



### Why This Matters

In August 2010, Congress passed a law requiring certain employers to pay a border security fee of up to \$2,250 if they have 50 or more employees in the United States, and if their workforce consists of 50 percent or more foreign workers. The fee is calculated based on the employer's self reporting of their workforce information. We performed an audit to determine whether employers provided inaccurate information to the United States Citizenship and Immigration Services (USCIS) to avoid paying the fee, thus reducing revenue available to the Federal Government.

### DHS Response

USCIS generally agreed with our recommendations and acknowledged measures which USCIS can take to further enhance the program's overall effectiveness. Specifically, USCIS concurred with four of five recommendations and had incorporated changes, subsequent to our work, that fulfill the intent of the remaining recommendation. USCIS also cited case law to demonstrate that a petitioner must prove by a preponderance of evidence that they are eligible for the benefit sought and that laws governing fees associated with the petition does not set a higher standard of proof. However, USCIS adjudication procedures do not require Immigration Services Officers validate that proper fees were paid.

#### For Further Information:

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

## USCIS Controls To Ensure Employers Sponsoring H-1B and L-1 Employees Pay Applicable Border Security Fee

### What We Determined

Our review of 203 petitions found that employers typically adhered to the requirements of the law and paid the border security fee when required. However, 3 percent of our random sample and 21 percent of our judgmental sample contained errors that we believe could be avoided if USCIS made improvements to its fee collection processes. Most of the errors were a result of erroneous employer declarations. For example, we found multiple instances in USCIS database where the same employer paid the border security fee for some petitions and not for others, yet USCIS does not have a process in place to identify these petitions for review. In other instances, USCIS erroneously returned the fee because the employer checked the wrong box on the petition.

Currently, USCIS procedures do not require that Immigration Services Officers verify the reasonableness of employer declarations against existing internal sources. Evidence of fraud in the foreign worker program confirms the need to validate information employers provide. Without validation, an employer's self-declaration is typically the sole basis for determining whether an employer is required to pay the border security fee. Implementing procedures to capture and validate readily available data provided by employers on their workforce could reduce the number of errors and help USCIS collect the correct fees.

### What We Recommend

We made 5 recommendations to USCIS to enhance overall effectiveness of the H-1B and L-1 nonimmigrant worker programs. We recommended that the Associate Director, Service Center Operations:

1. Develop a method to capture electronically employers' information related to the number of employees and composition of their workforce to facilitate USCIS data analysis in comparing employer information from one petition to another.
2. Implement procedures to compare the number of employees listed on Form I-129 against employer responses regarding their workforce.
3. Perform periodic reviews to identify employers who submit different fees for the same type of petitions.
4. Expand the use of data in VIBE to assess the reasonableness of employer-declared data on the number and composition of employees.
5. Conduct an analysis to determine the appropriate amount of time needed to adjudicate H-1B and L-1 petitions to include verification of submitted fees.