



441 G St. N.W.  
Washington, DC 20548

July 2, 2013

The Honorable Seth D. Harris  
Acting Secretary  
U.S. Department of Labor

Subject: *Actions Needed to Improve the Transparency and Reliability of Labor's Data on the H-2A Program*

Dear Acting Secretary Harris:

At the request of the Chairman of the Senate Subcommittee on Livestock, Dairy, Poultry, Marketing, and Agriculture Security, we recently issued a report about how the Department of Labor (Labor) processes applications from employers seeking temporary foreign agricultural workers under the H-2A program, which allows U.S. employers anticipating a shortage of domestic agricultural workers to hire foreign workers on a temporary basis.<sup>1</sup> As part of that review, we examined Labor's annual data on the number of H-2A applications filed, the number of H-2A worker positions requested, and the number of worker positions approved by Labor to determine whether we could rely on that data for reporting trends in H-2A visa program demand and usage.<sup>2</sup> The purpose of this letter is to summarize our key findings on the reliability of the data and the internal controls identified during our prior work. This letter contains three recommendations for your consideration to improve the transparency and reliability of the H-2A data we reviewed.

## Results in Brief

In pursuing the work on our 2012 report, we found that the number of applications submitted by employers to Labor for H-2A worker positions, the number of H-2A worker positions requested, and the number of worker positions approved by Labor cited in Labor's annual performance reports sometimes differed from those reported by Labor in the data files it makes available to the public on its website (data files). We also found that, in almost three quarters of the cases, the data reported from applications submitted on behalf of multiple employers contained inconsistencies. In 1,469 of the 2,010 multi-employer applications filed between fiscal year (FY) 2006 and FY 2012 (73 percent), the total number of H-2A worker positions requested did not match the sum of the number of worker positions for each of the individual employers listed on the application. On other multi-employer applications, some or all of the employers listed were shown as not requesting any worker positions at all. We found that Labor lacked the internal controls to monitor and prevent these inconsistencies. As a consequence of these differences and inconsistencies, we were unable to rely on the data to draw conclusions about year-to-year trends in usage of the H-2A program and, in some cases, we found the data to be unreliable in

<sup>1</sup> GAO, *H-2A Visa Program: Modernization and Improved Guidance Could Reduce Employer Application Burden*, GAO-12-706 (Washington, D.C.: Sept. 12, 2012).

<sup>2</sup> Labor uses the term "worker position" to refer to the number of individual jobs that an employer is seeking permission to fill with foreign workers. In some cases, an individual worker may fill more than one worker position.

terms of the number and identity of the employers seeking H-2A workers through the program. To inform users of the data's reliability and completeness and to improve the quality of future data, we are recommending that Labor take steps to disclose known limitations of the H-2A data on its website and verify the data on multi-employer applications that identify the number of H-2A worker positions requested by employers. In comments provided on a draft of this letter (see enclosure I), the Department of Labor's Employment and Training Administration (ETA) cited actions it had taken or plans to take to enhance the transparency and reliability of the data reported to the public on the H-2A program in the data files on Labor's website. Citing efforts to streamline application processing, it did not agree with our recommendation that it improve the validity of data on multiemployer applications by collecting separate data on where workers will be employed and where they will be housed and providing additional guidance on how to report requested worker positions. We continue to believe, however, that these steps would support more consistent reporting.

## **Scope and Methodology**

To assess the reliability of Labor's data files with respect to the number of H-2A worker positions requested by employers and the number approved by Labor from FY 2006 through FY 2012, we accessed the data available from files posted on two Labor websites as of March 28, 2013. We reviewed the completeness of the data posted by Labor on these websites on the number of H-2A applications and H-2A worker positions requested by employers and approved by Labor, assessed the consistency of the data by comparing the information on each application with the supporting detail, and attempted to use the data to replicate the statistics published by Labor in its annual performance reports on the H-2A program.<sup>3</sup> We also reviewed Labor's operating procedures and specifications for the design of the new module for Labor's automated system for processing and certifying requests for foreign labor under the H-2A program to understand the internal controls incorporated in the module. Finally, we interviewed Labor staff to obtain information on how the data are used, seek explanations for incomplete or inconsistent records, and understand differences between the data in the files on its website and the statistics provided in its annual performance reports. We reviewed only the data relevant to our work on the H-2A application process; we did not assess the reliability of all of the publicly available H-2A data.

