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H-1B VISA PROGRAM

More Oversight by Labor Can Improve Compliance with Program Requirements

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Highlights of [GAO-06-901T](#), a testimony before the Subcommittee on Immigration, Border Security and Claims, Committee on the Judiciary, House of Representatives.

Why GAO Did This Study

The H-1B visa program assists U.S. employers in temporarily filling certain occupations with highly-skilled foreign workers. There is considerable interest regarding how Labor, along with Homeland Security and Justice, is enforcing the requirements of the program. This testimony summarizes our report, GAO-06-720, that describes how Labor carries out its H-1B program responsibilities and how Labor works with other agencies involved in the H-1B program.

What GAO Recommends

The Congress should consider eliminating the restriction on Labor using information from Homeland Security to initiate an investigation and directing Homeland Security and Labor to share information on employers that may not be fulfilling program requirements., GAO recommends that Labor improve its checks of employers' applications; and that Homeland Security's U.S. Citizenship and Immigration Services (USCIS) include Labor's application case number in its new information technology system. Homeland Security agreed with our recommendations. Labor questioned whether more stringent checks were necessary and believes Congress intentionally limited Labor's role and placed program integrity with USCIS. We believe there are cost-effective methods that Labor could use to check the applications more stringently that would enhance the integrity of the H-1B process.

www.gao.gov/cgi-bin/getrpt?GAO-06-901T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Sigurd Nilsen at (202) 512-7215 or nilsens@gao.gov.

H-1B VISA PROGRAM

More Oversight by Labor Can Improve Compliance with Program Requirements

What GAO Found

While Labor's H-1B authority is limited in scope, it does not use its full authority to oversee employers' compliance with program requirements. Labor's review of employers' applications to hire H-1B workers is timely, but lacks quality assurance controls and may overlook some inaccuracies. From January 2002 through September 2005, Labor electronically reviewed more than 960,000 applications and certified almost all of them. Labor's review of the applications is limited by law to checking for missing information or obvious inaccuracies and does this through automated data checks. However, in our analysis of Labor's data, we found more than 3,000 applications that were certified even though the wage rate on the application was lower than the prevailing wage for that occupation. We also found approximately 1,000 certified applications that contained erroneous employer identification numbers, which raises questions about the validity of the applications. In its enforcement efforts, Labor's Wage and Hour Division (WHD) investigates complaints made against H-1B employers. From fiscal year 2000 through fiscal year 2005, Labor reported an increase in the number of H-1B complaints and violations, and a corresponding increase in the number of employer penalties. In fiscal year 2000, Labor required employers to pay back wages totaling \$1.2 million to 226 H-1B workers; by fiscal year 2005, back wage penalties had increased to \$5.2 million for 604 workers. Program changes, such as a higher visa cap in some years, could have been a contributing factor. In April 2006, WHD began randomly investigating willful violators of the program's requirements. Labor uses education as its primary method of promoting compliance with the H-1B program by conducting compliance assistance programs and posting guidance on its web site.

Labor, Homeland Security, and Justice all have responsibilities under the H-1B program, but Labor and Homeland Security face challenges sharing information. After Labor certifies an application, USCIS reviews it but cannot easily verify whether employers submitted petitions for more workers than originally requested on the application because USCIS's database cannot match each petition to Labor's application case number. Also, during the process of reviewing petitions, staff may find evidence that employers are not meeting their H-1B obligations. For example, Homeland Security may find that a worker's income on the W-2 is less than the wage quoted on the original application. USCIS may deny the petition if an employer is unable to explain the discrepancy, but it does not have a formal process for reporting the discrepancy to Labor. Moreover, current law precludes WHD from using this information to initiate an investigation of the employer. Labor also shares enforcement responsibilities with Justice, which pursues charges filed by U.S. workers who allege they were displaced by an H-1B worker. From 2000 through 2005, Justice found discriminatory conduct in 6 out of the 97 investigations closed, and assessed a total of \$7,200 in penalties.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to assist you in your oversight of the H-1B nonimmigrant visa program. This program was established to assist U.S. employers in temporarily filling certain positions with highly-skilled foreign workers. Employers who want to hire H-1B workers must attest to meeting certain labor conditions—such as notifying all employees of the intention to hire H-1B workers and offering H-1B nonimmigrants the same benefits as U.S. workers. A small number of H-1B employers are required to make additional attestations concerning the non-displacement and recruitment of U.S. workers. In recent years, employers have requested more of these workers than are allowed to come into the country—the cap on H-1B visas has been reached before or shortly after the beginning of each fiscal year. Currently, the annual number of H-1B workers authorized to enter the United States is 65,000, but in previous years the cap has been as high as 195,000.

