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March 2015

## H-2A AND H-2B VISA PROGRAMS

### Increased Protections Needed for Foreign Workers

This report was revised on May 30, 2017, to clarify when data cited from the Department of Labor's Wage and Hour Investigative Support and Reporting Database included all employers who were investigated and when data included only employers who were investigated and found to have violations. Corrections are on pages 34, 47, 48, 50, 53, 62, and 79.

Highlights of GAO-15-154, a report to congressional committees

## Why GAO Did This Study

Tens of thousands of foreign nationals travel to the United States each year under the H-2A and H-2B visa programs. These programs are designed to fill a temporary need that U.S. workers are unavailable to fill. Employers may use third parties to recruit these workers and recruitment generally takes place outside the United States with limited federal oversight. GAO was mandated to study foreign labor recruitment.

This report examines (1) the number of H-2A and H-2B workers who enter the country and the occupations they fill, (2) how U.S. employers recruit H-2A and H-2B workers and what abuse may occur in recruitment and employment, and (3) how well federal departments and agencies protect H-2A and H-2B workers. To address these objectives GAO conducted site visits to Mexico (where many workers originate) and Florida and Texas (where many work). GAO also analyzed relevant data from five federal agencies for fiscal years 2009 through 2013 including data on employers' applications for foreign workers, visas issued, violations committed by employers, and services provided to exploited workers.

## What GAO Recommends

GAO recommends, among other actions, that DHS publish information on jobs and recruiters; that DOL and DHS finalize their data sharing agreement; and that DOL review its H-2B enforcement efforts and collect data on cases affected by the debarment statute of limitations. The agencies generally agreed with our recommendations.

View GAO-15-154. For more information, contact Andrew Sherrill, (202) 512-7215, sherrilla@gao.gov

March 2015

# H-2A AND H-2B VISA PROGRAMS

## Increased Protections Needed for Foreign Workers

## What GAO Found

More than 250,000 foreign workers entered the United States through the H-2A (agricultural) and H-2B (nonagricultural) visa programs in fiscal years 2009 through 2013. U.S. employers use a process that involves multiple federal agencies to petition for and employ temporary foreign workers through these visa programs. The Department of State (State) reported that most workers using these visas were from Mexico. The majority of workers who entered the country were men and most were 40 years old or younger. Most workers were requested for the agriculture, horticulture, or food service industries, but the Department of Homeland Security (DHS) does not electronically maintain standardized data on workers' occupations, so information on occupations held is not fully known.

Generally, employers recruit workers in their home countries either directly or indirectly, using an outside third party, and some abuses—such as charging prohibited fees or not providing adequate job information—have been reported. About 44 percent of U.S. employers who hired H-2A and H-2B workers in fiscal year 2013 indicated on their petition to DHS that they planned to recruit workers indirectly. Some workers, federal officials, and advocacy groups GAO interviewed identified abuse during recruitment including: third-party recruiters charging workers prohibited fees; not providing information about a job, when required, such as wage level; or providing false information about job conditions. Stakeholders have called for providing workers with accurate job details and working conditions at the time of recruitment. However, DHS, which collects petition information from employers, does not electronically capture detailed job information or make these data publicly available. As a result, potential workers and their advocates cannot verify recruiters' job offers. DHS officials said they may capture more information on employers and job offers as the department transitions to an electronic petition system, but specifics have not been drafted.

To help prevent exploitation of and provide protections to workers, federal agencies screen employers and can impose remedies for those who violate visa program rules. However, certain limitations hinder the effectiveness of these remedies. When the Department of Labor (DOL) debars—or temporarily bans from program participation—employers who commit certain violations, it electronically captures limited information on these employers and shares it with DHS and State, which also screen employers' requests to hire workers. DOL and DHS officials said they are working on an agreement to share more information, but it has not been finalized. GAO's past work has shown that establishing guidelines on information sharing enhances interagency collaboration, which in this case could reduce the risk that some ineligible employers could be approved to hire workers. In addition, in fiscal years 2009 through 2013, DOL's H-2 employer investigations focused primarily on H-2A employers, although DOL identified some H-2B industries as high risk. DOL officials said they have not conducted a national investigations-based evaluation of H-2B employers as they have for H-2A employers. Without such an evaluation, it is unclear whether DOL's resources are being focused appropriately. Further, GAO's analysis found that about half of DOL investigations took longer than the 2-year statute of limitations on debarment. Because DOL does not collect data on the nature of the cases affected by this 2-year period, the agency cannot assess whether the statute of limitations has limited its ability to use debarment as a remedy.

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## Abbreviations

ADIS	Arrival and Departure Information System
CLAIMS 3	Computer-Linked Application Information Management System 3
CBP	U.S. Customs and Border Protection
CDM	Centro de los Derechos del Migrante, Inc.
DHS	Department of Homeland Security
DOJ	Department of Justice
DOL	Department of Labor
DS	Bureau of Diplomatic Security
FBI	Federal Bureau of Investigation
FDNS	Fraud Detection and National Security Directorate
FLSA	Fair Labor Standards Act
HAVEN	Humanitarian Adjudication for Victims Enterprise Nationwide
HHS	Department of Health and Human Services
HSTC	Human Smuggling and Trafficking Center
HTRS	Human Trafficking Reporting System
ICE	U.S. Immigration and Customs Enforcement
KCC	Kentucky Consular Center
LSC	Legal Services Corporation
NAICS	North American Industry Classification System
NGO	nongovernmental organization
NHTRC	National Human Trafficking Resource Center
OFLC	Office of Foreign Labor Certification
OIG	Office of Inspector General
OVC	Office for Victims of Crime
SOC	Standard Occupational Classification
State	Department of State
TIMS	Trafficking Information Management System
TVPA	Trafficking Victims Protection Act
USCIS	U.S. Citizenship and Immigration Services
WHD	Wage and Hour Division
WHISARD	Wage and Hour Investigative Support and Reporting Database

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Congressional Committees

Tens of thousands of foreign nationals apply for admission to the United States each year under the H-2A and H-2B temporary worker programs. These programs, which include agricultural workers on H-2A visas and nonagricultural workers on H-2B visas,<sup>1</sup> strive to help employers fill positions for which U.S. workers are not available while at the same time providing protections for U.S. and foreign workers.<sup>2</sup> Federal law allows employers to hire these temporary workers via nonimmigrant worker visas.<sup>3</sup> Employers may, in turn, hire third parties to recruit these workers and assist them through the visa process. These third parties can operate either in the United States, foreign countries, or both, limiting federal oversight.

Several federal agencies are responsible for administering the H-2A and H-2B program requirements. The Department of Labor (DOL) and Department of Homeland Security (DHS) screen employers who want to hire workers and the Department of State (State) screens workers who apply for H-2A and H-2B visas at U.S. embassies and consulates overseas.<sup>4</sup> Once DHS admits the workers into the United States, DOL,

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<sup>1</sup> In general, a visa allows a foreign citizen to travel to a U.S. port of entry and request permission of an immigration inspection officer with the Department of Homeland Security's (DHS) U.S. Customs and Border Protection to enter the United States for an identified period of time. A nonimmigrant visa permits travel to the United States on a temporary basis.

<sup>2</sup> H-2 program regulations state that they are construed to effectuate the purpose of the Immigration and Nationality Act that U.S. workers be employed whenever possible, and that where temporary foreign workers are admitted, that the terms and conditions for their employment do not result in a lowering of those for similarly employed U.S. workers. 20 C.F.R. § 655.0(a)(3).

<sup>3</sup> 8 U.S.C. § 1101(a)(15)(H)(ii)(A), (B).

<sup>4</sup> A visa is not required for H-2A workers coming from Jamaica and certain other Caribbean countries. 8 C.F.R. § 212.1(b). In these cases, the worker may go directly to a designated port of entry and apply for admission. According to DHS and State officials, as of July 2014, rules to end this exemption from the visa requirement were being developed and would then be subject to review by the Office of Management and Budget. Canadian citizens who enter the United States as temporary workers under the H-2 program are also visa exempt. We did not specifically review these visa exemptions as part of this report.

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DHS, the Department of Justice (DOJ), and State provide enforcement, and DOJ and the Department of Health and Human Services (HHS) provide funding for support services to victims of human trafficking.<sup>5</sup> Despite this involvement by multiple agencies, there has been criticism that the protections for temporary workers provided by current laws and regulations vary by visa program and are not adequately enforced. Advocates for workers say the structure of the programs allows employers or their representatives to take advantage of workers, for example, by charging them excessive recruitment fees, misleading them about the wages they will receive or, at the extreme, subjecting them to human trafficking.<sup>6</sup>

Since 2000, multiple pieces of legislation have been enacted aimed at combating human trafficking, punishing traffickers, and protecting victims.<sup>7</sup> In March 2013, the Violence Against Women Reauthorization Act of 2013 (VAWRA) was enacted, which also amended the Trafficking Victims Protection Act of 2000 (TVPA).<sup>8</sup> As part of VAWRA, GAO was mandated to review the use of foreign labor in the United States and overseas.<sup>9</sup> This report examines the use of foreign workers in the United

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<sup>5</sup> Human trafficking has been defined a number of different ways, but federal law defines severe forms of trafficking in persons, in part, to include the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 22 U.S.C. § 7102(9).

<sup>6</sup> Victims of human trafficking may include all types of immigrant and nonimmigrant visa holders, as well as undocumented aliens and American citizens.

<sup>7</sup> The Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 included the Trafficking Victims Protection Act of 2000 (TVPA) and the Violence Against Women Act of 2000. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 authorized continued appropriations for the TVPA and specifically prohibited fraud in foreign labor contracting. Pub. L. No. 110-457, §§ 222(e)(2), 122 Stat. 5044, 5067 (adding 18 U.S.C. § 1351) and 301, 122 Stat. 5085. Specifically, the Act added a criminal provision to Title 18, United States Code, stating that “[w]hoever knowingly and with intent to defraud recruits, solicits, or hires a person outside the United States for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment shall be fined or imprisoned for not more than 5 years, or both.”

<sup>8</sup> Pub. L. No. 113-4, 127 Stat. 54.

<sup>9</sup> Pub. L. No. 113-4, § 1235, 127 Stat. 54, 146. To fulfill the mandate, GAO also conducted a review on the use of foreign workers on federal contracts overseas. See GAO, *Human Trafficking: Oversight of Contractors' Use of Foreign Workers in High-Risk Environments Needs to Be Strengthened*, GAO-15-102 (Washington, D.C.: Nov. 18, 2014).

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States. We focused on H-2A and H-2B workers because of the similarity of these two programs and our past and ongoing work reviewing other visa types.<sup>10</sup> Specifically, this report addresses (1) the number of workers who enter the country using H-2A and H-2B visas and the occupations they fill; (2) how U.S. employers recruit H-2A and H-2B workers and what, if any, abuses may have occurred in the recruitment and employment processes; and (3) how well federal departments and agencies protect H-2A and H-2B workers.

To answer our research questions, we analyzed and reviewed data for fiscal years 2009 through 2013 from multiple federal agencies and departments—including DHS, DOJ, DOL, HHS, and State—that are involved in the administration and enforcement of the H-2A and H-2B programs as well as the provision of services to victims of abuse or human trafficking. Appendix I contains a full list of database sources. In addition, we reviewed nongeneralizable survey data from nongovernmental organizations (NGOs) that serve as worker advocates.<sup>11</sup> To assess the reliability of agency and NGO data, we reviewed agency and NGO documentation, interviewed officials, and conducted electronic testing, as appropriate. Based on these reviews, we determined the data were sufficiently reliable for the purposes for which they are used and presented in this report. Understanding that data on labor exploitation and human trafficking are limited—in part because these victims may be unwilling or unable to report abuse—we, nevertheless, attempted to review federal criminal investigation and prosecution data on cases involving H-2A and H-2B workers.<sup>12</sup> However, we were not able to do so because some law enforcement entities do not

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<sup>10</sup> We have issued previous reports on the H-1B visa program (see the list of related products at the end of this report). We concurrently conducted a separate review of the J-1 Summer Work Travel Program. Our report does not include a review of undocumented workers, although they may represent a significant percentage of agricultural workers, and limits the discussion of human trafficking to primarily labor trafficking.

<sup>11</sup> Because it can be difficult to reach workers to discuss these issues, we used these NGO surveys of workers to supplement our own discussion groups.

<sup>12</sup> GAO, *Human Trafficking: A Strategic Framework Could Help Enhance the Interagency Collaboration Needed to Effectively Combat Trafficking Crimes*, GAO-07-915 (Washington, D.C.: July 26, 2007).

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systematically collect information on the immigration status of the victims.<sup>13</sup>

We also interviewed (1) agency officials at DHS, DOJ, DOL, HHS, and State; (2) worker advocacy organizations and legal aid representatives, (3) state workforce officials, and, as possible, (4) employers, employer associations, and employer agents. We conducted site visits to Florida, Texas, and Mexico. During our site visits to Florida and Texas, we interviewed federal and state officials as well as employers and an employer agent.<sup>14</sup> In addition, we conducted three discussion groups with H-2A and H-2B workers. One group was held with Jamaican workers currently in the United States and two groups were held with workers who had returned to Mexico. We reviewed a random sample of 192 employer petition supplements received by DHS in fiscal year 2013 to determine how many employers/petitioners indicated they planned to use third parties to recruit workers. Finally, we reviewed relevant federal laws and regulations and the forms used to process employers and workers for the H-2A and H-2B programs. See appendix I for more information on our scope and methodology.

We conducted this performance audit from June 2013 through March 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>13</sup> Human Smuggling and Trafficking Center officials said they are developing a National Human Trafficking Assessment, based on data collected from over a dozen federal government agencies. The data collection is focused on human trafficking crimes and may include some information by visa type, but the final assessment was not available in time for inclusion in our report. The Human Smuggling and Trafficking Center was created by the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, § 7202, 118 Stat. 3638, 3813, and is under the auspices of the Departments of State, Homeland Security, and Justice.

<sup>14</sup> We selected Florida and Texas on the basis of the number of fiscal year 2013 H-2A and H-2B positions certified, among other factors. In 2013, Florida received the second highest number of H-2A and H-2B certifications and Texas received the highest number of H-2B certifications.

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## Background

In 1952, the Immigration and Nationality Act authorized the H-2 temporary worker program, which established visas for foreign workers to perform temporary services or labor in the United States.<sup>15</sup> The Immigration Reform and Control Act of 1986 amended the Immigration and Nationality Act and divided the H-2 program into two programs: the H-2A program for agricultural workers and the H-2B program for nonagricultural workers.<sup>16</sup> Federal regulations outline procedures for the H-2A and H-2B programs which, while providing certain protections for foreign workers, state that they are construed to effectuate the purpose of the Immigration and Nationality Act that U.S. workers be employed whenever possible and that where temporary foreign workers are admitted, that the terms and conditions for their employment do not result in a lowering of those for similarly employed U.S. workers.<sup>17</sup> There is no annual cap on the number of workers who may be issued H-2A visas; for H-2B workers, there is an annual cap of 66,000.<sup>18</sup> Both visas are for jobs to fill a temporary or seasonal need, generally defined as lasting not longer than 12 months for H-2A workers and 10 months for H-2B workers.<sup>19</sup> DHS may grant H-2 classification for up to the period of time authorized on the temporary labor certification or for a period of up to 1 year, with a maximum period of stay of 3 years.<sup>20</sup>

In the multi-step process of hiring workers, federal agencies screen employers to ensure they qualify to hire H-2A and H-2B workers and then also screen workers to ensure they are eligible for H-2A and H-2B visas and admissible into the United States. Employers who hire these workers also have obligations that they have to fulfill. To ensure the fulfillment of these obligations and compliance with other applicable laws, several agencies play an enforcement role.

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<sup>15</sup> Pub. L. No. 82-414, § 101(a)(15)(H)(ii), 66 Stat. 163, 169 (1952).

<sup>16</sup> Pub. L. No. 99-603, § 301(a), 100 Stat. 3359, 3411.

<sup>17</sup> 20 C.F.R. § 655.0(a)(3).

<sup>18</sup> 8 U.S.C. § 1184(g)(1)(B).

<sup>19</sup> 20 C.F.R. §§ 655.6(c), 655.103(d).

<sup>20</sup> 8 C.F.R. § 214.2(h)(15)(ii)(C).

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## H-2A and H-2B Screening and Program Approval Process

Three federal agencies—DOL,<sup>21</sup> DHS, and State—are involved in the screening and approval process for H-2A and H-2B employers and workers before they enter the United States (see fig. 1).

- DOL’s Office of Foreign Labor Certification (OFLC), under the H-2A program, reviews the employer’s application to ensure U.S. workers were not available for the jobs in question and the wages and working conditions being offered by the employer do not adversely affect U.S. workers similarly employed.<sup>22</sup> Under the H-2B program, employers must attest that U.S. workers were not available.<sup>23</sup> OFLC also screens employers’ applications to ensure ineligible employers—those who have been debarred—are not issued temporary labor certifications in the H-2A and H-2B programs. OFLC adjudicates the employer’s request and may approve, or certify, all the positions requested or a smaller number, or deny the application. With limited exceptions, employers must include an approved DOL certification when they apply to DHS.
- DHS’s U.S. Citizenship and Immigration Services (USCIS) screens the petition submitted by the employer.<sup>24</sup> The petition specifies the

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<sup>21</sup> The United States Court of Appeals for the Eleventh Circuit upheld a preliminary injunction granted by the District Court for the Northern District of Florida prohibiting the Department of Labor from enforcing final regulations it published for the H-2B program at 77 Fed. Reg. 10,038 (Feb. 21, 2012). *Bayou Lawn & Landscape Services v. Solis*, 713 F.3d 1080 (11th Cir. 2013). On Dec. 18, 2014, the District Court for the Northern District of Florida granted the plaintiffs’ motion for summary judgment and vacated DOL’s 2012 H-2B regulations. *Bayou Lawn & Landscape Services v. Perez*, No. 12-183 (N. D. Fla. Dec. 18, 2014) (ECF No. 74). Accordingly, in this report, all references to DOL’s H-2B regulations are to its 2008 regulations, unless otherwise noted, because those were the regulations being enforced by DOL at the time of our review. See 77 Fed. Reg. 28,764, 28,765 (May 16, 2012). The 2008 regulations are found at 73 Fed. Reg. 78,020. We also note that, as of Dec. 1, 2014, DOL’s 2008 regulations are the subject of litigation pending before the U.S. Court of Appeals for the 10th Circuit, *G.H. Daniels III & Associates, Inc. v. Solis*, 2013 WL 5216453 (D. Colo., Sept. 17, 2013), appeal pending, No. 13-1479 (10th Cir.).

<sup>22</sup> 20 C.F.R. §§ 655.130, 655.161. Under the H-2A program, agricultural associations may also submit applications on behalf of their member employers. Employers seeking to hire H-2A workers complete DOL Employment and Training Administration Form 9142A and those seeking to hire H-2B workers complete Form 9142B. For both the H-2A and H-2B programs, there are specific pre-filing procedures that employers must follow, including attempting to recruit U.S. workers by submitting a job order to the applicable state workforce agency. 20 C.F.R. §§ 655.15(e), 655.121.

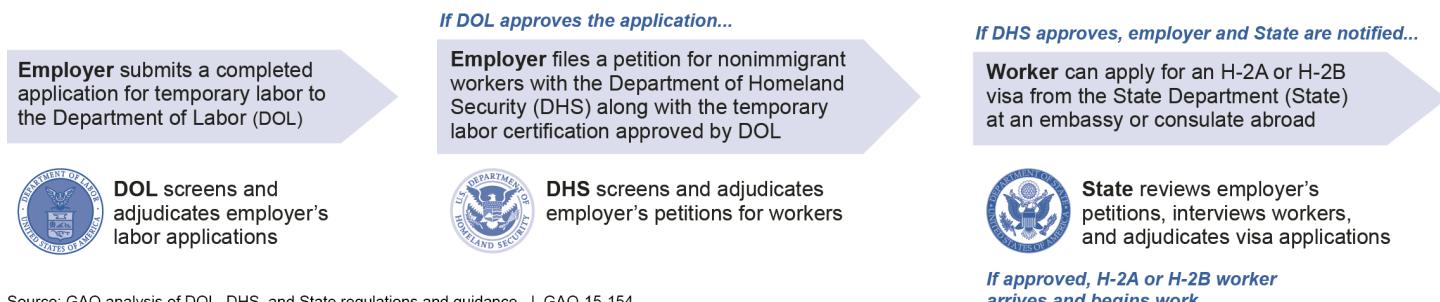
<sup>23</sup> 20 C.F.R. § 655.20.

<sup>24</sup> Petition for Nonimmigrant Worker Form I-129.

number of nonimmigrant workers needed,<sup>25</sup> which may be less than or equal to the number certified by DOL.<sup>26</sup> USCIS can either approve the petition—for the number of workers requested by the employer, or fewer—or it can deny the petition if, for example, it determines that the employer or the employer’s agent collected fees from the worker as a condition of employment and did not fully reimburse the worker. USCIS sends approved petitions to the State Department’s Kentucky Consular Center (KCC) for data entry, which makes the petition information accessible to U.S. embassies and consulates abroad.<sup>27</sup> According to State officials, KCC also conducts research on all new petitioners. In addition, at the request of an embassy or consulate, KCC verifies the rate of pay, number of required workers, job titles, and housing arrangements for specific petitions.

- Finally, State’s consular officers are charged with adjudicating workers’ visa applications. Among other things, they interview H-2A and H-2B visa applicants, review the visa application and supporting documentation, and apprise applicants of their legal rights.

**Figure 1: H-2A and H-2B Visa Programs Approval Process**



Source: GAO analysis of DOL, DHS, and State regulations and guidance. | GAO-15-154

<sup>25</sup> 8 C.F.R. § 214.2(h)(5)(i), (6)(iii).

<sup>26</sup> When there is a discrepancy between the number of workers requested on a certified labor application and the number requested on the petition, USCIS may need to review the application and petition to ensure the employer’s claimed need for workers is reasonable, according to a USCIS official.

<sup>27</sup> KCC is a U.S. Department of State facility located in Williamsburg, Kentucky. It supports the worldwide operations of the Bureau of Consular Affairs’ Visa Office. It uploads the petition information into the Petition Information Management System.

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Employers may or may not use third-party services based in the United States or the sending country to recruit and/or facilitate moving workers through the process of obtaining their visas and traveling to their worksites.

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## Obligations of H-2A and H-2B Employers

The Immigration and Nationality Act and relevant regulations require H-2A and H-2B employers to meet certain obligations, which differ by visa type, related to the recruitment and employment of workers. For both programs, DOL's and DHS's regulations prohibit the payment of fees from a prospective worker for any activity related to obtaining labor certification or as an offer or condition of employment, including payment of employer agent or recruitment fees.<sup>28</sup> However, employers and their agents may receive reimbursement from workers for any costs incurred that are the responsibility and primarily for the benefit of the worker.<sup>29</sup> For example, if an employer paid government-required passport fees, the employer can receive reimbursement for those fees. In addition, DOL's H-2A and H-2B regulations generally require employers to attest that they have contractually forbidden any foreign labor contractor or recruiter hired by the employer from seeking or receiving payments from prospective employees.<sup>30</sup> Under both programs, employers must comply<sup>31</sup> with all applicable federal, state,<sup>32</sup> and local laws, and are subject to a criminal provision that prohibits them from destroying, concealing, or confiscating workers' passports, visas, or other immigration documents.<sup>33</sup> In addition,

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<sup>28</sup> 20 C.F.R. §§ 655.22(j), 655.135(j); 8 C.F.R. §§ 214.2(h)(5)(xi)(A), (6)(i)(B).