The work that contributed to this performance audit was conducted from October 2011 to June 2013 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **Background**

### **Application process**

Most applications for H-2A worker positions are submitted to Labor by individual employers, but Labor also accepts applications from associations of agricultural employers, H-2A labor or job contractors, and agents representing employers." Labor's instructions to applicants filing a joint employer or master application on behalf of more than one employer direct them to identify the

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<sup>3</sup>We focused on final annual statistics; these reports are updated quarterly.

main (primary) employer and submit an attachment with specific details about each employer for whom the application is being filed.<sup>4</sup> About 19 percent of all H-2A worker positions requested from FY 2006 through FY 2012 were requested via multi-employer applications, and about 6 percent of all applications submitted during that period were multi-employer applications.<sup>5</sup>

## Data quality

Effective March 2010, Labor's H-2A regulations provided that the agency would maintain an electronic file accessible to the public with information on all employers applying for temporary agricultural labor positions.<sup>6</sup> As required, Labor has made the electronic file available on its website. These data, which include information on all employers applying for temporary agricultural labor positions, as well as the number of positions requested and approved, are subject to quality guidelines and Labor recommends specific practices to enhance the quality of the data.<sup>7</sup> Labor's guidelines specify, for example, that information quality is a goal in all phases of product development, which entails applying its policies, procedures, and guidance for quality to information products it has direct authority to control.<sup>8</sup> In addition, GAO's internal control guidance for federal agencies recommends certain activities for information systems, such as performing reconciliations to verify the completeness of the data, validating data to identify errors, and ensuring that erroneous data are captured, reported, investigated, and promptly corrected.<sup>9</sup>

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<sup>4</sup> Specifically, the instructions for the paper H-2A Application, ETA Form 9142, direct that applicants, "...for joint employer or master applications filed on behalf of more than one employer under the H-2A program, identify the main or primary employer in the section below and then submit a separate attachment that identifies each employer by name, mailing address, and total worker positions needed under the application." The instructions further specify that, "In accordance with Federal Regulation, incomplete or obviously inaccurate applications will not be certified by the Department of Labor." Labor's regulations specify that an association filing as a joint employer may file a master application, but the application form and the associated guidance do not define the term "master application," nor does the form collect information on whether the application should be considered a master application.

<sup>5</sup> According to Labor's data, 115,132 of the 612,687 H-2A worker positions requested by employers from FY 2006 through FY 2012 (18.8 percent) were requested via multi-employer applications, and 2,010 of the 34,467 applications the agency received for that period (5.8 percent) were multi-employer applications.

<sup>6</sup> 75 Fed. Reg. 6,884, 6,974-75 (Feb. 12, 2010) (codified at 20 C.F.R. § 655.174 (2012)). Labor officials told us that this regulation codified a longstanding practice of supplying such data. As of April 12, 2013, the data for FY 2006 through FY 2012 were posted in the data files on its website. Labor officials also cited an open government initiative and desire to reduce Freedom of Information Act requests as the impetus for this practice.

<sup>7</sup> All federal data issued to the public are subject to governmentwide data quality guidelines developed by the Office of Management and Budget (OMB) pursuant to the Information Quality Act. For the OMB guidelines, see *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*; Republication, 67 Fed. Reg. 8,452 (Feb 22, 2002). The guidelines may be found at [http://www.whitehouse.gov/omb/fedreg\\_reproducible](http://www.whitehouse.gov/omb/fedreg_reproducible). For the Information Quality Act, see Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, app. C, § 515, 114 Stat. 2763, 2763A-153 - 2763A-154 (2000) (44 U.S.C. § 3516 note). The law is also referred to as the Data Quality Act. Under the act, each agency was to issue guidelines for specifically ensuring the quality of its data and Labor's guidelines were effective in October 2002.

<sup>8</sup> Department of Labor, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor*, Oct. 1, 2002.

<sup>9</sup> *Internal Control Management and Evaluation Tool* (GAO-01-1008G, August 2001).