Several agencies are involved in the H-1B visa program. The Departments of Labor (Labor), Homeland Security (Homeland Security), and Justice (Justice) each have specific responsibilities during certain stages of the H-1B visa process, ranging from reviewing and approving an employer's request to hire an H-1B worker, to investigating complaints from both U.S. and foreign workers. The Department of State also has a role in issuing the worker's visa. Recently, there has been considerable interest regarding how Labor, in conjunction with the other agencies, is ensuring that employers comply with the requirements of the H-1B program.

I will draw on the results of a report we are releasing today that was conducted at the request of Chairmen Sensenbrenner and Hostettler, Ranking Member Jackson Lee, and Representative Smith, which describes (1) how Labor carries out its H-1B program responsibilities and (2) how Labor works with other agencies involved in the H-1B program.¹ To address these questions, we interviewed officials from Labor, Homeland Security's U.S. Citizenship and Immigration Services (USCIS), and Justice. We also reviewed laws and regulations pertaining to the H-1B program. We analyzed data on the applications electronically reviewed by Labor as well as data on the H-1B complaints received by Labor and the outcomes of the associated investigations. We also analyzed data on the H-1B petitions

¹*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.

received by USCIS and conducted site visits to the California and Vermont service centers. Finally, we analyzed reports from Justice regarding the outcomes of its investigations into charges of U.S. worker displacement by H-1B workers. A detailed discussion of our methodology is available in our full report.

In summary, Labor's oversight of the H-1B program is limited even within the scope of its existing authority. Labor's review of employers' H-1B applications is limited by law to identifying omissions and obvious inaccuracies, but we found it does not consistently identify all obvious inaccuracies. For example, Labor certified more than 3,000 applications even though the wage on the application was lower than the wage the employers were required to pay for that occupation and location. Labor's Wage and Hour Division (WHD) enforces H-1B program requirements by investigating complaints made against H-1B employers and recently began random investigations of previous program violators. From fiscal year 2000 through fiscal year 2005, complaints and violations increased but changes in the program, such as temporary increases in visa caps, may have been a factor. Labor shares H-1B responsibilities with Homeland Security and Justice, but Labor and Homeland Security face challenges sharing information across agencies. Homeland Security cannot easily verify whether employers submitted petitions for more workers than they originally requested on their application to Labor because USCIS's data system does not match each petition to Labor's application case number. Additionally, during the process of reviewing petitions, USCIS staff told us they may find evidence that employers are not meeting their H-1B obligations. However, USCIS does not have a formal mechanism to report such information to Labor, and current law precludes WHD from using this information to initiate an investigation of an employer. Justice pursues charges filed by U.S. workers alleging they were not hired or were displaced so that an H-1B worker could be hired instead, but it has not found discriminatory conduct in most cases.

To increase employer compliance with the H-1B program and protect the rights of U.S. and H-1B workers, Congress should consider eliminating the restriction on Labor using petition information submitted by employers to Homeland Security as the basis for initiating an investigation. Congress should also consider directing Homeland Security to provide Labor with information received during the adjudication process that may indicate an employer is not fulfilling its H-1B responsibilities. To strengthen oversight of employers' applications to hire H-1B workers and to help ensure employers are complying with program requirements, we recommend that Labor improve its procedures for checking for completeness and obvious

inaccuracies, and, as Homeland Security's USCIS transforms its information technology system, it include Labor's application case number in the new system.

The agencies gave us technical comments on our report and Homeland Security agreed with our recommendations. Labor questioned whether more stringent checks were necessary and believes Congress intentionally limited Labor's role and placed program integrity with USCIS.

We believe there are cost-effective methods Labor could use to check the applications more stringently that would enhance the integrity of the H-1B process.

