

# **Vulnerabilities of and Protections Needed for Temporary Workers**

## **Farm Workers in Mexico and the United States**

November 15, 2017

# Overview

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- Introduction
- Background
- Findings
- Conclusions
- Recommendations

## Introduction

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- Violence Against Women Reauthorization Act of 2013 mandated review of the use of foreign labor in the U.S. and overseas
- Focused on H-2A and H-2B workers
- Research questions addressed:
  - Number of H-2A and H-2B workers and their occupations
  - How U.S. employers recruit these workers and what abuses, if any, are there in their recruitment and employment processes
  - How well does the federal government protect these workers

## Background: Key Features of the H-2 Programs

### H-2A

- For agricultural workers
- No annual cap on the number of H-2A visas
- Employer pays for workers' transportation
- Employer provides free housing and three meals a day or access to cooking facilities

### H-2B

- For non-agricultural workers
- Annual cap of 66,000 workers per year
- Employer pays for transportation (changed in new regulations)
- Worker pays for housing
- Worker pays for meals

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## Background: Scope and Methodology

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- Analyzed data from multiple federal departments (Homeland Security, Justice, and Labor) from FY 2009 through FY 2013
- Interviewed federal agency officials, worker advocates, state workforce officials, employers, and employer associations
- Held discussion groups with workers from Mexico (in Mexico) and Jamaica (in U.S.)
- Reviewed NGO reports

# Background: Screening and approval process

**Employer** submits a completed application for temporary labor to the Department of Labor (DOL)



**DOL** screens and adjudicates employer's labor applications

*If DOL approves the application...*

**Employer** files a petition for nonimmigrant workers with the Department of Homeland Security (DHS) along with the temporary labor certification approved by DOL



**DHS** screens and adjudicates employer's petitions for workers

*If DHS approves, employer and State are notified...*

**Worker** can apply for an H-2A or H-2B visa from the State Department (State) at an embassy or consulate abroad



**State** reviews employer's petitions, interviews workers, and adjudicates visa applications

*If approved, H-2A or H-2B worker arrives and begins work*

Source: GAO analysis of DOL, DHS, and State regulations and guidance. | GAO-15-154

## Background: Recruitment Fees

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- For both programs, DOL and DHS regulations prohibit payment of fees from a prospective worker for any activity related to obtaining labor certification or as an offer of employment, including payment of employer agent or recruitment fees
- DOL regulations require that employers attest that they have contractually forbidden foreign labor contractors or recruiters from receiving payments from workers

# Number of Visas Issued Increased from 2009 through 2013

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Fiscal Year	H-2A	H-2B
2009	60,112	44,847
2010	55,921	47,403
2011	55,384	50,826
2012	65,345	50,009
2013	74,192	57,600

Source: GAO analysis of Department of State Nonimmigrant Visa System summary data | GAO-15-154



## Demographics of H-2A and H-2B Workers and Entry Patterns

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Most were:

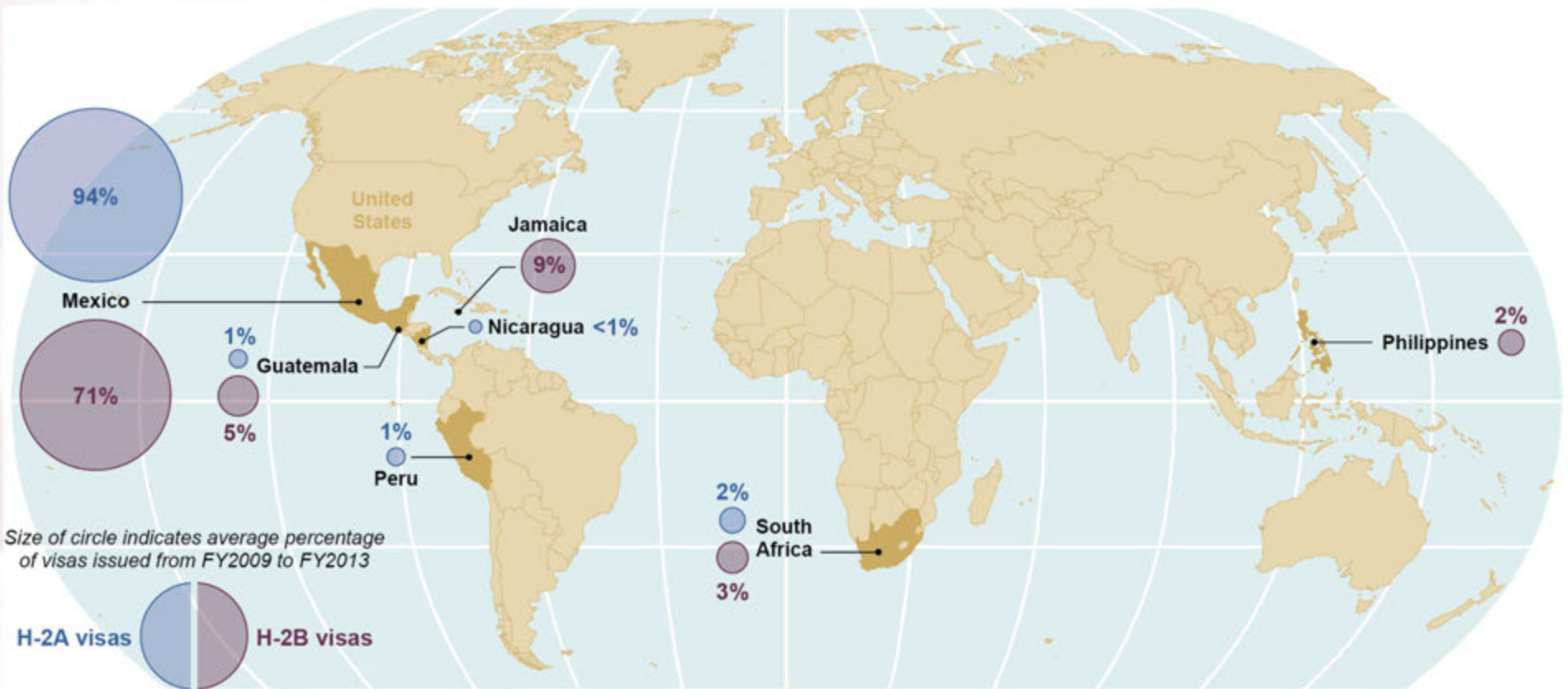
- From Mexico
- Predominantly men
  - For H-2A, 96 percent were men
  - For H-2B, about 85-88 percent were men
- Aged 40 or younger

Entered the country multiple times:

- About 50 percent of H-2A workers
- About 43 percent of H-2B workers

About 4 percent entered at least once under each visa type

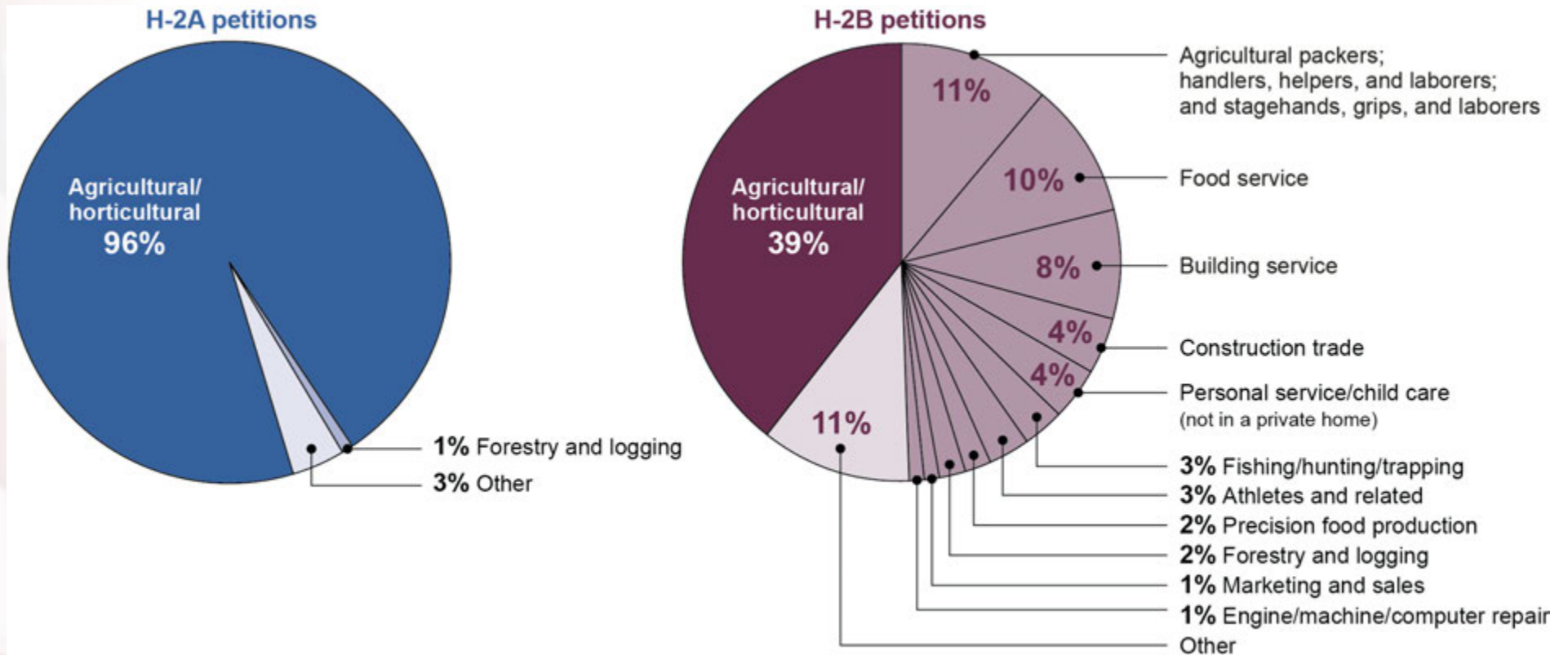
# Top Five U.S. Embassies and Consulates Issuing H-2A and H-2B Visas (2009-2013)