## **Information disclosure**

Labor makes these data available to the public through annual performance reports and via data files posted to its website. Because all H-2A positions that foreign workers are recruited for must first be made available to U.S. workers, entities such as workforce agencies may use the applicant data to provide U.S. workers with information on the number and locations of available positions.

## **Data collection and reporting**

Labor recently began transitioning to a new system (iCERT) for collecting and reporting data on the H-2A visa programs that allows employers to apply for workers via the internet. Until December 10, 2012, Labor entered data from employers applications for temporary workers into its Case Management System and used this system to collect and report data on the H-2A program. Labor officials report that the new H-2A module in the iCERT system is now being used to collect and report data on the H-2A program, such as the number of H-2A worker positions requested by employers and the number of worker positions approved by Labor. For employers who continue to file paper applications, Labor staff will enter data from their applications into iCERT.

The new system also allows applicants filing a joint or master application on behalf of more than one employer to list all employers for whom worker positions are requested and the number of H-2A worker positions sought by each employer. For example, when an association files an application as a joint employer in iCERT, the system asks for the main or primary employer and each additional employer by name, mailing address, and total worker positions needed.

The number of approved H-2A worker positions Labor records in its data systems is provided to employers on an official certificate that they transmit to the Department of Homeland Security (DHS) to document Labor's approval for them to hire foreign workers. Following review and approval by DHS, this information is provided to the Department of State, which uses the number of approved worker positions to set the number of H-2A visas to be issued.

## **Some of the H-2A Data Labor Publishes in Its Performance Reports Differ From Data Published in Its Data Files**

For the period we examined, the numbers of H-2A applications, requested worker positions, and approved worker positions reported in Labor's annual performance reports sometimes differed from those reported in its data files. Where differences occurred, the data files more often reflected larger numbers than the performance reports. In recent years, the reported numbers of H-2A applications, requested worker positions, and approved worker positions have been nearly identical in Labor's data files and in its annual performance reports, but for the period from FY 2006 to FY 2009, there were some differences in the number of applications reported as well as in the number of requested worker positions (see table 1). For example, for FY 2006, the number of H-2A worker positions requested listed in the data files posted on Labor's website was 10,028 higher than the number of worker positions listed its annual performance report. Similarly, for FY 2009, the number of H-2A worker positions requested listed in the data files posted on Labor's website was 12,216 higher than the number listed in its annual performance report. Consequently, the data from these two sources sometimes pointed to different conclusions about program trends, such as the pace of change in the demand for H-2A workers. Labor officials did not identify reasons for the discrepancies in the numbers of applications

reported, but they attributed differences in the number of worker positions requested to the fact that the data files posted on its website represent the original number of positions requested on applications and said the number of worker positions requested is not consistently updated to reflect the final numbers. According to Labor officials, employers may change the number of H-2A positions requested because of changes in farm conditions, such as weather that affects the produce to be harvested, which necessitates changes in the quantity of H-2A workers needed.

Labor does not indicate on its website that the data files may differ from the figures in its annual performance reports on the H-2A program. As a result, stakeholders, such as workforce agencies and policymakers, may rely on inaccurate data to make decisions about the H-2A program. According to Labor officials, the H-2A data contained in the files posted on its website are used primarily by worker advocacy organizations, such as legal aid organizations representing U.S. workers. These organizations use information on the number of H-2A positions requested by or approved for particular employers, the nature of positions made available, or the names of employers that participate in the program. In a meeting in which we discussed these data issues, Labor officials provided us with a disclaimer that they planned to post to their website to explain the limitations of the H-2A data posted and we confirmed that the disclaimer was subsequently added to the website. However, the disclaimer focused on interpreting data from multi-employer applications and did not address the differences between the numbers in the data files posted on its website and the numbers reported in Labor's annual performance reports.