<sup>29</sup> 20 C.F.R. §§ 655.22(g)(2), 655.135(j).

<sup>30</sup> 20 C.F.R. §§ 655.22(g)(2), 655.135(k).

<sup>31</sup> The specific regulatory language on compliance with laws varies slightly. Under the H-2A regulations, employers must comply with "all applicable Federal, State and local laws and regulations, including health and safety laws. In compliance with such laws,...the employer may not hold or confiscate workers' passports, visas, or other immigration documents." 20 C.F.R. § 655.135(e). The H-2B regulations state that employers must comply with "applicable Federal, State and local employment-related laws and regulations, including employment-related health and safety laws." 20 C.F.R. § 655.22(d).

<sup>32</sup> For example, in 1988 California passed, and in 2014 amended, a law that regulates the services of foreign labor contractors, who will be required to register with the state Labor Commissioner beginning in July 2016. This law also addresses employment contract requirements, fraudulent recruiting, and retaliation, among other things. Cal. Bus. & Prof. Code chap. 21.5 (2014), as amended by Senate Bill No. 477 (Sept. 28, 2014).

<sup>33</sup> 18 U.S.C. § 1592.

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the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 created a new criminal statute prohibiting the recruitment and hiring of persons outside the United States through false or fraudulent representations.<sup>34</sup>

Employer responsibilities are set forth in the regulations for both programs. Both DOL and DHS issued final H-2B regulations in 2008. DOL also issued new final H-2B regulations in 2012. However, during the time of our review, DOL was enforcing its 2008 H-2B regulations because it was enjoined from enforcing its 2012 regulations, which have since been vacated by a federal court.<sup>35</sup> Table 1 summarizes selected provisions related to employer obligations under the current H-2A and H-2B regulations, as well as DOL's 2012 H-2B regulations.

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<sup>34</sup> Pub. L. No. 110-457, § 222(e), 122 Stat. 5044, 5070 (creating 18 U.S.C. § 1351).

<sup>35</sup> 77 Fed. Reg. 28,764, 28,765 (May 16, 2012). On Dec. 18, 2014, the District Court for the Northern District of Florida vacated DOL's 2012 H-2B regulations. *Bayou Lawn & Landscape Services v. Perez*, No. 12-183 (N. D. Fla. Dec. 18, 2014) (ECF No. 74).

**Table 1: DOL Regulations Related to Selected Employer Obligations under H-2A and H-2B Visa Programs**

	<b>H-2A Regulations</b>	<b>2008 H-2B Regulations</b>	<b>2012 H-2B Regulations<sup>e</sup></b>
Disclosure of work contract	Employer must provide worker with a copy of the work contract, in a language understood by the worker, no later than when the worker applies for visa, <sup>b</sup> and must post the required worker rights and protections poster in a conspicuous location.  20 C.F.R. § 655.122(q) and 20 C.F.R. § 655.135(l).	No disclosure requirement.	Same as H-2A  77 Fed. Reg. 10,038, 10,158. 77 Fed. Reg. 10,038, 10,175.
Transportation to/ from United States <sup>a</sup>	Employer required to pay inbound transportation and daily subsistence (meals and lodging, when necessary) if worker completes 50 percent of the contract period and outbound transportation and daily subsistence if worker completes work contract or is terminated without cause.  20 C.F.R. § 655.122(h)(1), (2).	Worker pays transportation costs to the United States. Employer required to pay outbound transportation if worker is dismissed from employment for any reason before the end of the work contract.  20 C.F.R. § 655.22(m)	Same as H-2A, but employer required to pay outbound transportation if worker is dismissed from employment for any reason before the end of the work contract.  77 Fed. Reg. 10,038, 10,158.
Housing	Employer must provide free housing that meets applicable standards. 20 C.F.R. § 655.122(d).	Worker pays for housing.	Worker pays for housing.
Meals	Employer must provide three meals a day <sup>c</sup> or access to cooking facilities. 20 C.F.R. § 655.122(g).	Worker pays for meals.	Worker pays for meals.
Rate of pay	If paid by the hour, worker is paid the highest of the following: <ul style="list-style-type: none"><li>• adverse effect wage rate<sup>d</sup></li><li>• prevailing wage (including piece rate)</li><li>• agreed-upon collective bargaining wage</li><li>• federal or state minimum wage</li></ul> If paid on a piece rate, the employer must supplement the worker's earnings, if necessary, to the amount the worker would have earned if paid at the appropriate hourly rate.  20 C.F.R. § 655.122(l).	Worker is paid a wage that equals or exceeds the highest of the following: <ul style="list-style-type: none"><li>• prevailing wage (which may be a collective bargaining wage)</li><li>• federal, state, or local minimum wage.</li></ul> The offered wage rate cannot be based on commissions, bonuses, or other incentives unless the employer guarantees a wage that equals or exceeds the prevailing wage, or the federal, state, or local minimum wage, whichever is highest.  20 C.F.R. § 655.22(e); 20 C.F.R. § 655.22(g)(1).	Same as 2008 H-2B regulations.  77 Fed. Reg. 10,038, 10,156.

	<b>H-2A Regulations</b>	<b>2008 H-2B Regulations</b>	<b>2012 H-2B Regulations<sup>e</sup></b>
Work guarantee	<p>Employer must guarantee to offer the worker employment for a total number of work hours equal to at least three-fourths of the work days of the total period.</p> <p>20 C.F.R. § 655.122(i)(1).</p> <p>Employers must also make an assurance that the job is a full-time position of at least 35 hours per week.</p> <p>20 C.F.R. § 655.135(f).</p>	<p>No guarantee. Employers must attest that the job opportunity is a bona fide, full-time position.</p> <p>20 C.F.R. § 655.22(h).</p> <p>Full time is generally defined as 30 or more hours per week.</p> <p>20 C.F.R. § 655.4.</p>	<p>Same as H-2A, but the guarantee applies to each 12-week period (or 6-week period if the period of employment covered by the job order is less than 120 days).</p> <p>77 Fed. Reg. 10038, 10157.</p>

Source: GAO summary of selected DOL regulations. | GAO-15-154

Notes:

<sup>a</sup> According to DOL, for each category of regulations, the employer is responsible for transportation costs (both inbound and outbound) to the extent that such costs bring workers' wages below the federal minimum wage or cut into overtime premiums in the first and last workweeks (these protections are afforded under the Fair Labor Standards Act).

<sup>b</sup> In the absence of a separate, written work contract, the required terms of the job order and the certified Application for Temporary Employment Certification will be the work contract.

<sup>c</sup> As of March 5, 2014, employers may charge workers up to \$11.58 a day for three meals. This rate changes annually and is published in the Federal Register. 20 C.F.R. § 655.173(a).

<sup>d</sup> The adverse effect wage rate is the weighted average hourly wage for field and livestock workers (combined) in the states or regions as published by the U.S. Department of Agriculture. 20 C.F.R. § 655.103.

<sup>e</sup> The United States Court of Appeals for the Eleventh Circuit upheld a preliminary injunction granted by the District Court for the Northern District of Florida prohibiting the Department of Labor from enforcing final regulations it published for the H-2B program at 77 Fed. Reg. 10,038 (Feb. 21, 2012). *Bayou Lawn & Landscape Services v. Solis*, 713 F.3d 1080 (11th Cir. 2013). On Dec. 18, 2014, the District Court for the Northern District of Florida granted the plaintiffs' motion for summary judgment and vacated DOL's 2012 H-2B regulations. *Bayou Lawn & Landscape Services v. Perez*, No. 12-183 (N. D. Fla. Dec. 18, 2014) (ECF No. 74).

Employers of H-2A and H-2B workers may also be subject to the Fair Labor Standards Act (FLSA) in addition to H-2A and H-2B program requirements.<sup>36</sup> Among other things, FLSA establishes minimum wage, overtime pay, and recordkeeping standards affecting certain employees in both private sector and government employment.

## Enforcement of the H-2A and H-2B Programs

Several federal agencies have roles in the enforcement of H-2A and H-2B program laws and regulations (see fig. 2). DOL has the primary authority to monitor and enforce H-2A and H-2B program regulations as well as other relevant labor laws. The agency can investigate H-2A and H-2B

<sup>36</sup> 29 U.S.C. §§ 201-262.

employers for compliance with program requirements and impose civil money penalties for violations.

**Figure 2: U.S. Federal Agencies' Enforcement Roles for the H-2A and H-2B Programs**



Source: GAO analysis of DOL, DHS, State, and DOJ regulations and guidance. | GAO-15-154

Specifically, DOL's Office of Foreign Labor Certification (OFLC), Wage and Hour Division (WHD), and Office of Inspector General all have enforcement roles. OFLC may audit employers after they have received their certifications. WHD's responsibilities include, but are not limited to, ensuring the payment of required wages, the provision of transportation, meals, and housing, if applicable, as well as other employer obligations under the program. Moreover, with some variation by program, WHD has the authority to carry out investigative functions; impose civil money penalties; seek equitable and injunctive relief; and enforce employer obligations, including the payment of back wages.<sup>37</sup> In addition, the Inspector General's Office of Labor Racketeering and Fraud Investigations investigates fraudulent claims made by employers on their

<sup>37</sup> 29 C.F.R. § 501.1(c).

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labor application. Under the H-2A program, OFLC and WHD have concurrent jurisdiction to debar—or temporarily ban—an employer who has substantially violated a material term or condition of its temporary labor certification from further participation under the H-2A program.<sup>38</sup> OFLC has authority to debar such an employer under the H-2B program while WHD can recommend debarment.<sup>39</sup> Under the H-2A program, examples of potentially substantial violations include one or more acts of commission or omission by the employer involving failure to provide the required wages, benefits or working conditions to workers, and the employer's failure to pay a necessary certification fee in a timely manner.<sup>40</sup> Examples of a substantial violation under the H-2B program include engaging in a pattern or practice of acts that are significantly injurious to a significant number of workers' wages, benefits, or working conditions, and fraud involving the application for temporary employment certification.<sup>41</sup> Employer agents and attorneys are also subject to debarment if they participated in the employer's violation.<sup>42</sup> Once the debarment is final, DOL must provide a copy of the notice of debarment to DHS.<sup>43</sup>

DHS, DOJ, and State also have enforcement responsibilities. DHS's USCIS pursues administrative inquiries into petition fraud through site inspections.<sup>44</sup> DHS's U.S. Immigration and Customs Enforcement (ICE) and DOJ investigate criminal cases, including human trafficking crimes. DOJ also awards state and local law enforcement grants to human

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<sup>38</sup> 20 C.F.R. § 655.182(a); 29 C.F.R. § 501.20.

<sup>39</sup> 20 C.F.R. §§ 655.31(a)(1), 655.65(h).

<sup>40</sup> 20 C.F.R. § 655.182(d)(1)(i), (2).

<sup>41</sup> 20 C.F.R. § 655.31(d)(1)(i), (2).

<sup>42</sup> 20 C.F.R. §§ 655.31(b), 655.182(b).

<sup>43</sup> 20 C.F.R. §§ 655.31(f), 655.182(g).

<sup>44</sup> USCIS's Fraud Detection and National Security (FDNS) Directorate conducts pre- and post-adjudication site inspections to verify information contained in certain petitions.

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trafficking task forces and prosecutes criminal cases.<sup>45</sup> Finally, State's Bureau of Diplomatic Security investigates passport and visa fraud violations.

In addition to enforcement and prosecution, several federal agencies work to prevent victimization of workers. For example, DOL has a partnership program with 11 countries to assist in the protection of labor rights of vulnerable workers and State distributes a "Know Your Rights" pamphlet to workers during their visa interviews. In terms of protection of workers who become victims of human trafficking, DOJ and HHS provide funding to service organizations.<sup>46</sup> These organizations assist victims with food, shelter, clothing, and medical and legal services, in addition to other supports, so they can achieve self-sufficiency and rebuild their lives in the United States. Trafficking victims may also seek immigration relief in the form of T nonimmigrant status ("T visa") or U nonimmigrant status ("U visa") or continued presence, which allows the workers to remain in the country so they can assist with the investigation or prosecution of these

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<sup>45</sup> As we previously reported, the DOJ Bureau of Justice Assistance task forces vary with respect to which federal agencies participate—DOJ's Federal Bureau of Investigation, DHS' Immigration and Customs Enforcement, DOL, or others; the number of state or local law enforcement agencies involved—single or multiple police departments and sheriff's offices; and the number of nongovernmental groups that provide victim services. See GAO, *Human Trafficking: A Strategic Framework Could Help Enhance the Interagency Collaboration Needed to Effectively Combat Trafficking Crimes*, GAO-07-915 (Washington D.C.: July 26, 2007).

<sup>46</sup> In addition to DHS, DOJ, and HHS, many other agencies are involved in combating human trafficking through the President's Interagency Task Force to Monitor and Combat Trafficking in Persons. Members of the task force include the Departments of Agriculture, Defense, Education, the Interior, Labor, Transportation, and State; Domestic Policy Council; National Security Staff; Office of Management and Budget; Office of the Director of National Intelligence; Federal Bureau of Investigation; U.S. Agency for International Development; and the U.S. Equal Employment Opportunity Commission.

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cases as well as receive federally funded benefits and services.<sup>47</sup> Federal agencies' anti-trafficking activities are often guided by the "3P" paradigm of prevention of trafficking, protection of victims, and prosecution of traffickers (see fig. 3). While the paradigm is generally associated with human trafficking, it provides a useful framework for discussing labor exploitation in general.

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<sup>47</sup> T nonimmigrant status is available for victims of severe forms of trafficking in persons who have complied with any reasonable request for assistance by law enforcement in the investigation or prosecution of the trafficking, would suffer extreme hardship involving unusual and severe harm if removed from the United States, and are physically present in the United States on account of such trafficking. 8 U.S.C. § 1101(a)(15)(T). U nonimmigrant status is available for victims of qualifying criminal activity who have suffered substantial physical or mental abuse as a result of being a victim of the qualifying crime, possess information about the qualifying crime, and have been, are being, or are likely to be helpful to law enforcement or government officials in the investigation or prosecution of the qualifying criminal activity. 8 U.S.C. § 1101(a)(15)(U). Continued presence is a temporary immigration status provided to victims of human trafficking upon the application by federal law enforcement officials to DHS. 22 U.S.C. § 7105(c)(3). In addition, DHS regulations provide limited immigration relief, such as a 30-day extension of their stay, for any workers whose employer's petition has been revoked based on the worker's payment of a prohibited fee. 8 C.F.R. § 214.2(h)(5)(xi)(B) and § 214.2(h)(6)(i)(B)(4).

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**Figure 3: The “3P” Paradigm of Combating Human Trafficking**



Source: GAO representation of federal anti-human trafficking strategy from the Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States, 2013-2017. | GAO-15-154

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## More Than 250,000 H-2A and H-2B Workers Entered the United States from 2009 through 2013, but the Number of Workers Filling Specific Occupations Is Not Fully Known

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Most Workers Entering the United States on H-2A and H-2B Visas Were from Mexico, Male, and 40 Years Old or Younger

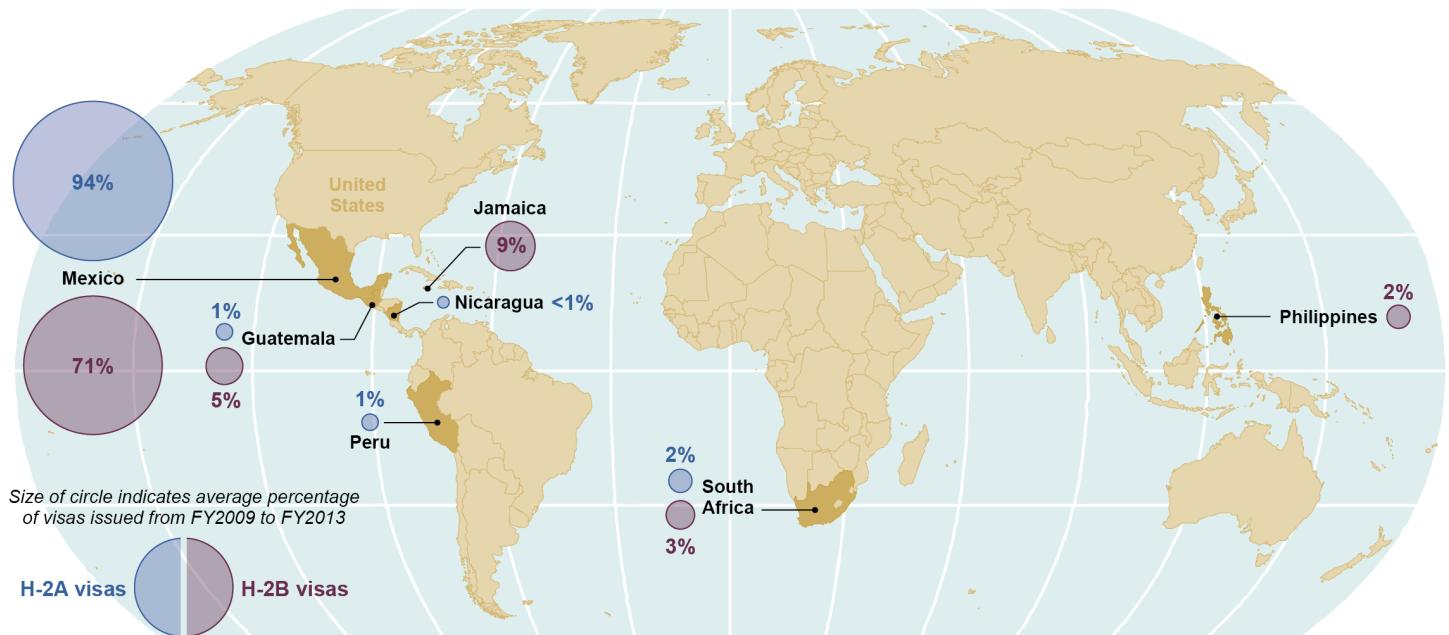
The number of H-2A and H-2B visas issued increased from fiscal year 2009 through fiscal year 2013 and most were issued to workers from Mexico. Specifically, State reported that 94 percent of H-2A visas and 71 percent of H-2B visas, on average, were issued to Mexican nationals (see fig. 4).<sup>48</sup> The number of H-2A visas issued in fiscal years 2009 through 2013 increased by about 23 percent, from 60,112 to 74,192, while the number of H-2B visas issued increased by 28 percent, from 44,847 to 57,600.<sup>49</sup>

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<sup>48</sup> These statistics do not take into account H-2 workers who did not need or did not obtain visas (for example, those from visa exempt countries).

<sup>49</sup> We used State's published information on nonimmigrant visa statistics, see <http://travel.state.gov/content/visas/english/law-and-policy/statistics/non-immigrant-visas.html>. We did not independently verify the reliability of these data.

**Figure 4: U.S. Embassies and Consulates That Issued the Highest Percentage of H-2A and H-2B Visas, Fiscal Years 2009 through 2013**



Source: GAO review of Department of State Nonimmigrant Visa System summary data; National Atlas (base map). | GAO-15-154

Note: These statistics do not take into account H-2 workers who did not need or did not obtain visas (for example, those from visa exempt countries).

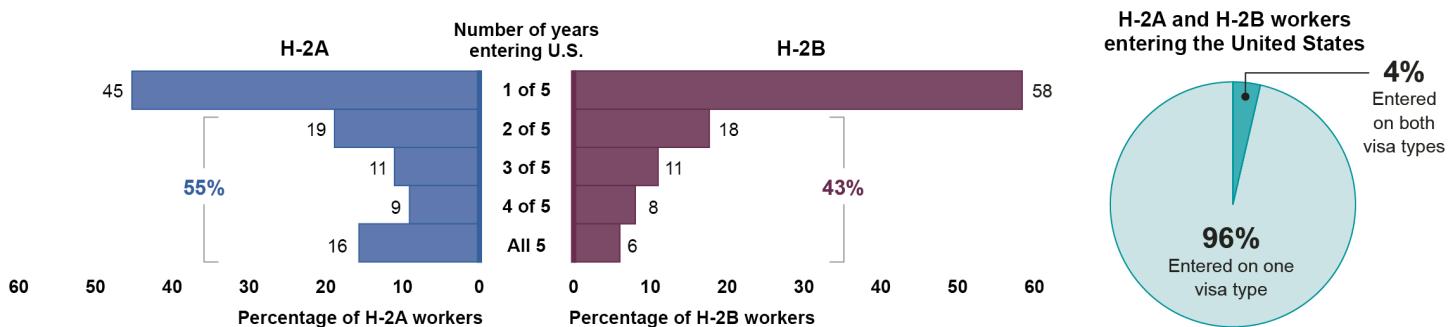
More than 250,000 H-2A and H-2B individual workers entered the United States in fiscal years 2009 through 2013, mostly from Mexico.<sup>50</sup> Of those workers who entered the country on H-2A visas, almost all were men—96 percent or more for all five fiscal years. Those workers who entered on H-2B visas were also mostly men; however, a higher percentage of women entered on H-2B visas—about 15 percent in fiscal year 2009 declining to

<sup>50</sup> In our analysis of DHS's Arrival and Departure Information System data, we counted the number of individuals who entered the country, not the number of admissions. The number of workers who entered the country may be different from the number of H-2A and H-2B visas issued because some workers may have entered the country in the same year under different visas and not all workers who received a visa may subsequently enter the country. For 1.2 percent of individuals who entered the country, we were not able to resolve conflicting personally identifiable information. As a result, we dropped these individuals from our analysis. See appendix I for more information.

about 12 percent in fiscal year 2013. Three-fourths of workers who entered were 40 years old or younger.<sup>51</sup>

Some H-2A and H-2B workers returned to the United States in multiple years (see fig. 5). Employers and government and NGO officials said many workers repeatedly return to the United States to work for the same or different employers. In our analysis, we found that, in fiscal years 2009 through 2013, about 55 percent of H-2A and 43 percent of H-2B workers returned multiple times.<sup>52</sup> Four percent of workers who entered had at least one entry under each visa type.

**Figure 5: Percentage of H-2A and H-2B Workers Who Entered the Country in One or More Years, Fiscal Years 2009 through 2013**



Source: GAO analysis of Department of Homeland Security Arrival and Departure Information System data. | GAO-15-154

Note: Percentages may not equal 100 due to rounding.

<sup>51</sup> If a worker entered the country more than once in a fiscal year, we calculated their age upon their first entry each fiscal year.

<sup>52</sup> Because the data did not allow us to determine if workers who entered the United States multiple times were entering under the same or different visas, we counted the worker as having one entry during a fiscal year if the worker entered the country one or more times during that year.

