

U.S. Department of Labor

Office of Inspector General—Office of Audit

**REPORT TO THE
EMPLOYMENT AND TRAINING
ADMINISTRATION**



**ETA CAN IMPROVE ITS MANAGEMENT
OF THE H-2A PROGRAM**

**DATE ISSUED: FEBRUARY 25, 2025
REPORT NUMBER: 06-25-001-03-321**



BRIEFLY...

ETA CAN IMPROVE ITS MANAGEMENT OF THE H-2A PROGRAM

Why We Did the Audit

The Employment and Training Administration (ETA) Office of Foreign Labor Certification is responsible for administering DOL's H-2A Temporary Agricultural Program, including reviewing applications and issuing temporary labor certifications. The program allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the United States (U.S.) to perform agricultural labor or services of a temporary or seasonal nature.

Based on 20 C.F.R. Part 655 and Departmental regulations that provide worker protections and employer requirements concerning wages and working conditions, we performed an audit to answer the following question:

Did ETA's management of the H-2A program ensure employers properly recruited U.S. workers, paid the prevailing wage, and provided proper housing to foreign workers?

What We Found

We found, based on our review of sampled H-2A applications, that ETA's management of the H-2A program generally ensured applications were in compliance with 20 C.F.R. Part 655 for properly recruiting U.S. workers, paying the prevailing wages, and providing proper housing to foreign workers. However, improvements can be made

to ensure prevailing wages are correctly paid and sufficient post adjudication reviews are completed.

Our audit found 5 of the 45 (11 percent) certified H-2A applications reviewed were certified with the incorrect prevailing wage at the time of certification. ETA's decision to not require the employer to modify the application to the correct prevailing wage creates the risk that foreign workers may not be paid correctly and fails to capture the correct wage as part of the certified case file.

Furthermore, our audit concluded that the number of post adjudication audits performed represented a small portion of the universe of applications certified during the period of January 1, 2022, through March 31, 2023. While ETA conducts these audits to enhance the integrity of its program, the agency had not properly updated its formal methodology or process for establishing the number of post adjudication audits to perform based on a determination of risk.

For the post adjudication audits reviewed, we identified ETA did not obtain sufficient documentation from employers. In 5 of the 6 (83 percent) post adjudication audits we reviewed, employers did not provide sufficient documentation to determine whether employees were properly compensated for wages earned and other expenses. Additionally, we found analysts did not provide a rationale or evidence to document how they determined employers' compliance with program requirements reviewed. ETA has no specific and standardized guidelines that an analyst must follow. As a result, ETA may face a higher likelihood of program non-compliance and may be unable to verify if employers properly recruited U.S. workers, paid the prevailing wage, and provided proper housing to foreign workers.

What We Recommended

We made four recommendations to ETA to improve program integrity by enhancing and implementing written procedures to ensure: (1) H-2A applications have the correct wage information when certified by analysts, (2) post adjudication audits target a representative number of applications for the level of risk in its application process, (3) analysts obtain sufficient evidence of payment of wages and expenses, and (4) analysts provide a rationale and obtain evidence to document how they determine employers' compliance with the program requirements reviewed. ETA agreed with two recommendations and partially agreed with the other two recommendations. We will monitor ETA's corrective action plans to resolve the recommendations.

Read the Full Report

For more information, go to:

<https://www.oig.dol.gov/public/reports/oa/2025/06-25-001-03-321.pdf>

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INSPECTOR GENERAL'S REPORT

Lenita Jacobs-Simmons
Deputy Assistant Secretary
for Employment and Training
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

This report presents the results of the U.S. Department of Labor (Department or DOL) Office of Inspector General's (OIG) audit of the Employment and Training Administration's (ETA) oversight of the H-2A Temporary Agricultural Program. The H-2A Temporary Agricultural Program allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the United States to perform agricultural labor or services of a temporary or seasonal nature. Employment of a seasonal nature is tied to a certain time of year by an event or pattern—such as a short annual growing cycle—and requires labor levels above what is necessary for ongoing operations. Employment is of a temporary nature when the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year.

