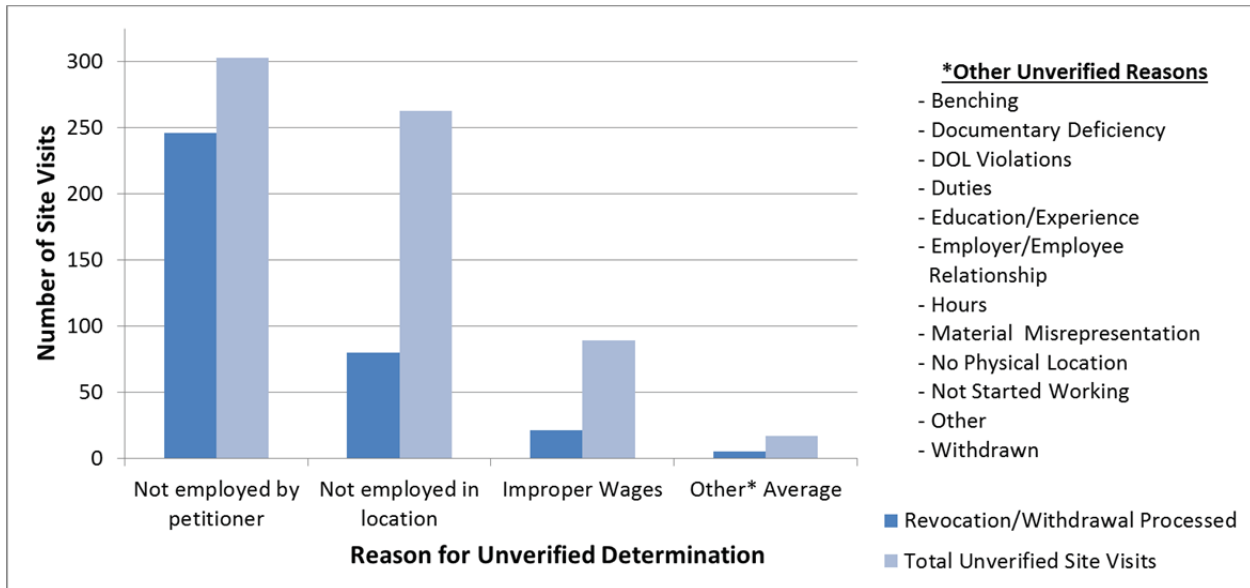
USCIS Takes Adjudicative Actions on Simple Noncompliant Cases

The ASVVP identifies a variety of noncompliance cases, but primarily takes action on one simple type of noncompliance — a beneficiary not employed by the approved employer. The program rarely revokes petitions for the more complex noncompliance and fraud cases. In 81 percent of the cases, a beneficiary that is “not employed by petitioner” was used as the basis for revocation. Conversely, when USCIS identified all other noncompliance or fraud schemes, including improper wage payment, misrepresentation of job duties, non-existent employee/employer relationship, and others, the agency revoked only 29 percent of the petitions (see figure 5).



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Figure 5. Top Results for ASVVP Site Visits during FY 2014–16



Source: DHS OIG analysis of data from multiple USCIS databases.

*Note: The “Other” column represents an average of the 12 other unverified reasons listed in the figure.

The disparities shown in figure 5 exist, in part, because USCIS does not provide comprehensive guidance to FDNS and SCOPS to ensure consistent determinations on ASVVP site visits. Through these site visits, FDNS establishes the legitimacy of the petitioning organization and verifies the accuracy of the employment offer. FDNS personnel conclude that a site visit is unverified if the information at the time of adjudication does not match the findings of the site visit or could not be verified. SCOPS personnel reopen these petitions based on agency manuals, the CFR, the *Immigration and Nationality Act*, precedent decisions, and other SCOPS guidance. As previously noted, if the claim is probably true, the petition cannot be denied or revoked, even if adjudications has some doubt as to the petition’s validity.

USCIS issued guidance that aligns FDNS and SCOPS determinations on one issue. A precedent decision⁹ taking effect April 9, 2015, clarified what constitutes a material change in the beneficiaries’ work location. If a site visit identified that a beneficiary was not working at the location reported on the LCA and petition, the site visit would be unverified. Prior to the decision, USCIS allowed the petitioner to submit a new LCA within 30 days of the move, with the updated work location after the unverified site visit took place, and would take no action on the petition. After the decision, a change of work location outside the previous commuting area is considered a material change

⁹ *Matter of Simeio Solutions, LLC*, USCIS Administrative Appeals Office, 26 I&N Dec. 542, Interim Decision #3832, decided April 9, 2015.



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to the original petition and would result in a revocation if an amended or new petition was not filed before the employee started working at the new location.

USCIS does not address when the beneficiary is inappropriately paid in accordance with the local wage scale and their experience. When submitting a prevailing wage level on the LCA, the petitioner is permitted to select a wage based on the beneficiary's experience, provided it falls within range for the specified occupation. FDNS may report the site visit as unverified if a beneficiary receives an incorrect wage level.¹⁰ Current SCOPS guidance instructs adjudicators to not pursue adjudicative action on these cases, and SCOPS personnel explained these are DOL matters. However, during fieldwork, USCIS officials said these cases were not always referred to DOL; rather, they were returned to FDNS and no action was taken.