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**The Number of Workers in Specific Occupations Is Not Fully Known; However, Employers Requested Most Workers for the Agriculture, Horticulture, or Food Service Industries**

When adjudicating H-2A and H-2B petitions, DHS's USCIS does not electronically record standardized occupational information on workers who are approved; although, the information is available in the paperwork provided by the employer. Instead, when reporting to Congress on occupations of H-2B workers, DHS provides Congress with occupational data collected by DOL, which include the specific occupations employers want H-2B workers to fill. These data, however, do not reflect the number of workers who are ultimately approved by DHS to work in these occupations.

DHS and State are required by law to report annually to Congress on the characteristics of H-2B workers, including their occupations.<sup>53</sup> To fulfill this requirement, DHS cites DOL data on the number and occupations of workers who were certified by DOL. The data collected by DOL capture detailed information on workers' occupations using the Standard Occupational Classification (SOC) system, which has 840 detailed occupations and is the system federal statistical agencies are required to use to increase data comparability.<sup>54</sup> While DOL's data provide detailed occupational information, they reflect the number of H-2A and H-2B workers that employers applied for, and that DOL certified, during the first step in the process of hiring workers. As a result, they generally provide an overestimate of the number of workers that may ultimately be approved in various occupations. According to a USCIS official, the number of workers will differ between DOL, DHS, and State because employers may initially request a higher number of workers than they ultimately need as H-2B work is seasonal and unpredictable. We found that from fiscal years 2009 through 2013, the number of H-2B workers certified by DOL and the number of workers requested by employers on

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<sup>53</sup> The American Competitiveness and Workforce Improvement Act of 1998, Pub. L. No. 105-277, div. C, tit. IV, § 416, 112 Stat. 2681, 2681-655, as amended by the REAL ID Act of 2005, Pub. L. No. 109-13, div. B, tit. IV, § 406, 119 Stat. 231, 320, requires that DHS annually report to the Senate and House Committees on the Judiciary information on the countries of origin of, occupations of, and compensation paid to those who were issued visas or otherwise granted nonimmigrant status. DHS compiles the report based on information provided by State, DOL, and three components within DHS: U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement.

<sup>54</sup> The SOC System is used by federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data. Under the SOC System, employers classify workers into one of the 840 detailed occupations according to their occupational title. These detailed occupations are then combined to form 461 broad occupations, 97 minor groups, and 23 major groups.

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petitions approved by USCIS differed by thousands of workers per year (see table 2).<sup>55</sup>

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**Table 2: Number of H-2B Workers Certified by DOL and Requested on Petitions Approved by DHS, Fiscal Years 2009 through 2013<sup>a</sup>**

H-2B Workers Certified by DOL <sup>b</sup>	H-2B Workers Requested on Petitions Approved by DHS/USCIS <sup>c</sup>	Difference
FY 2009	154,489	96,308
FY 2010	86,596	74,808
FY 2011	83,152	77,960
FY 2012	75,458	70,959
FY 2013	82,307	79,219

Source: GAO analysis of DHS USCIS petition data and review of DOL published certification data. | GAO-15-154

Notes:

<sup>a</sup> USCIS officials said not all certifications and corresponding petitions may be approved in the same fiscal year.

<sup>b</sup> Fiscal year based on DOL's certification decision date.

<sup>c</sup> Fiscal year based on the date the petition was received by DHS/USCIS. Includes both new and continuing petitions. New petitions are filed by petitioners requesting new workers or the same workers in a different nonimmigrant classification. Petitions for continuation are filed by petitioners requesting to extend a worker's employment in the same position and nonimmigrant classification with the same employer.

Furthermore, USCIS may then approve fewer workers for entry into the United States than were requested on the petition.<sup>56</sup> For example, we found that in fiscal years 2009 through 2013, a small percentage (about one percent) of new petitions for both H-2A and H-2B<sup>57</sup> had split decisions, where USCIS officers approved some, but not all, requested

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<sup>55</sup> USCIS officials said not all certifications and corresponding petitions may be approved in the same fiscal year.

<sup>56</sup> We attempted to report the number of workers approved by DHS in each fiscal year, but we were not able to reliably do so.

<sup>57</sup> New petitions are filed by petitioners requesting new workers or the same workers in a different nonimmigrant classification. Petitions for continuation are filed by petitioners requesting to extend a worker's employment in the same position and nonimmigrant classification with the same employer.

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workers—further reducing the number of workers in various occupations filled by H-2B workers compared to the number certified by DOL.<sup>58</sup>

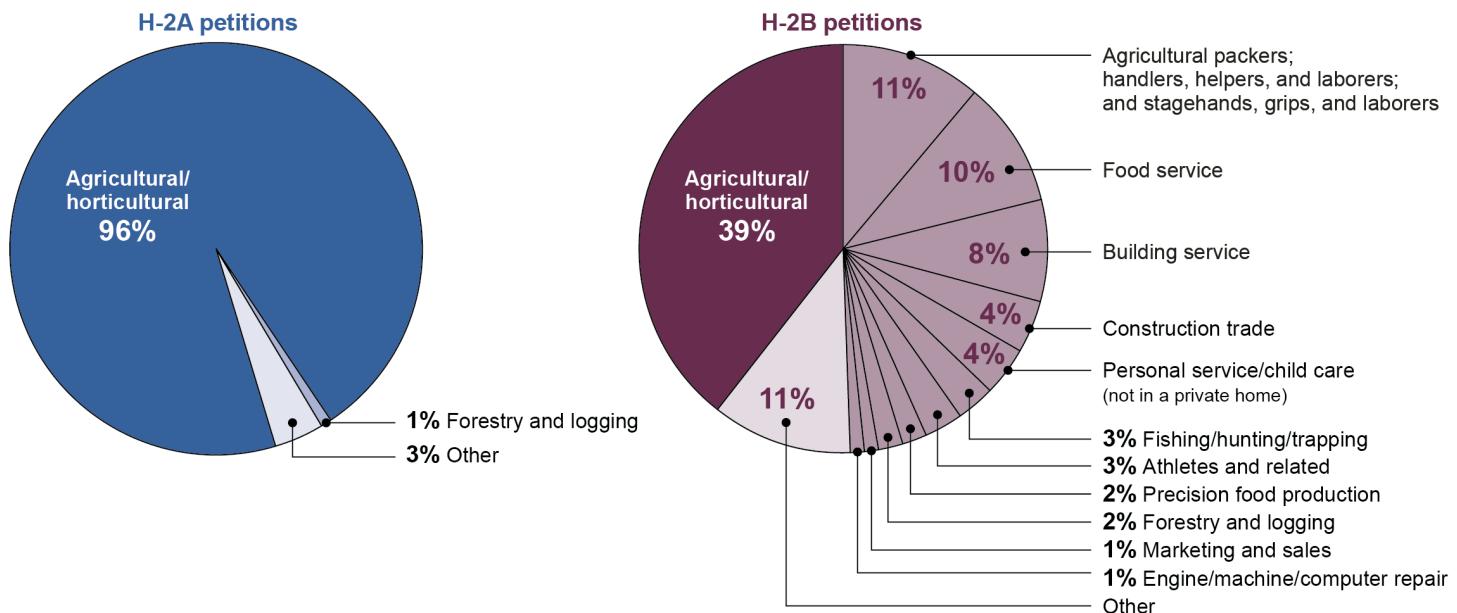
While DHS's USCIS petition data are more accurate than DOL data in terms of the number of workers requested, information about the type of occupations those workers are requested to fill is not coded and maintained electronically using a standard occupational classification system. Specifically, when USCIS officers enter information into their database (CLAIMS 3) to approve the final number of H-2 workers they do not denote in CLAIMS 3 the SOC information provided on the DOL certification, which is submitted with the petition.<sup>59</sup> Instead, they recode the job title from the employer's petition using an occupational classification system with 15 broad categories. These categories may be further divided into 1 to 12 occupational codes for a total of 83 detailed occupations, as opposed to DOL's 840 detailed occupations. See figure 6 below for a breakdown of H-2A and H-2B occupations requested on approved petitions. Officials said USCIS's current occupational system predates DOL's use of the SOC system to classify occupations on labor applications. However, the broad and overlapping categories within USCIS's occupational classification system make it difficult to distinguish the occupations filled by H-2A workers versus H-2B workers even though these programs are targeted to fill occupations in different sectors of the economy.

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<sup>58</sup> In addition, DHS officials said State could deny the worker's visa, which would also cause the number of occupations filled by H-2B workers to be lower than the number certified by DOL. However, State does not collect data on the occupations workers will be filling in the United States on its visa application.

<sup>59</sup> The Computer Linked Adjudication Information Management System 3, or CLAIMS 3, is USCIS's electronic case management system for immigration applications and petitions.

**Figure 6: Percentage of Occupations Requested By Employers/Petitioners on New H-2A and H-2B Petitions,<sup>a</sup> Fiscal Years 2009 through 2013**



Source: GAO analysis of Department of Homeland Security's Computer Linked Adjudication Information Management System 3 (CLAIMS 3) data. | GAO-15-154

Notes: Percentages may not equal 100 due to rounding.

<sup>a</sup> New petitions are filed by petitioners requesting new workers or the same workers in a different nonimmigrant classification. Petitions for continuation are filed by petitioners requesting to extend a worker's employment in the same position and nonimmigrant classification with the same employer.

USCIS plans to change its occupational coding system during its transformation from a paper-based processing of immigration benefits to an electronic processing system, but it has not yet determined which occupational classification system it will use. Modifications have been contemplated, but, for financial reasons, officials said they decided to wait until the agency's scheduled update of the petition form through its Transformation Program.<sup>60</sup> However, as we have previously reported, USCIS has faced longstanding challenges in implementing its Transformation Program, which raises questions about the extent to

<sup>60</sup> In 2005, USCIS embarked on a major initiative to transform its current paper-based petition system into an electronic system.

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which its eventual deployment will position USCIS to address the limitations in its data on occupations of approved workers. Specifically, in November 2011, we reported that USCIS had not developed reliable or integrated schedules for the program, and, as a result, could not reliably estimate when all phases would be complete.<sup>61</sup> As of July 2014, officials said the petition used to request H-2A and H-2B workers is currently scheduled to be updated in a phase for which they have not yet set requirements and, therefore, have not decided which classification system will be used.<sup>62</sup> The Office of Management and Budget's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies states that part of data quality is data utility, including the usefulness of the information. By using a nonstandard occupational classification system, the usefulness of USCIS's data is limited. Ensuring that the electronic petition for H-2A and H-2B visas uses a standardized occupation classification system will better position USCIS to report more reliable data to Congress on the H-2B workers U.S. employers use to fill specific occupations.

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<sup>61</sup> GAO, *Immigration Benefits, Consistent Adherence to DHS's Acquisition Policy Could Help Improve Transformation Program Outcomes*, GAO-12-66 (Washington, D.C.: Nov. 22, 2011). Since our November 2011 report, the Transformation Program schedule has encountered further challenges. As of February 2015, we have ongoing work that will, among other things, determine the current status of the Transformation Program, including the impact of changes made to the acquisition strategy since our 2011 report.

<sup>62</sup> In July 2014, the Director of USCIS testified that full deployment was expected to be completed by 2018 or 2019. See testimony by Leon Rodriguez, USCIS Director, before the House Committee on the Judiciary, Oversight of U.S. Citizenship and Immigration Services, July 29, 2014.

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## Employers Used Varying Methods to Recruit Workers and Some Workers Experienced Abuses Before and After Entering the United States

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### Employers Used Both Direct and Indirect Recruitment Methods

Employers generally use one of several methods to recruit workers, which can be broadly categorized as direct or indirect methods. (See table 3 for a description of each method.)

**Table 3: Methods of Worker Recruitment in the H-2A and H-2B Visa Programs<sup>a</sup>**

Attributes of recruitment methods		Parties involved in recruitment	Description
Direct		Employer	Employers travel to foreign countries to locate and interview workers directly.
Indirect	Informal <sup>b</sup>	Returning Workers	Employers use one or more returning workers to recruit additional workers for the next season. In some cases, a trusted foreman is asked to recruit workers. In other cases, the ability for workers to refer others for jobs in future years is seen as a way to build loyalty among returning workers.
	Formal	Contractor or Contractor-Subcontractor(s)	Employers contract with a third party who directly recruits workers. In some cases, the third party may subcontract out to one or more additional third parties to do the work of finding and recruiting workers. The third parties may be employer agents, attorneys, staffing agencies, U.S.-based recruiters, or foreign-based recruiters. This model can include multiple layers of subcontractors, who may operate in the United States, in foreign countries, or both.

Source: GAO analysis of reports by Centro de los Derechos del Migrante, Inc. and Jornaleros SAFE, and interviews with NGOs, federal officials, and H-2A employers. | GAO-15-154

Notes:

<sup>a</sup>The table represents our analysis of two independently derived recruitment frameworks. (1) Centro de los Derechos del Migrante, Inc., *Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change* (2013). Recruitment Revealed is based on 220 interviews with H-2A and H-2B workers in Mexico conducted from 2007 through 2012. (2) Jornaleros SAFE Executive Summary: *Mexican H2A Farmworkers in the U.S: The Invisible Workforce* (2012). The Jornaleros SAFE report is based on interviews with 382 H-2A workers in parts of Mexico from 2010 through 2012.

<sup>b</sup>The indirect informal recruitment model may be combined with the direct model. For example, an employer may use returning workers to recommend additional workers, but the employer will travel to the workers' home country to interview and hire the workers directly.

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In the direct method, employers locate and contact potential H-2A and H-2B workers themselves. This method may be difficult for newer employers with few contacts in the workers' home countries. To help employers directly recruit workers, officials at the U.S. Embassy in Mexico said they worked with local governments in 2013 to set up two job fairs where employers could recruit and hire workers, rather than using a third party. A high-level consular affairs official said while there was some enthusiasm for these job fairs, there were also some challenges. For example, the same official told us that recruiters discouraged employers from participating by telling them that they did not want to hire from the areas of the country where the job fairs were held. Nevertheless, officials said the fairs were useful, especially for employers who were recruiting workers for the first time. One employer who attended a job fair told us he hired approximately 36 of the 165 workers he needed and believed it was good augmentation to his other recruitment methods, which were generally based on referrals by long-term workers.<sup>63</sup>

In the indirect formal method of recruitment, employers use one or more contractors or third parties.<sup>64</sup> On the basis of our analysis of a sample of employer petitions, we estimate that about 44 percent of H-2A and H-2B petitions filed in fiscal year 2013 indicated that employers intended to use the formal indirect recruiting model and hire a third-party staffing, recruitment, or similar placement agency to find workers.<sup>65</sup> A nongeneralizable survey of H-2A workers in Mexico, conducted by a coalition of NGOs, found that most of the 382 workers they interviewed

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<sup>63</sup> Two employers who participated in the job fairs allowed State to share their contact information. Of those, one responded to our requests to set up an interview.

<sup>64</sup> DOL regulations generally require employers to contractually prohibit foreign labor contractors or recruiters that they hire from seeking or receiving any compensation, including recruitment fees, from prospective H-2 workers. 20 C.F.R. §§ 655.22(g)(2), 655.135(k). In addition, DHS regulations require a denial or revocation of an H-2 petition if the agency determines that an employer or his agent has collected prohibited fees. 8 C.F.R. §§ 214.2(h)(5)(xi)(A), 214.2(h)(6)(i)(B).

<sup>65</sup> When employers petition DHS for workers, they are asked to fill out an H-Supplement where they report whether they plan to use a staffing, recruiting, or similar placement service or agency to find workers and, if so, to name the agency. We reviewed a systematic random sample of new petitions (i.e., not petitions to continue a worker's stay) to determine how many employers use one of these third parties to assist them in finding workers. The 95 percent confidence interval for the estimate is (36 percent, 51 percent).

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were recruited under the indirect formal model,<sup>66</sup> while some employer industry groups said most employers opt for a less formal version of the indirect recruiting approach and use returning workers to refer additional workers. For example, the three H-2A employers we interviewed all used direct or indirect informal recruitment methods and two of them preferred to interview prospective workers themselves. Two of these employers said they had previously hired third parties to recruit workers, but stopped using them after experiencing problems. For example, one mentioned that he believed his agent was keeping a portion of the workers' paychecks. Consequently, he said he now relies on returning workers to refer new workers for future seasons.

Federal officials, employers, advocacy groups, and industry groups said each recruitment model presents certain trade-offs. Generally, employers who directly recruit their workers maintain control over the recruitment process, but this process is more labor-intensive for employers. According to interviews with some NGO officials, employers who opt for indirect recruitment methods and use third parties, including returning workers, generally do so for ease and convenience. A formal third party working individually or in conjunction with other third parties—including attorneys, employer agents, and recruiters—may offer a different complement of services. For example, one agent in Monterrey, Mexico, told us that he is hired directly by U.S. employers to shepherd workers through the entire process of applying for their visas,<sup>67</sup> while another Monterrey-based agent told us he generally works for U.S.-based agents who represent employers to set up visa interviews and assist workers with the visa application and other employment paperwork. While using third-party recruiters may be convenient for the employer, it may also

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<sup>66</sup> Jornaleros SAFE Executive Summary: Mexican H2A Farmworkers in the U.S: The Invisible Workforce (2012). Five organizations have been working on the Jornaleros SAFE Project, which began in May 2010. They are Centro Independiente de Trabajadores Agricolas, Dimension Pastoral de la Movilidad Humana, Global Workers Justice Alliance, United Farm Workers, and Catholic Relief Services. The Jornaleros SAFE report is based on interviews with 382 H-2A workers in parts of Mexico from 2010 through 2012. The survey is based on a non-random sample, and the results are not statistically projectable. See appendix I for additional information.

<sup>67</sup> Specifically, the agent said he contacts workers, makes visa appointments, helps workers fill out the online visa application, and explains the job contract to workers. The agent said he also leads workers through biometric processing the day before the interview, to the interview itself, and the pass-back of passports after the visas have been awarded. The agent's facilities also included a hotel for overnight stays and a bus station for departing to the United States.

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decrease an employer's knowledge of and control over the recruitment process. Particularly when using the formal indirect model, some NGO officials noted that as the number of layers between the employer and the worker grow, there are more avenues for someone in the recruitment process to exploit workers. In addition, some federal officials and an employer we spoke to said that the informal indirect model, which relies on returning workers to recruit, is not always free of problems either, as returning workers may also charge prohibited fees when recruiting potential workers. For example, one employer said he paid closer attention to this issue after he found out that his foreman, a naturalized citizen who was recruiting workers from his home country, was asking workers to buy him items such as shoes or a watch. In exchange, the workers were being paid for time they did not work. This employer said one of his permanent employees brought the situation to his attention; the foreman exerted such control over the H-2A workers that they feared coming forward while he was on the job.

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**Some Abuses, Such as Charging Prohibited Fees, That Occur during Recruitment May Increase the Likelihood of Workers Tolerating Abuse during Employment**

Some workers experienced a range of abuses during recruitment, some of which may make workers more likely to tolerate abuses later during employment. Abuses in recruitment include things such as being charged prohibited fees to get the job or recruited for a job that does not exist. The NGO coalition's nongeneralizable survey found that most of the 382 H-2A workers they interviewed believed themselves to have experienced violations of their rights under the H-2A program.<sup>68</sup> However, our discussions with workers found more mixed experiences. Of the 3 worker discussion groups we held, one group's experience was uniformly positive, another's experience was mixed, and the last group's experience

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<sup>68</sup> Jornaleros SAFE Report, 2012. The survey responses are not representative of all H-2A workers. See appendix I for more information on the survey.

was uniformly negative.<sup>69</sup> See appendix II for summaries of each worker discussion group.

Federal officials, NGOs, and workers described a range of abuses that may occur during recruitment. Table 4 describes some of these abuses.

**Table 4: Types of Abuses Some Workers Reported Experiencing during Recruitment for the H-2 Visa Programs**

Abuse Description	Mentioned by	Federal and NGO officials	NGO surveys <sup>a</sup>
	At least one of three worker discussion groups held by GAO		
Recruitment Fees – Workers pay prohibited fees to a recruiter in order to secure a visa and job	✓	✓	✓
Visa Fraud – Workers pay prohibited fees to a recruiter to help them obtain a visa, but there is no job waiting for them when they arrive in the United States. <sup>b</sup>		✓	
Recruitment Fraud – Workers pay prohibited fees to someone posing as a recruiter for an opportunity to go to the United States for work, but later find out that the job and visa do not exist		✓	
Inadequate Job Information – (a) H-2A workers do not receive a written job contract in advance of making a financial commitment to the job, if at all; or (b) workers may receive a contract in a language they do not understand; or (c) workers may receive false information about job conditions	✓	✓	✓

Source: GAO analysis of reports by Centro de los Derechos del Migrante, Inc. and Jornaleros SAFE; interviews with nongovernmental organizations and federal officials; and discussion groups with H-2A and H-2B workers. | GAO-15-154

Notes:

<sup>a</sup>This column is based on the results of two non-generalizable surveys conducted by NGOs: (1) Centro de los Derechos del Migrante, Inc., *Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change* (2013). Recruitment Revealed is based on interviews with 220 H-2A and H-2B workers in parts of Mexico from 2007 through 2012. (2) Jornaleros SAFE, *Executive Summary: Mexican H2A Farmworkers in the U.S: The Invisible Workforce* (2012). The Jornaleros SAFE report is based on interviews with 382 H-2A workers in parts

<sup>69</sup> Between November 2013 and June 2014, we conducted 3 discussion groups with workers who had previously participated in the H-2 visa programs. Two groups, which were organized with the assistance of an NGO, included H-2B workers from Mexico, and the third group, which was organized with the assistance of an employer agent and the Jamaican government agency responsible for recruitment, included H-2A workers from Jamaica. We sought the assistance of both an NGO and an employer in reaching out to workers in order to obtain a variety of workers' views and experiences. No employers, agents, or government recruiters were present during the discussion groups with workers. The experiences of workers who participated in our discussion groups are not representative of the larger population of H-2A and H-2B workers. For more information on how these discussion groups were conducted, see appendix I. For summaries of the discussion groups' comments see appendix II.

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of Mexico from 2010 through 2012. The results of these surveys are not generalizable to the entire population of H-2A and H-2B workers. A checkmark in this column means that one or more of the surveys found that 30 percent or more of workers surveyed reported experiencing this type of violation.

<sup>b</sup> Some federal officials told us that some workers knowingly pay fees for a job that doesn't exist as a means to gain entry to the United States with a visa. The Immigration and Nationality Act ( 8 U.S.C. § 1182(a)(6)(C)(i)) bars an alien from receiving a visa or admission into the United States if this alien has previously obtained or attempted to obtain a visa, other documentation, admission, or other benefit under the Immigration and Nationality Act by means of fraud or by willfully misrepresenting a material fact.

Abuses experienced by workers during recruitment may increase a worker's likelihood of tolerating further abuse during employment. For example, some recruiters may charge workers prohibited recruitment fees in order to secure a job. According to the NGO coalition survey and another survey conducted by the Centro de los Derechos del Migrante, Inc. (CDM) of workers who had returned to Mexico, many were charged these fees during recruitment.<sup>70</sup> Further, some NGOs and federal officials we interviewed told us that in order to pay these fees and other pre-employment expenses, such as transportation and passport fees, workers often had to take out loans, sometimes with high interest rates. Federal officials and NGO representatives said, in some cases, workers may put up their own land or property as collateral. In discussion groups, some workers told us they paid fees upwards of \$1,250, and some said the interest rate on their and others' loans was between 10 and 15 percent. Borrowing money at high interest rates to pay these fees can result in debt bondage, a possible indicator of human trafficking.<sup>71</sup> Because of the need to repay these debts, workers are generally more willing to put up with poor work conditions or abusive situations, some NGO representatives said.

