

## FDNS SITE VISITS | FREQUENTLY ASKED QUESTIONS

On Monday, April 3, 2017, [USCIS announced](#) that it will be taking additional measures to “deter and detect H-1B visa fraud and abuse”. These site visits are not new. U.S. Citizenship and Immigration Services (USCIS) has an **Office of Fraud Detection and National Security (FDNS)** which is charged with conducting audits as part of its Administrative Site Visit and Verification Program (ASVVP). For more information about the program, see the [Administrative Site Visit and Verification Program](#) page on the USCIS website. We have previously reported on this program:

- a December 2013 news story, [USCIS expands site visits to L-1 visa category](#);
- a November 2009 news story, [USCIS to conduct 25,000 on-site inspections](#);
- an October 2009 news story, [USCIS site visits, audits increasing](#); and
- an article entitled “On-site investigations of H-1B and L-1 employers” in the [August 2009 issue](#) of *Immigration Spotlight*.

Notably, the site visit program has expanded from R-1 (religious worker) and H-1B specialty occupation visa categories, to the L-1 intracompany transferee visa; in addition, a draft Executive Order leaked on January 23, 2017 called for expansion of the site visit program to all nonimmigrant visa petition categories.

### 1. What happens at a site visit?

Based on our past experience, site visits have been based on a random selection by USCIS of filed petitions, in which a USCIS officer will show up at the worksite listed on a visa petition without prior announcement and ask to meet with the employee. The officer will ask the employee a number of questions about his/her work that includes information provided in the visa petition on file such as job duties, hours per week, where the work occurs, manager’s name, hiring date, and salary. The officer may also ask to physically observe the employee’s actual work space. The officer may also meet or contact the HR and/or the manager and confirm the same details, as well as request payroll records. If a discrepancy in data is found, the employer may receive a Notice of Intent to Revoke (NOIR). A NOIR is not final. It will allow the employer an opportunity to respond to what the officer deemed deficient upon audit.

### 2. Which companies will be the target of the heightened security?

Couched as “Putting American Workers First”, this announcement states that USCIS will administer the site visit program targeting its focus on H-1B petitioners and worksites where the following characteristics may apply:

1. USCIS cannot validate basic business information through commercially available data likely through its Validation Instrument for Business Enterprises (VIBE) tool. For more information about VIBE, see the [Validation Instrument for Business Enterprises page](#) on the USCIS website;
2. The petitioner is an H-1B dependent employer (for more information on H-1B dependency see the [H-1B-Dependent FAQ](#) on the DOL website; and/or
3. The H-1B employee will be working off site at another company’s location.

### 3. Which companies should be most concerned about the increased site visits?

All employers should be prepared for site visits. However, smaller, newly formed companies that have not registered with major business credit profilers such as Dun & Bradstreet but are legitimately doing business in the U.S. may see an increase in site visits. USCIS validates basic business information in the VIBE system which is currently tied to Dun & Bradstreet data. An employer may contact Dun & Bradstreet for minimal registration in their system for VIBE purposes and the employer should not be charged a fee to do so. To find out more information, as well as how to register with Dun & Bradstreet, please see the [VIBE page](#) on the USCIS website.

Another focus of worksite visits is on consulting companies or positions where individuals are placed offsite. In these situations, the site visit may be complicated by the fact that there may or may not be a company representative on-site, or that there may be two company representatives on-site.

### 4. How should the employer prepare for site visits?

We suggest that HR communicate with reception and other staff members to be aware that any immigration officer who appears at a worksite should be referred to the HR who handles immigration matters for the company. HR should also develop a policy on whether to request participation of immigration counsel during the site visit. We also suggest that HR request the USCIS officer's business card, and advise immigration counsel of the visit and what specifically is requested and provided. HR may be contacted in person, via email, or phone to verify or provide employee information and/or records. These may include confirmation of job title and detailed job duties, hours per week the employee works, the employee's supervisor's name, the employee's base salary and whether the employee paid any of the filing fees. Such emails or phone calls should be treated as part of the fraud unit investigation and it is advisable to seek involvement of immigration counsel to assist with the response.

Note that if there are any planned or anticipated changes in any nonimmigrant employee's job such as a change in title, job duties, reduction in salary, worksite location (including telecommuting), etc., these possible changes should be discussed with immigration counsel in advance of any changes. This is so that any necessary amendments or new LCA postings can be completed before the change occurs. If HR discovers that a change has already happened, we suggest immediately reaching out to immigration counsel to determine remedial actions that may be required.

### 5. Should the employee meet with USCIS? What information will an FDNS Officer ask the employee to provide?

If FDNS contacts the employee directly without contacting a company representative, it is advisable for the employee to notify HR and immigration counsel. Depending on company policy, immigration counsel may or may not be involved in the interview. Note that site visits do not involve advance notification and are voluntary. If the decision is to proceed with the interview, the employee should request the USCIS officer's business card, and answer any reasonable questions related to the employment.