For an employer to meet the requirements of the H-2A Temporary Agricultural Program, the Department must determine that:

1. There are not sufficient able, willing, and qualified U.S. workers available to perform the agricultural labor or services of a temporary or seasonal nature for which an employer desires to hire temporary foreign workers (H-2A workers); and
2. The employment of the H-2A worker(s) will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.

Departmental regulations at 20 C.F.R. Part 655 provide worker protections and employer requirements concerning wages and working conditions. ETA's Office of Foreign Labor Certification has the responsibility for administering the Department's H-2A program, including reviewing applications and issuing temporary labor certifications.

The H-2A Temporary Agricultural Program also allows employment of foreign workers in jobs related to the herding or production of livestock on the range. These occupations are unique due to their location in remote areas and the requirement to work a non-traditional regular schedule involving workers generally being on call 24 hours per day, 7 days per week.

Based on Departmental regulations at 20 C.F.R. Part 655, we conducted a performance audit to answer the following question:

Did ETA’s management of the H-2A program ensure employers properly recruited U.S. workers, paid the prevailing wage,¹ and provided proper housing to foreign workers?

To answer our objective, we interviewed administrators and personnel from ETA Headquarters and its Chicago National Processing Center and reviewed established policies and procedures. We obtained and analyzed a universe of H-2A applications that received a full certification, partial certification, or denial. Then, we reviewed a sample of H-2A applications from that population to validate evidence of proper recruitment efforts, compliance with the prevailing wage, and provision of proper housing. Also, we analyzed a sample of post adjudication audits for certified H-2A applications and evaluated evidence and documentation to determine compliance. See Appendix A for additional details on scope and methodology.

RESULTS

During our review of the H-2A application process, we found ETA’s management of the H-2A program generally ensured applications were in compliance with 20 C.F.R. Part 655 for recruitment, wages, and housing. However, improvements can be made to ensure prevailing wages are correctly paid and sufficient post adjudication reviews are completed.

Our audit found most of the certified H-2A applications we reviewed resulted in proper recruitment of U.S. workers, payment of the prevailing wage, and proper housing provided to foreign workers. Specifically, ETA ensured proper recruitment through interstate job clearance systems and the website SeasonalJobs.dol.gov. In addition, ETA ensured the employer was providing housing that complied with the applicable local, state, or federal standards.

¹ For purposes of this report, the term “prevailing wage” is used to describe the offered wage rate, which is at or above the highest of these five rates: Adverse Effect Wage Rate (AEWR), a prevailing wage rate, the agreed-upon collective bargaining wage, the federal minimum wage, the state minimum wage, or any other wage rate the employer intends to pay.

However, some applications were certified with the incorrect prevailing wage at the time of certification.

Furthermore, our audit concluded that the number of post adjudication audits performed represented a small portion of the universe of certified applications during the period of January 1, 2022, through March 31, 2023. ETA officials selected applications for audit based on their assessment of program risk for the period they were reviewing and the resources available to complete the audits. However, they did not document how and why those selections were made. Additionally, ETA has not documented updates to its methodology or process for establishing the number of post adjudication audits to perform based on a determination of risk. For the post adjudication audits reviewed, we identified ETA did not request sufficient documentation to determine whether foreign workers were paid correctly and received proper reimbursements for transportation- and subsistence-related expenses.

Specifically, we found:

- 5 of the 45 (11 percent) certified H-2A applications reviewed were certified with the incorrect prevailing wage at the time of certification.
- The number of post adjudication audits performed represents 0.1 percent of certified H-2A applications during the period of January 1, 2022, through March 31, 2023.
- 5 of the 6 (83 percent) post adjudication audits reviewed did not include sufficient documentation to determine whether employees were properly compensated for wages earned and travel expenses.

In addition, we found analysts did not provide rationale or evidence to document how they determined employers' compliance with program requirements reviewed. As a result, ETA may face a higher likelihood of program non-compliance and may be unable to verify if employers properly recruited U.S. workers, paid the prevailing wage, and provided proper housing to foreign workers.