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<sup>70</sup> The CDM report is Centro de los Derechos del Migrante, Inc., *Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change* (2013). Recruitment Revealed is based on 220 interviews with H-2A and H-2B workers in Mexico conducted from 2007 through 2012. Both the CDM and Jornaleros SAFE surveys represent the views of the workers interviewed and cannot be generalized to the population of all H-2A and H-2B workers.

<sup>71</sup> Debt bondage is the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as security for a debt, if the value of those services, as reasonably assessed, is not applied toward the liquidation of the debt. 22 U.S.C. § 7102(5).

**Recruitment Fraud** According to State and NGO officials, in early 2013, a Mexican company fraudulently recruited for thousands of non-existent temporary jobs in the United States and Canada, charging potential workers recruitment fees and collecting identification documents before disappearing. Federal officials explained that the U.S. government was unable to respond directly because the fraud was perpetrated by non-U.S. citizens in a foreign country. As of November 2013, the Mexican government estimated that there were approximately 9,000 victims, according to an NGO official.

Source: GAO interviews with federal and NGO officials | GAO-15-154

Recruiters may also recruit workers for visas and/or jobs that do not exist. Someone posing as a recruiter may charge a worker a fee and possibly retain the worker's identification documents and, once paid, the recruiter disappears and the potential worker is left without a visa or job (see sidebar on Recruitment Fraud). Alternatively, visa fraud may occur when a worker secures a valid visa that does not have a real job associated with it.<sup>72</sup> In these cases, some NGO and State officials told us that some workers may not be aware that there is no job associated with their visa while other workers knowingly paid for a visa obtained through fraudulent means in order to gain entry into the country. The International Labor Recruitment Working Group, a coalition of NGOs, reported<sup>73</sup> that workers who work for employers other than those who petitioned for them may fear deportation and be more likely to tolerate poor working conditions or abusive situations.<sup>74</sup>

In addition, recruiters do not always provide potential workers with adequate job information, such as a written contract, or may provide the contract after the worker has committed financially. Also, according to the CDM survey of H-2A and H-2B workers, respondents said that some recruiters misrepresented the terms of work to prospective workers, including H-2B workers who are not required to receive a copy of the work contract.<sup>75</sup> As we learned in our worker discussion groups, this may

<sup>72</sup> This can occur if a recruiter or an employer specifies more positions than needed and brings workers into the United States with the intent to "sell" them to other employers.

<sup>73</sup> The International Labor Working Recruitment Group, *The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse* (2013).

<sup>74</sup> DHS regulations state that temporary employees, including H-2A and H-2B workers, are only authorized to come to the U.S. to work for an employer if petitioned for by that employer. 8 C.F.R. § 214.2(h)(1)(i). If a worker wants to change employers, the new employer must file a petition on Form I-129, which must be approved before the worker can begin employment with the new employer. 8 C.F.R. § 214.2(h)(2)(i)(D).

<sup>75</sup> CDM's survey results are not representative of all H-2A and H-2B workers. See appendix I for more information on the survey.

**Misinformation during Recruitment** In one of our discussion groups, an H-2B worker told us that he received written information about the job to prepare him for his visa interview. He said that the recruiter told him and other workers to memorize the details provided—including type and location of work, and pay rate—in order to be able to respond to questions during the interview, and that he was instructed to destroy the information after memorizing it. According to the worker, the information did not reflect the conditions he found on the job, however, and he was paid at a lower rate than what was listed on the paper.

Source: GAO discussion group with H-2B workers | GAO-15-154

lead workers to believe, for example, that they would be provided free housing when, in fact, they were charged rent, or that they would earn more money and work fewer hours than what they actually experienced (see sidebar on Misinformation during Recruitment).<sup>76</sup> Without accurate information about the terms of the employment before making a commitment, prospective workers are not able to evaluate whether taking the job is beneficial either personally or financially.

Several NGOs we spoke with noted that the lack of reliable information about genuine job offers is one of the main problems potential workers face when trying to protect themselves against abusive situations. DOL's regulations require that H-2A employers provide workers a copy of the work contract, which typically includes information such as the type of work, wage basis and rate, and number of hours per week, no later than when they apply for the visa.<sup>77</sup> Even so, some H-2A workers reported not receiving written contracts, a DOL official said. To address scenarios such as these, an NGO and international labor recruitment corporation collaborated to create a set of guidelines to encourage ethical behavior during recruitment.<sup>78</sup> These guidelines call for providing jobseekers with accurate details of the job and working conditions at the time of recruitment in a language they understand so as to protect workers from experiencing abuse, such as recruitment abuse and contract fraud.<sup>79</sup> Furthermore, federal internal control standards state that agency management should establish adequate means for communicating and exchanging information with external stakeholders, which in this case

<sup>76</sup> Employers are required to provide free housing to H-2A workers. 8 U.S.C. § 1188(c)(4), 20 C.F.R. § 655.122(d)(1). However, there is no requirement for employers to provide housing to H-2B workers.

<sup>77</sup> 20 C.F.R. § 655.122(q).

<sup>78</sup> Verite and ManpowerGroup, *An Ethical Framework for Cross-Border Labor Recruitment: An Industry/Stakeholder Collaboration to Reduce the Risks of Forced Labor and Human Trafficking*, 2012. According to the report, this collaboration between Verite, an NGO that works with businesses to protect human and labor rights in international supply chains, and ManpowerGroup, an international recruitment firm, developed guidelines that are “aligned with principles and recommendations developed by leading global organizations, governments, business, labor, civil society and other stakeholder coalitions.”

<sup>79</sup> While an NGO representative involved in creating the guidelines told us the effort was not affiliated with any government agency, DOL's Bureau of International Labor Affairs provides the guidelines as a resource in an online toolkit aimed at reducing human trafficking.

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include prospective workers, on issues that might have a significant impact on the agency mission, such as ensuring H-2A and H-2B program integrity.<sup>80</sup>

DHS and DOL collect data on the H-2A and H-2B jobs for which employers are seeking workers; however, some key information, including the identity of recruiters, is not made available to potential workers or their advocates during recruitment. In responding to public comments on its 2008 H-2B regulations, DHS acknowledged the merit of providing information on recruiters and their practices to the public.<sup>81</sup> USCIS currently collects information on the petition form about available jobs, including wages and hours, as well as employers' recruitment plans and the identity of third parties hired to recruit workers. However, USCIS does not maintain these data electronically or report them publicly. DHS plans to implement electronic petition forms during its transformation; however, as mentioned previously, this upgrade is still several years away and the agency has not yet begun to identify the specific elements from the petition that will be collected electronically. In addition, DHS does not currently have plans to make this information public. DHS officials said that before making job and recruitment information public, they would have to consider whether doing so would raise any privacy concerns. However, DOL already publishes some similar information from temporary labor applications, but these data do not reflect the number of worker positions ultimately approved by DHS and, therefore, are not as useful to potential foreign workers or their advocates.<sup>82</sup> Furthermore, DOL does not currently collect any information on whether the employer plans to use a third party recruiter and, if so, who that recruiter is.<sup>83</sup> Without accurate, accessible information about employers, recruiters, and jobs during the recruitment process, potential foreign workers are unable to

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<sup>80</sup> GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999)

<sup>81</sup> Changes to Requirements Affecting H-2B Nonimmigrants and Their Employers, 73 Fed. Reg. 78,104, 78,113 (Dec. 19, 2008).

<sup>82</sup> DOL maintains a public job registry where H-2A job orders are posted for 50 percent of the contract period. In addition, on DOL's website, OFLC makes available files with several years' of annual and the most recent quarterly data on adjudicated temporary labor applications (both approved and denied certifications). These data are updated quarterly.

<sup>83</sup> Under the 2012 H-2B regulations that have been vacated, employers would be required to provide information regarding their recruiters. See 77 Fed. Reg. 10,038, 10,151.

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effectively evaluate the existence and nature of specific jobs or the legitimate parties contracted to recruit for employers, potentially making them more vulnerable to abuse.

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### Some Workers May Experience Abuses, Such As Violations Related to Pay, During Employment

Once they are in the country, workers may experience problems with pay or inadequate living conditions, as well as discrimination and threats.<sup>84</sup>

Regarding the H-2A and H-2B program requirements, from fiscal years 2009 through 2013, DOL's Wage and Hour Division found that 866 H-2A and 60 H-2B employers had violated one or more worker protections associated with these programs, or other requirements.<sup>85</sup> See table 5 for violations related to employers participating in the H-2A and H-2B programs.

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<sup>84</sup> Due to differences in H-2A and H-2B program regulations, some violations are specific to one visa type. For example, employers are required to provide housing only under the H-2A program.

<sup>85</sup> Wage and Hour Division found violations under H-2A in 890 concluded investigations and under H-2B in 64 concluded investigations from fiscal years 2009 through 2013. These numbers of investigations are larger than the numbers of employers found to have violations because employers may have been investigated more than once during this time period. Wage and Hour Division investigations are described in more detail later in this report.

**Table 5: Select Categories of Violations That Occurred during Recruitment and Employment in the H-2 Visa Programs as Identified by DOL's Wage and Hour Division (WHD) in Fiscal Years 2009 through 2013, by Number and Type of Employer**

<b>Category of violations</b>	<b>Number of H-2A employers <sup>a</sup></b>
Violations related to pay or pay statements <sup>b</sup>	766
Violations related to paycheck deductions or failure to pay for required employer-provided items <sup>c</sup>	400
Violations related to safety of employer-provided housing and transportation	393
Violations related to recruitment of foreign workers <sup>d</sup>	260
Violations related to failure to abide by other employment laws <sup>e</sup>	106
<b>Number of H-2B employers <sup>f</sup></b>	
Violations related to pay <sup>g</sup>	27
Violations related to recruitment of foreign workers <sup>h</sup>	10
Violations related to failure to abide by other employment laws <sup>i</sup>	3
Violations related to failure to pay for required employer-provided items <sup>j</sup>	1

Source: GAO's analysis and categorization of DOL's Wage and Hour (WHISARD) data. | GAO-15-154

Note: Because investigations frequently involve violations of multiple requirements, the number of employers represented in each violation category may overstate the number of employers. Specifically, if an employer had more than one type of violation in the same category, the employer was counted each time the violation occurred. Unique employers were identified using company legal names, federal employer identification numbers, and addresses. We grouped specific violations to create the categories in the table above. WHD does not categorize violations in this same manner. For the specific WHD violations that are included in each category see the notes below.

<sup>a</sup> In fiscal years 2009 through 2013, 31,537 H-2A employer petitions were approved by USCIS. Employers may have filed more than one petition during that time period.

<sup>b</sup> This includes violations related to failure to provide wage statements, pay wages when due, pay the proper or required rate, pay the three-fourths guarantee, pay with required frequency, or meet pay statement requirements.

<sup>c</sup> This includes illegal deductions and failure to provide: housing (for the entire employment period, at no cost); subsistence; required items or necessary supplies at no charge; and inbound and outbound transportation as well as transportation to and from worksite.

<sup>d</sup> This includes failure to provide a copy of the work contract or job order; failure to contractually forbid cost-shifting; and unlawful cost-shifting.

<sup>e</sup> This includes failure to comply with worker's compensation requirements and other employment-related laws.

<sup>f</sup> In fiscal years 2009 through 2013, 22,802 H-2B employer petitions were approved by USCIS. Employers may have filed more than one petition during that time.

<sup>g</sup> This includes violations related to the rate of pay and offered wage.

<sup>h</sup> This includes failure to contractually forbid recruiters from seeking prohibited fees, or requiring workers to pay prohibited fees to recruiters.

<sup>i</sup> This includes failure to comply with other federal, state, and local employment laws.

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<sup>j</sup>This includes failure to pay for outbound transportation for H-2B workers dismissed before the end of the certified period of employment.

Furthermore, from 2011 through 2013, the National Human Trafficking Resource Center (NHTRC)<sup>86</sup> received over 1,400 complaints related to H-2A or H-2B workers alleging labor violations.<sup>87</sup> Nearly twice as many of these complaints alleging labor violations involved H-2B workers than complaints involving H-2A workers.<sup>88</sup> For example, more than one-third of the complaints were related to pay and hours worked while another quarter dealt with contract violations. Other common alleged abuses reported by NHTRC callers included wrongful termination and hazardous, unsafe, and unsanitary working conditions. Workers in two of our discussion groups said they experienced or witnessed a variety of alleged abuses, such as verbal or physical abuse, confiscation of identification documents, poor or unsafe conditions in the working or living environment, and problems with hours worked or pay rate, including no overtime pay and unfair paycheck deductions.

In addition to labor and housing violations, in a small number of complaints NHTRC received, workers reported abuses severe enough to be categorized by NHTRC as human trafficking. From 2011 through 2013, NHTRC received 130 complaints about the possible trafficking of H-2A and H-2B workers, 35 of which they found had key indicators related to potential human trafficking, such as force, fraud, or coercion (see appendix III for more information). Of these 130 complaints, the industries with the largest number of alleged cases of labor trafficking

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<sup>86</sup> Funded by HHS, NHTRC is a toll-free, national human trafficking hotline that provides urgent assistance through referrals to law enforcement or service providers. It also provides nonurgent assistance, such as providing information and a range of other services. We analyzed data from 2011 through 2013 because NHTRC officials told us that data collection on hotline complaints has changed since it began, and the most robust information is available since 2011.

<sup>87</sup> While the focus of NHTRC is human trafficking, we found that about 90 percent of the complaints to the hotline related to H-2A and H-2B workers who reported labor violations rather than allegations of human trafficking. These numbers represent complaints and not substantiated findings of labor violations.

<sup>88</sup> Of the 1,428 cases, 519 involved only H-2A workers and 909 involved only H-2B workers. An NHTRC official said that there are protocols in place to determine how to process the calls it receives. For example, when appropriate, NHTRC will refer calls to federal agencies, including DOL's Wage and Hour Division or Occupational Safety and Health Administration, or relevant law enforcement agencies.

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were agriculture, landscaping, and carnivals. Furthermore, our analysis found that in calendar years 2012 and 2013, DOJ-funded service providers<sup>89</sup> assisted 340 workers who were victims of human trafficking identified in typical H-2 industries.<sup>90</sup> Over 93 percent of these workers were reported to be victims of labor trafficking. See appendix III for more information on characteristics of human trafficking victims.

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## Workers May Have Disincentives to Report Abuses for Several Reasons, Including the Structure of the H-2A and H-2B Programs and Fear of Retaliation

According to our interviews with federal and NGO officials, the incidence of abuse may be underreported. The number of complaints of abuse reported to NHTRC is low compared to the number of workers who enter the country each year and an employer and an employer agent we interviewed said workers who experience problems with recruiters, especially those who return to the same employer each year, often directly report any problems to the employer. Officials also noted, however, that the structure of the H-2A and H-2B programs may create disincentives for workers to report abuse. One disincentive to reporting abuse is that workers can only work for the employer who petitioned for them. This requirement can make workers fear retaliation if they complain about mistreatment because the workers do not have the choice of working for another employer. For example, several NGOs reported that workers may be threatened with exclusion from future employment opportunities through the same employer or recruiter—commonly referred to as blacklisting—for speaking up about abuse. This was evident during one of our discussion groups in Mexico, where workers expressed concern about the fact that our meeting room had a window where people walking by could possibly see and report them to the local recruiter, affecting their chances for future employment in the United States. In addition, workers may not complain because they are afraid of not receiving their visa. Federal officials told us that recruiters may coach workers to not disclose that they paid recruitment fees, telling them that their visas would be denied if they admitted to paying a prohibited fee.

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<sup>89</sup> These service providers are funded by DOJ's Office for Victims of Crime.

<sup>90</sup> In OVC's Trafficking Information Management System (TIMS) data, the grantees entered that 352 foreign national victims had an H-visa, but did not specify which type of H-visa. We grouped victims by their trafficking setting and other information reported in TIMS. According to DOJ officials, human trafficking victims are often forced or coerced to work in settings that are completely different from the work that the person anticipated they would do when they entered the United States.

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Finally, as mentioned previously, debt bondage may serve as a disincentive to reporting abuse.

WHD officials told us that workers may put up with abuses such as underpayment because they rationalize that they are making more than they would at home; as a result, few complaints come from workers who are still on the job. They may also face other forms of retaliation, such as threats of deportation or physical violence. For example, officials from the Texas Workforce Commission said in many cases H-2A workers do not want to file a complaint for fear of retaliation or coercion. NGO officials said recruiters or other actors in home countries can use the threat of violence against the workers' families as another way to exert control over workers. Workers in one discussion group said they and others did not report abuses for fear of being fired, sent home, or other retaliation against themselves or their families, as well as fear of the political connections of the local recruiter. For these reasons, among others, some federal officials and NGO representatives that we interviewed agreed that abuses are underreported in the H-2A and H-2B programs.

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## Federal Agencies Take Steps to Prevent Exploitation of Workers and Provide Assistance to Victims, but Vulnerabilities Persist

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To Help Prevent Abuse,  
Federal Agencies Provide  
Labor Rights Information  
to Workers before Arrival  
and Screen Employers for  
Eligibility, but Gaps in  
Screening Exist

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**State and DOL Provide Information to Workers before They Arrive In the United States**

State has taken steps to educate workers and the public about labor rights before workers arrive in the United States. For example, at the consulate in Monterrey, Mexico, we observed State officials providing briefings to workers following their visa interviews and distributing brochures on their rights.<sup>91</sup> According to NGO officials, these brochures have been effective in helping workers understand their rights and ask for help; in fact, an official from the national human trafficking hotline told us that the hotline has seen an increase in reported complaints by H-2 visa holders since State started providing these brochures. State officials in Monterrey also provided workers with a passport cover that had a hotline phone number to call if they needed assistance. In addition, the U.S. Embassy in Mexico launched a 2-month anti-fraud campaign in October 2013 to increase awareness of legal employment through the H-2 program. Officials told us the campaign targeted the rural areas of Mexico and provided information through billboard advertisements, brochures, and the radio.

DOL officials said they have established formal partnerships with the embassies and consulates of 11 countries in order to assist the department in the protection of labor rights of vulnerable workers and to help communicate with workers whom the department might not otherwise be able to reach, including those under the H-2A and H-2B visa program.<sup>92</sup> For example, in fulfillment of the 2014 United States-Mexico joint declaration under the North American Agreement on Labor Cooperation, DOL used these partnerships to disseminate information to visa recipients and locate migrants whose back wages have been recovered by DOL's Wage and Hour Division (WHD).<sup>93</sup> Agency officials told us that, as of November 2014, in response to the declaration, they

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<sup>91</sup> State, in consultation with other agencies, created a "Know Your Rights" pamphlet that informs workers applying for employment-based nonimmigrant visas of their rights, as required by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 202, 122 Stat. 5044, 5055.

<sup>92</sup>These partnerships are known as the Consular Partnership Program. The eleven countries are Belize, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Peru, and the Philippines.

<sup>93</sup> In April 2014, DOL and the Mexican Secretariat of Labor and Social Welfare signed a joint ministerial declaration aimed at informing Mexican workers entering on H-2A and H-2B visas about their labor rights under U.S. law. DOL and the Mexican Secretariat of Labor subsequently published a work plan that lists the outreach activities contemplated under the joint declaration.

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had conducted approximately 24 outreach events to inform workers on H-2 visas about their rights and employers about their responsibilities under U.S. law.

Other international organizations that receive federal funding have conducted a number of migration-focused awareness activities aimed at educating the public, including potential victims, about labor rights. For example, the International Organization for Migration, which receives funding from State, recently launched a public-private alliance that plans to develop practical tools for governments, recruiters, and employers, including an international accreditation process for employers and recruiters and a referral process for complaints.<sup>94</sup>

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#### Agency Screening May Not Detect Some Employers Who Are Ineligible to Hire Workers

DOL, DHS, and State all screen employer requests to hire H-2A and H-2B workers, but some relevant employer information may not be shared across the agencies.

DOL faces challenges in preventing ineligible employers from hiring foreign workers because of certain limitations in how it reviews and uses information that employers submit. By statute and regulation, DOL may not issue a temporary labor certification for a specified period to an employer who has been debarred under the H-2A or H-2B programs.<sup>95</sup> According to DOL's standard operating procedures, it screens for these employers by matching new temporary labor applications to a list of employers, employer agents, and attorneys who have been debarred from participating in the programs. This can be challenging, however, because, according to DOL, NGO, and other federal agency officials,

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<sup>94</sup> One of the tools being developed is the International Recruitment Integrity System (IRIS). IRIS is a consortium of international stakeholders committed to the fair recruitment and selection of migrant workers. Some NGOs in the United States have also proposed creating a registry of third-party recruiters as a means of regulating the process. However, representatives of one organization cautioned that the effectiveness of such a registry would be limited if employers are not held accountable for their recruitment practices.

<sup>95</sup> 8 U.S.C. § 1188(b); 20 C.F.R. §§ 655.31, 655.182. DOL is statutorily authorized under 8 U.S.C. § 1188(b) to debar an H-2A employer for up to 3 years if it finds the employer substantially violated a material term or condition of its labor certification. DOL has, by regulation, instituted a similar debarment process for H-2B employers as "a necessary and reasonable mechanism to enforce H-2B labor certification requirements and ensure compliance with the program's statutory requirements." 73 Fed. Reg. 78,020, 78,043 (Dec. 19, 2008).

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debarred employers may “reinvent” themselves by starting new companies and submitting applications with slightly different information in order to continue hiring workers. For example, some DOL officials said they have seen individuals with two last names switch the order of those names and continue in the program. In addition, our analysis found that DOL certified an employer with a different name, but the same address as a debarred employer. On another occasion, DOL approved an employer with the same employer identification number as a debarred employer, but with a slightly different name.

Despite these challenges, DOL does not consistently use some of the information it collects on employers, nor share it with DHS and State, which also have roles in screening employers. For example, DOL electronically enters the employer’s name, the city and state where it is located, and identification number, and uses this information in screening new applications for debarred employers. While DOL has additional identifying information available on those employers, such as street address and telephone number, it does not require these data to be electronically entered or used in screening new applications. In failing to use this additional information systematically, DOL may miss opportunities to detect some debarred employers who try to participate in the visa programs by changing some—but not all—of their information.

Moreover, DOL shares limited information on debarred employers—employer name, city, state, and period of debarment—with DHS and State, which also screen for debarred employers.<sup>96</sup> DHS officials said they compare petition information they receive from employers with DOL’s public list of debarred employers.<sup>97</sup> Officials at State’s Kentucky Consular Center (KCC) said they compare petitions that DHS approves to DOL’s public debarment list and have, in fact, found a small number of approved petitions from debarred employers.<sup>98</sup> Because only the limited,

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<sup>96</sup> DHS regulations allow the agency to deny an employer’s petition for H-2A or H-2B worker visas if DOL has debarred that employer. 8 C.F.R. § 214.1(k).