Limitations to ASVVP Policies and Training

The lack of a standardized process across the agency and country allows inconsistencies in how ASVVP site visits are conducted. We observed a varying degree of effort in how IOs conducted 26 site visits throughout the country. For example, IOs at one location did not obtain any documentation on site. Instead, they requested all documentation be emailed at a later date. Obtaining this information via email after the site visit could allow the opportunity for the petitioner to alter or forge the documents. We also noted that not all IOs are inspecting workstations or physically verifying the beneficiary's job duties to validate the work being performed and identify potential fraud indicators.

The IOs rely on the ASVVP *Standard Operating Procedures*, training material, and other informal documents to conduct site visits. However, this guidance is very broad and leaves room for varied interpretation, which can fluctuate with experience level. Specifically, the *Standard Operating Procedures* direct IOs to verify H-1B requirements through interviews, document reviews, and observations during site visits and to document the results in a Compliance Review Report. According to the *Standard Operating Procedures*, Section 1.7.4 Review Records, when possible, IOs obtain legible photocopies or photographs of the documents for uploading into the FDNS-Data System. However, it does not require the IOs to obtain the documentation on site. Additionally, Section 1.5.1 allows site visits to be waived under certain conditions and conducted telephonically, eliminating other critical physical verification elements from the process, including validating work performed.

¹⁰ Incorrect wage levels would include an experienced manager/supervisor who would normally be paid at a higher level based on experience level but is being paid at the lowest wage permitted, normally reserved for entry-level employees with a basic or limited understanding.



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IOs may be missing key fraud findings because of the lack of training associated with the ASVVP site visits. Although USCIS reports to Congress claimed that these site visits can detect fraud schemes and are a fraud deterrent, the agency does not provide training to IOs to assist them with detecting potential fraud during site visits for referral to more experienced IOs.

Also, USCIS does not train IOs dedicated to conducting ASVVP site visits on what fraudulent documents look like, how to detect fraud, or potential fraud indicators. IO training materials specifically state that “ASVVP is low-level verification, NOT fraud detection work.”

USCIS’ FY 2016 annual report to Congress states:
“While these reviews do not directly detect fraud, they allow USCIS to identify fraud schemes that were not identifiable in the past.”

This statement directly contradicts the agency’s own representations to Congress about the purpose and utility of the program.

Improvements to training, as well as better policies and procedures will help IOs detect fraud during site visits. A better understanding and awareness of potential fraud within the H-1B Program could lead to more targeted site visits, fraud findings, and revocations.

Turnover

As currently designed, the ASVVP has high turnover that hinders IOs’ ability to understand complex visa categories, and gain experience in identifying fraud and noncompliance issues. For each IO that leaves, expertise is lost. Table 5 illustrates the turnover rates for IOs conducting ASVVP site visits during FYs 2014–16.

Table 5. ASVVP Site Visit IO Turnover Rates in FYs 2014–16

| Fiscal Year | Employee Turnover | Average Positions Filled | Turnover Percentage |
|-------------|-------------------|--------------------------|---------------------|
| 2014 | 16 | 69 | 23% |
| 2015 | 32 | 60 | 53% |
| 2016 | 31 | 58.5 | 53% |

Source: DHS OIG analysis of USCIS data.

USCIS has not conducted an assessment to evaluate the cause and levels of turnover of IOs and the impact turnover may have on the effectiveness of site visits and associated costs. Despite the lack of an assessment, based on an FY 2016 USCIS report to Congress¹¹ and our interviews with IOs and upper management of USCIS, high turnover rates may be due to upward mobility limitations. In the report to Congress, USCIS recognized the ASVVP had high

¹¹ USCIS, *FY 2016 H-1B and L-1A Compliance Review and Site Visits Report to Congress*, 2016.



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vacancy rates for IOs. The agency attributed the rate to IOs pursuing promotions in other USCIS positions because the IO promotion potential is limited. The report also noted that attrition rates impacted performance numbers for FY 2015. As of April 2017, USCIS planned to hire IOs at a higher grade level because they plan to take a more targeted approach on employers for site visits. This may impact turnover rates in the future, but has not yet been fully implemented or evaluated.

USCIS Needs a Better Approach to Allocate Resources

USCIS has not developed an approach to allocate its site visit resources in the most effective and efficient manner. Specifically:

- USCIS lacks performance measures to show how site visits add value to the H-1B Program; and
- USCIS does not have a process to collect and analyze key data elements to help guide the H-1B site visit program.

USCIS conducts limited performance measuring to show how site visits add value to the H-1B Program and cannot determine its overall effectiveness to improve the program. USCIS' only performance goals and outcome indicators for site visits are based on quantity and timeliness of site visits completed. USCIS tracks the total number of ASVVP site visits conducted by FDNS and sets a goal of 30 days to complete each site visit report. Once FDNS provides SCOPS with unverified site visit results, USCIS does not require SCOPS to take final adjudicative action in a timely manner.