Background

The H-1B program was created by the Immigration Act of 1990, which amended the Immigration and Nationality Act (INA).² The H-1B visa category was created to enable U.S. employers to hire temporary workers as needed in specialty occupations, or those that require theoretical and practical application of a body of highly specialized knowledge. It also requires a bachelor's or higher degree (or its equivalent) in the specific occupation as a minimum requirement for entry into the occupation in the United States.³ The Immigration Act of 1990 capped the number of H-1B visas at 65,000 per fiscal year.

Since the creation of the H-1B program, the number of H-1B visas permitted each fiscal year has changed several times. Congress passed the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), which increased the limit to 115,000 for fiscal years 1999 and 2000. In 2000, Congress passed the American Competitiveness in the Twenty-First Century Act (AC-21), which raised the limit to 195,000 for fiscal year 2001 and maintained that level through fiscal years 2002 and 2003. The number of H-1B visas reverted back to 65,000 thereafter.⁴

² The H-1 non-immigrant category was created under the Immigration and Nationality Act of 1952 to assist U.S. employers needing workers temporarily. Non-immigrants are foreign nationals who come to the United States on a temporary basis and for a specific purpose, such as to attain education and work.

³ Fashion models of distinguished merit and ability also qualify for H-1B visas and do not need to meet the definition of specialty occupation.

⁴ However, under AC-21 and the H-1B Visa Reform Act of 2004, some H-1B workers—such as those being hired by institutions of higher education, nonprofit or government research organizations, or those with a master's or higher degree from a U.S. institution—may be exempt from the annual cap.

Generally, an H-1B visa is valid for 3 years of employment and is renewable for an additional 3 years.

Filing an application with Labor's Employment and Training Administration is the employer's first step in hiring an H-1B worker,⁵ and Labor is responsible for either certifying or denying the employer's application within 7 days. By law, it may only review applications for omissions and obvious inaccuracies. Labor has no authority to verify the authenticity of the information. Employers must include on the application information such as their name, address, rate of pay and work location for the H-1B worker, and employer identification number. All employers are also required to make four attestations on the application as to:

1. **Wages:** The employer will pay non-immigrants at least the local prevailing wage or the employer's actual wage, whichever is higher, and pay for nonproductive time caused by a decision made by the employer; and offer nonimmigrants benefits on the same basis as U.S. workers.
2. **Working conditions:** The employment of H-1B nonimmigrants will not adversely affect the working conditions of U.S. workers similarly employed.
3. **Strike, lockout, or work stoppage:** No strike or lockout exists in the occupational classification at the place of employment.
4. **Notification:** The employer has notified employees at the place of employment of the intent to employ H-1B workers.

Certain employers are required to make three additional attestations on their application. These additional attestations apply to H-1B employers who: (1) are H-1B dependent, that is, generally those whose workforce is comprised of 15 percent or more H-1B nonimmigrant employees; or (2) are found by Labor to have committed either a willful failure to meet H-1B program requirements or misrepresented a material fact in an application during the previous 5 years. These employers are required to additionally attest that: (1) they did not displace a U.S. worker within the period of 90 days before and 90 days after filing a petition for an H-1B worker;

⁵ Employers can submit applications to Labor up to 6 months prior to the H-1B worker's intended employment date.

(2) they took good faith steps prior to filing the H-1B application to recruit U.S. workers and that they offered the job to a U.S. applicant who was equally or better qualified than an H-1B worker; and (3) prior to placing the H-1B worker with another employer, they inquired and have no knowledge as to that employer's action or intent to displace a U.S. worker within the 90 days before and 90 days after the placement of the H-1B worker with that employer.⁶

After Labor certifies an application, the employer must submit a petition for each worker it wishes to hire to USCIS. On March 1, 2003, Homeland Security took over all functions and authorities of Justice's Immigration and Naturalization Service under the Homeland Security Act of 2002 and the Homeland Security Reorganization Plan of November 25, 2002. Employers submit to USCIS the application, petition, and supporting documentation along with the appropriate fees. Information on the petition must indicate the wages that will be paid to the H-1B worker, the location of the position, and the worker's qualifications. Through a process known as adjudication, USCIS reviews the documents for certain criteria, such as whether the petition is accompanied by a certified application from Labor, whether the employer is eligible to apply for H-1B workers, and whether the prospective H-1B worker is qualified for the position.