<sup>97</sup> To adjudicate employer petitions, DHS uses the Validation Instrument for Business Enterprises, or VIBE, to verify business information. The information contained in VIBE may include type of business, financial standing, number of employees, ownership and legal status, company executives, and current physical address.

<sup>98</sup> KCC officials said if they find an approved petition from an employer on the debarment list, they notify the DHS service center that adjudicated the petition and State’s consular affairs. Since April 2013, KCC officials said they identified four approved petitions from debarred employers. KCC can also submit complaints to DOL’s Wage and Hour Division.

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publicly available information on debarred employers is shared with DHS and State, these agencies do not have access to the additional information that DOL collects. Such information may help them more thoroughly screen for debarred employers. Our past work has found establishing guidelines to share information with partners is a key practice for enhancing interagency collaboration.<sup>99</sup> DOL and DHS officials told us that they were working on a comprehensive data sharing agreement that would provide for the electronic sharing of each agency's data with the other. DOL officials said this agreement has been under deliberation for about 2 years. A State official said that the department was also originally involved in the agreement. State's involvement is on hold, however, because its visa database contains some DHS petition data. State considers this DHS data to be third-party information that it cannot agree to share until DHS and DOL finalize their bilateral agreement. The State official confirmed that once this bilateral agreement is finalized, State will discuss sharing its visa data. As of January 2015, DOL and DHS officials told us that they were still negotiating an agreement. DHS officials said the goal is to have the agreement signed by fiscal year 2016 with deployment shortly thereafter. While they have not identified any significant technical challenges to date, the agreement must be reviewed and approved by many components in both agencies, officials said.

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<sup>99</sup> GAO, *Interagency Collaboration: Key Issues for Congressional Oversight of National Security Strategies, Organizations, Workforce, and Information Sharing*, GAO-09-904SP (Washington, D.C.; September, 2009).

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## To Protect Victims of Labor Violations, Federal Agencies Provide Services and Immigration Relief, but the Range of Available Services Varies by Visa Type

Several federal agencies are involved in assisting victims of labor violations, including abuses severe enough to be categorized as human trafficking, which may include H-2A and H-2B workers.<sup>100</sup> For example, some workers are eligible to receive legal aid funded by the Legal Services Corporation (LSC), which awards grants to legal services providers to provide legal assistance to low-income U.S. citizens and some eligible non-citizens.<sup>101</sup> For all H-2A and H-2B workers, LSC grantees can provide brief advice and consultation by telephone that does not include continuous representation.<sup>102</sup> The full range of legal assistance services, however, can be offered only to H-2A workers, H-2B workers who work in forestry, and any victims of human trafficking.<sup>103</sup> Because the majority of H-2B workers do not work in forestry they are not eligible for LSC-funded legal assistance.<sup>104</sup> NGO representatives said access to legal representation can be an important factor in determining whether workers file complaints to report abuses and DOL officials also confirmed that complaints brought under the H-2A and H-2B programs generally come from advocacy groups or attorneys. According to a recent NGO report, the use of private attorneys is not a viable option for several

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<sup>100</sup> The President's Interagency Task Force to Monitor and Combat Trafficking in Persons released its first federal strategic action plan for fiscal years 2013 through 2017 that outlined several goals. The plan focuses on interagency alignment of efforts for the provision of services, improvement of understanding through data collection and research, expanded access to services through increased victim identification and targeted training, and improved outcomes in terms of the short and long term health, safety, and well being of victims.

<sup>101</sup> In 1974, the LSC was established by statute to, among other things, provide equal access to the system of justice in the United States for individuals who seek redress of grievances and to assist in improving opportunities for low-income persons. Congress provides funding to the LSC, which awards grants to legal services providers for civil legal assistance. Pub. L. No. 93-355, § 2, 88 Stat. 378.

<sup>102</sup> 45 C.F.R. § 1626.7(a).

<sup>103</sup> Section 504 of LSC's fiscal year 1996 appropriations act (Pub. L. No. 104-134, 110 Stat. 1321, 1321-54) restricted funding to recipients that provide legal assistance to aliens. The exceptions to this rule have been reincorporated annually in LSC's appropriation. Predating the 1996 general restriction, H-2A workers became eligible to receive legal assistance funded by LSC in 1986. Pub. L. No. 99-603, § 305, 100 Stat. 3359, 3434. The fiscal year 2008 LSC appropriation extended eligibility for assistance to H-2B forestry workers. Pub. L. No. 110-161, div. B, Title V, § 540, 121 Stat. 1844, 1924. The authority for LSC grantees to provide legal services to victims of human trafficking is described in LSC's Program Letter 06-2.

<sup>104</sup> In fiscal year 2013, less than 3 percent (or 105 out of 3,932) of all new approved H-2B employer petitions were for forestry and logging.

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reasons including prohibitive costs, language barriers, and worker mobility.<sup>105</sup> In addition, a NGO representative said that it is often difficult for them to recruit pro bono representation for workers because the cases are complex and the agencies involved are difficult to navigate.<sup>106</sup>

To protect H-2A and H-2B workers who have become victims of abuse severe enough to be categorized as human trafficking, DOJ's Office for Victims of Crime (OVC) and the Department of Health and Human Services (HHS) provide funding to grantees, which provide victim services.<sup>107</sup> Our analysis of OVC's grantee data found that from January 2012 through December 2013,<sup>108</sup> grantees served 340 victims of human trafficking identified in typical H-2 industries.<sup>109</sup> The most common OVC-

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<sup>105</sup> "The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse", The International Labor Recruitment Working Group, February, 2013. The following organizations authored this report: AFL-CIO, AFT, Centro de los Derechos del Migrante, Inc. (CDM), the Coalition to Abolish Slavery and Trafficking (CAST), Department for Professional Employees (DPE), Economic Policy Institute (EPI), Farm Labor Organizing Committee (FLOC), Farmworker Justice, Global Workers Justice Alliance, National Domestic Workers Alliance (NDWA), National Employment Law Project (NELP), National Guestworker Alliance (NGA), Safe Horizon, SEIU, Solidarity Center, Southern Poverty Law Center (SPLC), UNITEHERE! and Verité. The following organizations have endorsed the content of the report: Free the Slaves, Polaris Project, and Vital Voices Global Partnership.

<sup>106</sup> Pro bono legal aid is provided by volunteer attorneys and legal professionals free of charge to clients, often to advance a social cause.

<sup>107</sup> We were not able to report on the services provided by HHS grantees because neither HHS nor the grantees collect comprehensive data on assisted victims by visa type.

<sup>108</sup> DOJ's Office for Victims of Crime (OVC) provides funding, authorized through the Trafficking Victims Protection Act, to state and local organizations that provide emergency shelter, transportation, counseling, legal services, and other direct services for victims of human trafficking. OVC trafficking victim services grantees use an online data collection system, the Trafficking Information Management System (TIMS) to collect performance measurement data such as the number of trafficking victims served, the number of services provided, and other grant performance indicators. Grantees began using TIMS online in 2012; therefore, this report only reflects data that was entered into TIMS between January 2012 and December 2013. Some fields of information in the database, such as the type of immigration relief an individual had upon entering the United States are optional and, therefore, were not completed for all foreign national victims who were served.

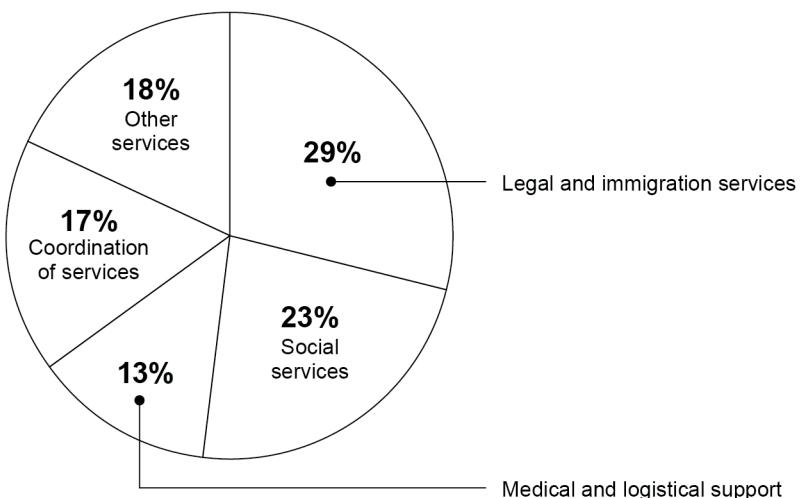
<sup>109</sup> In the TIMS data, the grantees entered that 352 foreign national victims had an H-visa, but did not specify which type of H-visa. We grouped victims by their trafficking setting and other information reported in TIMS. According to DOJ officials, human trafficking victims are often forced or coerced to work in settings that are completely different from the work that the person anticipated they would do when they entered the United States.

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provided services were legal and immigration services, as well as various types of social services (see fig. 7).<sup>110</sup> In addition, HHS is authorized to certify foreign victims of human trafficking so that they can access federally-funded benefits and services.<sup>111</sup> See appendix III for more information on human trafficking victims and services provided.

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**Figure 7: Types of Services Provided to Human Trafficking Victims Who Were Identified in Typical H-2 Industries, January 2012 through December 2013**



Source: GAO analysis of data from the Department of Justice Office for Victims of Crime's Trafficking Information Management System (TIMS). | GAO-15-154

In addition to these services, DHS's USCIS can provide immigration relief to H-2A and H-2B workers who are trafficking victims allowing them to remain in the United States to assist with the prosecution of cases. Workers may apply to USCIS for immigration relief in the form of a T visa—for victims of a severe form of human trafficking who meet other certain criteria—or a U visa—for victims of qualifying criminal activity, including severe forms of human trafficking and fraud in foreign labor

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<sup>110</sup> We counted services provided by type regardless of the frequency or amount of services provided. The type of service is based on our aggregation of detailed services specified in the TIMS data. For more information, see appendix I.

<sup>111</sup> TVPA, Pub. L. No. 106-386, div. A, § 107(b)(1)(E), 114 Stat. 1464, 1476. Victims of human trafficking are eligible for these benefits to the same extent as refugees. According to HHS, these services include Refugee Cash and Medical Assistance, the Matching Grant Program, the Public Housing Program, and Job Corps.

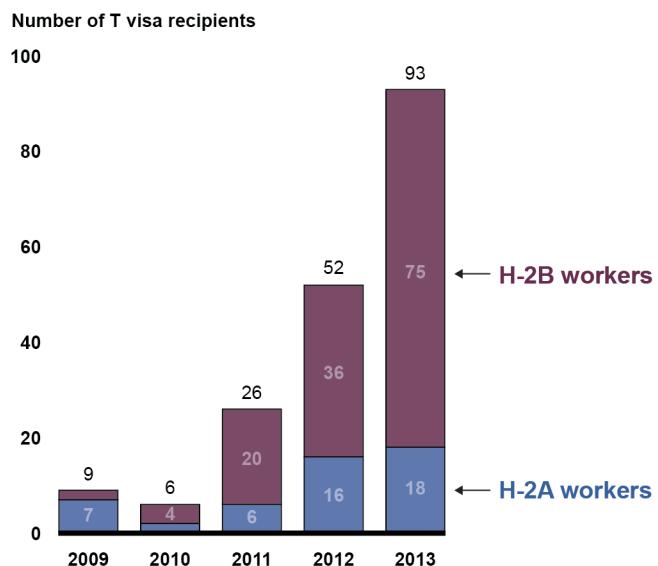
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contracting, who also meet certain other criteria.<sup>112</sup> While the number of H-2 workers who received T visas increased from fiscal year 2009 through fiscal year 2013, their share of all T visa recipients remained relatively small at 2 and 5 percent, for H-2A and H-2B workers respectively (see fig. 8). See appendix III for more information on T visa recipients.

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<sup>112</sup> T nonimmigrant status was created by TVPA, Pub. L. No. 106-386, div. A, § 107(e), 114 Stat. 1464, 1477. This form of immigration relief allows victims of severe forms of trafficking in persons who meet certain other criteria to remain in the United States to assist in an investigation or prosecution of human trafficking cases. Individuals with T visas are eligible for employment authorization and may be eligible for lawful permanent residence after a certain period of time. When applying for T visas, victims self-report their immigration status. DHS officials said, however, that many victims are assisted by NGOs or attorneys when filing their application paperwork, which likely increases the accuracy of this information. U nonimmigrant status was created by the Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1513(b), div. B, tit. V, 114 Stat. 1464, 1534. This form of immigration relief allows victims of qualifying criminal activity, including severe forms of trafficking in persons who have suffered substantial physical or mental abuse and meet certain other criteria, to remain in the United States to assist federal, state or local authorities investigating or prosecuting qualifying criminal activities. The Violence Against Women Reauthorization Act of 2013 added fraud in foreign labor contracting to the list of qualifying criminal activities at 8 U.S.C. § 1101(a)(15)(T)(iii). Pub. L. No. 113-4, § 1222, 127 Stat. 54, 144. DHS officials reported that, as of July 2014, they had received fewer than 10 U visa petitions for victims of this crime and had not yet approved any.

**Figure 8: Approved T Visas for H-2 Workers Who Were Human Trafficking Victims, Fiscal Years 2009 through 2013**



Source: GAO analysis of Department of Homeland Security's Humanitarian Adjudication for Victims Enterprise Nationwide summary data. | GAO-15-154

## To Enforce Employer Compliance, Federal Agencies Take A Number of Actions, but Targeting of H-2B Employers Is Limited

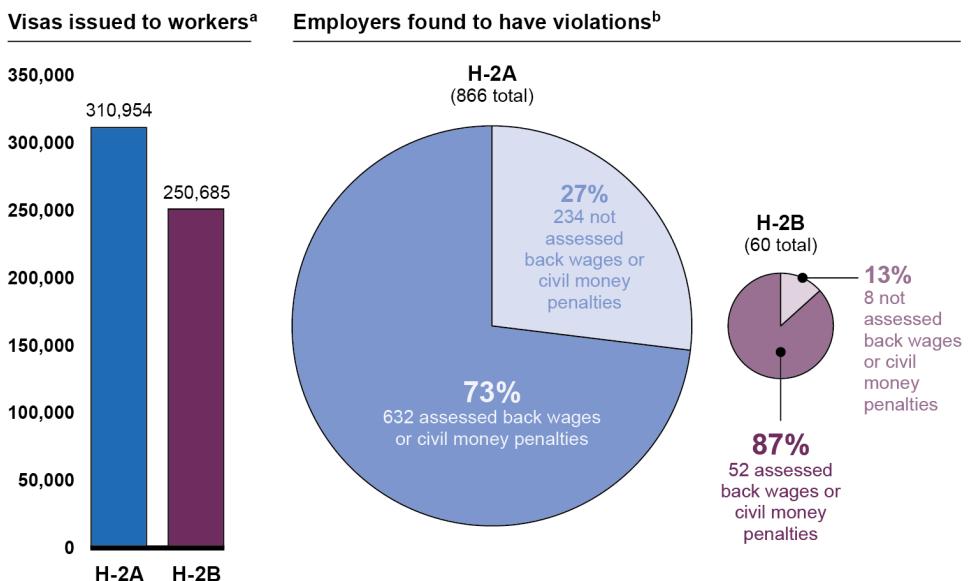
### Department of Labor

DOL's Wage and Hour Division (WHD) and Office of Foreign Labor Certification (OFLC) seek to ensure compliance of H-2 employers with applicable laws and regulations through audits and investigations, but investigations of H-2B employers were limited in number compared to those of H-2A employers.

WHD conducts investigations of both H-2A and H-2B employers; however, according to WHD data provided by DOL officials, 90 percent of the total investigations conducted from fiscal year 2009 through fiscal year 2013 were under H-2A. Our analysis of WHD data, which involved reviewing case data to identify unique employers, shows that 926 H-2A

and H-2B employers were found to have violations. Of those, 94 percent (or 866) were H-2A employers, while 6 percent (or 60) were H-2B employers. In contrast, during the same time period, 55 percent of all H-2 visas issued (or 310,954) were for H-2A workers and 45 percent (or 250,685) were for H-2B workers (see fig. 9).

**Figure 9: Summary of State H-2 Visas Issued and DOL Wage and Hour Enforcement Data by H-2 Employers, Fiscal Years 2009 through 2013**



Source: GAO analysis of State Nonimmigrant Visa System data and analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD). | GAO-15-154

Note:

<sup>a</sup>One employer may hire more than one H-2A or H-2B worker. In fiscal years 2009 through 2013, 31,537 H-2A and 22,802 H-2B employer petitions were approved by USCIS. Employers may have filed more than one petition during that time period.

<sup>b</sup>Our analysis of WHD data provided by DOL officials shows that WHD conducted 1,288 investigations under H-2A and H-2B from fiscal year 2009 through fiscal year 2013. Of those, 90 percent (or 1,164) were H-2A investigations, while 10 percent (or 124) were H-2B investigations. Employers may be counted more than once if they were investigated in more than one fiscal year. See appendix IV for a unique count of employers per fiscal year.

Although WHD investigated relatively few H-2B employers; based on our analysis of agency data, a high percentage of the H-2B employers found to have violations had remedies assessed. Specifically, 87 percent of the H-2B employers found to have violations were required to pay back wages or were assessed civil money penalties. DOL assessed back wages totaling \$400,000 to H-2B employers from fiscal year 2009 through

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2013. For the same period, DOL assessed civil money penalties totaling \$700,000 to H-2B employers (for further information on the amount of back wages and civil money penalties assessed for H-2A and H-2B employer violations, see appendix IV).

Our analysis also shows there were fewer debarments of H-2B employers compared to H-2A employers in fiscal years 2009 through 2013. During this period, 72 H-2A employers and 10 H-2B employers were debarred. Officials from OFLC said that the lower number of H-2B employer debarments could be due to the more stringent H-2B debarment regulations.<sup>113</sup> OFLC implemented a program in 2011 that conducts audits of selected employers once their applications are certified.<sup>114</sup> Based on the results of the audit, OFLC can find the employer in compliance, issue a warning, or debar the employer from program participation for a specified period of time. The number of H-2A and H-2B debarments increased from 8 in fiscal year 2011 to 37 in fiscal year 2013, which OFLC officials attributed, at least in part, to the audit program. The majority of debarments were the result of the employer not responding to a post-certification audit or not paying certification fees.

WHD officials said that there could be several reasons for the apparent imbalance in the number of investigations between the two programs and resultant remedies. In particular, while WHD has had the authority to investigate H-2A cases since 1987, it has had such authority relative to H-2B cases only since 2009 and has needed time to implement an H-2B

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<sup>113</sup> Under the H-2B program, DOL's regulations define a substantial violation of an employer's labor certification as a pattern or practice of acts that shows a significant failure of the employer to comply with various requirements of the program. 20 C.F.R. § 655.31(d)(1). The H-2A regulations, by contrast, define a substantial violation as one or more such acts. 20 C.F.R. § 655.182(d)(1).

<sup>114</sup> OFLC uses random and non-random sampling techniques to select certified temporary labor certifications for audits.

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investigation program.<sup>115</sup> In addition, since H-2A workers receive employer-provided housing and H-2B workers do not, H-2B workers may not be housed together, which may make it harder for agency officials to reach them. Moreover, H-2B workers are spread out in a wide range of industries, some of which may be missed by an investigative approach focused on industries with large concentrations of vulnerable workers. Also, officials said the number of H-2B complaints received is small, although this may be a reflection of workers' reluctance to come forward. WHD officials said they see a high number of violations and low number of complaints in the agriculture industry, which uses H-2A workers, but also in the hotel, construction, and landscaping industries, which use H-2B workers. DOL officials noted that they investigate these industries and, as a result, some H-2B employers. Finally, WHD officials told us that WHD was evaluating the H-2A program and as part of that effort, they investigated random samples of H-2A employers, thus increasing the number of investigations of H-2A employers.<sup>116</sup> DOL officials said that they conducted this evaluation to help identify patterns of violations and better target future investigations, but have not conducted a similar evaluation for H-2B workers.

WHD officials said their enforcement strategy does not rely only on complaints but also targets specific industries identified to be most at risk for committing labor law violations, including those with H-2A and H-2B

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<sup>115</sup> DOL officials told us that because it took a couple of years to ramp up their investigations of H-2B employers, data from fiscal years 2011 through 2013 would provide a better characterization of their efforts. We found that in fiscal years 2011 through 2013, WHD concluded investigations of a total of 698 H-2 employers found to have violations. Of those, 92 percent (or 640) were investigations of H-2A employers, while 8 percent (or 58) were investigations of H-2B employers. During the same time period, 55 percent of all H-2 visas issued (or 194,921) were for H-2A workers and 45 percent (or 158,435) were for H-2B workers. Because the differences in percentages were small between our original time frame (fiscal years 2009 through 2013) and WHD's suggested time frame (fiscal years 2011 through 2013), we chose not to redo all of our analyses using data only from fiscal years 2011 through 2013.

<sup>116</sup> In fiscal years 2010, 2011 and 2012, WHD investigated nationally representative samples of H-2A employers. The total number of H-2A employers found to have violations in fiscal years 2011 and 2012, including those in the representative samples, was 177 and 224, respectively. The number of employers found to have violations did not decline in the year following the investigations-based evaluation of H-2A employers. In fiscal year 2013—the year after the data collection for the evaluation—the number of H-2A employers found to have violations slightly increased to 239. However, the litigation surrounding the issuance of DOL's 2012 H-2B regulations may have affected the targeting of WHD enforcement efforts with respect to H-2A and H-2B employers.

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workers. The priority industries identified by a study conducted for the WHD,<sup>117</sup> which officials said helps guide their enforcement efforts, include food service, hospitality (hotel/motel), and landscaping/horticultural services, all of which hire H-2B workers. This study recommended that WHD prioritize industries with large numbers of vulnerable workers. Some federal officials and NGOs told us that they believed there were proportionately more abuses in the H-2B program. For example, a DOL Office of Inspector General (OIG) official told us that his office investigates more H-2B cases than other temporary worker programs.<sup>118</sup> In particular, of the total of 103 cases investigated by the DOL OIG in fiscal years 2009 through 2014, at least one case involved H-2A workers and at least 21 cases involved H-2B workers.<sup>119</sup> According to the OIG official, some employers inflate the total number of H-2B workers needed or employer agents fraudulently submit applications on behalf of an employer without the employer's knowledge. As a result, workers are sometimes "sold", or provided for use by other employers, once they enter the country.

The WHD study also stated that workers in many of the industries with the highest levels of noncompliance with labor laws are often the most reluctant to trigger investigations through complaints due to their immigration status, lack of knowledge of rights, or fears about employment security. The study recommended that WHD prioritize these industries where the workforce is unlikely to step forward, among other factors. Many H-2B workers may be reluctant to file complaints, in part, because they do not have access to legal aid through the Legal Services Corporation, among other reasons.

The study also recommended that WHD expand the use of investigations-based surveys to evaluate its enforcement efforts and to better

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<sup>117</sup> Weil, David. *Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division*. Boston University. May 2010.

<sup>118</sup> The DOL OIG specifically investigates alleged fraud related to the H-2A, H-2B, H-1B, and permanent visa certification processes. It does not, however, track cases by program type. We identified these cases by reviewing case notes for references to H-2A and H-2B workers. There may have been additional cases involving these workers that we were not able to identify.