USCIS does not assess output or outcome indicators, such as how many site visits lead to revocations, revised petitions, or fraud detection. FDNS does not fully track and analyze data on ASVVP and targeted site visits. Thus, USCIS was unable to provide data on its site visits, including total number of H-1B site visits and site visit costs. Data collected for both types of site visits and program costs are incomplete and not used to assess the program's effectiveness.

The Government Performance and Results Modernization Act of 2010 requires that Federal agencies create a performance plan covering each program activity. The performance plan should include indicators to measure or assess progress toward performance goals including efficiency, output, and outcome indicators.

Although the agency does collect some information from the site visits, USCIS does not assess the results. Without ensuring a set of performance indicators such as data accuracy and reliability are being used to measure progress toward performance goals, USCIS cannot ensure funds are spent efficiently.



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Additionally, USCIS does not monitor H-1B beneficiaries upon expiration or revocation to assist DHS with tracking visas. For example, USCIS has failed to produce documentation illustrating that it is actively tracking expired or revoked H-1B beneficiaries, allowing them to remain in the United States illegally. We recently reported shortfalls with how DHS is tracking this and all visa activity.¹²

Recommendations

Recommendation 1: We recommend that the Deputy Director, U.S. Citizenship and Immigration Services, develop a process to collect and analyze complete and accurate data for all H-1B site visit activity. At a minimum, USCIS should:

- a. track targeted site visits as well as program costs associated with Administrative Site Visit and Verification Program and targeted site visits;
- b. analyze adjudicative actions for unverified site visits; and
- c. use data collected above to develop performance measures to assess the effectiveness of the site visit programs and assist with oversight improvements.

Recommendation 2: We recommend that the Deputy Director, U.S. Citizenship and Immigration Services, identify data and assessments obtained through site visit programs post adjudication and implement measures to systematically share this information with external stakeholders as appropriate.

Recommendation 3: We recommend that the Deputy Director, U.S. Citizenship and Immigration Services, conduct an assessment of the H-1B Administrative Site Visit and Verification Program to:

- a. identify the best allocation of resources for oversight of the H-1B Program. This should include an adjustment of the number of required site visits per year, and the time and effort spent at each site visit;
- b. update policies, procedures, and training to ensure consistent approaches and proper documentation for site visits;
- c. enhance the random sampling procedures to also include a more risk-based approach that prioritizes the recurring violators within the universe of H-1B holders and a random stratified selection of small or

¹² *DHS Tracking of Visa Overstays is Hindered by Insufficient Technology*, OIG-17-56, May 1, 2017.



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- high risk petitioners; and assesses available information and data on petitioners; and
- d. ensure immigration officers have a career path that will encourage them to remain in the position and enable them to develop, enhance, and contribute to identifying and addressing noncompliance or fraud for the long term.

Recommendation 4: We recommend that the Deputy Director, U.S. Citizenship and Immigration Services, develop comprehensive policies across Directorates to ensure adjudicative action is prioritized on fraudulent or noncompliant immigration benefits identified by the H-1B ASVVP and targeted site visits.

Management Comments and OIG Analysis

Recommendation 1.

USCIS Response: Concur. USCIS recognized the benefits of collecting and analyzing key data elements to help guide the H-1B site visit activity. The FDNS Mission Support Division has assigned funding codes to the ASVVP to allow for enhanced reporting. USCIS launched the Targeted Site Visit and Verification Program in phases to develop effective and systematic targeting of potential and unknown fraud. Under this new program, site visits are visa-specific and rely on screening using risk criteria, allowing for the systematic tracking of resources required to conduct them and providing clear outcomes to estimate the impact of the program. This is considered a hybrid program between randomly selected “Compliance” visits and “For Cause” site visits that are based on fraud elements discovered through benefit processing.

FDNS will issue guidance to help ensure more consistency in how the time associated with “For Cause” site visits for travel and on-site time is recorded in the FDNS-Data System. This will advance FDNS’ ability to capture the travel and on-site time as a subset of the total resources required for administrative investigations. FDNS expects to develop and issue guidance related to tracking the activities and costs related to site visits by June 30, 2018. USCIS’ Center Fraud Detection Operations and SCOPS use data on adjudicative actions from the Comprehensive ASVVP Reporting System during compliance reviews. The USCIS FDNS Fraud Division will include data collected through this reporting system to assess how to improve its capabilities, site visit policies, training, and set performance goals. Expected completion date is June 30, 2018. The new Targeted Site Visit and Verification Program will provide the comprehensive data needed to measure performance and assess the effectiveness of the site visit programs. FDNS Fraud Division will review the data and propose performance measures for consideration. FDNS plans to



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incorporate Targeted Site Visit and Verification Program performance goals in its annual set of performance measures by September 30, 2018.

OIG Analysis: This recommendation is resolved and open. We will need to confirm that USCIS has fully implemented all planned actions successfully, and developed a process to collect and analyze complete and accurate data for all H-1B site visit activities. Specifically, we will need to:

- validate the assigned funding codes and how the Targeted Site Visit and Verification Program provides effective and systematic targeting of potential and unknown fraud;
- review the FDNS guidance to confirm it will ensure more consistency in how the time associated with “For Cause” site visits for travel and on-site time is recorded in the FDNS-Data System;
- assess how the data collected through the Comprehensive ASVVP Reporting System is used to improve capabilities, site visit policies, training, and set performance goals; and
- review the process of how the new Targeted Site Visit and Verification Program data contributes to performance measures and the effectiveness of the site visit programs.