Source: GAO review of Department of State Nonimmigrant Visa System summary data; National Atlas (base map). | GAO-15-154

# H-2B Workers Filled More Varied Occupations and Industries Than H-2A Workers

Percentage of occupations requested by employers on new H-2A and H-2B petitions, FYs 2009-2013



Source: GAO analysis of Department of Homeland Security's Computer Linked Adjudication Information Management System 3 (CLAIMS 3) data. | GAO-15-154

## Employers Used Varying Methods to Recruit Workers

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Employers used both direct and indirect recruitment methods:

- Direct – Employer recruits
  - Informal – Returning worker recruits others
  - Formal – Contractor or contractor-subcontractor recruits
- Indirect

# Types of Abuses Some Workers Experienced during Recruitment

Abuse Description	Mentioned by		
	At least one of the three worker discussion groups held by GAO	Federal and NGO officials	NGO surveys
Recruitment Fees	✓	✓	✓
Visa Fraud		✓	
Recruitment Fraud		✓	
Inadequate Job Information	✓	✓	✓

Source: GAO analysis of reports by Centro del los Derechos del Migrante Inc., and Jornaleros SAFE; interviews with nongovernmental organizations and federal officials; and discussion groups with H-2A and H-2B workers. | GAO 15-154

# Aggregated Categories of Violations That Occurred during Recruitment and Employment

Category of Violation	Number of H-2A employers	Number of H-2B employers
Violations related to pay or pay statement	766	27
Violations related to paycheck deductions (H-2A) or failure to pay for required employer-provided items	400	1
Violations related to recruitment of foreign workers	260	10
Violations related to failure to abide by other employment laws	106	3
Violations related to safety of employer-provided housing and transportation	393	N/A

Source: GAO's analysis and categorization of DOL's Wage and Hour (WHISARD) data, fiscal year 2009-2013. | GAO-15-154

## Complaints about Abuse of H-2A and H-2B Workers

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National Human Trafficking Resource Center (NHTRC):

- Received over 1,400 complaints of abuse
- Nearly twice as many were H-2B than H-2A
- More than 1/3 were related to pay and hours
- A quarter were related to contract violations
- 130 included possible human trafficking and 35 included key indicators, such as force, fraud, or coercion
- Industries with largest number of alleged cases were agriculture, landscaping, and carnivals

