



Trusted Employer Program

Fiscal Year 2022

August 11, 2022

Fiscal Year 2022 Report to Congress



**Homeland
Security**

U.S. Citizenship and Immigration Services

Message from the Director

August 11, 2022

I am pleased to present the following report, “Trusted Employer Program,” for Fiscal Year (FY) 2022, which has been prepared by U.S. Citizenship and Immigration Services (USCIS).

This report was compiled pursuant to direction in the Joint Explanatory Statement accompanying the FY 2022 Department of Homeland Security Appropriations Act, 2022 (P. L. 117-103).

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Lucille Roybal-Allard
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Chris Murphy
Chair, Senate Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

If you have any questions, please do not hesitate to contact me at (240) 721-1500.

Sincerely,



Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services



Executive Summary

USCIS created the Known Employer (KE) pilot, otherwise known as the Trusted Employer Program pilot, to test a streamlined processing system for certain immigrant and nonimmigrant employment-based visa petitions.

Goals of the KE pilot were to:

- Reduce the amount of paperwork filed by employers and retained by USCIS;
- Promote consistent adjudication of employment-based petitions;
- Streamline the adjudicative process to improve efficiency; and
- Provide greater support to our partners at U.S. Customs and Border Protection and U.S. Department of State, leading to greater efficiency and consistency at ports of entry and consular posts.

The pilot was launched on March 3, 2016, with the original duration of 1 year. Following the initial run, the pilot was extended through December 31, 2017, and more recently through December 31, 2020, before USCIS made the decision to end the pilot, based on a combination of operational, technical, and regulatory issues.



Trusted Employer Program Fiscal Year 2022

Table of Contents

I. Legislative Language	1
II. Cost Analysis	2
III. Adjudicative Impact.....	3
IV. Conclusion	7
V. Appendix: Abbreviations.....	8

I. Legislative Language

This report responds to the direction set forth in the Joint Explanatory Statement accompanying the Fiscal Year (FY) 2022 Department of Homeland Security (DHS) Appropriations Act (P. L. 117-103), which states:

Trusted Employer Program—Within 60 days of the date of enactment of this Act, USCIS shall provide a report to the Committee on the operation of the pilot program from 2016 to 2020 for the Trusted Employer Program, including information regarding any cost savings to the agency, cost savings to petitioners, and operational and security benefits to the agency.

II. Cost Analysis

The Known Employer (KE) pilot, otherwise known as the Trusted Employer Program, was established utilizing forms and guidance, and affected only nine employers; thus, it was not subject to the Paperwork Reduction Act (PRA),¹ Administrative Procedure Act, or Executive Order 12866, Regulatory Planning and Review.² As a result, U.S. Citizenship and Immigration Services (USCIS) was not required to estimate the burden and cost savings. However, prior to its start, the following was determined:

Costs of Adjudication:

USCIS costs of adjudication for the pilot would be covered by the normal processing fees, to include:

Form Number	Title	2010 fee rule	2016 fee rule
Form I-950	Application for Predetermination under KE Pilot Program	No fee for pilot	No fee for pilot
Form I-129	Petition for a Nonimmigrant Worker	\$325	\$460
Form I-907	Request for Premium Processing Service	\$1,225 (optional)	\$1,225 (optional)
Form I-140	Immigrant Petition for Alien Workers	\$580	\$700
Form I-360	Petition for Amerasian, Widow(er), or Special Immigrant	\$405	\$435

NOTE: The 2010 fee rule was in effect until December 22, 2016.

Additionally, the website and document repository developed for the pilot, known as the KE Document Library, took approximately 6 months for the agency's information technology department to develop and was required to be maintained throughout the life of the program.

¹ See 5 CFR 1320.3(c) (applying the PRA to collections imposed on 10 or more persons).

² See 58 FR 51735 (Oct. 4, 1993).

III. Adjudicative Impact

At the beginning of the pilot program, approximately nine service center officers adjudicated KE files, in addition to their other duties. Later, USCIS added the religious worker classifications (Form I-360, Special Immigrant Religious Worker and Form I-129 R-1, Temporary Nonimmigrant Religious Workers), as well as Form I-140, Immigrant Petition for Alien Workers, which added an estimated eight additional officers. In total, there were approximately 17 officers adjudicating KE petitions, in addition to their regular assigned duties, throughout the course of the pilot.

The security vetting of prospective pilot participants and the predetermination evidence review process were both manual processes that could take up to 6 months to complete. After the successful security vetting, participants were invited to join the program and file Form I-950, Application for Predetermination under the KE pilot program. After the I-950 was filed by a prospective petitioner, the evidentiary review in support of the requested predeterminations would occur. The review process required all service centers that adjudicated a particular classification to coordinate their review. The reasoning for the multi-center review process was to ensure that all centers agreed that evidence being used to support predetermination met the petitioner's evidentiary burden. This cross-center collaboration meant that the process of approving predeterminations was time-consuming and required several individuals to be involved.

After the I-950 approval, the petitioner was sent a copy of a KE approval notice. Petitioners were required to include a copy of this approval notice with each respective petition filed under the pilot, which requested the use of KE predeterminations. The notice indicated to the adjudicating officer for which predeterminations the petitioner qualified.

Officers that processed KE petitions found no discernable adjudicative time savings associated with the pilot. The evidence that was replaced by the predetermination did not require a significant amount of adjudicative time in the normal course of case processing because officers evaluating petitioners and employers were extremely well-known to USCIS.