The FDNS officer typically seeks to confirm information contained in the employer's visa petition, pertaining to the position, hours of employment, qualifications, salary and worksite location. The FDNS officer will have identification that s/he will present before any questions are asked. All questions will relate to the terms of employment. It is advisable for all foreign national employees to be familiar with the information listed on the most recent nonimmigrant petition, particularly with regards to the description of job duties, salary and worksite(s).

After meeting with FDNS, the employee should provide HR and immigration counsel with detailed notes as to what was asked and what answers/information was provided. In addition, the employee should forward any follow-up emails from USCIS to HR and immigration counsel.

### 6. USCIS came to the worksite but the employee was not there. Is this a problem?

Not necessarily. If the employee was not at the worksite due to a business meeting or travel, or was on a medical leave, USCIS will likely provide the opportunity to explain why the employee was not at the worksite on the day of FDNS's visit. The FDNS officer may email or call to arrange for a follow up meeting. The USCIS officer's business card or other contact information should be forwarded to HR and immigration counsel.

If the employee was not at the worksite because the worksite address changed and the new address is not listed on the most recent petition, this could lead to a Notice of Intent to Revoke (NOIR). A NOIR is not final, and the employer will be given an opportunity to respond and address any issues raised. However, it is best to avoid this situation by ensuring that HR and immigration counsel are notified before any change or addition to the worksite, including if one of the worksites is a home office and there is a change of home addresses. Additionally, before taking a different job within the company, the employee should discuss any impact to maintenance of status with HR and immigration counsel.

### 7. What are the rules for when an amended H-1B visa petition should have been filed?

In the H-1B context, minor changes such as promotions and changes in worksite within the Metropolitan Statistical Area/commuting area do not require filing of an H-1B visa petition. USCIS FDNS officers will initially note a discrepancy, and immigration counsel should be contacted to explain that a new petition filing was not required. Material changes, or changes in worksite outside the MSA/commuting area do require the filing of a new petition. For more information, see the news story on our website, [Changes in the worksite location require action before the change happens](#).

If there have been any changes in employment such that the filed petition is no longer accurate, the employee should contact HR and immigration counsel. Some changes are not considered "material," such as working on a different project but doing the same type of work, a change in managers or a wage increase. Other changes that are "material" may require an amended petition, such as a change in worksite location or a material change in job duties (e.g., moving from Engineer to Sales).

It is important that if the worksite address is scheduled to change, the employee notifies HR and immigration counsel before the change in worksite. It needs to be determined by immigration counsel if the worksite change requires an amended H-1B visa petition filing or simply the reposting of the LCA notice at the new worksite. If an FDNS officer goes to the address originally listed on the petition and does not find the

employee there, they may issue a Notice of Intent to Revoke (NOIR). A NOIR is not final, and the employer will be given an opportunity to respond and address any issues raised; however, it is best to avoid this situation

### 8. Should an attorney be present during a site visit?

It is generally not realistic for an attorney to be present in that there is usually no advance warning before the site visit. So long as the employment is consistent with the filed petition, there are generally no issues concerns raised. As indicated above, site visits are unannounced, so if attorney involvement is desired, it would be more viable to involve immigration counsel, if available, telephonically and most importantly after the visit. USCIS FDNS officers may request additional information and documents *via* email; it is advisable to involve immigration counsel in reviewing and responding to the written request.

### 9. Why are some employers receiving repeated site visits?

According to USCIS, each post-adjudication compliance review focuses on one petition and beneficiary. Therefore, employers who petition for many beneficiaries have had a higher chance of being randomly selected for multiple site visits. This may change in the future given the new targeted focus of USCIS site visits.

### 10. What is the difference between a USCIS FDNS site visit and a DOL audit?

According to USCIS, each post-adjudication compliance review focuses on one petition and beneficiary. Therefore, employers who petition for USCIS is not the only agency who may visit employers to review compliance with regulatory requirements. The Department of Labor (DOL) Wage & Hour Division (WHD) can conduct audits involving a request for production of some or all LCAs, notice postings, public access files, and payroll and benefits information within one day's notice, and enforces penalties for LCA violations, as outlined on its [website](#). However DOL's Employment & Training Administration (ETA) recently signaled its additional involvement in a [news item](#) issued on April 4, 2017 timed to coincide with the USCIS news item, in which it indicated it would engage in greater coordination with other agencies, announced the creation of a USCIS email address for reports regarding potential fraud abuse of the H-1B visa, and indicated plans to revise the Labor Condition Application (LCA) for greater transparency.

### 11. What is the difference between a USCIS FDNS site visit and an ICE audit?

Immigration and Customs Enforcement (ICE) also may contact employers as part of their worksite enforcement investigations which are typically focused on I-9 compliance and not on H-1B compliance only. This involves an audit of some or all I-9 employment verification forms.

If an employer is contacted regarding a DOL or ICE audit, immigration counsel should immediately be contacted. Both audits provide for a short notice period prior to documents being produced.