ETA Did Not Ensure Applications Were Certified with the Correct Wage Information

As a result of our review, we found ETA can make improvements to ensure wages are correctly paid. Our review of 45 certified H-2A applications identified 5 applications (11 percent) in which the listed prevailing wage, or Adverse Effect

Wage Rate (AEWR), was incorrectly listed at the time the application was certified. The employer submitted the application with the AEWR in effect at the time of application. However, by the time the analyst certified the application, the AEWR had changed. Instead of requiring the employer to modify the application, the analyst certified the application with the incorrect AEWR and issued a “Notice of AEWR Change” to the employer. The “Notice of AEWR Change” notifies the employer of the Federal Register Notice concerning the AEWR change but does not identify the new rates in writing. See the Table below for the five applications with different AEWRs.

Table: H-2A Applications Certified with Incorrect Prevailing Wage Information

Example Number	AEWR at Time of Application (\$/hour)	AEWR at Time of Certification (\$/hour)	AEWR Amount Difference Between Application and Certification	AEWR Percentage Difference Between Application and Certification
1	\$16.05	\$17.51	\$1.46	8.3%
2	\$13.15	\$14.16	\$1.01	7.1%
3	\$15.58	\$16.34	\$0.76	4.7%
4	\$11.88	\$12.45	\$0.57	4.6%
5	\$15.89	\$16.47	\$0.58	3.5%

Source: OIG analysis

According to 20 C.F.R. Part 655.120(b)(3) Offered Wage Rate - AEWR Determinations:

If an updated AEWR for the occupational classification and geographic area is published in the Federal Register during the work contract, and the updated AEWR is higher than the highest of the previous AEWR, a prevailing wage for the crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity and geographic area, the agreed-upon collective bargaining wage, the Federal minimum wage, or the State minimum wage, the employer must pay at least the updated AEWR upon the effective date of the updated AEWR published in the Federal Register.

ETA officials explained that their policy is for analysts to certify the application with the incorrect prior year prevailing wage, or AEWR, and to include a courtesy notification letter directing the employer to pay the correct prevailing wage. ETA

requires analysts to include this letter in the certification package transmitted to the employer. Also, the letter is retained within the Foreign Labor Application Gateway (FLAG) system—the primary system used to process H-2A applications and document post adjudication audits. ETA stated analysts cannot modify the application without the employer’s permission. Accordingly, ETA claimed requesting the employer to modify the application could delay a timely certification, which interferes with statutory timeframes.

However, ETA’s management decision to not require the employer to modify the application to the correct prevailing wage, or AEWR, creates the risk that foreign workers may not be paid correctly and fails to capture the correct wage as part of the certified case file in FLAG. Furthermore, since ETA performs a small number of post adjudication audits, it is unlikely ETA can ensure foreign workers are paid the correct wage.

**ETA Performed Post Adjudication Audits
Representing 0.1 Percent of Total H-2A
Applications Certified**

Between January 1, 2022, and March 31, 2023, ETA certified 29,203 applications. However, during the same time frame, ETA performed 33 post adjudication audits. This represented 0.1 percent of certified H-2A applications.

At its discretion, ETA conducts post adjudication audits to enhance program integrity. The agency requires employers to submit documentation and evidence demonstrating compliance with the terms and conditions of the H-2A applications, such as recruitment efforts and paying the correct wage to foreign workers.

In 2022, the H-2A program began using a risk-based selection method. However, ETA has not documented updates to its methodology or process for establishing the number of post adjudication audits to perform based on a determination of risk.

Also, in 2022, ETA formed the H-2A Integrity Work Group to perform post adjudication audits, but this group does not select or determine the number of audits to perform. ETA officials selected cases to audit based on resources available (e.g., fewer resources available during the peak season of November through April). For our sample population, cases were selected based on stakeholders’ input regarding issues from specific regions and analysts’ input based on their role processing applications.

According to the U.S. Government Accountability Office’s Standards for Internal Control in the Federal Government, ETA’s management should establish and operationalize activities to monitor internal control systems and evaluate results. Specifically, these standards state:

since internal control is a dynamic process that has to be adapted continually to the risks and changes an entity faces, monitoring of the internal control system is essential in helping internal control remain aligned with changing objectives, environment, laws, resources, and risks. Internal control monitoring assesses the quality of performance over time and promptly resolves the findings of audits and other reviews. Corrective actions are a necessary complement to control activities in order to achieve objectives.