**Table 1: Data Reported by Labor in Its H-2A Annual Performance Reports and in the Data Files on its Website, FY 2006 through FY 2012**

Indicator of Program Demand or Usage	Fiscal Year						
	2006	2007	2008	2009	2010	2011	2012
<b>Number of H-2A Applications</b>							
Annual performance report	6,717	7,740	8,096	7,857	7,378	7,361	5,475 <sup>b</sup>
Data File	7,468	7,740	8,355	8,145	7,375	7,358	8,047 <sup>b</sup> (5,475)
Difference <sup>a</sup>	-751 (-11%)	0	-259 (-3%)	-288 (-4%)	3 (<.1%)	3 (<.1%)	0
<b>Number of H-2A Positions Requested</b>							
Annual performance report	64,146	80,413	86,134	91,739	89,177	83,844	90,362
Data File	74,174	80,413	90,760	103,955	89,177	83,846	90,362
Difference <sup>a</sup>	-10,028 (-16%)	0	-4,626 (-5%)	-12,216 (-13%)	0	-2 (<.1%)	0
<b>Number of H-2A Positions Approved</b>							
Annual performance report	59,110	76,814	82,099	86,014	79,011	77,246	85,248
Data File	60,917	76,818	82,099	86,014	79,011	77,164	85,248
Difference <sup>a</sup>	-1,807 (-3%)	-4 (<.1%)	0	0	0	82 (.1%)	0

Source: GAO analysis of Labor data.

<sup>a</sup>This row shows the difference between the figures reported in the two sources (Labor's performance report and its data file for the year indicated in the column header) and expresses the size of this difference as a percentage of the figure Labor reported in its performance report.

<sup>b</sup>In Labor's final quarterly report for 2012, the cumulative number of applications identified for the year was over 1,500 fewer than the number it had reported as of the end of the 3<sup>rd</sup> quarter. Although Labor did not provide an explanation for this on its website, Labor appeared to have changed the basis on which it reported application numbers, so that it no longer treated each listed employer as an additional application. We have reported the number that Labor released for 2012 (5,475) and the number calculated consistent with Labor's prior reporting conventions (8,047).

Although there has been little variation in FY 2010 and subsequent years through FY 2012, the earlier differences between the numbers in Labor's annual performance reports and those in the data files on its website introduce uncertainty regarding trends in program usage. For example, the number of H-2A worker positions requested posted in Labor's data files for FY 2009 to FY 2011 indicate that the decline in the number of H-2A positions requested was two and a half times larger than the decline in the number of positions reported in Labor's annual performance reports for the same time period. Similarly, Labor's annual performance reports on requests for H-2A workers for FY 2006 show a markedly smaller number than the data files posted on Labor's website.

## Labor Does Not Control for Inconsistencies in Data on Multi-employer Applications

We found many inconsistencies within multi-employer applications regarding the numbers of H-2A worker positions requested. However, Labor has not incorporated controls in its new data collection procedures to enhance the quality of the data reported on multi-employer applications. While Labor's H-2A application requests detailed data on multi-employer applications, the agency does not check that the total number of H-2A worker positions requested equals the sum of the number of positions requested by each of the individual employers listed on the application. Consequently, the information it reports on multi-employer applications frequently contains inconsistencies. Federal internal control guidance recommends several ways to enhance data quality, such as performing reconciliations to verify the completeness of the data; validating data to identify errors; and ensuring that erroneous data are captured, reported, investigated, and promptly corrected.<sup>10</sup>

The instructions Labor provides to applicants filing a joint employer or master application on behalf of more than one employer direct them to supply the total number of H-2A worker positions requested, as well as detailed information on the number of H-2A positions requested by each employer on whose behalf they are filing, and Labor's regulations and application forms indicate that Labor will not approve incomplete applications. We found, however, that for almost three-quarters of the multiemployer applications (applications that listed more than one employer), the aggregate number of worker positions requested by specific employers listed on the application did not match the total number of H-2A worker positions requested. In additional cases, applications frequently were missing data on the numbers of worker positions requested by some or all of the employers listed on the application.<sup>11</sup>

Labor officials told us that, due to time pressures in processing H-2A applications, they first update the data on the total number of H-2A positions requested on each multi-employer application. Then, as time permits, they update the detailed information on the number of worker positions requested by each employer listed on the application. The officials attributed inconsistencies in the data reported to a variety of causes, including errors introduced by the speed of the approval process and the number of last-minute requests by associations for changes in the number of H-2A worker positions requested, possibly driven by changing farm conditions. Labor officials also noted that, in some cases, multi-employer applications included the names of employers without also showing the number of H-2A worker positions requested by those employers for two reasons: (1) some of these applications include entities that house H-2A workers rather than employ them, or (2) all worker positions were listed with the employer who would provide housing with the result that the actual employers appeared to request no worker positions. In addition, Labor officials told us that some of the 8 percent of multi-employer applications that were approved without any information on workers needed by specific employers may have been for H-2A workers in certain occupations, such as shepherding. Officials said workers in those positions might work simultaneously for a number of different employers. Entities that only house H-2A workers need not be listed on the applications and Labor officials speculated that applicants include them to document the availability of housing.