For example, in attempting to demonstrate an ability to pay (an I-140 eligibility requirement available under the KE pilot for predetermination), a company normally would have submitted federal income tax returns, audited financial statements, or annual reports, which contain an audited financial statement. The time to evaluate evidence submitted in the regular course of filing was not discernably greater than evaluating the KE approval notice included with petitions using the pilot program.

Similarly, while one of the goals of the pilot program was to reduce paperwork filed by employers and retained by USCIS, the KE pilot saw no meaningful impact reported by the service centers or participating employers. This was because of an insufficient volume of filings under the program, which did not facilitate a meaningful analysis of cost savings. There was a general lack of filing and engagement from participants, which were expected to file a high volume of petitions and could have seen some degree of benefit from the pilot. While a

sustained filing process with a sufficient volume of filings could see returns, USCIS never saw a significant impact during the pilot program.

Although there was no meaningful time savings or significant reduction in paperwork for USCIS within the adjudication process for KE petitions, there was a significant increase in the total amount of working hours because of the I-950 clearance process, in addition to the time required for security vetting. This translated to an overall increase in agency costs, and a shift of resources away from the adjudication of pending petitions.

The table below presents the number of filings submitted under the KE program.³

KE Participation Breakdown

Form/Class Preference	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Grand Total
I-129	8	15	3	659	328	24	1,037
H-1B, Specialty Occupation Worker	7	14	3	1	1		26
L-1A, Intracompany Transferee in a Managerial or Executive Capacity				1	6		7
L-1B, Intracompany Transferee in a Position Involving Specialized Knowledge	1	1			3		5
R-1, Religious Worker				657	318	24	999
I-140	1	1	3	100	69	4	178
E13 Multinational Executives and Managers	1	1	1	11	2		16

³ While both I-140 E12, Outstanding Professor or Researcher, and I-129 TN, NAFTA Professionals also were included in the possible filing options for the pilot, there were no petitions received for those classifications during the pilot.

E21 Persons with Advanced Degrees or Persons of Exceptional Ability				35	31	1	67
E31 Skilled Workers				4	4	1	9
E32 Professionals			2	50	32	2	86
I-360				1	1		2
SD1, Ministers of Religion					1		1
SR1, Certain Religious Workers				1			1
Grand Total	9	16	6	760	398	28	1,217

USCIS first attempted to select a group of participants balanced in size, industry, and location, while also looking for employers with multiple filings across the classifications that were incorporated into the pilot. The selection team also considered different industries and locations to ensure that the pilot consisted of a diverse participant group. Several educational institutions, along with middle- and small-sized companies, declined to participate in the pilot because they did not believe that they could file enough petitions to make their participation worthwhile.

Several companies contacted the agency to participate in the pilot after the announcement. USCIS considered those companies when seeking replacements for participants that were removed from the pilot because of inactivity and looked at past filing patterns to gauge if the pilot was beneficial. These newly added pilot participants were subjected to the same security vetting as the initial participants.

Even though the KE pilot began with nine participants that completed the initial I-950 clearance process, only four to five entities were active. Active in this case meant remaining responsive to USCIS’s communication and engagement efforts and steady continued petition submissions. Over the course of the pilot, participants included:

- Air Products and Chemicals, Inc.
- Amazon
- Citigroup Global Markets, Inc.
- Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints
- Ernst & Young U.S. LLP
- General Motors Company
- Kiewitt

- Schaeffler Group USA, Inc.
- Siemens Corporation
- Standard Chartered Bank

Only two of the pilot participants routinely filed petitions, despite USCIS reaching out to employers on multiple occasions to encourage filing with the program. The Church of Jesus Christ of Latter-day Saints (LDS) and General Motors Company. Their routine filings occurred during FY 2019 and FY 2020. From FY 2016 through FY 2021, LDS filed 96 percent of the Forms I-129 participating in the program. As noted in the chart above, this amounted to 999 out of 1037 petitions filed under the I-129. During the same period, General Motors Company filed 94 percent of the Forms I-140 participating in the program, 168 out of 178 petitions filed under the I-140.

IV. Conclusion

USCIS made the decision to end the KE pilot in 2020, based on a combination of operational, technical, and regulatory issues. The lengthy process of clearing KE predeterminations, combined with no discernible time savings for USCIS during the adjudication of petitions using the KE process, meant that time savings were negligible. While reducing the paperwork burden for the agency and petitioners was one of the goals, such a reduction was not observed in any meaningful way because of the low participation rate from most participants.

Developing a permanent KE program of similar design would: divert resources away from current technology development priorities, add complexity to operations by creating additional petition ingestion processes, create differing adjudication processes, require additional personnel, and require the creation of additional electronic systems that would need to be maintained. Based on this pilot, USCIS also did not see a clear way to scale and operationalize the program with only a few participants to a widely available permanent program that could be effective and beneficial to both the public and the agency.

Although the pilot was initiated as an effort to streamline paper adjudications and to reduce the paperwork burden for petitioners, USCIS believes that technology development efforts currently underway ultimately will achieve many of the KE pilot goals and will offer efficiencies that stakeholders expect to see, including electronic filing, user-based accounts allowing for the reuse of petitioner information, electronic storage and easy reuse and resubmission of evidence, and electronic correspondence, including the ability to respond to requests for evidence in a digital format.

While the KE program did not achieve its objectives, USCIS remains committed to delivering greater consistency and expeditious adjudication for employers and all we serve.

V. Appendix: Abbreviations

Abbreviation	Definition
DHS	Department of Homeland Security
FY	Fiscal Year
KE	Known Employer
LDS	Church of Jesus Christ of Latter-day Saints
PRA	Paperwork Reduction Act
USCIS	U.S. Citizenship and Immigration Services