Our audit determined ETA had not properly updated its formal methodology for establishing how many post adjudication audits should be conducted based on its risk assessment. ETA’s use of a small audit sample representing a small portion of the universe increases the risk of fraud and noncompliance going undetected. ETA stated that the H-2A program relies on employers to self-attest on the application to abide by certain terms, assurances, and obligations as a condition for receiving a temporary labor certification from the Department. However, ETA’s reliance on employers’ self-attestations increases the risk of material misstatements and/or intentional incidents of noncompliance going undetected. As a result, ETA may face a higher likelihood of program noncompliance.

ETA Determined Compliance Through Post Adjudication Audits Without Sufficient Documentation

We found that, for 5 of the 6 post adjudication audits (83 percent) reviewed, ETA did not obtain sufficient documentation from the employer to validate that the employees received payments for wages earned and travel expenses incurred. As a result, we were unable to validate whether those payments were made to the employee.

As part of the post adjudication audit process, ETA requested specific information from the employer through a Notice of Audit Examination Letter to validate compliance with the program regulations. Employers provided ETA with various forms of documentation, such as bank statements, logs, payroll records, and checks issued to individual employees. Although efforts were made by ETA to validate the requested documentation, we determined that the employers did

not provide sufficient evidence that payments were actually received (i.e., receipts of endorsed/processed checks, direct deposits, and/or wire transfers that showed the payment coming from the employer and being received by the employee). As a result, we believe ETA was not able to sufficiently validate whether employees were properly paid and reimbursed for expenses.

Specifically, we found:

- Two employers were issued a compliance letter by ETA acknowledging that the employers had responded to their request for audit documentation in a timely manner and the Department would not take further action with respect to the audit examination. However, the OIG was unable to validate whether employees of the two audited employers received payments for wages earned and travel expenses, notably:
 - One employer provided a scanned document and a spreadsheet, which captured the hours worked and wage earnings. The employer also provided a scanned document for all 17 employees that captured transportation costs, including mileage, bus fare, housing, and other related expenses. However, the documentation was not sufficient to validate that the employees received the necessary payments.

Additionally, the documentation examined showed that the transportation and temporary housing reimbursement amounts were the same for all 17 H-2A workers, despite the workers' varying start dates.
 - The second employer provided various scanned documents capturing the hours worked, wages earned, and bank check stubs issued to employees. The employer also provided bank check stubs for transportation reimbursements. However, the documentation did not allow us to validate that employees received payments.
- One employer received a warning letter from ETA because the employer failed to: (1) demonstrate a temporary need for employees, (2) provide the employees' home address on their earnings records, (3) provide documentation of reimbursements of expenses, such as lunches and gasoline, and (4) provide documentation demonstrating that employees were reimbursed for travel expenses. However, we were unable to determine whether

employees received payments for wages earned. The employer provided a scanned document detailing the days of work, hours, hourly rate, deductions, and total pay for a pay period consisting of 2 weeks. However, the employer did not provide sufficient documentation to validate that employees received payments.

- In reviewing another post adjudication audit, we found the employer received a warning letter from ETA because foreign workers were employed beyond the certification period. However, we were unable to validate whether employees received payments for wages earned and travel expenses incurred. The employer provided scanned documents from its payroll system capturing the hours worked, wage earnings, photocopies of the front of paychecks, and timesheets for each employee. The employer also provided a scanned document listing its employees and the reimbursement amounts for transportation. However, the employer did not provide sufficient documentation to validate that employees received payments.
- In the final post adjudication audit reviewed, the employer received a warning letter because it failed to prove the temporary need for workers. However, we found that, although the warning letter was issued, the FLAG Audit Checklist listed all items reviewed as compliant. Furthermore, we were unable to validate whether employees of the same employer received payments for wages earned and travel expenses incurred. The employer provided scanned documents from its payroll system capturing the hours, wage earnings, rate of pay, and total pay. The employer also provided scanned documents for transportation reimbursements. This included scanned copies of the front of checks issued to each employee and forms that listed travel reimbursement amounts. However, the employer did not provide sufficient documentation to validate that employees received payments.