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<sup>10</sup> *Internal Control Management and Evaluation Tool* ([GAO-01-1008G](#), August 2001).

<sup>11</sup> For 1,469 of the 2,010 multi-employer applications submitted, there were differences between the requests from specific employers listed on the application and the total number of H-2A worker positions requested. Among approved applications, these differences ranged from 1 to 590.

However, Labor's guidance for this portion of the application form provides no specific instructions as to how employers should record situations in which worker positions are shared across employers or the workers who will fill those positions are housed by entities different from those for whom they may work.

Labor does not have internal control mechanisms in place, such as electronic flags or supervisory review, to monitor or prevent H-2A applications containing inconsistencies or missing information from being approved. Labor's new iCERT system will request that applicants enter the number of H-2A positions requested by each employer listed on certain multi-employer applications, but Labor's plans for using the new iCERT module to process H-2A applications do not require that the module contain an edit check that would flag cases in which the detailed information on each employer listed on the application does not match the total number of worker positions requested. Labor officials told us that they believed such controls would slow the approval process while they attempted to reconcile the information, and they did not offer a rationale for not monitoring the occurrence of inconsistencies.

## **Conclusions**

The consistency of the data Labor publishes in its publicly available sources has improved since FY 2009, but without disclosing the historical discrepancies or the reasons for them, the agency risks continuing to provide the public and policymakers with unreliable or misleading information on trends in the demand for and use of the H-2A program by employers—data that its own regulations provide that it will obtain and make available. This information is important not only to policymakers, but also to U.S. workers and their advocates seeking to make use of available employment opportunities. While the improved agreement between the numbers posted in Labor's data files and those in its annual performance reports in recent years is a positive trend, without accurate and transparent historical data on both the number of worker positions requested and applications submitted, it may be difficult to identify trends in program demand and rates of approval of H-2A positions. Labor's new iCERT system provides a good opportunity to address some of these inconsistencies, particularly with multi-employer applications, and to institute internal controls that will enhance data quality. However, without clarifying how applicants should report H-2A worker positions requested by employers on multi-employer applications, including data on workers housed by another entity, it will continue to be difficult to determine how many employers are hiring workers through the H-2A program. Finally, having controls in Labor's new iCERT system that ensure the accuracy of the data collected on the aggregate number of H-2A worker positions requested on multi-employer applications is important because, once the total number of worker positions requested on the application is approved by Labor, it is used by the Department of State to set the number of H-2A visas issued. In addition, worker advocacy organizations and U.S. workers may use the detailed information on each application to determine the number of H-2A positions available from specific employers.

## **Recommendations for Executive Action**

We recommend that the Secretary of Labor direct the Assistant Secretary for Employment and Training to take the following actions:

1. Enhance the transparency of the data reported to the public on the H-2A program in the data files on Labor's website by disclosing the limitations of the data, including that the number of H-2A worker positions requested by employers represents the number requested on their initial applications and does not consistently reflect later changes to

the applications, such as increases or decreases in the number of worker positions requested or approved, and that caution should be applied in using the data to draw conclusions about trends in the H-2A program.

2. Enhance the validity of the data reported in the data files on multi-employer applications by collecting separate data on where workers will be employed and where they will be housed, and by providing additional guidance on how to report requested worker positions.
3. Improve the reliability of the data on H-2A applications filed on behalf of multiple employers in the new H-2A module of the iCERT system by assessing the feasibility of adding data edit checks to the module that would flag inconsistencies in the data. For example, one check could compare the total number of H-2A positions requested on a multi-employer application to the sum of the number of positions listed on the application for each employer listed and flag applications for further review if the numbers do not match.