<sup>119</sup> Based on our analysis of data provided by DOL OIG, 76 defendants at 17 criminal trials were found guilty or entered a plea of guilty or no contest. These cases resulted in fines, asset forfeiture, or restitution.

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understand factors associated with compliance. Despite the vulnerability of H-2B workers and their potential reluctance to file complaints, WHD has not evaluated compliance among H-2B employers nor its enforcement efforts through a national investigations-based survey of H-2B employers, as it has for H-2A employers. Without this type of evaluation, it is unclear whether DOL's investigative resources are being focused appropriately and the degree to which H-2B employers are complying with program regulations, which may increase the risk of H-2B workers remaining vulnerable to exploitation.

DOL's ability to use debarment as a remedy may be limited by the 2-year statute of limitations on debarring employers. By statute and regulation, DOL may debar an H-2A or H-2B employer who has committed certain violations from program participation for up to three years,<sup>120</sup> which is one of the remedies it can use to enforce compliance. The Immigration and Nationality Act, however, stipulates a 2-year statute of limitations on debarment for the H-2A program and, through regulation, DOL has implemented the same 2-year period for debarment under the H-2B program.<sup>121</sup> To stay within the statute of limitations, DOL must complete an investigation and issue a notice of intent to debar within 2 years after the violation occurred. However, as previously discussed, workers may have disincentives to report violations when they occur, which may cause delays in reporting abusive employers and WHD's opening of investigations.

Officials from three DOL offices involved in debarment or the investigation of violations—OFLC, WHD, and the DOL OIG—all said the 2-year statute of limitations often hinders the department's ability to implement appropriate administrative remedies for employers who violate prescribed program requirements. For example, OIG and WHD officials said by the time a case has been investigated or gone through the court system 2 years might have elapsed. WHD officials said this may be especially true if the violation occurs early in the employment process such as during recruitment. Because certain violations can only be substantiated through interviews, as opposed to using records and observations, if a relevant worker leaves the country before he or she can be interviewed and

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<sup>120</sup> 8 U.S.C. § 1188(b); 20 C.F.R. §§ 655.31, 655.182.

<sup>121</sup> 8 U.S.C. § 1188(b)(2)(A); 20 C.F.R. §§ 655.182(c)(1), 655.31(b)(2).

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cannot be located, investigators may need to wait until the worker returns the next season, according to a WHD official.

Our analysis of WHD investigation data on employers found to have violations indicates that the median length of time from the beginning to the end of investigations that concluded in fiscal years 2009 through 2013 was 24 months, which means that 50 percent of the investigations took longer than 2 years.<sup>122</sup> While officials raised the statute of limitations as possibly restricting the use of debarment as a remedy, none of the offices involved collects data on the extent to which the 2-year statute of limitations affected the number of cases that may have been considered for debarment. The inability to consider debarment as a remedy in cases where employers have committed substantiated violations could result in employers who would have been debarred continuing to participate in the programs and hiring workers.

#### Other Agencies

State, DHS, and DOJ also have enforcement authorities related to the H-2A and H-2B programs. According to officials from State's Bureau of Diplomatic Security (DS), the investigations that most often result in successful prosecutions come from partnerships with other federal agencies that investigate individuals or businesses that exploit foreign workers.<sup>123</sup> DS investigators develop criminal cases of passport and visa crimes, refer cases to other agencies, and enter cases in an electronic system to alert other federal agencies and law enforcement entities about individuals of concern.<sup>124</sup> DS officials said they have had very few H-2A investigations and convictions since multiple H-2A program regulations may make it harder to exploit H-2A workers. One reason for the high number of successful prosecutions of H-2B cases, they said, is that they have DS agents in Mexico who work closely with embassy staff and

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<sup>122</sup> We calculated the median length of time (in months) from the beginning date of the investigation to its end date. There was also an investigation “concluded” date in WHD’s data, which resulted in a median of 28 months.

<sup>123</sup> We were not able to report on DS cases because the visa type of the foreign workers involved was not collected as a reportable data field.

<sup>124</sup> The electronic system used by State is the TECS (not an acronym) system, which is the updated and modified version of the former Treasury Enforcement Communications System. TECS is owned and managed by DHS’s Customs and Border Protection (CBP). TECS is a mainframe-based system used to disseminate data to federal agencies in support of border enforcement and the inspection and security screening of travelers and cargo entering or exiting the US.

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**A case prosecuted by DOJ involving illegal recruitment and labor practices: United States v. Askarkhodjaev**

The defendant and 11 co-defendants were indicted by a federal grand jury in Kansas City, Missouri, for their participation in a racketeering conspiracy that included forced labor trafficking. According to DOJ, Askarkhodjaev owned and operated a labor leasing company, Giant Labor Solutions, in Kansas City. He was the leader of a criminal enterprise that fraudulently recruited and petitioned for hundreds of foreign workers, including H-2B workers, from the Dominican Republic, the Philippines, Eastern Europe, Central Asia, and elsewhere, among other things. The H-2B workers were charged from \$400 to \$5,000 per person for fees associated with obtaining or extending their visas. Once workers were in the United States, the enterprise fraudulently changed the petitioning employer in violation of the visa terms. The workers were compelled into service in various jobs, including housekeeping and cleaning services, in 14 different states. They were forced to live in overcrowded, high-rent apartments and coerced through threats of deportation and wage withholding. The fees paid, high rents, and wage withholding often resulted in negative earnings. DOJ prosecuted this case under the statute prohibiting fraud in foreign labor contracting enacted as part of the Trafficking Victims Reauthorization Act of 2008. Askarkhodjaev pleaded guilty and, on May 9, 2011, was sentenced to 12 years in prison and three years of supervised release.

Source: GAO analysis of DOJ documents | GAO-15-154

sometimes talk with workers directly during their visa interviews.

DHS and DOJ can also pursue administrative and criminal cases. Officials from DHS's USCIS Fraud Detection and National Security (FDNS) Directorate told us that they often investigate employers or employer agents who are under suspicion of farming out excess workers to employers other than the ones who petitioned for them.<sup>125</sup> While FDNS investigates administrative violations, the U.S. Immigration and Customs Enforcement (ICE), along with DOJ's Federal Bureau of Investigation (FBI), investigate criminal cases, including human trafficking crimes.<sup>126</sup> Once the Civil Rights Division at DOJ receives labor trafficking investigations from law enforcement agencies, its Human Trafficking Prosecution Unit may elect to prosecute some of these cases (see the sidebar on the case prosecuted by DOJ).

In their investigation and prosecution of H-2 labor exploitation cases, officials from these agencies identified important challenges. In instances where fees were charged, State officials said it is often hard for workers to determine which fees are prohibited and which ones are not, as recruiters may bundle and charge for services together. Further, an ICE official said that when fees are paid in Mexico, the agency has no jurisdiction to investigate. In addition, not all H-2 workers are willing to testify. State officials noted that they are only able to develop criminal charges for about 3 percent of all investigated H-visa cases largely due to lack of evidence as some witnesses refuse to testify for fear of deportation. Moreover, it is hard for victims of human trafficking to come to prosecutors for help. For example, according to an official from the Civil Rights Division at DOJ, it is extremely rare for victims to come forward on their own or go directly to a law enforcement entity since victims are often

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<sup>125</sup> We were not able to report on FDNS Directorate site visits because the visa type of the foreign workers requested on the petition was not collected as a reportable data field.

<sup>126</sup> We were not able to report on ICE investigations because the visa type of the foreign workers involved was not collected as a reportable data field. We requested data from DOJ's Bureau of Justice Assistance Human Trafficking Reporting System, which tracks information from the human trafficking task forces. However, we are not reporting on those cases due to a very small sample size of reported incidents involving H-2A and H-2B workers. In addition, we requested FBI data on investigated cases that included H-2A and H-2B workers. These data were collected through a file review that the FBI conducted at the request of the Human Smuggling and Trafficking Center (HSTC). However, the FBI's input to HSTC was considered deliberative information and HSTC's report was not published in time for its inclusion in this report.

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frightened by threats from their traffickers. Also, victims often do not understand U.S. laws or that they have been victimized, which constrains reporting to law enforcement. In addition, victims may need to be mentally and psychologically stabilized before they can testify. These challenges present a barrier to prosecution.

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## Conclusions

DHS is currently not providing Congress the information it needs on the specific occupations of approved H-2B workers because the information it maintains electronically is not sufficiently detailed or standardized. By not using a standardized occupational classification system to report the occupations of approved workers, DHS is limited in its ability to provide Congress with reliable information about the specific occupations of H-2B workers. As DHS moves forward with its transformation to an electronic petition form, it has the opportunity to update its system requirements in such a way that would better meet the information needs of Congress.

In addition, DHS does not make certain details about H-2A and H-2B jobs available to potential workers or their advocates even though it collects this information on employers' petitions. Given the large number of individuals who were issued H-2A and H-2B visas in fiscal years 2009 through 2013 and who experienced some type of abuse during their recruitment, employment, or both, it is important that reliable job information be available to potential workers and their advocates. Without access to such information, potential workers may remain at an increased risk of abuse during their recruitment and, possibly, during their employment.

Identifying and investigating exploitative employment situations and then preventing employers who committed certain violations from further participating in the H-2A and H-2B programs is critical to protecting workers. To its credit, DOL's Office of Foreign Labor Certification collects detailed information, such as phone numbers and addresses, on employers who have been debarred. However, the agency neither uses all of this information to screen new employer applications nor shares it with DHS and State for their screening processes. Without this information, agencies could approve debarred employers' requests to hire workers, especially if the employers had changed some of their information to avoid detection. The data sharing agreement currently being negotiated by DOL and DHS provides an opportunity to strengthen agencies' efforts to ensure that debarred employers do not evade the screening process and continue to hire workers.

Further, H-2A and H-2B program rules require employers to fulfill certain obligations, and federal agencies can use certain enforcement remedies, such as debarment, if employers have been found to violate specified program requirements. However, in fiscal years 2009 through 2013, DOL's enforcement strategy was substantially more focused on H-2A employers than it was on their H-2B counterparts. Without an evaluation of its enforcement efforts for H-2B employers—similar to the one

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conducted for H-2A employers—it remains unclear whether DOL's enforcement resources are being appropriately targeted. In addition, when DOL finds that an employer, agent, or attorney committed a violation warranting debarment, it must issue a notice of intent to debar within the 2-year statute of limitations. However, without having collected data on the nature of cases where debarment could not be pursued because the statute of limitations had expired, the agency is not able to assess to what extent, if any, this statute of limitations has affected its ability to debar employers who have violated program requirements.

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## Recommendations for Executive Action

We are making the following recommendations:

To better report the occupations filled by H-2B workers who have been approved by DHS, the Director of U.S. Citizenship and Immigration Services should implement during its transformation process to an electronic petition form, an occupation classification system that conforms to a national standard.

To help potential H-2A and H-2B workers and their advocates better assess employment offers and reduce their vulnerability to abuse, the Director of U.S. Citizenship and Immigration Services should, during its transformation to an electronic petition form, ensure that petition job information is collected in an electronic manner and made available to the public as soon as possible following a final adjudication decision. Such job information should include number of positions, wage, and any staffing, placement or recruitment agency the employer plans to use.

To help protect workers from being hired by employers who have been debarred from program participation, the Director of U.S. Citizenship and Immigration Services and the Secretary of Labor should finalize and implement their agreement to share data, including those on debarred employers.

To help protect workers from being hired by employers who have been debarred from program participation, the Secretary of Labor should direct the Assistant Secretary, Employment and Training Administration, to use all employer-related information it collects on debarred employers to screen new applications.

To ensure that H-2B workers are adequately protected and that DOL's investigative resources are appropriately focused, the Secretary of Labor should direct the Administrator, Wage and Hour Division, to review its

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enforcement efforts and conduct a national investigations-based evaluation of H-2B employers.

To determine to what extent, if any, the 2-year statute of limitations on debarment limits its use as a remedy for employers who violate program requirements:

- The Secretary of Labor should direct the Assistant Secretary, Employment and Training Administration, and the Administrator, Wage and Hour Division, to collect data on the nature of the cases where debarment would have been recommended but was not because the 2-year statute of limitations had expired, and based on that data determine whether to pursue a legislative proposal to extend the statute of limitations.
- The Department of Labor Inspector General should direct the Assistant Inspector General, Office of Labor Racketeering and Fraud Investigations to provide the Assistant Secretary, Employment and Training Administration, and the Administrator, Wage and Hour Division, data on the number of referrals for debarment that the Inspector General's Office sent to the department after the 2-year statute of limitations had expired.

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## Agency Comments and Our Evaluation

The Departments of Health and Human Services, Homeland Security, Justice, Labor, and State were provided a draft of this report for review and comment. All the agencies provided technical comments that we incorporated, as appropriate. The Department of Homeland Security provided written comments, reproduced in appendix V, and agreed with our recommendations. The Department of Labor (DOL), Office of Inspector General (OIG) provided written comments, which are reproduced in appendix VI. While the OIG supported our recommendation that DOL determine whether the 2-year statute of limitations on debarment limits its use as a remedy for employers who violate program requirements and indicated it would take steps to support this effort, it also clarified that it does not make recommendations about debarment on the cases it refers to DOL. In response, we revised the recommendation to the OIG to clarify that its focus is on the OIG providing data on the number of referrals it sent to DOL after the 2-year statute of limitations had expired.

Finally, DOL also provided written comments, which are reproduced in appendix VII. The department generally agreed with all of our

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recommendations. In response to our recommendation that the Employment and Training Administration (ETA) and the Wage and Hour Division (WHD) collect data on the nature of the cases where debarment would have been recommended but the 2-year statute of limitations had expired, the department said it would consider undertaking this type of data collection on a limited basis. This data collection would help DOL understand the impact of the 2-year statute of limitations on its ability to debar employers who have committed certain violations, which we believe is important for protecting workers. Further, in comments on our draft report, the DOL OIG stated that in 2010 it issued an audit report recommending that debarment authority be used more extensively in foreign labor certifications and that ETA and WHD should take steps to assure that debarment is considered and decisions documented for anyone convicted of foreign labor certification violations.<sup>127</sup>

We are sending copies of this report to the Secretaries of Health and Human Services, Homeland Security, Labor, and State; the Attorney General; appropriate congressional committees; and other interested parties. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or [sherrilla@gao.gov](mailto:sherrilla@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix VIII.



Andrew Sherrill, Director  
Education, Workforce  
and Income Security

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<sup>127</sup> Department of Labor, Office of Inspector General, *Debarment Authority Should Be Used More Extensively in Foreign labor Certification Programs*, 05-10-002-03-321 (Washington. D.C.: Sept. 30, 2010).

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*List of Committees*

The Honorable Lamar Alexander  
Chairman  
The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Chuck Grassley  
Chairman  
The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable John Kline  
Chairman  
The Honorable Robert Scott  
Ranking Member  
Committee on Education and the Workforce  
House of Representatives

The Honorable Bob Goodlatte  
Chairman  
The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
House of Representatives

# Appendix I: Objectives, Scope, and Methodology

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As part of the Violence Against Women Reauthorization Act of 2013, GAO was mandated to review the recruitment of foreign workers.<sup>1</sup> We focused on H-2A and H-2B workers because of the similarity of these two programs and our recent work reviewing other visa types.<sup>2</sup> We examined (1) the number of workers who enter the country under H-2A and H-2B visas and the occupations they fill, (2) how U.S. employers recruit H-2A and H-2B workers and what, if any, abuses may have occurred in the recruitment and employment processes, and (3) how well federal departments and agencies protect H-2A and H-2B workers.

This appendix provides a detailed account of the information sources used to answer these questions, the analyses we conducted, and any limitations we encountered. This appendix is organized into two sections. Section 1 describes the key data sources used for the report. Section 2 describes our site visits, interviews, and review of documentary evidence.

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## Section 1: Data Sources

Our information sources included electronic datasets administered by the Departments of Labor (DOL), Homeland Security (DHS), Justice (DOJ), and State (State), and by a nongovernmental organization (NGO). We reviewed data covering fiscal years 2009 through 2013 because the 2008 reauthorization of the Trafficking Victims Protection Act prohibited fraud in foreign labor contracting. Details on the scope and purpose of these data are described below. For each of the datasets, we conducted a data reliability assessment of selected variables by conducting some or all of the following, depending on the dataset: electronic data testing for completeness and accuracy; reviewing documentation on the dataset; and interviewing knowledgeable officials about how the data are collected and maintained, their appropriate uses, and any limitations. For the purposes of our analysis, we found the variables that we reported to be sufficiently reliable.

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<sup>1</sup> Pub. L. No. 113-4, § 1235, 127 Stat. 54, 146. To fulfill this mandate, we also conducted a review on the use of foreign workers in federal contracts overseas. See GAO, *Human Trafficking: Oversight of Contractors' Use of Foreign Workers in High-Risk Environments Needs to Be Strengthened*, GAO-15-102 (Washington, D.C., Nov. 2014).

<sup>2</sup> We have issued a number of reports on the H-1B visa program (see list of related products at the end of this report). GAO concurrently conducted a separate review of the J-1 Summer Work Travel Program.

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## Department of Labor

### Wage and Hour Division (WHD)

WHD's Wage and Hour Investigative Support and Reporting Database (WHISARD) contains information on investigations related to the H-2A and H-2B programs. For fiscal years 2009 through 2013, we requested all case-level data of H-2A and H-2B investigations that found violations and assessed their reliability through review of related documents, interviews with relevant officials, and electronic data testing. For the purposes of our analysis, we found the variables that we reported to be sufficiently reliable given the context in which they are presented in the report. We analyzed these violations by number of employers rather than by number of employees (or workers) because, according to DOL officials, H-2A violations can involve H-2A workers as well as corresponding domestic workers. We also analyzed the number of employers who had repeat violations (i.e., the same violation) and recurring violations (i.e., not the same violation) by visa type. In addition, for those investigations found to have violations that resulted in some type of remedy, we analyzed the amount of back wages due to workers and civil money penalties assessed. We also analyzed these remedies by industry using the North American Industry Classification System (NAICS) to classify employers.<sup>3</sup> We used the 2-digit level—which designates the industry sector—and the 3-digit level—which designates the industry subsector—for each employer. In 11 cases, the same employer had more than one NAICS code. We reviewed each of these cases based on the NAICS codes and selected one code for each employer. Finally, we analyzed the duration of investigations—the length of time from the beginning of the investigation to the conclusion.

### Office of Foreign Labor Certification (OFLC)

We obtained temporary labor certification data from fiscal years 2009 through 2013, a list of employers who were debarred from participating in the H-2A or H-2B programs at any point during fiscal years 2009 through 2013, and the temporary labor certifications that were associated with those debarred employers. We assessed the reliability of these data through review of related documentation, interviews with relevant officials, and electronic data testing. For the purposes of our analysis, we found

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<sup>3</sup> NAICS is the standard used by federal statistical agencies in classifying business establishments for the purposes of collecting, analyzing, and publishing statistical data related to the U.S. economy. It groups establishments into industries according to similarity in the processes used to produce goods and services. The NAICS code has two to six digits with each additional digit offering greater classification detail.

the variables that we reported to be sufficiently reliable given the context in which they are presented in the report. We used debarred employers' temporary labor certifications to create a more robust set of information about each employer than what DOL maintains in their list (including the name, address, and contact phone number of the employer or employer agent who filed the certification). To identify any temporary labor certifications that were filed and/or approved during an employer's period of debarment, we ran an electronic comparison of the 2009-2013 temporary labor certification data and then compiled information on debarred employers, focusing on particular data fields, including name, address, phone number, and employer agent/attorney name. We also compared the dates of debarment with the certification dates of all applications.

We also reviewed publicly available data on employer applications for H-2B workers from fiscal years 2009 through 2013. OFLC posts these data to their website and refers to them as Disclosure Data.

**Office of Inspector General**

As part of its responsibilities, Labor's Office of Inspector General conducts investigations into alleged fraud related to the H-2A, H-2B, H-1B, and permanent visa certification processes. To determine which cases involved H-2A or H-2B victims, we reviewed summary data from the OIG's Investigative Management Information System (IMIS) on closed human trafficking and fraud cases for fiscal years 2009 through 2013. To assess the reliability of these data we reviewed related documentation and interviewed relevant officials. For the purposes of our analysis, we found the variables that we reported to be sufficiently reliable given the context in which they are presented in the report.

There was a limitation to these data, however, because they included H-1B and permanent labor certification cases as well as H-2A and H-2B cases, and the types of visas held by victims in each case were not always identified. Therefore, we read through the case notes for all of the 103 cases to determine which cases specifically identified H-2A and/or H-2B victims and analyzed data on those cases. However, there may have been additional cases that involved H-2A or H-2B workers, but the case notes did not identify them and, therefore, they were not included in our analysis.

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**Department of Homeland  
Security**

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**U.S. Citizenship and  
Immigration Services (USCIS)-  
CLAIMS 3**

To analyze the occupations filled by H-2A and H-2B workers, we obtained petition data from the Computer Linked Application Information Management System 3 (CLAIMS 3) for fiscal years 2009 through 2013 (we determined a petition's fiscal year using the date it was received by USCIS) and assessed their reliability by reviewing related documentation, interviewing relevant officials, and conducting electronic data testing. For the purposes of our analysis, we found the variables that we reported to be sufficiently reliable given the context in which they are presented in the report. Using the CLAIMS 3 data we analyzed the occupational codes that had been coded in the database by USCIS staff based on the job title provided by the employer on approved petitions. A list defining the occupation codes was provided by USCIS. To determine which petitions were approved and how many workers were requested on those petitions, we met with USCIS officials to determine which data field(s) to use. We also calculated the number of petitions with split decisions.<sup>4</sup> We also used the petition data to select potential employers/petitioners to interview during our site visits to Texas and Florida. We created a list of petitioners who were within the same or nearby cities where we had other interviews planned. We attempted to reach petitioners from a variety of industries. Once likely employers or employer agents were identified, we attempted to find contact information on the internet as the petition data did not include phone numbers or email addresses. We were not able to find contact information for all the employers or employer agents we identified. We contacted employers or employer agents until we had two or three scheduled for each of our site visits. Ultimately, we interviewed two H-2A employers and one H-2B employer agent.

Finally, to understand how many employers planned to use a third party to recruit workers, we reviewed a random sample of petition H-supplements from fiscal year 2013. Employers petitioning for H-2A or H-2B workers must fill out an H-supplement in addition to the basic petition form. On the supplement, employers must indicate if they plan to use a staffing, recruiting, or similar placement service or agent to locate workers. The supplement information is kept only in hardcopy in the employer's case file and therefore had to be reviewed manually. Both the H-2A and H-2B petition supplement sample frames were sorted by the number of approved workers. We calculated this number using the

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<sup>4</sup> According to USCIS officials, petitions can have split decisions where only a partial number of the workers requested by the employer are approved. For these split decisions we were not able to determine the number of workers that were approved.

method communicated to us by USCIS from February through May 2014. We then selected a systematic random sample of 96 H-2A petitions and 96 H-2B petitions for a total sample size of 192 supplements. We treated the data as a simple random sample for estimation purposes and, therefore, the results are unweighted. USCIS made those files available for our review at their facility in Harrisonburg, Virginia. All requested files, but one, were available. Each file was reviewed and categorized by one analyst and then those categorizations were confirmed by another analyst. Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval (e.g., plus or minus 10 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. All percentage estimates from the file review have margins of error at the 95 percent confidence level of plus or minus 10 percentage points, unless otherwise noted.