The U.S. Government Accountability Office, Government Auditing Standards, 2018 Revision, Section 8.92 – Requirements: Evidence states:

In determining the sufficiency of evidence, auditors should determine whether enough appropriate evidence exists to address the audit objectives and support the findings and conclusions to the extent that would persuade a knowledgeable person that the findings are reasonable.

ETA's Comprehensive Audit Standard Operating Procedures do not provide any description or guidance on the specific type of evidence that is appropriate and sufficient to support audit conclusions. In addition, the procedures do not require a uniform method of documenting audit reviews and final determinations. Furthermore, the procedures, which are outdated and relevant to a system no longer used, have not been updated to reflect the migration of the process in 2020 from the previous system to FLAG. As a result, there are no specific and standardized guidelines that an analyst must follow when assessing and documenting evidence reviewed in making a final determination for an audit.

Without obtaining sufficient and appropriate evidence to provide reasonable assurance that wages are paid properly, and expenses are reimbursed in accordance with 20 C.F.R. Part 655.120 (b)(3), ETA cannot ensure employers complied with their attestations on the application. This leaves foreign workers susceptible to improperly paid wages, incorrect reimbursement of expenses, and further employer abuse. It also undermines the self-attestation application process if ETA does not use adequate evidence in its post adjudication audits to ensure employers complied with the laws and regulations to which they attested in their applications. Use of a self-attestation process should involve a robust post adjudication review to ensure the wages and working conditions of similarly employed workers in the United States are not adversely affected.

OIG'S RECOMMENDATIONS

We recommend the Assistant Secretary for Employment and Training:

1. Enhance and implement written policies or procedures to ensure H-2A applications have the correct wage information when certified by analysts.
2. Enhance and implement written policies or procedures for post adjudication audits that target a representative number of applications appropriate for the level of risk in its application process.
3. Enhance and implement written policies or procedures that provide specific guidelines to ensure analysts obtain sufficient evidence of payment of wages earned and expenses incurred.
4. Enhance and implement written policies or procedures to ensure analysts provide a rationale and obtain sufficient evidence to document how they determine employers' compliance with the program requirements reviewed.

Analysis of Agency's Comments

In response to a draft of this report, ETA agreed with two of our four recommendations and provided corrective actions. However, ETA only partially agreed with the remaining two recommendations. While we clarified some of our report language in response to ETA's comments, there were no material changes to our findings. Synopses of ETA's comments and our corresponding responses are detailed as follows:

- ETA agreed with Recommendation 1 and stated that it would update written procedures for the AEWL Change Notification Letters, to include the new AEWL rate and to ensure the correct wage amount is documented within the H-2A application record.
 - The OIG agrees with the proposed procedural updates and application record documentation.

- ETA partially agreed with Recommendation 2 and stated it would enhance and implement written policies or procedures for post adjudication audit selections—specifically, documenting the reasoning for the risk factor selection and the number of audits selected. ETA stated that staff resource availability is a concern. Application levels in most programs have doubled or tripled, and nearly all case adjudication resources are dedicated to processing labor certification applications, leaving limited resources available to conduct audit examinations to ensure employer compliance with program requirements. As an alternative approach, ETA recommends updating its Risk-Based Audit Selection SOP, established in 2020, to include detailed reasoning for the quantity of audits selected and the associated risk factor for each group of audit selections.
 - The OIG agrees with the proposal to enhance and implement written policies or procedures for post adjudication audit selections to document the reasoning for the risk factor selection and the number of audits selected. We also agree with the alternate approach of updating the Risk-Based Audit Selection SOP to include detailed reasoning for the quantity of audits selected and the associated risk factor for each group of audit selections.