Recommendation 2.

USCIS Response: Concur. USCIS agreed that greater coordination with other Federal agencies; specifically, coordination with the Department of Justice, Department of Labor, and Department of State is critical for ensuring the integrity of the H-1B program. The enhanced sharing of information will facilitate investigations and sanctions of those who violate the rules of the H-1B Program. USCIS and DOL executed a Memorandum of Agreement in January 2017 to allow access to agency systems that contain certain labor condition application and employment-based petition information, including USCIS’ VIBE system. VIBE would allow DOL to access information on petitioners that have been identified as having committed fraud or that are under investigation by a law enforcement agency. Consistent with Executive Order 13788, USCIS and DOL are evaluating statutory authorities to allow for the systematic sharing of USCIS site visit information with DOL.

USCIS and DOS are working to further enhance the sharing of USCIS site visit information through the External Source Site Visit and Verification Program. USCIS is in the final stages of providing DOS access to the FDNS-Data System database. Through the FDNS-Data System, DOS will have access to USCIS site visit information, and will be in a position to use this information when adjudicating visa applications. USCIS and DOS are also working on a number of information-sharing initiatives that will help enhance the integrity of the H-



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1B program, including mechanisms for DOS to share with USCIS derogatory information uncovered during the visa adjudication process. Finally, USCIS is in the process of establishing a Memorandum of Understanding with the Department of Justice Civil Rights Division's Immigrant and Employee Rights Section, which is responsible for enforcing the anti-discrimination provisions of the *Immigration and Nationality Act*. USCIS plans to share site visit information that may be helpful in identifying, investigating, and prosecuting H-1B employers that intentionally discriminate against U.S. workers. Expected completion date is March 31, 2018.

OIG Analysis: This recommendation is resolved and open. We need to confirm USCIS can systematically share data and assessments obtained through site visit programs post adjudication and implement measures with external stakeholders as appropriate.

Recommendation 3.

USCIS Response: Concur. USCIS responded that it is adopting a more targeted approach when making site visits to H-1B petitioners and the worksite of H-1B employees as part of increased efforts to combat fraud and abuse in the H-1B program. FDNS Fraud Division plans to conduct more site visits and began reviewing a potential increase in site visits through the creation of the Targeted Site Visit and Verification Program that would double the overall number of site visits to 20,000. The annual target for site visits will be set each year based on executive priorities and available resources. FDNS has proposed increasing the number of site visits and awaits decisions on the FY 2018 budget to see whether resources will be available. This increase will be dependent on the availability of new positions and infrastructure. Expected completion date is September 30, 2018.

On March 31, 2017, USCIS issued Policy Memorandum 602-0142, *Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions."* The FDNS Fraud Division finalized operational guidance for conducting H-1B site visits that aligns with policy and conducted a series of trainings to familiarize IOs with both the guidance and the policy. These efforts ensure a more consistent approach to the conduct of H-1B site visits so that adjudicators are better able to use the results of these visits for adjudicative purpose. FDNS expects to complete any additional guidance and training by June 30, 2018.

The Targeted Site Visit and Verification Program incorporates risk-based criteria into threat-based assessments. FDNS plans to expand the program to include additional risk-based criteria by March 31, 2018. To address retention issues, USCIS has implemented a strategy to hire IOs at a higher grade level in



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order to improve retention rates. USCIS has begun hiring IOs at the GS-11 level, and the number of positions at this level is expected to increase in FY 2018 and beyond as future vacancies will have the option to advertise at this GS-11 level. As the number of GS-11 IOs increase, so will the capacity of USCIS to conduct fraud-based targeted site visits. FDNS expects full implementation by December 31, 2017.

OIG Analysis: This recommendation is resolved and open. USCIS should provide support to demonstrate a better allocation of resources for oversight of the H-1B Program; revised policies, procedures, and training; enhanced random sampling procedures; and an official updated immigration officer career path.

Recommendation 4.

USCIS Response: Concur. FDNS IOs will continue to transmit compliance reviews and administrative investigations results to USCIS Service Centers for action, as per ongoing practice. FDNS has recently taken measures to align itself with current USCIS policy for reviewing H-1B petitions filed for workers in the information technology industry. These measures should make for more consistent site visit results, which should assist Service Centers to more efficiently assess the viability of adverse administrative action. FDNS expects to complete the additional guidance and training, if needed, by June 30, 2018.

OIG Analysis: This recommendation is resolved and open until USCIS demonstrates the actions taken ensure adjudicative action is prioritized on fraudulent or noncompliant immigration benefits identified by the H-1B ASVVP and targeted site visits.



