

United States Senate

March 2, 2020

The Honorable Kenneth T. Cuccinelli
Principal Deputy Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, N.W.
Washington, D.C. 20529

Dear Deputy Director Cuccinelli,

Under the Trump Administration, U.S. Citizenship and Immigration Services (USCIS) has prioritized transitioning from processing paper applications to electronic processing for all visa requests. As an important component of these efforts, USCIS has committed to continuing the Known Employer Pilot Program and making this program permanent through regulation.

As you are aware, delays in visa processing detract from other USCIS case workloads and cause economic harm for businesses and not-for-profits that petition for immigrant and nonimmigrant workers. USCIS has explored alleviating these burdens through the Known Employer Pilot Program. Once implemented, this program would modify the process by which USCIS reviews an employer's eligibility to sponsor immigrants and nonimmigrants for employment-based visas by allowing that employer to pre-certify certain aspects of the petition adjudication.

USCIS has invited five employers to participate in the Known Employer Program, including: Citigroup Global Markets, Inc; Ernst & Young U.S. LLP; General Motors Company; Schaeffler Group USA, Inc.; and the Corporation of the Presiding Bishop of the Church of Jesus Christ of the Latter-day Saints. These organizations were invited by USCIS to participate and represent employers of different sizes from various industries and locations to provide the best possible data to USCIS for evaluation.

We are glad to see that the Department of Homeland Security (DHS) announced its intention to make the Known Employer Pilot Program permanent on the Spring 2019 and Fall 2019 Unified Agendas of Long Term Actions, where DHS states that the program "would promote simplicity and efficiency in the benefit application process for employers, while allowing USCIS to further protect benefit integrity and ensure consistency with respect to adjudications." DHS also comments that the "initiative would reduce paperwork for all parties."¹ USCIS notes that the Known Employer Pilot will reduce costs for the Federal government and for visa petitioners.²

¹ Fall 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions, Current Long-Term Actions, Department of Homeland Security, "Implementing a Known Employer Program for Certain Employment-Based Nonimmigrant and Immigrant Visa Classification." RIN: 1615-AC35.

² Department of Homeland Security, DHS/USCIS/PIA-059 Known Employer Document Library, <https://www.dhs.gov/publication/dhsuscispia-059-known-employer-document-library>.

As of May 21, 2019, USCIS stated on the Known Employer Pilot Program webpage at USCIS.gov that “USCIS is not accepting applications for the Known Employer pilot.” The five companies that currently participate include large and small for-profit entities, as well as one not-for-profit entity. There is currently space for up-to nine organizations to participate.³

We are concerned that USCIS will not be able to draw conclusive data regarding the viability of this program from only one participating not-for-profit entity and four for-profit entities. We ask that you consider re-opening the Known Employer Pilot Program in order to assess its impact on additional petitioners and visa categories. Expanding participation in the Known Employer Pilot Program to nine organizations will ensure that USCIS receives conclusive data on how petition requirements and different types of petitioners will impact the day-to-day operation of this common-sense and cost-saving program.

In addition to inviting additional participants, we request the following information:

1. In remarks to Business Roundtable in May 2018, then-Director of USCIS Francis Cissna stated that implementation of a permanent Known Employer Program “won’t happen quickly, but rest assured that [...] it is a priority of mine.”⁴ Do you still consider implementation of the Known Employer Program to be a priority? Does USCIS intend to extend the Known Employer Pilot Project beyond May 31, 2020?
2. In remarks to the Federal Bar Association in May 2019, Senior Advisor Robert Law stated that the Known Employer Program is viewed internally as a “corollary to our electronic processing initiative.” Given that USCIS has publicly committed to becoming a “paperless agency by 2020,” what timeline should the public expect for USCIS implementation of a permanent Known Employer Program?⁵
3. The pilot project in its current form has space for up-to nine organizations to participate, but only five organizations currently participate. What criteria was used to determine the current participants? Why has USCIS decided that it is not going to accept new applications for this program?
4. Has USCIS found this pilot program to be successful? What data can be shared regarding the success and viability of the Known Employer Pilot Program?

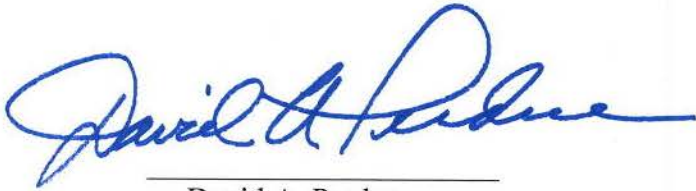
³ “Known Employer Pilot,” USCIS, (<https://www.uscis.gov/working-united-states/information-employers-employees/known-employer-pilot>), Last Updated: 05/21/2019, Last Accessed: 12/17/2019.