- ETA partially agreed with Recommendation 3 and stated that it would enhance and implement written policies or procedures to provide specific guidelines on how it obtains evidence of payment of wages earned and expenses incurred within the scope of H-2A regulations and policies. ETA disagreed with the OIG's conclusion of what is considered sufficient evidence. ETA believes that the types of documentation the OIG recommends ETA request and review, related to the evidence of payment

- of wages and expenses, falls under the jurisdiction of the Department's Wage and Hour Division. As an alternative approach, ETA recommends enhancing and implementing a guidance document to include direction on how to: (1) detail appropriate documentation to request when initiating audits, (2) evaluate the documentation, (3) determine additional evidence to request if the analyst has concerns about the evidence provided, and (4) arrive at a final evaluation in accordance with H-2A regulations and policy.
- The OIG agrees with the proposal to enhance and implement written policies or procedures to provide specific guidelines on how it obtains evidence of payment of wages earned and expenses incurred within the scope of H-2A regulations and policies. We also agree with the alternate approach of enhancing and implementing a guidance document to address the four elements described.
 - ETA agreed with Recommendation 4 and stated that it would update the H-2A Post-Certification Audit SOP, established in 2020, to reflect current procedures performed within the FLAG module implemented in late 2022.
 - The OIG agrees with the proposed updates to the H-2A Post-Certification Audit SOP.

We look forward to working with ETA personnel to ensure the intent of the recommendations is addressed.

The agency's response to the draft report is included in its entirety in Appendix B. We appreciate the cooperation and courtesies ETA extended us during this audit.



Laura B. Nicolosi
Assistant Inspector General for Audit

APPENDIX A: SCOPE AND METHODOLOGY

Scope

The audit covered ETA's oversight of H-2A Foreign Labor Certification applications with decision dates between January 1, 2022, and March 31, 2023, and H-2A Office of Foreign Labor Certification post adjudication audits conducted between January 1, 2022, and March 31, 2023.

Methodology

We conducted this performance audit 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To answer our audit objective, we:

- Reviewed established policies and procedures to gain an understanding of ETA's process for certifying H-2A applications.
- Interviewed administrators and analysts within ETA's Chicago National Processing Center to determine how recruitment occurred through: (1) state workforce agency use of interstate job clearance systems, (2) employers seeking employees from the previous year/season and soliciting their return to the job, and (3) SeasonalJobs.dol.gov.
- Interviewed administrators and analysts within the Chicago National Processing Center. We asked questions to determine what oversight activities occurred to ensure H-2A workers' pay complied with the prevailing wage at the time work was performed. Furthermore, we inquired about oversight activities to ensure employers provided housing that complied with the applicable local, state, or federal standards.
- Obtained a universe of H-2A applications that received a full certification, partial certification, or denial with decision dates between January 1, 2022, and March 31, 2023. We statistically selected a sample of 50 applications from that universe to validate

- evidence and documentation of: (1) recruitment efforts, (2) offers of the correct prevailing wage, and (3) availability of properly certified and approved housing prior to the anticipated work start date.
- Interviewed administrators and analysts within the Chicago National Processing Center regarding the methods used and documentation captured when conducting post adjudication audits. We then obtained a universe of post adjudication audits conducted on H-2A applications between the dates of January 1, 2022, and March 31, 2023, and judgmentally selected a sample of seven to review. These seven sampled cases did not overlap with our sample of applications selected. Of the seven, six cases were audited by the Chicago National Processing Center. One case was not audited because the employer did not use its H-2A certification as it hired a U.S. worker before the anticipated work start date. For the six audited cases, we evaluated evidence and/or documentation provided by the employer to determine compliance with the items requested in the Notice of Audit Examination Letter.

Internal Controls

In planning and performing our audit, we assessed ETA's internal controls relevant to our audit objective by obtaining an understanding of those controls and assessing control risks relevant to our objective. We considered the internal control elements of control environment, risk assessment, control activities, information and communication, and monitoring during our planning and substantive phases, and evaluated relevant controls. The objective of our audit was not to provide assurance of internal controls; therefore, we did not express an opinion on ETA's internal controls. However, our consideration of internal controls for administering the accountability of the H-2A program would not necessarily disclose all matters that might be significant deficiencies. Because of the inherent limitations on internal controls, or misstatements, noncompliance may occur and not be detected.