## **Agency Comments and Our Evaluation**

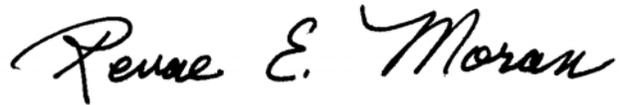
The Department of Labor's Employment and Training Administration (ETA) provided comments on a draft of this letter, which are reproduced in enclosure I. ETA agreed with our recommendations that it take specific actions to enhance the transparency of the data reported to the public on the H-2A program in the data files on Labor's website and improve the reliability of the data on H-2A applications filed on behalf of multiple employers. In its comments, ETA cited actions it had taken or planned to take, such as publishing a notice on its performance data website disclosing data limitations and examining the feasibility of automating a new internal control in its iCert system over the next 6 months. ETA, however, did not agree with our recommendation that it enhance the validity of the data reported on multi-employer applications by collecting separate data on where workers will be employed and where they will be housed, and by providing additional guidance on how to report requested worker positions. In its response, ETA stated that, to streamline the processing of applications, it allows agricultural associations filing as joint employers to list the farms or other locations where workers will be housed on the same attachment as the farms where workers will be employed. We continue to believe, however, that allowing applicants to report this information on the same form introduces confusion as to which farms will employ the workers and where they will be housed, which requires different actions on the part of Labor, and that applicants may require additional guidance to support consistent reporting.

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This report is intended for use by the management of the Department of Labor. Copies will be made available to others upon request. The report is also available at no charge on GAO's homepage at <http://www.gao.gov>. If you or your staff have any questions concerning this letter,

please contact me at (202) 512-7215 or [moranr@gao.gov](mailto:moranr@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of our report. GAO staff who made key contributions to this report are listed in enclosure II.

Sincerely,

A handwritten signature in black ink that reads "Revae E. Moran". The signature is written in a cursive style with a large, stylized initial 'R'.

Revae Moran  
Director, Education, Workforce and Income Security Issues  
U.S. Government Accountability Office

## Enclosure I: Comments from the Department of Labor

U.S. Department of Labor

Assistant Secretary for  
Employment and Training  
Washington, D.C. 20210



JUN 17 2013

Ms. Revae Moran  
Director  
Education, Workforce, and  
Income Security Issues  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft Management Letter: *Actions are Needed to Improve the Transparency and Reliability of Labor's H-2A Data* containing GAO's analysis of H-2A program data.

We know that our H-2A program data are routinely requested by members of Congress, the public workforce system, academic researchers, the media, and other stakeholders interested in understanding program trends to inform policy and program decision-making. As such, the Department is committed to continuously improving the transparency and reliability of program data collected to administer employment-based immigration programs, and we are continuing to make progress in helping the public understand how many employers use the H-2A program as well as trends in program workload and outcomes. For example, on July 18, 2012, we established a dedicated performance page on the Employment and Training Administration, Office of Foreign Labor Certification's (OFLC) Web site so that the public can access annual performance reports, an interactive map of annual workload data, quarterly selected statistical factsheets, and longitudinal case-level record data.

Our H-2A performance data demonstrates that agricultural employers are successfully using the program. Although GAO cites inconsistencies between the total number of workers requested per agricultural association application and the sum of the number of workers requested by each employer member in 73 percent or 1,469 of agricultural association applications processed since Fiscal Year (FY) 2006, the Department notes that these instances represent less than 3 percent of all H-2A applications processed during that timeframe. The Department also observes that when examining the number of H-2A worker positions approved on applications filed by agricultural associations, an important data point for understanding certified employer demand for foreign labor; GAO found no data inconsistencies for the most recent five fiscal years.

The GAO's letter identified the following three recommendations for the Department to address:

1. *Enhance the transparency of the data reported to the public on the H-2A program in the data files on Labor's website by disclosing limitations of the data, including that the number of H-2A workers positions requested by employers represents the number requested on their initial applications and does not consistently reflect later changes to the applications, such as increases or decreases in the number of worker positions requested or approved, and that caution should be used in using the data to draw conclusions about trends in the H-2A program.*

The Department agrees that disclosing potential limitations applicable to H-2A program data enhances program transparency. To that end, in March 2013, OFLC published a notice on its Performance Web page (<http://www.foreignlaborcert.doleta.gov/performance/data.cfm>) disclosing the limitations of using H-2A case data. Specifically, this notice explained how application data are entered, processed, and extrapolated from individual cases, as well as and identifies limitations of the data specific to agricultural associations.