The Wage and Hour Division of Labor's Employment Standards Administration performs investigative and enforcement functions to determine whether an employer has complied with its attestations on the application. An aggrieved individual or entity⁷ or certain non-aggrieved parties may file a complaint with Labor that an employer violated a requirement of the H-1B program. To conduct an investigation, the Administrator must have reasonable cause to believe that an employer did not comply with or misrepresented information on its application.

⁶ These additional requirements first applied from January 19, 2001—September 30, 2003. However, the provision requiring these attestations sunsetted, or expired, and was not reinstated until March 8, 2005. Consequently, from October 1, 2003, to March 7, 2005, H-1B dependent employers and willful violator employers were not required to make the additional attestations, and, in effect, were able to hire H-1B workers even if they displaced U.S. workers and did not make efforts to recruit U.S. workers.

⁷ An aggrieved individual can be an H-1B worker, a U.S. worker, or a bargaining representative for workers; an aggrieved entity can be another federal agency, such as the Department of State, or a competitor who is adversely affected by the employer's alleged non-compliance with the application.

Employers who violate any of the attestations on the application are subject to civil money penalties or administrative remedy, such as paying back wages to H-1B workers or debarment, which disqualifies an employer from participating in the H-1B program for a specified period of time. Employers, the person who filed the complaint, or other interested parties who disagree with the findings of the investigation then have 15 days to appeal by requesting an administrative hearing.

The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) of the Department of Justice also has some enforcement responsibility. Under statutory authority created by the Immigration Reform and Control Act of 1986, OSC pursues charges of citizenship discrimination brought by U.S. workers who allege that an employer preferred to hire an H-1B worker.

Labor Does Not Use Its Full Authority to Oversee Employers' Compliance with Program Requirements

Labor's H-1B authority is limited in scope, but it does not use its full authority to oversee employers' compliance with program requirements. Labor's review of employers' applications to hire H-1B workers overlooks some inaccuracies, such as applications containing invalid employer identification numbers. WHD investigates complaints made against H-1B employers and recently began random investigations of some employers who had previously violated program requirements. Labor uses education as the primary method of promoting employers' compliance with the H-1B program.

Labor's Review of Employers' Requests Is Fast but May Overlook Some Inaccuracies

Labor reviews applications electronically⁸ by subjecting them to data checks, and its web site informs employers that it will certify or deny applications within minutes based on the information entered. We found that of the 960,563 applications that Labor electronically reviewed from January 2002 through September 2005, it certified 99.5 percent.

Labor's review of the application is limited by law to identifying omissions or obvious inaccuracies. Labor defines an obvious inaccuracy as when an employer:

⁸ As of January 2006, Labor required applications to be submitted electronically. Special mail application filing procedures are available for employers without Internet access or with physical disabilities.

- files an application after being debarred, or disqualified, from participating in the H-1B program;
- submits an application more than 6 months before the beginning date of the period of employment;
- identifies multiple occupations on a single application;
- states a wage rate that is below the Fair Labor Standards Act minimum wage;
- identifies a wage rate that is below the prevailing wage on the application; and
- identifies a wage range where the bottom of the range is lower than the prevailing wage on the application.

Despite these checks, Labor’s system does not consistently identify all obvious inaccuracies. For example, although the overall percentage was small, we found 3,229 applications that were certified even though the wage rate on the application was lower than the prevailing wage for that occupation in the specific location (see table 1).⁹

Table 1: Examples of Wage Rates and Prevailing Wages on Labor Condition Applications That Were Incorrectly Certified

Sample applications	Application wage rate	Application prevailing wage	Application status
Application 1 FY 2002	\$60,163 per year	\$83,833 per year	Certified
Application 2 FY 2003	\$37,784 per year	\$52,876 per year	Certified
Application 3 FY 2004	\$32,000 per year	\$35,000 per year	Certified
Application 4 FY 2005	\$55,000 per year	\$75,000 per year	Certified

Source: GAO analysis of Department of Labor data.