⁴ “Remarks – Business Roundtable – May 10, 2018,” USCIS, (https://www.uscis.gov/sites/default/files/files/nativedocuments/Director_prepared_remarks_to_Business_Roundtable_May_2018.pdf), Last Accessed 12/19/2019.

⁵ “Federal Bar Association Immigration Law Conference,” 05/17/2019, USCIS, (https://www.uscis.gov/sites/default/files/files/nativedocuments/Federal_Bar_Association_Immigration_Law_Conference_-_Remarks_from_Office_of_Policy_and_Strategy_Senior_Advisor_Robert_Law.pdf), Last Accessed: 12/19/2019.

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read "David A. Perdue". The signature is fluid and cursive, with a long horizontal stroke at the end.

David A. Perdue
United States Senate

A handwritten signature in blue ink, appearing to read "Kelly Loeffler". The signature is cursive and includes a large, stylized initial "K".

Kelly Loeffler
United States Senate



U.S. Citizenship
and Immigration
Services

August 31, 2020

The Honorable David Perdue
United States Senate
Washington, DC 20510

Dear Senator Perdue:

Thank you for your March 2, 2020 letter regarding the status of the Known Employer pilot program. Mr. Cuccinelli asked that I respond on his behalf.

The Department of Homeland Security (DHS) created the Known Employer pilot program to assess methods of streamlining the filing process and adjudication of certain employment-based categories. DHS has elected to extend the pilot through December 31, 2020. Some elements from the pilot have been concurrently developed in the agency's eProcessing initiatives. Prior to the current end date, the agency will review the pilot and determine whether or not to extend it again. Due to the limited amount of time remaining before the end of the pilot's current extension and the limited utility to new participants, the agency has elected to not add new employers at this time.

Although U.S. Citizenship and Immigration Services (USCIS) has implemented internal reviews of the program, no formal public review has been conducted and the internal discussions are not available for release. Enclosed you will find our responses to the specific questions in your correspondence.

Thank you for your letter and interest in this important matter. We will take into consideration your recommendations. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in black ink, appearing to read "Joe Edlow", with a long horizontal flourish extending to the right.

Joseph Edlow
Deputy Director for Policy

Enclosure

cc:

The Honorable Kelly Loeffler
United States Senator

**U.S. Citizenship and Immigration Services' Response to
Senator Perdue's March 2, 2020 Letter**

- 1. In remarks to Business Roundtable in May 2018, then-Director of USCIS Francis Cissna stated that implementation of a permanent Known Employer Program "wont happen quickly, but rest assured that [...] it is a priority of mine. Do you still consider implementation of the Known Employer Program to be a priority? Does USCIS intend to extend the Known Employer Pilot Program beyond May 31, 2020?"**

The Known Employer Pilot program was begun as an effort to expedite the processing of certain employment-based immigrant and nonimmigrant visa petitions and classifications through predetermining eligibility for certain regulatory criteria associated with the various applicable classifications. Though the pilot had been a priority for U.S. Citizenship and Immigration Services (USCIS) since 2016, a number of elements associated with this pilot have been incorporated into the new eProcessing initiatives as USCIS transitions to a digital business model. Consequently, though the pilot has been extended till December 31, 2020, the agency is currently evaluating the program's path beyond that date.

- 2. In remarks to the Federal Bar Association in May 2019, Senior Advisor Robert Law stated that the Known Employer Program is viewed internally as a "corollary to our electronic processing initiative." Given that USCIS has publicly committed to becoming a "paperless agency by 2020," what timeline should the public expect for USCIS implementation of a permanent Known Employer Program?**

As noted in our response to Question 1, the agency is currently exploring the program's path beyond its current December 31, 2020 extension. A decision to end or extend the pilot will be made later this year.

- 3. The pilot project in its current form has space for up-to nine organizations to participate, but only five organizations currently participate. What criteria was used to determine the current participants? Why has USCIS decided that it is not going to accept new applications for this program?**

USCIS worked with the Department of Homeland Security, U.S. Customs and Border Protection, and the Department of State to select the initial employer participants based on filing volume, the breadth of petitioner's filing across classifications, and diversity in the petitioning industries. The program is scheduled to extend to December 31, 2020, and because the onboarding process is lengthy, new participants would not be able to meaningfully utilize the pilot during this timeframe. There currently are no plans to add participants.

- 4. Has USCIS found this pilot program to be successful? What data can be shared regarding the success and viability of the Known Employer Pilot Program?**

As part of the ongoing Known Employer pilot, the agency conducted an informal program review and made some changes to the pilot based upon the findings. No formal public review has been conducted at this time.