

## **BRIEFLY...**

Highlights of Report Number 06-12-001-03-321, issued to the Assistant Secretary for Employment and Training.

### **WHY READ THE REPORT**

The Office of Inspector General (OIG) audited the Employment and Training Administration's (ETA) role in the H-2B visa program. This audit expanded the work we completed in our previous report issued September 30, 2011, which focused on four H-2B forestry employers in Oregon. In that report, we recommended that ETA develop and implement procedures to strengthen their application review and post-adjudication process because of weaknesses we noted with ETA's employer validation and prevailing wage submissions on their H-2B application.

The H-2B non-immigrant program permitted employers to hire foreign workers to enter the U.S. to perform temporary non-agricultural services or labor on a one-time, seasonal, peakload, or intermittent basis. Employers submitted H-2B applications to the Department of Labor's (DOL) Office of Foreign Labor Certification (OFLC) within ETA. To obtain H-2B certification and comply with employment protections, employers self-attested that U.S workers capable of performing the job were not available and that the employment of foreign workers would not adversely affect the wages and working conditions of similarly employed U.S. workers.

### **WHY OIG CONDUCTED THE AUDIT**

We conducted our audit to answer the question:

Did ETA's management of the H-2B program ensure adequate protections for U.S. workers?

Our audit work was conducted at the ETA Headquarters' Office of Foreign Labor Certification, the Chicago National Processing Center, and onsite visits to 31 of 33 employers from Texas, Pennsylvania, Maryland, North Carolina, California, and South Dakota.

### **READ THE FULL REPORT**

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2012/06-12-001-03-321.pdf>.

**September 2012**

## **MANAGEMENT OF H-2B PROGRAM NEEDS TO BE STRENGTHENED TO ENSURE ADEQUATE PROTECTIONS FOR U.S. WORKERS**

### **WHAT OIG FOUND**

The OIG found ETA's management of the H-2B program needs to be strengthened to ensure adequate protections for U.S. workers. Our audit revealed that 27 of the 33 employers could not support attestations made on their applications. Our findings in employment attestations, immigration, and pre-filing recruitment indicated systemic weaknesses stemming from ETA's post-adjudication audit process and the H-2B regulations' self-attestation based model. These systemic weaknesses increased the risk of unsubstantiated employer attestations and jeopardized the protections afforded by the program to U.S. workers.

Specifically, ETA: (1) did not request necessary source documents when conducting its post-adjudication audits; (2) did not validate foreign worker employment eligibility; (3) performed most of its post-adjudication audits six months after the H-2B employment period ended; and (4) did not request supporting documentation to be submitted at the time of application. These issues allowed U.S. employers to not recruit and employ qualified U.S. workers, thus depriving domestic workers of employment opportunities.

### **WHAT OIG RECOMMENDED**

The OIG recommended ETA: 1) develop an alternative methodology when conducting its post-adjudication audits; 2) collaborate with Department of Homeland Security (DHS) to explore ways for ETA to review U.S. Citizenship and Immigration Services documents during ETA post-adjudication audits; 3) begin post-adjudication audits no later than 120 days into the approved employment period of the selected application and complete within 70 days; and 4) continue pursuing regulatory action and explore other ways to ensure the integrity of the program including, but not limited to, legislative changes designed to expand ETA's pre-approval validation authority.

ETA generally agreed with three of the four recommendations. Based on ETA's response to our second and fourth recommendations, we modified them to emphasize that ETA should seek regulatory changes and take other actions to ensure the integrity of the H-2B program.