Additionally, Labor does not identify other errors that may be obvious. Specifically, Labor told us its system reviews an application’s employer

⁹ Prior to the enactment of the H-1B Visa Reform Act of 2004, Labor’s regulations permitted employers to pay actual wages that were only 95 percent of the prevailing wage. Our analysis only includes those cases where the actual wage rate was less than 95 percent of the prevailing wage.

identification number¹⁰ to ensure it has the correct number of digits and that the number does not appear on the list of employers who are ineligible to participate in the H-1B program. However, we found 993 certified applications with invalid employer identification number prefixes. Officials told us that in other programs, such as the permanent employment program, Labor matches the application's employer identification number to a database with valid employer identification numbers. However, they do not formally do this match with H-1B applications because it is an attestation process, not a verification process.

Likewise, Labor officials told us they frequently review the application process to determine where improvements can be made, but they rely on a system of data checks rather than a formal quality assurance process because of the factual nature of the form and the number of applications received. Also, officials said if they conducted a more in-depth review of the applications, they could overreach their legal authority and increase the processing time for applications. Additionally, they said the integrity of the H-1B program is ensured through enforcement and by the fact that there is actual review by staff when the employer submits the paperwork to USCIS.

Labor Investigates Complaints, and Has Begun the Process of Randomly Investigating Previous Violators

Labor enforces H-1B program requirements primarily by investigating complaints filed against employers by H-1B workers or others. Labor's Wage and Hour Division received 1,026 complaints from fiscal year 2000 through fiscal year 2005. Labor officials said they investigate the employer's compliance with all program requirements for all H-1B workers; therefore, an investigation may yield more than one violation.

While the number of H-1B complaints and violations has increased from fiscal year 2000 through fiscal year 2005, the overall numbers remain small and may have been affected by changes to the program. As shown in table 2, we found that the number of complaints increased from 117 in fiscal year 2000 to 173 in fiscal year 2005, and the number of cases with violations more than doubled, along with a corresponding increase in the number of employer penalties. In fiscal year 2000, Labor required employers to pay back wages totaling \$1.2 million to 206 H-1B workers; by

¹⁰ The employer identification number is used by the Internal Revenue Service to identify taxpayers who are required to file business tax returns. The number has nine digits and is issued in the XX-XXXXXXX format.

fiscal year 2005, back wages penalties had increased to \$5.2 million for 604 workers. The most common type of violation each fiscal year involved a failure to pay H-1B workers the required wage. Labor officials told us it is difficult to attribute changes in complaints and violations to any specific cause because of multiple legislative changes to the program, such as the temporary increase in the number of H-1B workers allowed to enter the country and the additional attestations for certain employers that expired and then were reinstated.

Table 2: H-1B Complaints, Violations, Back Wages Due, and Civil Money Penalties Assessed

Fiscal year	Number of complaints	Number of cases with violations	Amount of back wages due (millions)	Number of employees due back wages	Civil money penalties assessed	H-1B fiscal year cap ^a
2000	117	93	\$1.2	226	\$21,000	115,000
2001	192	67	0.6	135	17,750	195,000
2002	238	210	3.8	830	48,350	195,000
2003	148	264	4.0	552	136,890	195,000
2004	158	271	4.2	390	114,125	65,000
2005	173	217	5.2	604	103,350	65,000
Total	1,026	1,122	19.0	2,737	441,465	N/A

Source: GAO analysis of Department of Labor, Wage and Hour Division data, the American Competitiveness and Workforce Improvement Act of 1998, and the American Competitiveness in the Twenty-First Century Act of 2000.

^a N/A = not applicable.

Labor’s Wage and Hour Division has recently begun random investigations of employers who have willfully violated H-1B program requirements in the past. Under the INA, as amended, Labor has had the authority to conduct these investigations since 1998, but officials told us the agency had not done so until recently for several reasons. First, these employers frequently go out of business because they are not allowed to participate in the H-1B program for a period of time. Second, there are only a limited number of willful violators—just 50 nationwide in late fiscal year 2005. In addition, we were told that H-1B investigators have heavy caseloads. However, Labor officials said they now have 59 cases that they can investigate, and in April 2006, directed each of their regional offices to initiate a random investigation of at least one employer prior to the end of fiscal year 2006.

