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DHS Efforts to Minimize Petition Fraud and Abuse on the Rise

Although we are used to hearing about audits and investigations from U.S. Immigration and Customs Enforcement (ICE), its sister agency, U.S. Citizenship and Immigration Services (USCIS), is just as busy with its efforts to identify and prevent fraud. In recent months, the Department of Homeland Security (DHS) introduced a host of measures aimed at minimizing immigration fraud and abuse and ensuring the bona fide nature of petitions U.S. employers file on behalf of foreign national employees. From a newly-formed searchable database, to on-site visits, phone calls and emails from USCIS representatives, DHS is poised to identify fraud and take action. These measures go hand-in-hand with the Obama administration's ramped-up enforcement of immigration laws through employer investigations and penalties to create a [culture of compliance](#). Now more than ever, it is critical for employers to sharpen their focus on compliance initiatives and consistent practices.



The most recent addition to DHS's compliance toolbox is the USCIS Data Repository. DHS announced the creation of this new database in the [Federal Register](#) on September 8, 2010. The Data Repository, which will become active on October 8, 2010, will contain mirror copies of existing USCIS databases of petitions filed for those in a temporary visa status (nonimmigrant) and those filed in support of permanent resident status (immigrant). One of the goals of the Data Repository is to enhance the detection of immigration fraud and national security concerns by compiling information from multiple databases into a searchable single-interface format. With increased technological capabilities, USCIS will be able to tighten its investigative efforts and encourage data sharing among agencies.

Unlike existing USCIS databases, the Data Repository will be hosted on a classified network, to ensure security using the existing infrastructure and network. The storage of unclassified data on classified storage systems will not make the data "Classified." However, the search parameters and results used to access the data

will be considered classified. The Data Repository will also use audit trails to track user access and detect fraud or misuse of immigration information by USCIS employees. The information-sharing capabilities of the Data Repository will likely make it significantly easier for USCIS to access petitioner and beneficiary information and investigate any circumstances it finds to be out of the ordinary. Yes, this is data mining.

DHS is not the only agency attempting to combat immigration fraud. The Department of State recently announced that it will be conducting random telephone audits of USCIS **approved** nonimmigrant petitions (i.e. H-1B, L-1, O-1, H-2B, etc.) through the Kentucky Consular Center (KCC). We have also seen such audits conducted via email. USCIS forwards approved nonimmigrant petitions to the KCC, where a record of the approval is maintained, serving as the primary point of reference for U.S. embassies and consulates processing visas abroad. The audits are intended to verify that the sponsoring entity is a legitimate employer offering actual employment to the foreign national. Employers subjected to KCC audits can expect to hear basic questions about the company, the sponsored foreign national, and the terms of employment. Emails received by employers include the following language:



The U.S. Department of State occasionally contacts petitioners and client companies involved with Non-Immigrant visa petitions in order to verify that information presented to the U.S. Consulate is accurate and valid. The attached document was presented to the U.S. Consulate in [City], [Country] in support of a pending H1B visa application. I would greatly appreciate if you would answer the following questions:

Please note: The H1B visa application was filed by Company X

1. Was the attached letter signed by Mr. Smith and issued on behalf of Company X?
2. Does Company X anticipate receiving the services of Mr. James Jones?

Thank you for your assistance with this inquiry. If any further information is needed, please contact me.

Verification of the bona fides of a filing does not stop there. KCC auditors are conducting independent reviews of the sponsoring employer's website, contact information, and even using Google Earth to confirm the employment location stated on the nonimmigrant petition. Employers should note that these KCC audits are separate from those USCIS' Fraud Detection and National Security ([FDNS](#)) unit conducts. FDNS contacts employers with similar questions when the petition is being adjudicated or after approval when the employment is in progress.

Employers may hear a knock on the door in addition to a ringing telephone since the reviews and inquiries do not stop with USCIS petition approval or visa issuance by the Department of State. DHS' efforts are ongoing and seemingly never-ending. USCIS site visits are increasingly common. Although site visits are currently mandatory for the R visa religious worker category, last year employers witnessed FDNS' increased focus on H-1B

investigations. Reports from employers who experienced these site visits indicate that the investigators describe their role to be the verification of two things: (1) that the employer is a real operating business entity; and (2) that the foreign national being sponsored is a "legitimate" employee. The sponsored employee is expected to provide proof of identity, while the company is expected to verify the employment information. Companies should not expect any advance warning of these site visits, as some investigators arrive on-site unannounced. In recent months there have also been reports of FDNS utilizing verification emails similar to those sent from KCC.

As DHS increases pressure and demands accountability for fraud and misrepresentation to ensure that only bona-fide petitions are approved, employers can no longer assume that a petition approval means the end of scrutiny. As the use of information-sharing technology between agencies becomes more prevalent and the government's capacity to conduct audits continues to grow, employers must remain vigilant in maintaining organized records and preparing for the possibility of government audits or site visits.

In the age of increased audits and fraud detection efforts, it is imperative for all employers take the time to review existing procedures or establish internal policies and protocols designed to limit liability and safeguard company interests. If nothing else, they should take the time to identify and designate a company representative to speak with the government officials or contractors and delineate the access and information that should be provided to any auditor or investigator.

Government agencies are marching forward and using technology to their advantage. It is time for U.S. employers to take proactive steps to minimize liability and to prepare for potential reviews and audits - with the understanding that the scrutiny is not likely to dissipate in the current economic and political climate.



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[Greenberg Traurig's Business Immigration and Compliance Group](#) has extensive experience in advising multinational corporations on how to minimize exposure and liability regarding a variety of employment related issues, particularly I-9 employment eligibility verification matters and E-Verify related issues. In addition to assisting in I-9 and H-1B (Labor Condition Application) audits, GT develops immigration-related compliance strategies, company protocols and performs internal I-9 compliance inspections. GT has also defended businesses involved in large-scale government worksite enforcement actions, high stakes administrative I-9 Audits and Department of Labor Wage and Hour investigations. Our seasoned attorneys provide counsel on a variety of compliance-related issues, including IRCA anti-discrimination laws-Office of Special Counsel Investigations, and employers' responsibilities when faced with traditional no-match situations, as well as more serious workplace identity theft or other alleged misrepresentations made by employees. Our national footprint, combined with a broad based platform, provide seamless integration with our partners practicing in government contract, deemed export, labor & employment, tax, white collar defense, litigation as well as other areas of the law.

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