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Appendix A

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

We conducted this audit to determine whether the USCIS ASVVP and targeted site visits are safeguarding the integrity of the H-1B Program. The scope of the audit focused on the process after USCIS approved H-1B petitions. To accomplish our objective, we reviewed Federal laws and regulations related to the H-1B Program; USCIS' strategic plan; policies, procedures, and guidance associated with the H-1B Program, the ASVVP, and targeted site visits; prior OIG and GAO audit reports; USCIS' Memorandums of Agreement with other agencies; Congressional testimony; media articles; and USCIS' reporting and available data on site visit results and outcomes.

We interviewed USCIS Headquarters officials in the FDNS, the SCOPS, the Field Operations Directorate, the Management Directorate's Office of Performance and Quality, and the Office of Policy and Strategy. We also interviewed USCIS personnel in Mount Laurel, NJ; Philadelphia, PA; Santa Ana, CA; Chicago, IL; and the Vermont, California, and Nebraska Service Centers in St. Albans, VT; Laguna Niguel, CA; and Lincoln, NE. We also interviewed personnel from the U.S. Customs and Border Protection Office of Field Operations at Chicago O'Hare International Airport; U.S. Immigration and Customs Enforcement Homeland Security Investigations' Document and Benefit Fraud Task Force; Social Security Administration OIG; and DOL's Employment and Training Administration and Wage and Hour Division to identify these stakeholders' role in the administration and enforcement of H-1B Program and their relationship with USCIS.

We observed 21 ASVVP and 5 targeted site visits in the following locations: New Jersey, Pennsylvania, California, Illinois, and Indiana. We relied on the IOs and their planned schedule for the visits selected. We observed and obtained FDNS officers' perspectives on site visits conducted pertaining to approved H-1B petitions issued by USCIS. We used our limited observations on site visits to supplement other information collected and analysis conducted; we did not use it as the basis for overall conclusions.

We obtained USCIS data on ASVVP and targeted site visits, ASVVP staffing and costs, and H-1B revocations. Specifically, we analyzed the following data for FYs 2014-16:

- ASVVP and targeted site visits to include determinations made after site



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- visits by the field offices and the Service Centers contained in the FDNS-Data System;
- consolidated information on FDNS determinations and actions taken of ASVVP site visits contained in the Comprehensive ASVVP Reporting System; and
 - current status and adjudicative actions for unverified ASVVP site visits in Computer Linked Application Information Management System 3.

We were unable to validate ASVVP and targeted site visit program and staffing costs. FDNS does not track specific costs of IOs conducting targeted site visits; therefore, we were unable to report on the targeted site visit costs. We also observed queries run by USCIS to generate the site visit data from the FDNS-Data System and Comprehensive ASVVP Reporting System and determined what controls are in place for both systems. We believe the data to be sufficiently reliable to support our audit conclusions.

To determine the outcomes and adjudicative actions resulting from ASVVP site visits identified as fraudulent or noncompliant, we analyzed data for 2,331 unverified site visits during FYs 2014–16. We evaluated USCIS internal controls to the extent necessary to accomplish our objective. We developed an understanding of the internal controls over the ASVVP and targeted site visits by reviewing USCIS guidance and interviewing Headquarters and field officials.

We conducted this performance audit between November 2016 and June 2017 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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Appendix B
USCIS Comments to the Draft Report

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



**U.S. Citizenship
and Immigration
Services**

SEP 28 2017

MEMORANDUM FOR: John V. Kelly
Deputy Inspector General

FROM: Tracy L. Renaud *for* *Tracy L. Renaud*
Acting Deputy Director
U.S. Citizenship and Immigration Services

SUBJECT: Management's Response to OIG Draft Report: "USCIS Needs a
Better Approach to Verify H-1B Visa Participants"
(Project No. 16-083-AUD-USCIS)

Thank you for the opportunity to review and comment on this draft report. The U.S. Citizenship and Immigration Services (USCIS) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

USCIS is pleased to note OIG's positive recognition of the recent actions to increase targeted site visits. These allow for a greater focus on:

- Cases in which the employer's basic business information cannot be verified through commercially available data;
- H-1B-dependent employers who have a high ratio of H-1B workers compared to U.S. workers; and
- Employers petitioning for beneficiaries who work offsite at another company or organization's location.

USCIS has established an email address dedicated to receiving information about suspected H-1B fraud or abuse. Anyone can email to submit tips, alleged violations, and other relevant information about potential H-1B fraud or abuse. To improve transparency and the public's insight into the H-1B program, USCIS plans to issue a public report on H-1B petitions submitted for Fiscal Year 2018, along with data about the petitions. These actions reflect USCIS' continued commitment to safeguard the integrity of the H-1B Program by conducting more robust site visits, utilizing more enhanced lines of inquiry during site visits, and to ensure funds are put to better use.

The draft report contained four recommendations with which USCIS concurs. Please see the attached for our detailed response to each recommendation.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.



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Attachment: DHS Management Response to Recommendations Contained in Project 16-083-AUD-USCIS

The DHS OIG recommended that the USCIS Acting Deputy Director:

Recommendation 1: Develop a process to collect and analyze complete and accurate data for all H-1B site visit activity. At a minimum, USCIS should:

- a. track targeted site visits as well as program costs associated with Administrative Site Visit and Verification Program and targeted site visits,
- b. analyze adjudicative actions for unverified site visits, and
- c. use data collected above to develop performance measures to assess the effectiveness of the site visit programs and assist with oversight improvements.