Labor Relies Primarily on Education to Promote Employer Compliance

Labor uses education as the primary method of promoting employer compliance with the H-1B program. From 2000 through 2005, Labor's district offices conducted six presentations on H-1B compliance. Labor also holds compliance seminars in response to requests from employer associations and discusses program requirements with companies that do not have pending lawsuits related to the H-1B program. Additionally, Labor posts guidance and fact sheets on its web site. While some of its fact sheets have not been updated since the program was amended by the H-1B Visa Reform Act in 2004, officials said 26 new fact sheets will be posted on the agency's web site by the end of fiscal year 2006. During investigations of employers, Labor explains the employer's legal obligations and asks the employer about the changes it plans to make to comply with the law. When an investigation results in an employer's debarment, Labor publicizes the case through press releases highlighting the consequences for not complying with H-1B program requirements. Labor is also working with the Department of State to provide information cards to H-1B workers when they are issued their visa. These cards inform them about their employment rights, including required wages and benefits, illegal deductions, working conditions, records, and discrimination.

Homeland Security and Justice also use education to promote employer compliance with the H-1B program. Homeland Security publishes informational bulletins and uses its web site to advise the public of any changes to the program regarding filing fees or eligibility resulting from changes in the law. Justice engages in educational activities through public service announcements aimed at employers, workers, and the general public. The agency trains employers and works with other federal agencies to coordinate employer education programs. Justice also uses a telephone intervention hotline to resolve disputes between U.S. workers and H-1B employers, answers questions submitted via e-mail, issues guidance, and provides information on its web site.

Labor and Homeland Security Face Challenges Sharing Information

Labor, Homeland Security, and Justice all have responsibilities under the H-1B program, but Labor and Homeland Security face challenges sharing information that could help identify possible program violations. In addition to Homeland Security, Labor also shares enforcement responsibilities with Justice, which pursues charges filed by U.S. workers who allege that they were not hired or were displaced because of an H-1B worker. Justice has found discriminatory conduct in relatively few cases.

Labor and Homeland Security Coordinate to Process Employers' Requests to Hire H-1B Workers, but Do Not Use Certain Information to Investigate Possible Violations

Homeland Security reviews Labor's certified application as part of the adjudication process; however, it cannot easily verify whether employers have submitted petitions for more workers than originally requested on the application. USCIS's data system does not match each petition to its corresponding application because the system does not include a field for the unique number Labor assigns each application. As a result, USCIS cannot easily verify how many times the employer has used a given application or which petitions were supported by which application, potentially allowing employers to use the application for more workers than they were certified to hire. USCIS told us that while it has attempted to add Labor's application case number to its database, it has not been able to because of the system's memory limitations and it will be several years before a new information technology system is operational.

During the process of reviewing employers' petitions, USCIS may find evidence the employer is not meeting the requirements of the H-1B program, but current law precludes Labor's Wage and Hour Division from using this information to initiate an investigation of the employer. Some petitions to extend workers' H-1B status have been submitted with W-2 forms where the wage on the W-2 was less than the wage the employer indicated it would pay on the original Labor application, according to USCIS staff. If the employer is unable to adequately explain the discrepancy, USCIS may deny the petition but does not have a formal mechanism for reporting these discrepancies to Labor. Moreover, even if USCIS did report these cases, current law precludes WHD from using the information to initiate an investigation. According to officials from Labor, it does not consider Homeland Security to be an aggrieved party; therefore, Labor would not initiate an investigation based on information received from, or a complaint filed by, Homeland Security.

Justice Handles U.S. Worker Cases

Justice pursues charges filed by U.S. workers who allege that an H-1B worker was hired in their place. Such charges may be resolved before an administrative law judge, through an out-of-court settlement, or by dismissal for lack of reasonable cause to believe that a violation occurred. From 2000 through 2005, no cases were heard by an administrative law judge. Most of the 101 investigations started by Justice from 2000 through 2005 were found to be incomplete, withdrawn, untimely, dismissed, or investigated without finding reasonable cause for a violation. Of the

97 investigations closed, Justice found discriminatory conduct in 6 cases, and assessed \$7,200 in penalties in 3 of the 6 cases, all in 2003.¹¹

