

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.

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) debar—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.