We understand that the GAO was specifically concerned with data related to H-2A applications filed by agricultural associations acting as a joint-employer with its members. The Department's regulations and data collection system provides flexibilities for agricultural associations by permitting the filing of master applications, allowing the associations to estimate the number of worker positions needed for each member, allowing "real-time" amendments to pending applications in the event of climatic changes or other market conditions, and permitting the transfer of workers from one member to another listed on a certified H-2A application. We often accommodate requests from agricultural associations to change the number of worker positions or revise the members listed on an H-2A application, even when those requests occur just before the statutorily required certification deadline of 30 calendar days before the start date of work. Although these last-minute changes are not always reflected in our electronic case record, we consider that the H-2A program data are, as a whole, reliable. We recognize, however, the need to educate the public about this data limitation.

We also understand that the GAO was concerned that certain H-2A data in OFLC's annual reports was different than case-level public disclosure data from FY 2006. The H-2A program data utilized for OFLC's annual reports are extracted at a different time period than the quarterly case-level disclosure data and then sanitized for outliers prior to any statistical aggregation. Again, we recognize the need to educate the public about this data limitation, and we believe the notice on OFLC's Performance Web page addresses these data limitations.

*2. Enhance the validity of data reported in the data files on multi-employer applications by collecting separate data on where workers will be employed and where they will be housed, and by providing additional guidance on how to report requested worker positions.*

The Department does not agree with this recommendation. Agricultural associations are already required by regulation to list the name, address, total number of workers needed, and the crops and agricultural work to be performed for each employer member that will employ H-2A workers. To streamline the processing of applications, the Department allows

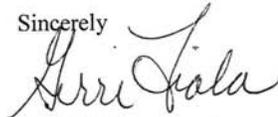
agricultural associations filing as joint employers to list the farms or other locations (e.g., temporary labor camps) where workers will be housed on the same attachment as the farms that will employ workers. When the agricultural association needs to adjust the number of workers requested or remove one or more employer members from a pending application, OFLC performs this action promptly with minimal disruption in application processing, thereby avoiding delays in workers reaching farms to perform vital work. The information we currently collect from employers allows us to process the H-2A applications in a timely manner.

*3. Improve the reliability of the data on H-2A applications filed on behalf of multiple employers in the new H-2A module of the iCERT system by assessing the feasibility of adding data edit checks to the module that would flag inconsistencies in the data. For example, one check could compare the total number of H-2A positions requested on a multi-employer application to the sum of the number of positions listed on the application for each employer listed and flag applications for further review if the numbers do not match.*

The Department agrees that one important aspect of maintaining program integrity involves the use of internal controls to ensure data reliability. On February 7, 2013, OFLC implemented a new procedure to more accurately reconcile the number of worker positions requested and certified for each employer member listed on an H-2A application filed by an association acting as a joint-employer. More specifically, in those very limited circumstances where a decision to issue a partial certification (e.g., reducing the original number of worker positions requested) is reached, the OFLC will promptly contact the agricultural association to ascertain which of its employer members will be receiving fewer workers than were originally requested. Once a response is received, the revised data are entered on the H-2A application record using the iCERT Visa Portal System before the OFLC issues a final certification decision. Although we believe this procedure adequately addresses the recommendation, OFLC will also examine the feasibility of automating this new internal control in its iCERT System over the next six months.

Although we believe the steps described above address the GAO recommendations, we welcome the opportunity for additional discussion designed to improve the level of transparency and understanding of our data.

Sincerely



Gerri Fiala  
Acting Assistant Secretary

## **Enclosure II: GAO Contact and Staff Acknowledgements**

### **GAO Contact**

Revae Moran, (202) 512-7215 or [moranr@gao.gov](mailto:moranr@gao.gov)

### **Staff Acknowledgements**

In addition to the contact listed above, key contributors to this report were Betty Ward-Zukerman, Assistant Director, Hiwotte Amare, Jeff Miller, Kathleen Van Gelder, and Craig Winslow.

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