Response: Concur. USCIS recognizes the benefits of collecting and analyzing key data elements to help guide the H-1B site visit activity. There are challenges, however, in developing a functional classification process, as some fraud investigations involve multiple types of immigration fraud and multiple application/petition forms. The USCIS Fraud Detection and National Security Directorate (FDNS) conducts three distinct types of site visits explained in section a below. Regarding the specific steps recommended in the audit report, USCIS plans include the following:

- a. USCIS' FDNS Mission Support Division (MSD) will continue to ensure funds for site visits are tracked and used efficiently. FDNS MSD has assigned funding codes to the Administrative Site Visit and Verification Program (ASVVP) to allow for enhanced reporting.

USCIS launched the Targeted Site Visit and Verification Program (TSVVP) as a pilot in April 2017. TSVVP is being rolled out in phases to develop effective and systematic targeting of potential and unknown fraud. TSVVP is considered a hybrid program between randomly selected "Compliance" visits and "For Cause" site visits that are based on fraud elements discovered through benefit processing. TSVVP relies on systematic screening using risk criteria to focus visits on specific types of visas and allow for systematic tracking of the resources required to conduct the site visits and clear documentation of the outcomes of the site visits. TSVVP site visits are visa-specific, allowing for the systematic tracking of resources required to conduct them and providing clear outcomes to estimate the impact of the program.

FDNS also conducts "For Cause" site visits as a part of larger administrative investigations into suspected benefit fraud.¹ To improve tracking of "For Cause" site visits, FDNS will issue guidance to help ensure more consistency in how the time associated with "For Cause" site visits for travel and on-site time is recorded in the FDNS data system (FDNS-DS). This will advance FDNS' ability to capture the travel and on-site time as a subset of the total resources required for administrative investigations.

¹ "For Cause" site visits were previously referred to as "targeted site visits" prior to the creation of TSVVP.



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FDNS expects to develop and issue guidance related to tracking the activities and costs related to site visits by June 2018. Estimated Completion Date (ECD): June 30, 2018.

- b. USCIS' Center Fraud Detection Operations and the Service Center Operations Directorate use data on adjudicative actions from the Comprehensive ASVVP Reporting System (CARS) during compliance reviews. The USCIS FDNS Fraud Division (FD) will include data collected through CARS to assess how to improve its capabilities, site visit policies, training, and set performance goals. ECD: June 30, 2018.
- c. The new TSVVP program will provide the comprehensive data needed to measure performance and assess the effectiveness of the site visit programs. FDNS FD will review the available data and propose performance measures for consideration. FDNS also plans to incorporate TSVVP performance goals in its annual set of performance measures for Fiscal Year (FY) 2018. ECD: September 30, 2018.

Recommendation 2: Identify data and assessments obtained through site visit programs post-adjudication and implement measures to systematically share this information with external stakeholders as appropriate.

Response: Concur. USCIS agrees that greater coordination with other federal agencies, namely the Department of Justice (DOJ), Department of Labor (DOL), and Department of State (DOS), is critical for ensuring the integrity of the H-1B program. The enhanced sharing of information will facilitate investigations and sanctions of those who violate the rules of the H-1B Program.

As part of ongoing efforts to pursue robust data sharing, USCIS and DOL executed a Memorandum of Agreement on January 12, 2017, to allow access to agency systems that contain certain labor condition application and employment-based petition information, including USCIS' Validation Instrument for Business Enterprises (VIBE) system. Among other things, VIBE would allow DOL to access information on petitioners that have been identified as having committed fraud or that are under investigation by a law enforcement agency. Also, consistent with Executive Order 13788, USCIS and DOL are evaluating existing statutory authorities to allow for the systematic sharing of USCIS site visit information with DOL, specifically commonly encountered compliance issues.

USCIS and DOS are working to further enhance the sharing of USCIS site visit information through the External Source Site Visit and Verification Program. USCIS is in the final stages of providing DOS access to the FDNS-DS database. Through FDNS-DS, DOS will have access to USCIS site visit information, and it will be in a position to use site visit information when adjudicating visa applications. USCIS and DOS are also working on a number of information sharing initiatives that will help enhance the integrity of the H-1B program, including mechanisms for DOS to share with USCIS derogatory information uncovered during the visa adjudication process.

Finally, USCIS is in the process of establishing a memorandum of understanding (MOU) with DOJ Civil Rights Division's Immigrant and Employee Rights Section (IER), which is responsible for enforcing the anti-discrimination provisions of the Immigration and Nationality



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Act. Through this MOU, USCIS plans to share with IER site visit information that may be helpful in identifying, investigating, and, where appropriate, prosecuting H-1B employers that intentionally discriminate against U.S. workers. ECD: March 31, 2018.

