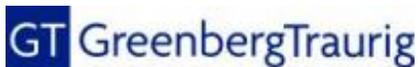


# Agencies Open H-1B Cap Season with Initiatives to Combat Fraud and Abuse



Article By

[Kristen W. Ng](#)

[Rebecca B. Schechter](#)

[Greenberg Traurig, LLP](#)

[Inside Business Immigration](#)

- [Immigration](#)
- [Labor & Employment](#)
- [All Federal](#)

Wednesday, April 5, 2017

The U.S. immigration agency's busiest day of the year was marked with reminders about the dark side of the H-1B visa program. Acceptance of H-1B cap-subject petitions started on April 3, 2017. But the flurry of H-1B filings were met with announcements from agencies involved with the H-1B program about measures designed to tighten policies and further regulate the H-1B program. These agency announcements indicate a coordinated message of cracking down on H-1B fraud in order to protect the U.S. worker.

## **USCIS Press Release and Policy Memorandum**

While some U.S. Citizenship and Immigration Services (USCIS) employees were busy accepting what is expected to be several thousand H-1B petitions at its Vermont and California Service Centers on April 3, 2017, opening day of the 2017 H-1B lottery, other USCIS employees were putting the finishing touches on a press release outlining new plans to combat employer fraud and abuse in the H-1B visa program.

### ***USCIS Press Release:***

The release, titled "Putting American Workers First: USCIS Announces Further Measures to Detect H-1B Visa Fraud and Abuse," was a clear signal by USCIS that it

plans to improve the integrity of the H-1B program and ensure that the program is in no way harming U.S. workers. USCIS said that its site visits, operated by its Fraud Detection and National Security (FDNS) directorate, will focus on employers who place employees offsite as well as employers who are H-1B dependent. H-1B dependency, which is defined by statute, means a high percentage of an employer's workforce is made up of H-1B workers. This initiative is yet more evidence that USCIS is taking aim at third-party staffing companies. The press release also provided a USCIS email address for reporting suspected incidents of H-1B fraud and abuse and also reminded the public about additional ways it can let authorities know about possible misuse of the H-1B program via a Department of Labor form and by contacting Immigration and Customs Enforcement's Homeland Security Investigations (HSI) unit.

### ***USCIS Policy Memorandum:***

On March 31, 2017, USCIS issued a policy memorandum to rescind the Dec. 22, 2000 guidance on H-1B computer-related positions. This March 2017 memorandum includes guidance that the Occupational Outlook Handbook (OOH), a long relied-upon resource for petitioners and attorneys alike to classify jobs and to confirm their status as specialty occupations, should no longer be used as the main resource to determine whether a position is a specialty occupation position. The guidance focuses heavily on the job code for "Computer Programmers," which it notes may not qualify as a specialty occupation because most programmers have a bachelor's degree, but some do not. Most notably, this guidance includes discussion about the Wage Level and corresponding prevailing wage, suggesting that a job that is coded at a Level I prevailing wage should be scrutinized heavily because it would "likely contradict a claim that the proffered position is particularly complex, specialized, or unique compared to other positions within the same occupation."

### **Department of Justice's Immigrant and Employee Rights Section**

The Department of Justice's Immigrant and Employee Rights Section (IER), formerly known as the Office of Special Counsel for Immigration-Related Unfair Employment Practices, also chimed in on H-1B cap opening day with a reminder to H-1B employers that they may not discriminate against U.S. workers. IER, which is responsible for enforcing the anti-discrimination provision of the Immigration and Nationality Act (INA), explained in its press release that employers may violate the INA if they prefer to hire H-1B visa holders over U.S. workers.

### **Department of Labor's Press Release**

The Department of Labor (DOL) is the most recent agency to issue a press release for the purpose of combatting H-1B fraud, expressing support for the efforts of its colleagues at USCIS and DOJ, while adding its own plans. In addition to increasing its coordination with other federal agencies to investigate and prosecute misuse of the H-1B program, DOL said it is considering changes to the Labor Condition Application, which is a required part of the H-1B visa petition process, "to provide greater transparency for agency personnel, U.S. workers and the general public." The DOL also said it would continue with its stakeholder engagements on how to

improve the H-1B program so as to provide greater protections to US workers.

©2019 Greenberg Traurig, LLP. All rights reserved.

**Source URL:** <https://www.natlawreview.com/article/agencies-open-h-1b-cap-season-initiatives-to-combat-fraud-and-abuse>