Conclusion and Recommendations

We found that Labor—in coordination with Homeland Security—could provide better oversight of employers’ compliance with H-1B visa program requirements. Even though Labor’s authority to review applications is limited, it is certifying some applications that do not meet program requirements or have inaccurate information. Additionally, USCIS may find information in the materials submitted by an H-1B employer that indicates the employer is not complying with the program requirements. However, these employers may not face consequences because USCIS does not have a formal mechanism for reporting this information to Labor, and current law restricts Labor from using such evidence to initiate an investigation. USCIS also has an opportunity to improve its oversight by matching information from its petition database with Labor’s application case number to detect whether employers are requesting more H-1B workers than they were originally certified to hire. As Congress deliberates changes to U.S. immigration policy, it is essential to ensure that employers comply with program requirements designed to protect both domestic and H-1B workers.

To increase employer compliance with the H-1B program and protect the rights of U.S. and H-1B workers, Congress should consider the following two actions:

- Eliminate the restrictions on Labor using petition information submitted by employers to Homeland Security as the basis for initiating an investigation, and
- Direct Homeland Security to provide Labor with information received during the adjudication process that may indicate whether an employer is fulfilling its H-1B responsibilities.

¹¹ In the three cases where penalties were assessed, employers advertised for only H-1B workers for various information technology positions. Upon receiving notice of the charges, the employers immediately agreed not to post discriminatory advertising in the future and to take steps to recruit U.S. workers (as well as permanent and temporary residents, refugees, and asylees). In these cases, minimum penalties were imposed because there were no identifiable victims and, by statute, penalties are capped at \$2,200 per violation or individual. In the three cases where penalties were not assessed, discrimination against U.S. workers appeared to be inadvertent, not intentional.

Further, we recommend that Labor strengthen its oversight of employers' applications to hire H-1B workers by improving its procedures for checking for completeness and obvious inaccuracies, including developing more stringent, cost-effective methods of checking for wage inaccuracies and invalid employer identification numbers. We also recommend that USCIS ensure employers' compliance with the program requirements by including Labor's application case number in its new information technology system, so that adjudicators are able to quickly and independently ensure that employers are not requesting more H-1B workers than were originally approved on their application to Labor.

We provided a draft of our report to the Departments of Labor, Homeland Security, and Justice for their review and comments. Each agency provided technical comments, which we incorporated as appropriate. Justice did not have formal comments on our report.

Homeland Security agreed with our recommendations, and stated that USCIS intends to include Labor's application case number in its new information technology system.

Labor questioned whether our recommendation for more stringent application review measures is supported by the low error rate that we found, as well as whether the benefits of instituting such measures would equal or exceed the added costs of implementing them. In addition, Labor said that Congress intentionally limited the scope of Labor's application review in order to place the focus for achieving program integrity on USCIS.

We believe that Labor is at risk of certifying H-1B applications that contain more errors than were found in the scope of our review. For example, we checked only for employer identification numbers with invalid prefix codes, and did not look for other combinations of invalid numbers or data. Therefore, we do not know the true magnitude of the error rate in the certification process. We continue to believe there are cost-effective methods that Labor could use to check the applications more stringently that would enhance the integrity of the H-1B process.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

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Acknowledgments**

For information regarding this testimony, please contact Sigurd R. Nilsen, Director, Education, Workforce, and Income Security Issues, on 202-512-7215. Individuals making key contributions to this testimony include: Alicia Puente Cackley, Gretta L. Goodwin, Amy J. Anderson, Pawnee A. Davis, Sheila McCoy and Rachael C. Valliere.

Related GAO Products

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.

Homeland Security: Better Management Practices Could Enhance DHS's Ability to Allocate Investigative Resources. [GAO-06-462T](#). Washington, D.C.: March 28, 2006.

Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud. [GAO-06-259](#). Washington, D.C.: March 10, 2006.

Homeland Security: Visitor and Immigrant Status Program Operating, but Management Improvements Are Still Needed. [GAO-06-318T](#). Washington, D.C.: January 25, 2006.

Immigration Benefits: Improvements Needed to Address Backlogs and Ensure Quality of Adjudications. [GAO-06-20](#). Washington, D.C.: November 21, 2005.

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