Recommendation 3: Conduct an assessment of the H-1B Administrative Site Visit and Verification Program to:

- a. identify the best allocation of resources for oversight of the H-1B Program. This should include an adjustment of the number of required site visits per year, as well as the time and effort spent at each site visit;
- b. update policies, procedures, and training to ensure consistent approaches and proper documentation for site visits;
- c. enhance the random sampling procedures to also include a more risk-based approach that prioritizes the recurring violators within the universe of H-1B holders and a random stratified selection of small or high risk petitioners and assesses available information and data on petitioners; and
- d. ensure immigration officers have a career path that will encourage them to remain in the position and enable them to develop, enhance, and contribute to identifying and addressing noncompliance or fraud for the long term.

Response: Concur. USCIS is adopting a more targeted approach when making site visits to H-1B petitioners and the worksite of H-1B employees as part of increased efforts to combat fraud and abuse in the H-1B program.

- a. FDNS FD plans to conduct more site visits. As noted in the OIG's report, USCIS has a current goal of 10,000 ASVVP compliance review completions per FY. FDNS FD began reviewing a potential increase in site visits through the creation of a TSVVP that would double the overall number of site visits to 20,000. The annual target for site visits will be set each year based on executive priorities and available resources. FDNS has proposed increasing the number of site visits and awaits decisions on the FY18 budget to see if resources will be available. This increase will be dependent on the availability of new positions and infrastructure. ECD: September 30, 2018.
- b. As noted in the OIG report, compliance and fraud findings have included schemes that seldom resulted in adverse administrative action. On March 31, 2017, USCIS issued Policy Memorandum (PM) 602-0142, *Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions."* Consecutively, FDNS FD finalized operational guidance for conducting H-1B site visits that aligns with policy and conducted a series of trainings to familiarize Immigration Officers (IOs) with both the guidance and the policy. These efforts ensure a more consistent approach to the conduct of H-1B site visits so that adjudicators are better able to use the results of these visits for adjudicative purpose. FDNS expects to complete any additional guidance and training by June 2018. ECD: June 30, 2018.



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- c. The TSVVP, which is still in a pilot phase, incorporates risk-based criteria into threat based assessments. FDNS plans to expand the program in FY18 to include additional risk-based criteria. ECD: March 31, 2018.
- d. To address retention issues, USCIS has implemented a strategy to hire IOs at a higher-grade level in order to improve retention rates. USCIS has begun hiring IOs at the GS-11 level, and the number of positions at this level is expected to increase in FY18 and beyond as future vacancies will have the option to advertise at this GS-11 level. As the number of GS-11 IOs increase, so will the capacity of USCIS to conduct fraud-based targeted site visits. The GS-11 IOs will be required to undergo the formal three-week Fraud Detection and National Security Basic Officer Basic Training Course, and they will have the opportunity to compete for GS-12/13 IO 2 positions as they become vacant. FDNS expects to see the full implementation in FY18. ECD: December 31, 2017.

Recommendation 4: Develop comprehensive policies across Directorates to ensure adjudicative action is prioritized on fraudulent or noncompliant immigration benefits identified by the H-1B ASVVP and targeted site visits.

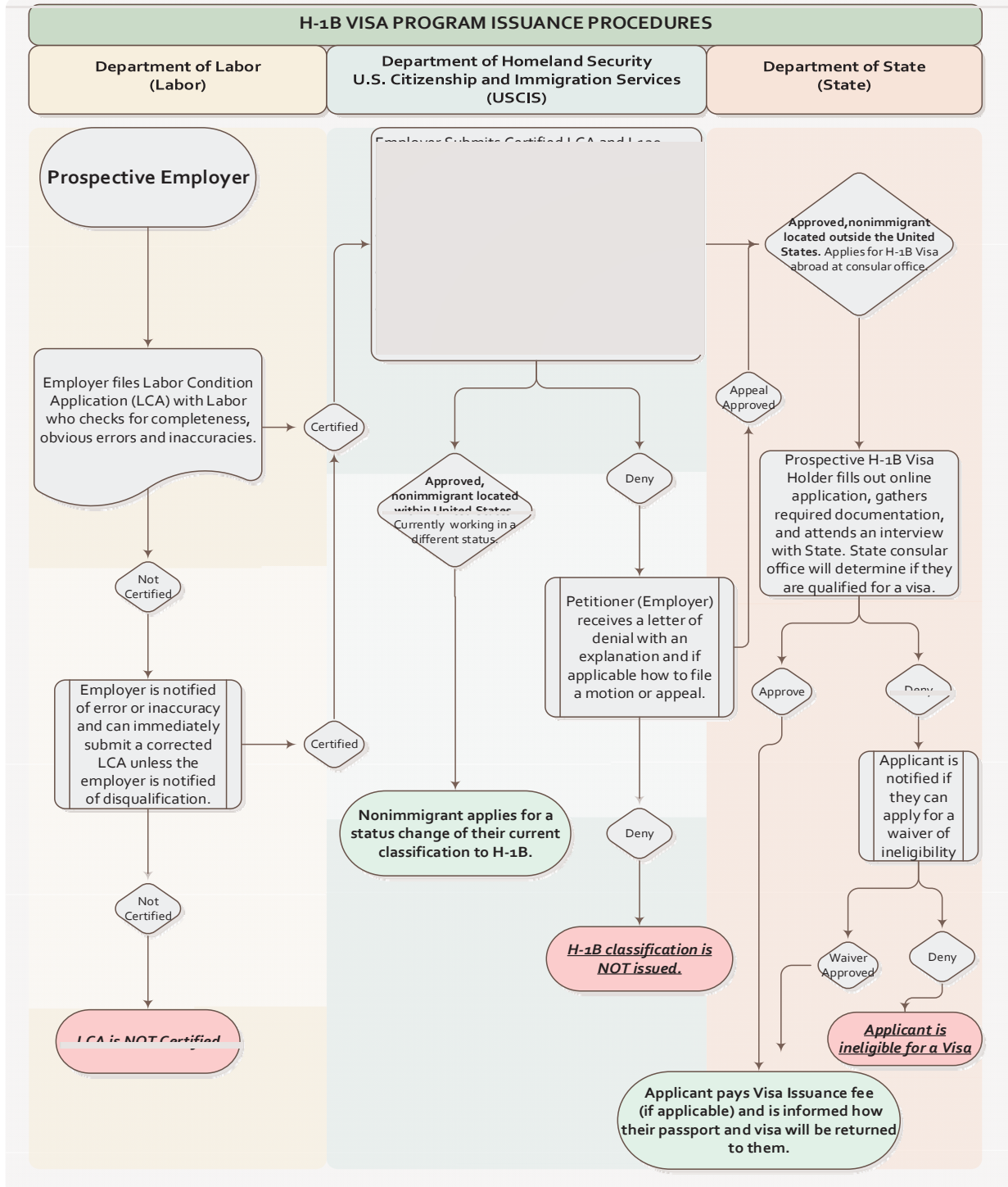
Response: Concur. FDNS IOs will continue to transmit compliance reviews and administrative investigations results to USCIS Service Centers for action, as per ongoing practice. As noted in the response to 3b above, FDNS has recently taken measures to align itself with current USCIS policy for reviewing H-1B petitions filed for workers in the IT industry. These measures should make for more consistent site visit results, which, in turn, should assist Service Centers to more efficiently assess the viability of adverse administrative action. FDNS expects to complete any additional guidance and training, if needed, by June 2018. ECD: June 30, 2018.



