

DHS Proposal Would Expand Biometrics Collection and Use for Immigration Enforcement

September 19, 2020

By [Ann H. Lee](#) and [Amy R. Dalal](#)



On September 11, 2020, the U.S. Department of Homeland Security (DHS) proposed a regulation that focuses on the expansion of the collection and use of biometric data in the enforcement and administration of immigration laws. The proposed rule would subject foreign nationals to periodic biometrics collection and continuous vetting after they enter the United States and until they become U.S. citizens.



On September 11, 2020, the U.S. Department of Homeland Security (DHS) [proposed a regulation](#) that focuses on the expansion of the collection and use of biometric data in the enforcement and administration of immigration laws. The proposed rule would subject foreign nationals to periodic biometrics collection and continuous vetting after they enter the United States and until they become U.S. citizens. The stated focus of the expansion is to help “limit identity fraud” and improve U.S. Citizenship and Immigration Services’ (USCIS) identity management systems. The rule would also eliminate age limits on the collection of biometrics, and subject immigration sponsors, including U.S. citizens, to biometrics collection.

The regulation would expand biometric collection to do the following:

- Require any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with an immigration benefit or request, including U.S. citizens, to appear for biometrics collection without regard to age, unless DHS waives or exempts the biometrics requirement. This would include all regional center principals tied to EB-5 Immigrant Investor Program Visas. The expansion may also impact employment-based filings.
- Authorize biometric collection, regardless of age, upon the arrest of an alien for purposes of processing, care, custody, and initiation of removal proceedings.
- Increase biometrics collection to include eye scans, palm prints, and voice prints.

- Allow DHS to “require, request, or accept DNA test results, which include a partial DNA profile, to prove the existence of a claimed genetic relationship,” and allow DHS to “use and store DNA test results for the relevant adjudications or to perform any other functions necessary for administering and enforcing immigration and naturalization laws.”
- Modify how petitioners for a U visa (which provides immigration relief to individuals covered under the Violence Against Women Act (VAWA)) or a T visa (which provides immigration protection to victims of human trafficking) demonstrate “good moral character” and remove the presumption of good moral character for children under the age of 14.
- Expand the purpose of biometrics collection “to include criminal history and national security background checks; identity enrollment, verification, and management; secure document production, and to administer and enforce immigration and naturalization laws,” including checking against the Federal Bureau of Investigation’s (FBI) databases for records of criminal activity.

Comments on the proposed rule are due by October 13, 2020. DHS will also accept comments on associated USCIS immigration form revisions until November 10, 2020. After DHS receives and reviews the public comments, the final rule will be issued in the *Federal Register*, which likely will take several additional months.

Public comment and feedback is expected to be extensive, particularly given the privacy concerns and potential application processing delays that may result with the proposed expansions of biometrics collections.

Ogletree Deakins’ Immigration Practice Group will continue to monitor developments with respect to the policy changes and will post updates on the [Immigration blog](#) as additional information becomes available.

AUTHORS RELATED ARTICLES



Ann H. Lee

November 17, 2022
Shareholder, Denver

Ogletree
Deakins

DOL Sued Over FOIA
Request for Contractors’
EEO-1 Reports

Dallas



Shareholder, Raleigh

January 25, 2023

Ogletree
Deakins

OFCCP’s Scheduling List
Targets Contractors That

Didn't Certify in OFCCP's
Contractor Portal

RELATED WEBINAR

Ogletree
Deakins

February 9, 2023

I-9 Compliance Series: The
Basics, Part 1—What Does
Good Faith Compliance
Mean? Contractors'...

RELATED SEMINAR

Ogletree
Deakins

February 16 | Miami, FL

Employment Law Briefing

Browse More Insights

PODCASTS

SEMINARS

WEBINARS



Sign up to receive emails about new developments and upcoming programs.

[SIGN UP NOW](#)