Data Reliability

We assessed the reliability of ETA's H-2A data reported online via FLAG by performing completeness, consistency, and accuracy tests. Through our testing, we found inaccuracies that we considered immaterial. Despite these issues, we determined the data was sufficiently reliable for our testing purposes as our intention was to only use the data set to determine program compliance.

Criteria

- 20 C.F.R. Part 655 Temporary Agriculture Employment of H-2A Aliens in the United States: 2010 Final Rule
- 20 C.F.R. Part 655 (ETA) Temporary Agriculture Employment of H-2A Aliens in the United States: 2022 Final Rule
- 86 Federal Register 71282, Notice – Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rates for Non-Range Occupations in 2022
- 20 C.F.R. § 653.501 - Requirements for Processing Clearance Orders
- 20 C.F.R. Part 655 - Temporary Employment of Foreign Workers in the United States

Prior Relevant Coverage

During the last 4 years, the OIG has issued two reports of significant relevance to the subject of this report, as follows:

1. DOL Needs to Improve Debarment Processes to Ensure Foreign Labor Program Violators are Held Accountable, Report No. 06-20-001-03-321 (September 30, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/06-20-001-03-321.pdf>; and
2. Overview of Vulnerabilities and Challenges in Foreign Labor Certification Programs, Report No. 06-21-001-03-321 (November 13, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2021/06-21-001-03-321.pdf>.

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

The agency's response to our draft report follows.



December 20, 2024

MEMORANDUM FOR:

CAROLYN R. HANTZ
Assistant Inspector General for Audit

FROM:

JOSÉ JAVIER RODRÍGUEZ

A handwritten signature in black ink, appearing to read "JJR".

SUBJECT:

Response to Draft Report – *ETA Can Improve Its
Management of the H-2A Program*, Report No.
06-25-XXX-03-321

The U.S. Department of Labor's (Department) Employment and Training Administration (ETA) appreciates the opportunity to respond to the above-referenced draft report from the Office of Inspector General (OIG). Below are ETA's observations on the draft report, followed by ETA's responses to the recommendations.

ETA appreciates the OIG acknowledging in the draft report that "ETA's management of the H-2A program generally ensured applications were in compliance with 20 C.F.R. Part 655 for recruitment, wages, and housing." The OIG recognized the complexities of the H-2A program, and the efforts made by ETA to ensure working conditions did not adversely affect U.S. farmworkers.

The draft report discusses ETA's authority to ensure employer compliance with wage-related obligations under the H-2A program. Given the complexity of the H-2A regulations, ETA identified sections in the OIG's draft report on the wage-related obligations that use terms that differ from their regulatory definition or misconstrue responsibilities. ETA would like to clarify that in the H-2A program, the definition of prevailing wage is a wage rate established by the Office of Foreign Labor Certification (OFLC) Administrator for a crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity and geographic area based on a survey conducted by a state that meets the requirements in 20 C.F.R. 655.120(c). Under the H-2A regulations at 20 C.F.R. 655.120(a), a prevailing wage is one of six wage sources, along with the Adverse Effect Wage Rate (AEWR), the highest of which employers must offer and pay.

Additionally, ETA wants to clarify that the regulatory scope of determining whether a wage offer is compliant with the regulations is different from assuring that the worker was actually paid that amount. OFLC's purview, including post-certification audits, is focused on wage offered and wage advertised compliance and not on determining factuality of wages paid.

Lastly, the correct regulatory citation for offered wage rate compliance is 20 C.F.R. 655.120(a), and the correct regulatory citation for reimbursement of travel expenses is 20 C.F.R. 655.122(h).