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Appendix C H-1B Process





Source: DHS OIG analysis of CFR and program information.





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Appendix D
Stakeholder Involvement and Legislative Limitations

| Department | Legislation/Regulation |
|--|--|
| <p align="center">Department of Labor</p>  | 20 CFR § 655.700 Subpart H |
| | <p>An employer seeking to employ H-1B non-immigrants must file a LCA and agree to various attestation requirements. The LCA must be certified by the DOL before USCIS can grant H-1B status to the non-immigrant. An enforcement system will also be authorized where the DOL determines whether an employer has engaged in misrepresentation or failed to meet a condition of the LCA, imposing fines and penalties where appropriate.</p> |
| | 20 CFR § 655.810 Subpart I |
| | <p>The following remedies can be ordered if violations are found:</p> <ul style="list-style-type: none"> • The difference in actual wages received and wages not received, but earned, or fringe benefits by the petitioner to the beneficiary. • Civil money penalties up to \$35,000 depending on the violation. • Disqualifying the petitioner from receiving an approved LCA in the future for a period between 1-3 years at a minimum depending on the violation. • Other administrative remedies. |
| <p align="center">Department of Homeland Security</p>  | 20 CFR § 655.705 Subpart H |
| | <p>The DHS accepts an employer's petition with the DOL certified LCA attached. The DHS then makes a determination on the following:</p> <ul style="list-style-type: none"> • Whether the petition corresponds with and is supported by the LCA. • Whether the occupation named in the LCA is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability. • Whether the qualifications of the non-immigrant meet the statutory requirements for H-1B visa classification. <p>If the petition is approved, DHS will notify the U.S. Consulate where the non-immigrant intends to apply for the visa unless the non-immigrant is in the U.S. and eligible to adjust status without leaving this country.</p> |



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| <p>Department of State</p>  | <p>20 CFR § 655.705 & 655.715 Subpart H</p> <p>The DOS, through U.S. Embassies and Consulates, is responsible for issuing H-1B visas. The DOS, in conjunction with DHS, is also responsible for determining specialty occupations and whether or not the non-immigrant qualifies for the H-1B program.</p> |
| <p>Department of Justice</p>  | <p>20 CFR § 655.705 Subpart H</p> <p>The Department of Justice administers the system for the enforcement and disposition of complaints regarding an H-1B dependent employer's or willful violator employer's failure to offer a position filled by an H-1B non-immigrant to an equally or better qualified United States worker, or such employer's willful misrepresentation of material facts relating to this obligation.</p> |

Source: DHS OIG analysis of CFR and program information.



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Appendix E
Office of Audits Major Contributors to This Report

Patrick O'Malley, Director
Paul Streit, Audit Manager
Kristine Odiña, Analyst-in-Charge
Paul DeLuca, Auditor
Ryan McCarthy, Auditor
Christine Meehan, Auditor
Zachary Wilkolaski, Auditor
Henry Kim, Auditor
Kevin Dolloson, Communications Analyst
Kendra Starkus, Independent Referencer



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