**U.S. Customs and Border  
Protection (CBP)**

To determine the number and demographics of H-2A and H-2B workers who entered the country, we obtained data from the Arrival and Departure Information System (ADIS) and assessed their reliability by reviewing related information, interviewing relevant officials, and conducting electronic data testing. For the purposes of our analysis, we found the variables that we reported to be sufficiently reliable given the context in which they are presented in the report. Among other things, ADIS houses data that are collected on noncitizens at the point of entry into the United States. We identified arrival records for those individuals who originally entered the country with an H-2A or H-2B visa. About one percent of these individuals had entry records with conflicting personally identifiable information, such as date of birth, citizenship, etc., or had an unknown gender or country of citizenship. We excluded these records from our analysis.<sup>5</sup> In addition, about 10 percent of the entry records corresponded to a smaller number of individuals that appeared to have entered multiple times within the same day. Because we were not able to determine if a worker with multiple entries was entering the country on one visa or more

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<sup>5</sup> We talked with CBP officials about this exclusion. While it might have been possible to match these conflicting records based on more extensive analysis of each record, we chose not to do so because we did not have all the data fields available in ADIS and because of resource constraints.

than one visa, we counted workers who entered one or more times in a fiscal year as entering once that fiscal year.<sup>6</sup>

**USCIS-HAVEN**

To analyze the profile of trafficking victims who received T visas, we obtained data covering fiscal years 2009 through 2013 from the Humanitarian Adjudication for Victims Enterprise Nationwide (HAVEN) database. Due to privacy concerns, DHS provided statistical information summarized in tables, which included information on approved T visas by fiscal year and visa type, and which were further disaggregated by state of residence, gender, age of approval, country of birth and citizenship, and certifying agency. To assess the reliability of these data we reviewed related documentation and interviewed relevant officials. For the purposes of our analysis, we found the variables that we reported to be sufficiently reliable given the context in which they are presented in the report.

**U.S. Immigration and Customs Enforcement (ICE)**

We requested data on ICE human trafficking investigations that were collected through a file review conducted by the Human Smuggling and Trafficking Center (HSTC). However, HSTC's National Human Trafficking Assessment report was not finalized in time to be included in our report.

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**Department of Justice**

**Criminal Department, Civil Rights Division**

In order to report the number of human trafficking prosecutions that involve H-2A and H-2B workers, we interviewed a senior official in the Human Trafficking Prosecution Unit. We were not able to use the data collected by this office, however, because of the way in which cases were coded and the fact that officials told us the database does not have a data field that captures the type of visa a victim might have used to enter the country.

**Office of Justice Programs**

To understand the number of H-2A and H-2B workers who were identified to be victims of human trafficking and served through DOJ-funded taskforces and service providers, we obtained data on victims who entered the country under an H-visa from the Human Trafficking Reporting System (HTRS) for fiscal years 2010 through 2013 and the Trafficking Information Management System (TIMS) for calendar years

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<sup>6</sup> We discussed this decision rule with CBP officials who agreed with this approach.

2012 through 2013.<sup>7</sup> HTRS tracks information from DOJ's Human Trafficking Task Forces. However, we did not report on HTRS cases due to the small sample size of reported incidents involving H-2A and H-2B workers. TIMS captures information on services to trafficking victims that were provided through DOJ-funded grantees and we assessed the reliability of these data by reviewing related documentation and interviewing relevant officials. For the purposes of our analysis, we found the variables that we reported to be sufficiently reliable given the context in which they are presented in the report. The DOJ-funded grantees entered into the TIMS data that 352 foreign national victims had an H-visa, but did not specify which type of H-visa. We grouped victims by their trafficking setting and other information reported in TIMS.<sup>8</sup> However, given the nature of the TIMS data, these victims could have entered the country under any type of H-visa and been trafficked into these industries. We grouped the types of services provided into five categories—legal and immigration services, social services, medical and logistical support, coordination of services, and other services.<sup>9</sup> Social services include housing assistance, social service advocacy and explanation of benefits, emotional and moral support, and protection and safety planning. Medical and logistical support includes medical, dental and mental health assistance, substance abuse treatment, and help with transportation and translation services. Coordination of services includes client intake, orientation, and ongoing case management. Other services include assistance with family reunification, repatriation, financial aid, personal items, education, and other types of assistance. To analyze victims' demographic profiles, suffered abuses, and services received, we analyzed the data by gender; country of origin; type of trafficking such as labor or sex; trafficking setting such as hotel, restaurant, construction site, agricultural field, residential home, etc.; trafficking subtype such as domestic servitude, commercial cleaning, herding, traveling carnival,

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<sup>7</sup> We requested different time periods from each database based on the availability of electronic data.

<sup>8</sup> Since this report focuses on H-2 workers, we excluded 12 H-visa workers who were either engaged in teaching or for which their employment information was missing. We included six victims who had a trafficking setting of massage parlor or brothel, among others, with a trafficking subtype of prostitution and pornography production.

<sup>9</sup> We counted services provided by type regardless of the frequency or amount of services provided.

hospitality and others; and provided services such as immigration and legal, housing, etc.

We also requested a list of organizations that are contracted by the Office of Justice Programs to provide services to victims and interviewed some of these organizations during our site visits. See Section 2 below.

**Federal Bureau of Investigation  
(FBI)**

We requested data on FBI human trafficking investigations that were collected through a file review conducted at the request of HSTC. However, HSTC's National Human Trafficking Assessment report was not finalized in time to be included in our report.

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**Department of State**

**Bureau of Consular Affairs**

To report the number of H-2A and H-2B visas issued in fiscal years 2009 through 2013, we reviewed summary data on visa issuance published by State on its Nonimmigrant Visa Statistics website.<sup>10</sup> We assessed the reliability of these data by reviewing related information and interviewing relevant officials. For the purposes of our analysis, we found the variables that we reported to be sufficiently reliable given the context in which they are presented in the report.

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**Department of Health and  
Human Services**

**HHS Rescue and Restore  
Regional Grantees**

HHS collects data from its grantees that support local anti-trafficking coalitions, conduct outreach and public awareness activities, and provide training and technical assistance related to human trafficking. Since HHS officials told us grantees' monitoring data do not include information on visa status, we reached out to all 11 Rescue and Restore regional grantees and requested any available data collected by visa type. No grantees responded that they collected data in this manner.

**HHS National Human  
Trafficking Resource Center**

We also requested data from the National Human Trafficking Resource Center (NHTRC) maintained by the Polaris Project and funded by HHS

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<sup>10</sup> State publishes nonimmigrant visa issuances by visa class, nationality, and year. See <http://travel.state.gov/content/visas/english/law-and-policy/statistics/non-immigrant-visas.html>.

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and assessed their reliability by reviewing related documentation and interviewing relevant officials. For the purposes of our analysis, we found the variables that we reported to be sufficiently reliable given the context in which they are presented in the report. These data consist of reports of alleged abuse and do not contain legally substantiated information. We analyzed data that was coded by severity of the case and urgency of the response. We analyzed a total of 1,564 cases, which included cases alleging possible human trafficking as well as cases alleging labor violations (seven cases were eliminated because the visa status did not clearly indicate that the victims were H-2A or H-2B workers). We analyzed the data by visa type (H-2A or H-2B) with respect to a number of victim characteristics: type of abuse (such as wage and hour abuse; contract violation; wrongful termination; hazardous, unsafe, or unsanitary working conditions; verbal or physical abuse); as well as industry, type of trafficking, country of origin, and number of referrals to other services.

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## **Section 2: Site Visits, Interviews, Discussion Groups, and Review of Documentary Evidence**

To answer our objectives, we conducted semi-structured interviews with agency officials; employers, employer agents, and trade groups; a union representative; law enforcement agents; H-2A and H-2B workers in the United States and Mexico; and NGO representatives. We identified those we interviewed through prior GAO work on these issues; transcripts of congressional hearings, agency staff, organizations involved in immigration reform, and through other interviewees.

We also conducted four site visits. To understand how H-2A and H-2B workers are processed and interviewed for their visas we visited the U.S. Embassy in Mexico City, Mexico, and the U.S. Consulate in Monterrey, Mexico. We chose Mexico primarily because of the high percentage of both H-2A and H-2B workers who come from there, but also considered the country's tier in the State Department's Trafficking in Persons report, among other factors. In both Mexico City and Monterrey, we interviewed State Department officials who are involved in adjudicating H-2A and H-2B visa applications, interviewing workers, and preventing fraud. In Mexico City, we also met with Mexican officials at the state and local level to learn about issues that migrants from Mexico may face and the support services provided to them. We also met with representatives of NGOs working on issues related to Mexican H-2A and H-2B workers. Further, in Monterrey, we met with two employer agents who process workers for employers; toured the State Department's Applicant Service Center; and observed the visa interview and pass-back processes where approved visas are distributed to workers. Following our site visit to Mexico, we asked to interview some of the U.S. employers who attended the 2013 job

fairs that the U.S. Consulate in Monterrey helped to coordinate in San Luis Potosi and Nogales, Mexico, in order to understand the fairs' usefulness in helping employers find workers. Two employers who attended the job fairs agreed to have the consulate provide us with their contact information. One H-2A employer agreed to be interviewed.

For the site visits in the United States, we selected the states of Texas and Florida primarily based on the number of nonimmigrant positions certified by state, but also considered state laws or regulations governing guest worker programs or human trafficking, innovative recruitment or employment programs within a state, the number of reported victims of labor violations or trafficking, and the location of Anti-Human Trafficking Coordination Teams, among other factors.

In Texas, we traveled to Dallas, Austin, and Houston. We interviewed officials from the DOL Office of Inspector General's Office of Labor Racketeering and Fraud Investigations, DOL Wage and Hour Division, and DHS's ICE Homeland Security Investigations. We also interviewed officials at the Texas Workforce Commission. In addition, we interviewed officials from DOJ service providers, an H-2A employer, and an H-2B employer agent (for how we selected employers to interview see Section 1, Department of Homeland Security, USCIS). In Florida, we traveled to Tampa and Miami. We interviewed officials from the DOL Wage and Hour Division and DHS's ICE Homeland Security Investigations and Anti-Human Trafficking Coordination Team. We also interviewed an H-2A employer and officials from NGOs and DOJ service providers.

To determine if Texas or Florida had any state statutes that relate to recruiting H-2A and H-2B workers, we searched the Westlaw and Lexis legal databases in October 2014 using a range of relevant search terms.

To understand the processing of H-2A and H-2B applications, we visited DOL's Chicago National Processing Center where we interviewed analysts and lead analysts and observed as they adjudicated applications. We also interviewed certifying officers for both the H-2A and H-2B programs.

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<b>Worker Discussion Groups</b>	To locate workers for discussion groups, we were assisted by an NGO, an employer agent, and a Jamaican government agency responsible for recruitment. We sought the assistance of both an NGO and an employer/employer's representative in order to obtain a variety of worker
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views and experiences; however, no employers, agents, or government recruiters were present during the discussion groups. Specifically, we:

- Conducted two discussion groups in Mexico with male H-2B workers who had previously worked in the United States in different industries. We identified the workers through an NGO working in the United States and Mexico, Centro de los Derechos del Migrante, Inc. (CDM), and traveled to the state of Puebla to interview the workers. To protect the identities of the workers, we did not ask for or collect their real names. A GAO facilitator led the discussion groups assisted by a contracted translator.
- Conducted a discussion group with male H-2A workers from Jamaica. We identified the workers through the New England Apple Council and Jamaican Central Labour Organization. We conducted the discussion in Massachusetts. A GAO facilitator led the discussion assisted by a GAO employee who was fluent in Patois.

The results of these discussion groups cannot be generalized to the larger population of H-2A and H-2B workers.

We attempted to conduct additional interviews by video teleconference with H-2A workers in Mexico with the assistance of the Global Workers Justice Alliance. We were not able to conduct these interviews, however, because many workers were working in the United States during the time frame in which we were trying to conduct the discussion group. Moreover, according to a Global Workers Justice Alliance representative, workers who remained in Mexico declined to talk with us. Finally, with the assistance of CDM, we attempted to conduct a discussion group with female H-2B workers who were currently in the United States. According to CDM officials, however, these workers also declined to talk with us.

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**NGO Surveys of H-2A and H-2B Workers**

To better understand the recruitment and employment experiences of workers as well as recruitment models used by employers, we reviewed reports documenting two surveys conducted by NGOs—CDM and a

coalition of NGOs working on a project called Jornaleros SAFE.<sup>11</sup> CDM officials said they interviewed more than 200 H-2A and H-2B workers from several Mexican states over a 5-year period for their Justice in Recruitment Project.<sup>12</sup> Workers were interviewed primarily at worker rights workshops. The survey is based on migration episodes rather than individuals so some workers may be interviewed more than once. Officials said their survey represented a convenience sample and could not be generalized beyond the population they interviewed.

Officials associated with Jornaleros SAFE said they interviewed over 350 H-2A workers or worker's family members.<sup>13</sup> In order to be interviewed, workers had to have an H-2A visa in their passport. While officials told us that they interviewed a very small number of H-2B workers, the focus of the project was on H-2A workers and the number of H-2B interviews conducted was negligible. Workers were located through community leaders and interviewed in their homes and churches. Similar to CDM's report, these survey results are not generalizable.

To address all objectives, we reviewed relevant federal laws and regulations, news media articles, and agency and NGO reports on migrant workers and human trafficking, which we selected through various sources, including discussions with GAO staff with experience in these issues, agency staff, and other interviewees, among others.

We conducted this performance audit from June 2013 through March 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>11</sup> Five organizations have been working on the Jornaleros SAFE Project, which began in May 2010. They are Centro Independiente de Trabajadores Agrícolas, Dimension Pastoral de la Movilidad Humana, Global Workers Justice Alliance, United Farm Workers, and Catholic Relief Services.

<sup>12</sup> Centro de los Derechos del Migrante, Inc., *Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change* (2013).

<sup>13</sup> Jornaleros SAFE, *Executive Summary: Mexican H2A Farmworkers in the U.S: The Invisible Workforce* (2012).

# Appendix II: Summaries of H-2A and H-2B Visa Worker Discussion Groups

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Discussion Group 1: H-2B workers from Mexico – Centro de los Derechos del Migrante, Inc. (CDM), a transnational NGO working on issues affecting Mexican migrant workers, assisted us in setting up this discussion group. We spoke to four workers who entered the United States on visas over several years while working for different employers. Some of the workers reported paying recruitment fees in Mexico of more than \$350 to cover transportation to the Consulate and the cost of the visa. Some of the workers said they took out loans in order to pay the fees.

Across their variety of experiences, workers told us that they had better experiences with some employers than others. For example, one worker told us that one employer housed workers in trailers with access to bathroom facilities while other workers reported that employers had them sleep on pallets or bathe using cold water.

Workers reported experiencing or witnessing a number of abuses, including employers confiscating their passports and visas, being required to work outside during thunderstorms, underpayment of wages, and physical abuse. However, workers told us they were generally too afraid to report these abuses because they feared being fired or that something might happen to their families at home in Mexico.

Discussion Group 2: H-2B workers from Mexico – CDM assisted us in setting up this discussion group. We spoke to seven workers who entered the United States together in 2011 to work for the same forestry company. In Mexico, they said they paid recruitment fees of approximately \$1,250, which included things such as employment paperwork, transportation to the Embassy, visa application, and transportation to the job site. The workers all said they took out loans to pay the fees. The workers reported that they were told they would earn \$10 per hour working 8 hours per day and \$15 per hour when they worked more than 40 hours per week.

Upon arrival in the United States, the workers learned they would be paid based on the amount of work completed, not the hours worked. They claimed their paychecks reflected deductions for equipment and safety vests they were required to use. After 2 weeks of working 10-11 hours per day, the workers said they earned \$133 and owed \$100 in rent.

Discussion Group 3: H-2A workers from Jamaica – The New England Apple Council and the Jamaican Central Labour Organization assisted us in setting up this discussion group. We spoke to five workers, all of whom

participated in the visa program for multiple years and generally worked for the same employers each time. The workers reported having positive experiences during recruitment and with their employers. Workers told us that they received contracts before leaving Jamaica and did not have to pay any money during recruitment. They also told us that their employers generally provided nice housing for the workers and some training prior to beginning work.

The Jamaican government plays an active role in the H-2A program and, according to a Jamaican government official, conducts all recruitment activities for Jamaicans who wish to participate in the program.

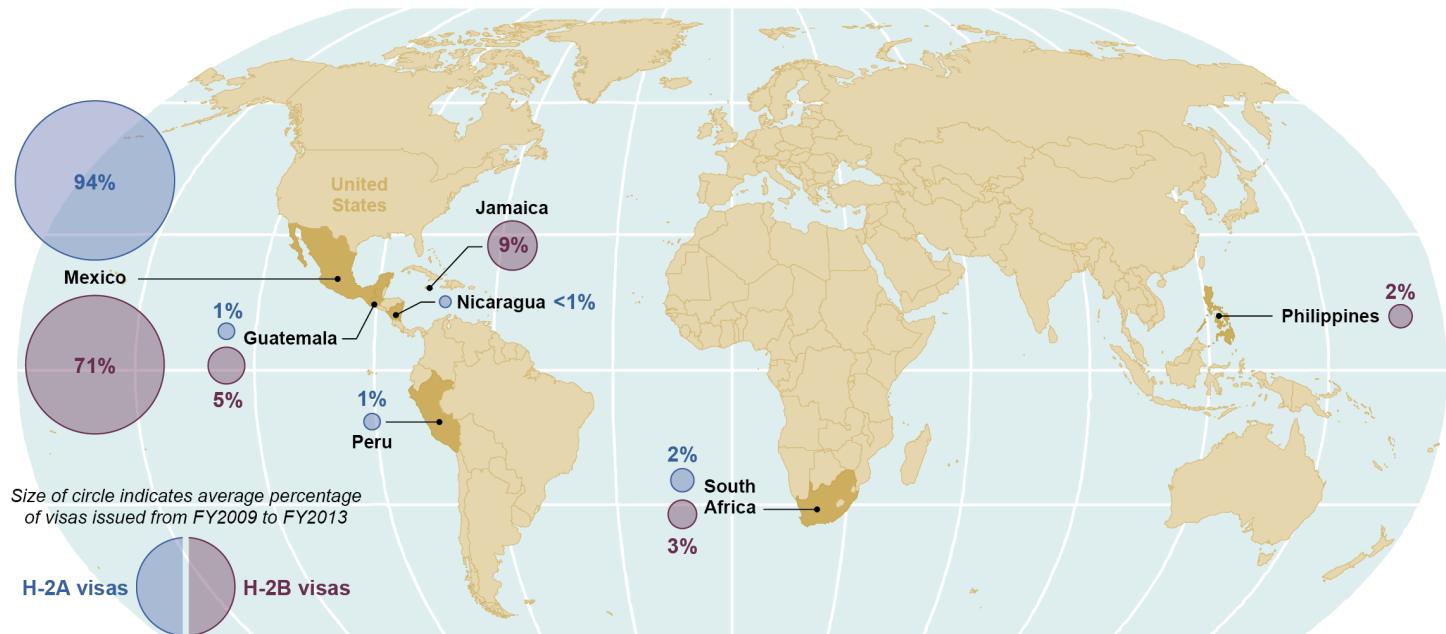
# Appendix III: Characteristics of and Assistance to H-2A and H-2B Human Trafficking Victims

## Approval of T Visas for H-2A and H-2B Workers by U.S. Citizenship and Immigration Services at DHS

A critical protection for human trafficking victims is their ability to lawfully extend their stay in the United States by obtaining T nonimmigrant status from U.S. Citizenship and Immigration Services. From fiscal years 2009 through 2013, 49 H-2A and 137 H-2B workers obtained T visas. Almost 90 percent of H-2A victims were men while three-quarters of H-2B victims were men and one-quarter were women. For both visa types, over three quarters of the victims were between 31 and 50 years old. Thailand was the most frequent country of citizenship for H-2A victims (47 percent on average from fiscal years 2009 through 2013) and the Philippines was the most frequent country of citizenship for H-2B victims (59 percent) (see fig. 12). This contrasts with the small number (less than two percent) of visas issued to workers from these countries. An NGO official told us that workers from Thailand, for example, may be more vulnerable because trafficking networks in that country may be more organized and there are fewer social supports for these workers when they arrive in the United States.

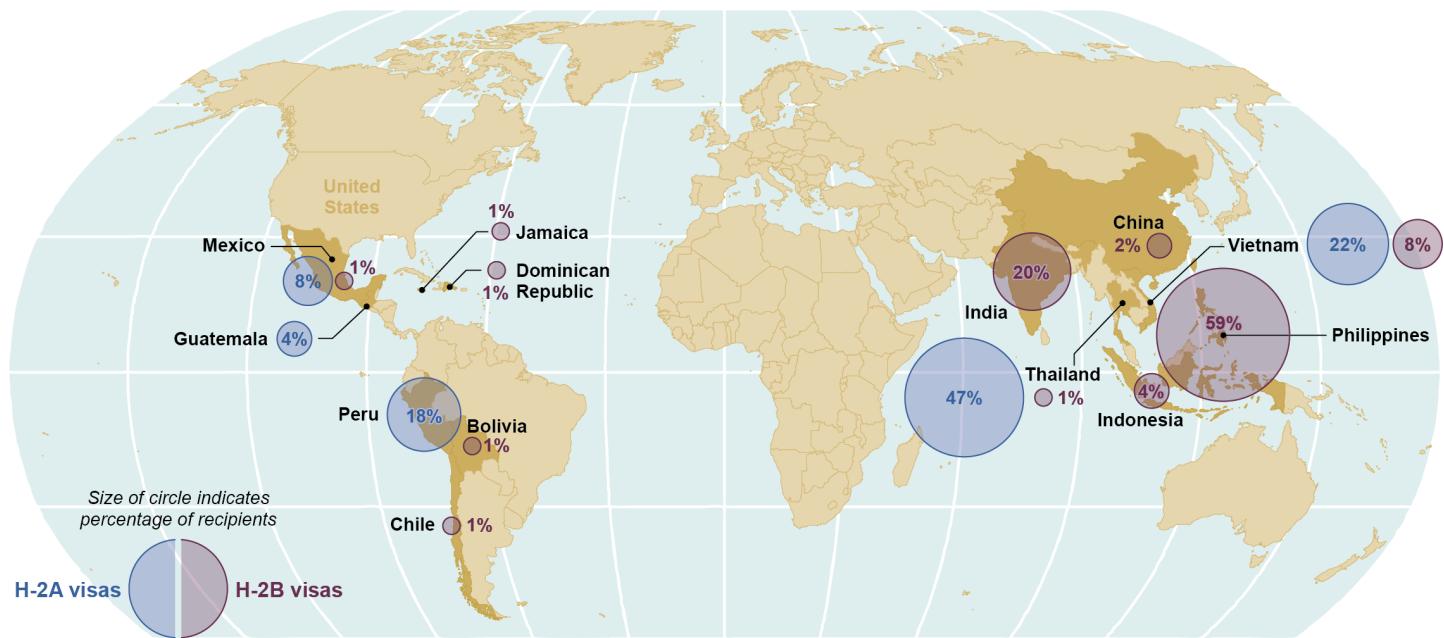
**Figure 10: U.S. Embassies and Consulates That Issued the Highest Percentage of H-2A and H-2B Visas and Country of Citizenship of H-2 Workers Approved for the Highest Percentage of T Visas, Fiscal Years 2009 through 2013**

U.S. embassies and consulates that issued the highest percentage of H-2A and H-2B visas



Source: GAO review of Department of State Nonimmigrant Visa System summary data; National Atlas (base map). | GAO-15-154

**Country of citizenship of H-2 workers approved for the highest percentage of T-visas**



Source: GAO analysis of Department of Homeland Security's Humanitarian Adjudication for Victims Enterprise Nationwide summary data; National Atlas (base map). | GAO-15-154

Note: The above percentages on H-2 visas issued do not take into account H-2 workers who did not need or did not obtain visas (for example, those from visa exempt countries).