The increasing number of H-2A applications received each year continues to impact ETA's ability to meet short statutory timeframes. As a result, staffing resources must be directed to processing applications which severely impacts ETA's ability to conduct post-certification audits. In the President's Fiscal Year (FY) 2025 Budget¹, the Department warned Congress that workload increases in recent years, when combined with limited appropriated resources, creates significant constraints on OFLC case processing. In FY 2023, OFLC received its highest-ever application levels, with a record number of applications submitted in the H-2A, H-2B, PERM, and Prevailing Wage programs. Over the past decade, the application levels in most of OFLC's programs have doubled or tripled, with the Department receiving three times more H-2A and H-2B applications in FY 2023 than in FY 2014. Additionally, while application levels have significantly increased, inflation-adjusted funding for federal foreign labor certification case adjudications decreased 13 percent from FY 2010 to FY 2023. When combined with statutory and regulatory processing timeframes in the temporary labor certification programs, nearly all of OFLC's case adjudication resources are dedicated to processing labor certification applications to mitigate the risk of delays, leaving limited resources available to conduct audit examinations to ensure employer compliance with program requirements.

ETA appreciates the OIG's ongoing efforts to improve the integrity of the foreign labor certification programs and the collaborative way the OIG works with ETA to better protect U.S. and foreign workers in their employment while also increasing the integrity of the H-2A program.

Responses to the Recommendations

Please find below each of the recommendations contained in the draft report, followed by ETA's proposed corrective actions to address the recommendations.

Recommendation 1: Enhance and implement written policies or procedures to ensure H-2A applications have the correct wage information when certified by analysts.

ETA Response: ETA agrees with this recommendation. ETA plans to update written procedures for the AEWR Change Notification Letters to include the new AEWR rate and to ensure the correct wage amount is documented within the H-2A application record. The Administrator for OFLC is responsible for this recommendation.

Recommendation 2: Enhance and implement written policies or procedures for post adjudication audits that target a representative number of applications appropriate for the level of risk in its application process.

ETA Response: ETA partially agrees with this recommendation. ETA agrees to enhance and implement written policies or procedures for post-adjudication audit selections to document the reasoning for the risk factor selection and the number of audits selected. However, ETA disagrees with the omission of staff resource availability as an additional factor with level of risk when determining the appropriate number of applications to select for an audit.

¹ Fiscal Year 2025 Congressional Budget Justification, Employment and Training Administration - [CBI-2025-V1-07.pdf](#).

As an alternative approach, ETA recommends updating the Risk-Based Audit Selection standard operating procedure (SOP) established in 2020 to include detailed reasoning for the quantity of audits selected and the associated risk factor for each group of audit selections. If the OIG accepts this alternative approach, the Administrator for OFLC will be responsible for this recommendation.

Recommendation 3: Enhance and implement written policies or procedures that provide specific guidelines to ensure analysts obtain sufficient evidence of payment of wages earned and expenses incurred.

ETA Response: ETA partially agrees with this recommendation. ETA agrees to enhance and implement written policies or procedures to provide specific guidelines on how OFLC obtains evidence of payment of wages earned and expenses incurred within the scope of H-2A regulations and policies. However, ETA disagrees with the OIG's conclusion of what is considered sufficient evidence. The OIG has consistently indicated that ETA was unable to validate if employees received payment for wages. However, the OIG failed to identify the specific authority that requires ETA to conduct validation.

ETA is authorized to audit and request evidence that further supports the employer's compliance with H-2A applications post-certification. ETA believes that the types of documentation the OIG recommends ETA request and review, related to the evidence of payment of wages and expenses, falls under the jurisdiction of the Department's Wage and Hour Division (WHD). WHD has enforcement authority to ensure employers have complied with their obligations to H-2A workers and workers in corresponding employment.

As an alternative approach, ETA recommends enhancing and implementing a guidance document to: 1) detail appropriate documentation to request when initiating audits, 2) identify how to evaluate the documentation, 3) determine additional evidence to request if the analyst has concerns about the evidence provided, and 4) determine how to arrive at a final evaluation in accordance with H-2A regulations and policy. If the OIG accepts this alternative approach, the Administrator for OFLC will be responsible for this recommendation.

Recommendation 4: Enhance and implement written policies or procedures to ensure analysts provide a rationale and obtain sufficient evidence to document how they determine employers' compliance with the program requirements reviewed.

ETA Response: ETA agrees with this recommendation. ETA plans to update the H-2A Post-Certification Audit SOP established in 2020 to reflect current procedures performed within the Foreign Labor Application Gateway module implemented in late 2022. The Administrator for OFLC is responsible for this recommendation.

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