## Profile of Complaints from H-2A and H-2B Visa Holders Referred from the National Human Trafficking Resource Center to Service Providers

As a hotline funded by the Department of Health and Human Services (HHS), the National Human Trafficking Resource Center (NHTRC) helps connect victims with services. From 2011 through 2013 the hotline received a total of over 1,500 complaints from H-2A and H-2B workers. Almost all complaints involved alleged labor exploitation. The industries most commonly reported to NHTRC by complainants for both visa types were agriculture and landscaping (over 80 percent for H-2A workers and over 30 percent for H-2B workers).

- About 92 percent of the complaints did not have indicators of trafficking (i.e., force, fraud, and coercion) but involved commonly reported abuses such as wage and hour complaints (39 and 36 percent for H-2A and H-2B workers, respectively), as well as other contract violations (20 and 28 percent for H-2A and H-2B workers, respectively). Other commonly identified abuses by those hotline complainants included wrongful termination and hazardous, unsafe, and unsanitary working conditions.

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- About 8 percent of complaints demonstrated key indicators related to potential human trafficking. These calls involved mostly male workers and the main countries of origin were Mexico and Philippines (73 and 15 cases, respectively).

As a follow up, NHTRC most often provided H-2A and H-2B workers with referrals to two or more service providers who offer victim assistance services.

# Appendix IV: Details on Back Wages and Civil Money Penalties Assessed by the Department of Labor (DOL)

**Table 6: Summary of DOL Back Wages Assessed to H-2A and H-2B Employers, Fiscal Years 2009 through 2013**

		Number of Employers	Total	Average	Minimum	Maximum	Median
H-2A	2009	69	\$452,803	\$6,562	\$39	\$57,231	\$2,511
	2010	47	\$398,970	\$8,489	\$35	\$153,076	\$2,129
	2011	100	\$855,673	\$8,557	\$22	\$193,526	\$3,049
	2012	108	\$1,905,999	\$17,648	\$45	\$937,690	\$2,838
	2013	118	\$4,928,457	\$41,767	\$21	\$2,338,700	\$3,998
	All*	433	\$8,541,901	\$19,326	\$21	\$2,338,700	\$3,171
H-2B	2011	2	\$14,293	\$7,147	\$567	\$13,726	\$7,147
	2012	11	\$204,002	\$18,546	\$881	\$93,507	\$8,720
	2013	18	\$190,373	\$10,576	\$147	\$58,617	\$5,916
	All*	31	\$408,668	\$13,183	\$147	\$93,507	\$6,266

Source: GAO analysis of DOL WHISARD data. | GAO-15-154

\*Note: Total number of employers for all years shows the number of unique employers and thus is smaller than the simple sum over the fiscal years, since some employers may have been assessed back wages more than once.

**Table 7: Summary of DOL Civil Money Penalties Assessed to H-2A and H-2B Employers, Fiscal Years 2009 through 2013**

		Number of Employers	Total	Average	Minimum	Maximum	Median
H-2A	2009	55	\$326,838	\$5,943	\$250.	\$58,800	\$2,100
	2010	51	\$369,085	\$7,237	\$250	\$101,200	\$2,000
	2011	106	\$840,280	\$7,927	\$200	\$84,900	\$2,950
	2012	136	\$3,384,189	\$24,884	\$300	\$1,507,900	\$3,600
	2013	158	\$6,435,788	\$40,733	\$500	\$3,129,900	\$7,075
	All*	493	\$11,356,179	\$22,443	\$200	\$3,129,900	\$4,000
H-2B	2012	18	\$289,968	\$16,109	\$2,500	\$65,000	\$11,398
	2013	29	\$412,676	\$14,230	\$1,500	\$82,968	\$10,000
	All*	47	\$702,645	\$14,950	\$1,500	\$82,968	\$11,076

Source: GAO analysis of DOL WHISARD data. | GAO-15-154

\*Note: Total number of employers for all years shows the number of unique employers and thus is smaller than the simple sum over the fiscal years, since some employers may have been assessed civil monetary penalties more than once.

**Appendix IV: Details on Back Wages and Civil Money Penalties Assessed by the Department of Labor (DOL)**

**Table 8: Summary of State H-2 Visa and DOL Wage and Hour Enforcement Data by H-2 Employers, Fiscal Years 2009 through 2013**

	FY 2009		FY 2010		FY 2011		FY 2012		FY 2013		Total*		
	Total	(% of Total H2)	Total	(% of Total H2)									
Number of Visas Issued to Workers	H-2A	60,112	57%	55,921	54%	55,384	52%	65,345	57%	74,192	56%	310,954	55%
	H-2B	44,847	43%	47,403	46%	50,826	48%	50,009	43%	57,600	44%	250,685	45%
Number of Employers Found to Have Violations	H-2A	121	100%	105	98%	177	98%	224	91%	239	88%	866	94%
	H-2B	0	0%	2	2%	4	2%	21	9%	33	12%	60	6%
Number of Employers Assessed Back Wages and/or Civil Money Penalties	H-2A	74% of 90		65% of 68		76% of 135		73% of 163		74% of 176		73% of 632	73% of 866
	H-2B	0		0		2		4		18		32	52
		50% of 2		86% of 18		97% of 32		87% of 52					

Source: GAO review of State Nonimmigrant Visa System statistics and analysis of DOL WHISARD data. | GAO-15-154

Note: Our analysis of WHD data provided by DOL officials shows that WHD conducted 1,288 investigations under H-2A and H-2B from fiscal year 2009 through fiscal year 2013. Of those, 90 percent (or 1,164) were H-2A investigations, while 10 percent (or 124) were H-2B investigations. One employer may hire more than one H-2A or H-2B worker. The table represents a unique count of employers per fiscal year.

\*In the total for all years employers may be counted more than once if they were investigated and found to have violations in more than one fiscal year.

# Appendix V: Comments from the Department of Homeland Security



**Homeland  
Security**

February 10, 2015

Andrew Sherrill  
Director, Education, Workforce, and Income Security  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Draft Report GAO-15-154, "H-2A AND H-2B VISA PROGRAMS: Increased Protections Needed for Foreign Workers"

Dear Mr. Sherrill:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's recognition of U.S. Citizenship and Immigration Services (USCIS) work to provide immigration relief to H-2A and H-2B workers who are victims of human trafficking allowing them to remain in the United States to assist with the prosecution of their cases. USCIS is committed to ensuring that foreign workers are afforded necessary protections.

USCIS is also committed to collecting relevant occupational classifications and job information. USCIS currently collects occupational information on H-2 beneficiaries, but acknowledges that the older, Disk Operating System-based computer system currently in use provides limited data for analysis. USCIS will address these issues through its Transformation efforts, as immigration services are moved from a paper-based process to an electronic environment.

The draft report contained three recommendations directed to DHS with which the Department concurs. Specifically, GAO recommended that the Director of USCIS:

**Recommendation 1:** Implement during its transformation process to an electronic form, an occupation classification system that conforms to a national standard.

**Response:** Concur. USCIS will review the current paper Form I-129, Petition for a Nonimmigrant Worker, to determine if any changes are needed to capture standardized

occupational information for H-2B temporary workers. USCIS' transformation initiative involves adapting the paper form into an electronic environment. USCIS' Office of Transformation Coordination (OTC) and Service Center Operations Directorate (SCOPS) will work collaboratively to examine modifying the Form I-129 to capture the Standard Occupational Classification code.

Once USCIS determines what changes are needed on the paper Form I-129 to address H-2B occupation data, USCIS will use the Office of Management and Budget-approved version of the form to develop the electronic equivalent for a future release in USCIS' Electronic Immigration System (USCIS ELIS).

Under the current USCIS ELIS development schedule, USCIS anticipates beginning work on the Form I-129 during Fiscal Year (FY) 2017 and completing it at the end of FY 2017. USCIS is using the Agile process to develop USCIS ELIS and, under this process, USCIS has categorized its product lines and prioritized its efforts to incorporate the business processes and associated forms into USCIS ELIS. The current prioritization of the product lines is: immigrants, citizenship, nonimmigrants, and humanitarian. Petitions for H-2A and H-2B temporary nonimmigrant workers are part of the nonimmigrant line of business. Therefore, under current priorities, USCIS will be addressing other product lines prior to the nonimmigrant benefits. Estimated Completion Date (ECD): September 30, 2017.

**Recommendation 2:** Ensure that petition job information is collected in an electronic manner and made available to the public as soon as possible following a final adjudication decision.

**Response:** Concur. When USCIS undertakes modifications of Form I-129 for incorporation into USCIS ELIS (see response to Recommendation 1), OTC and SCOPS will work together to ensure job-related information is captured. USCIS' Office of Privacy will be included in these efforts to ensure that any potential information that may be released publicly does not violate the Privacy Act of 1974. ECD: December 31, 2017.

**Recommendation 3:** In conjunction with the Secretary of Labor, finalize and implement their agreement to share data, including those on debarred employers.

**Response:** Concur. USCIS and the Department of Labor are drafting a Memorandum of Agreement (MOA) to share labor certification and petition data between the two agencies. The draft agreement is currently undergoing internal agency review. USCIS anticipates finalizing the MOA by the end of the first quarter of FY 2016. ECD: December 31, 2015.

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**Appendix V: Comments from the Department  
of Homeland Security**

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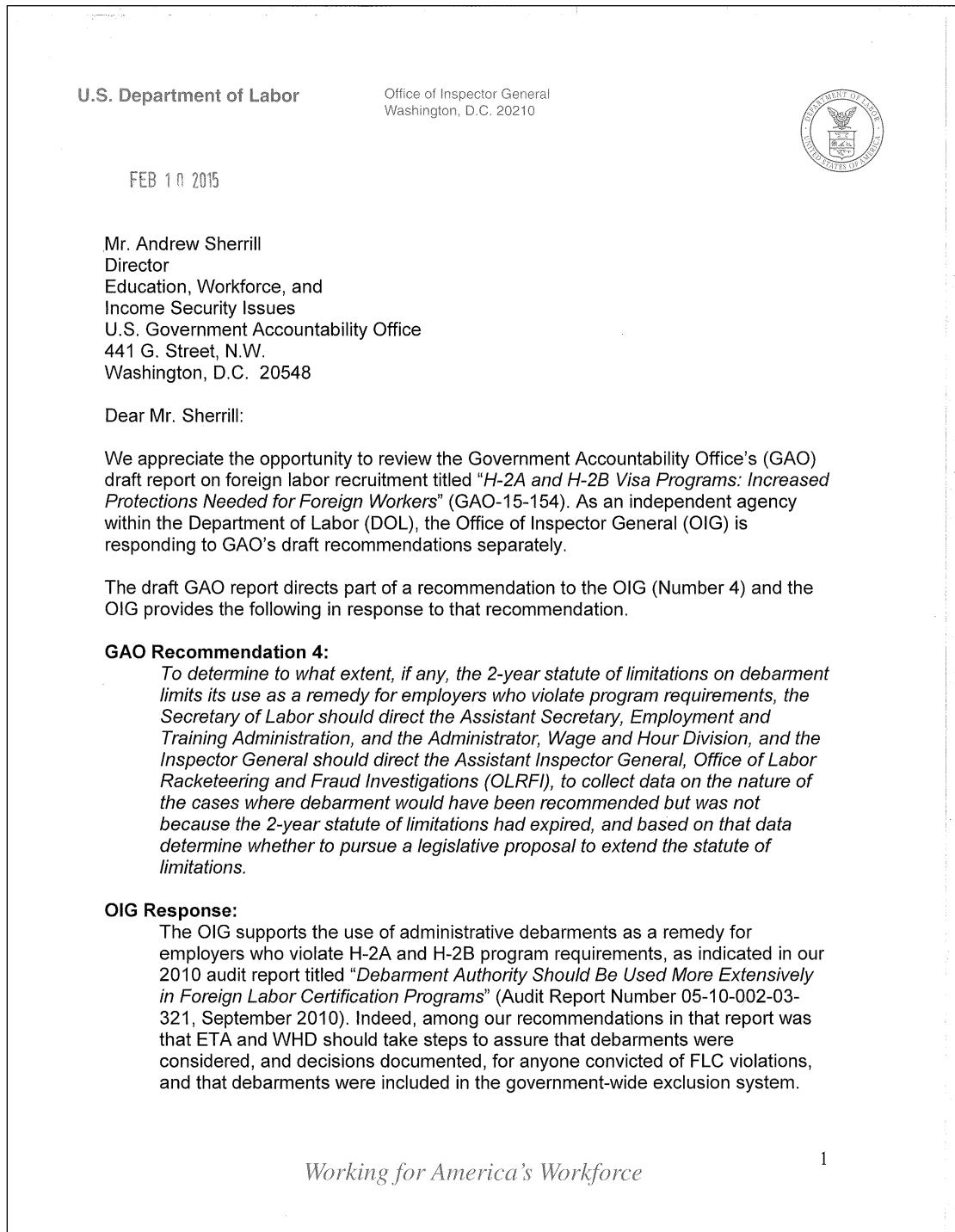
Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,



Jim H. Crumpacker, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

## **Appendix VI: Comments from the Department of Labor, Office of Inspector General**



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**Appendix VI: Comments from the Department  
of Labor, Office of Inspector General**

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The OIG sends referrals for administrative debarment to DOL at the earliest stage possible following an investigation, in some cases even at the indictment phase in order to expedite the process. We do not, however, make recommendations to DOL on those referrals. As such, the OIG does not have the data required to conduct the evaluation recommended by GAO in recommendation number 4.

However, the OIG supports GAO's recommendation that DOL determine whether the 2-year statute of limitations on debarment limits its use as a remedy for employers who violate program requirements. In support of this effort, the OIG will:

- Determine and communicate to DOL how many OLRFI referrals sent to the Department from January 01, 2012 to date were referred beyond the 2-year statute of limitations; and,
- Following the opening of an OIG investigation, and to the greatest extent possible without prejudicing or otherwise affecting an ongoing criminal investigation, continue to identify and refer to the Department matters which may be appropriate for immediate consideration for debarment and suspension actions.

Please contact me at (202) 693-5100 if you have any questions concerning this matter. Alternatively, your staff may contact Luiz Santos, Director of Congressional Liaison and Communications, at (202) 693-7062.

Sincerely,

*Larry D. Turner*  
Larry D. Turner  
Deputy Inspector General

# Appendix VII: Comments from the Department of Labor

**U.S. Department of Labor**  
Washington, D.C. 20210



**FEB 19 2015**

Mr. Andrew Sherrill  
Director  
Education, Workforce, and  
Income Security Issues  
U.S. Government Accountability Office  
441 G. Street, N.W.  
Washington, D.C. 20548

Dear Mr. Sherrill:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report entitled, *H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers (GAO-15-154)*. We understand that GAO was mandated by Congress, under Section 1235 of the Violence Against Women Reauthorization Act of 2013 (Public Law 113-4), to study foreign labor recruitment and the use of foreign labor in the United States and overseas, and that, in examining the use of foreign workers in the United States, GAO focused on H-2A and H-2B workers.

The Department of Labor (the Department) agrees that adequate controls are necessary to ensure employers comply with program requirements, provide adequate protections to both foreign and U.S. workers, and help prevent worker exploitation. The Department is pleased to note GAO's acknowledgement of the challenges agencies face in screening out applications from employers who are currently debarred, and the very small number of instances (four applications out of nearly 20,000 applications filed since April 1, 2013) in which the Department *may* have inadvertently issued a certification to a debarred employer. We are committed to continuing our efforts to publish lists of employers debarred from the H-2A and H-2B programs on the Employment and Training Administration's (ETA) web site, promptly disseminating debarred employer information to the Departments of Homeland Security (DHS) and State, and updating the ETA iCERT System to screen any future filed applications from currently debarred employers.

The draft report contained four recommendations made to the Department, with which the Department largely agrees. Specifically, GAO recommended:

**Recommendation 1:** To help protect workers from being hired by employers who have been debarred from program participation, the Director of U.S. Citizenship and Immigration Services (USCIS) and the Secretary of Labor should finalize and implement their agreement to share data, including those on debarred employers.

**Response:** The Department concurs. During the past year, in collaboration with the Department's Office of Inspector General and Wage Hour Division (WHD), the ETA has taken a leadership role in developing a comprehensive Memorandum of Understanding (MOU) with the DHS USCIS. This MOU enables the real-time exchange of unclassified information related to ETA's temporary and permanent labor certification applications and DHS's employer and beneficiary related information for the purpose of carrying out each Department's mission to enforce the Immigration and Nationality Act and other relevant immigration laws. The Department is working closely with the DHS USCIS to finalize and execute the MOU, along with the related technical Interface Control Documents and Interagency Security Agreements by no later than December 31, 2015, for implementation during calendar year 2016.

As GAO noted, the ETA Office of Foreign Labor Certification already actively shares current information on employers debarred from participation in the H-2A and H-2B programs with the USCIS, DOS, and WHD. Specifically, when debarment actions are finalized, ETA electronically forwards to these partner agencies a copy of the final debarment notice and select information related to the debarred employer. To enhance the amount of employer information available to our partner agencies quickly, ETA will begin sending copies of the ETA Form 9142A H-2A Application for Temporary Labor Certification or ETA Form 9142B H-2B Application for Temporary Labor Certification for employers that were subject to the final debarment action taken by the Department. The ETA Form 9142A and 9142B contain all information related to the debarred employer and, if applicable, detailed information concerning the employer's authorized attorney or agent, worksite locations, job duties, number of worker positions requested or certified, wage rates and validity dates. ETA anticipates implementing this new procedure on March 1, 2015, for any future debarred employers.

**Recommendation 2:** To help protect workers from being hired by employers who have been debarred from program participation, the Secretary of Labor should direct the Assistant Secretary, Employment and Training Administration, to use all employer-related information it collects on debarred employers to screen new applications.

**Response:** To help protect workers from being hired by employers who have been debarred, the Department concurs with the GAO recommendation that all employer-related information collected by the ETA should be considered when screening new applications. ETA currently screens for debarred employers using two mechanisms. First, debarred employers are promptly added to an automated data table in ETA's iCERT System, which matches incoming employer applications using the Federal Employer Identification Number. Second, during case adjudication, the ETA analyst performs a more intensive review of the applications using a more expansive set of employer related information. To achieve greater efficiencies in the screening process, ETA will explore enhancement of its iCERT System's automated matching routine to flag more information (e.g., employer address) on debarred employers for implementation during calendar year 2016.

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**Appendix VII: Comments from the Department  
of Labor**

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**Recommendation 3:** To ensure that H-B workers are adequately protected and that DOL's investigative resources are appropriately focused, the Secretary of Labor should direct the Administrator, Wage and Hour Division, to review its enforcement efforts and conduct a national investigations-based evaluation of H-2B employers.

**Response:** In consultation with the Department's Chief Evaluation Office, WHD prioritizes a range of research, data analysis, and evaluation projects, which consist of external and internal studies. As part of the agency's annual planning process, WHD maintains an evolving directed strategic enforcement program with initiatives at the national and local levels. WHD will incorporate this recommendation into these processes in order to determine an appropriate time and approach for an evaluation of H-2B employers.

**Recommendation 4:** To determine to what extent, if any, the 2-year statute of limitations on debarment limits its use as a remedy for employers who violate program requirements, the Secretary of Labor should direct the Assistant Secretary, Employment and Training Administration, and the Administrator, Wage and Hour Division, and the Inspector General should direct the Assistant Inspector General, Office of Labor Racketeering and Fraud Investigations, to collect data on the nature of the cases where debarment would have been recommended but was not because the 2-year statute of limitations had expired, and based on that data determine whether to pursue a legislative proposal to extend the statute of limitations.

**Response:** WHD and ETA do not currently collect data on cases where debarment would have been recommended but was not because the 2-year statute of limitations had expired. WHD will consider undertaking this sort of data collection on a limited basis in conjunction with any evaluation efforts pursued under the prior recommendation.

Sincerely,



Portia Wu  
Assistant Secretary  
Employment and Training Administration



Laura Fortman  
Deputy Administrator  
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# Appendix VIII: GAO Contact and Staff Acknowledgments

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## Staff Acknowledgments

In addition to the contact named above, Nagla'a El-Hodiri (Assistant Director), Hiwotte Amare, Amy Anderson, Susan Aschoff, Gergana Danailova-Trainor, Isabella Johnson, Revae E. Moran, James Rebbe, Salvatore Sorbello, Jr., Walter Vance, and Shana Wallace made key contributions to this report. Other contributors included Rob Ball, Carl Barden, James Bennett, Kathryn Bernet, Gary Bianchi, Kurt Burgeson, Sara Daleski, Holly Dye, Rebecca Gambler, Gloria Hernandez-Saunders, Leslie Holen, Catherine Hurley, Kathy Leslie, Ted Leslie, Sheila McCoy, Wayne McElrath, Thomas Melito, George Ogilvie, Michael Pahr, Lerone Reid, Stephen Sanford, Brian Schwartz, Andrew Stavisky, Daren Sweeney, Rosemary Torres Lerma, Emily Wilson, Amber Yancey Carroll, and Chris Zbrozek.

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*Immigration Benefits: Consistent Adherence to DHS's Acquisition Policy Could Help Improve Transformation Program Outcomes.* [GAO-12-66](#) (Washington, D.C.: November 22, 2011).

*H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program.* [GAO-11-26](#) (Washington, D.C.: January 14, 2011).

*H-2B Visa Program: Closed Civil and Criminal Cases Illustrate Instances of H-2B Workers Being Targets of Fraud and Abuse.* [GAO-10-1053](#) (Washington, D.C.: September 30, 2010).

*Human Trafficking: A Strategic Framework Could Help Enhance the Interagency Collaboration Needed to Effectively Combat Trafficking Crimes.* [GAO-07-915](#) (Washington, D.C.: July 26, 2007).

*Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad.* [GAO-06-825](#) (Washington, D.C.: July 18, 2006).

*H-1B Visa Program: Labor Could Improve Its Oversight and Increase Information Sharing with Homeland Security.* [GAO-06-720](#) (Washington, D.C.: June 22, 2006).

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