## Reasons Violations May Be Underreported

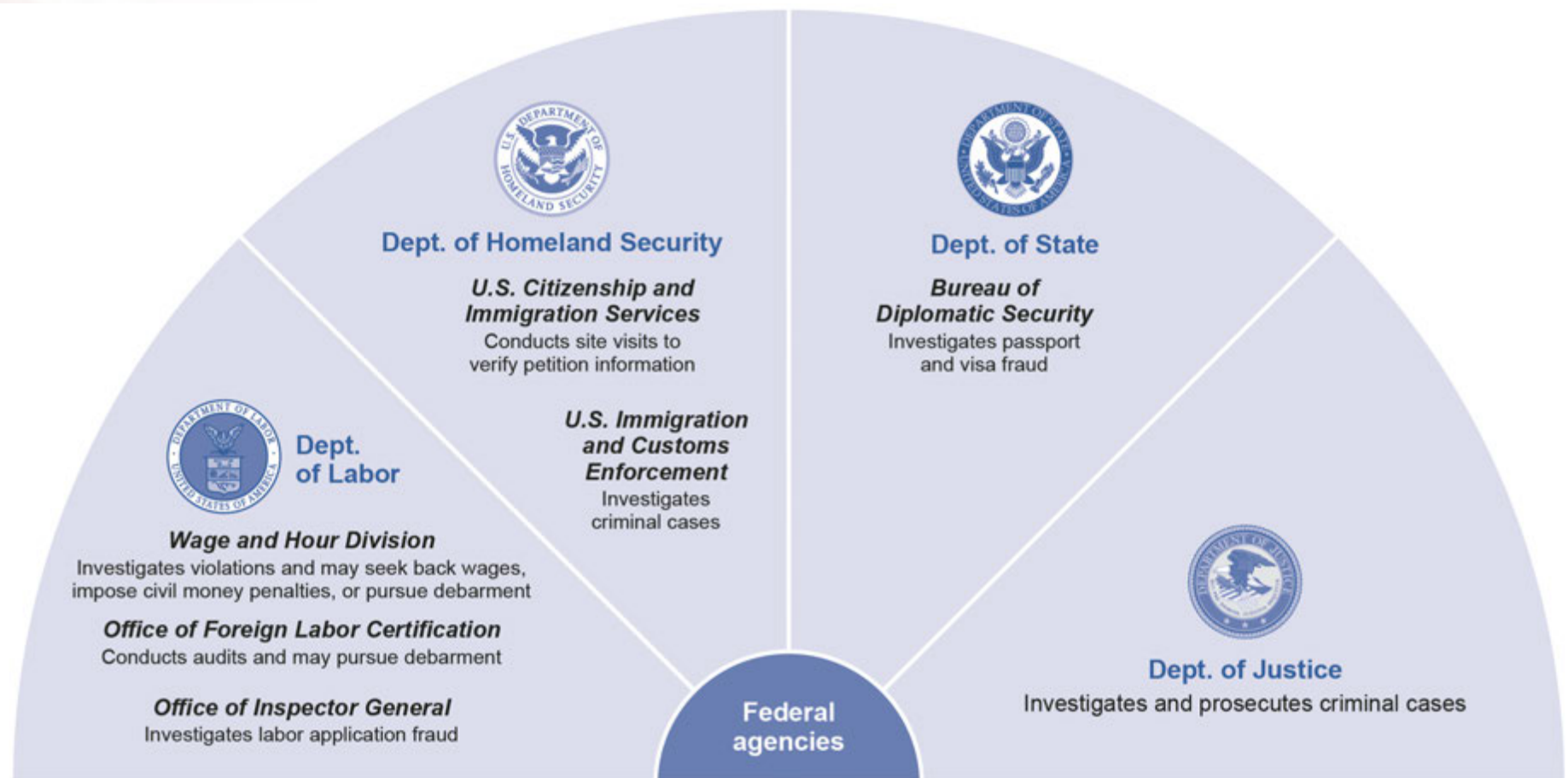
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Workers may have disincentives to report abuses for several reasons:

- Structure of the H-2A and H-2B programs: single employer on visa;
- Can create fear of
  - being excluded from future work for speaking up about abuse (blacklisted)
  - admitting to having paid recruitment fees and having visa denied
  - retaliation from recruiters against themselves or their families



# Multiple Federal Agencies Share Responsibility to Prevent Exploitation of Workers and Provide Assistance to Victims



Source: GAO analysis of DOL, DHS, State, and DOJ regulations and guidance. | GAO-15-154

# Federal Agencies Screen Employers

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- DOL screens employer applications to ensure program eligibility
- DHS screen employer petitions
- However:
  - DOL does not use all available information to screen applications for employers who are ineligible to participate in the program
  - DOL does not share all information on ineligible employers with DHS and State

## Federal Agencies Provide Information to Workers Before Entering U.S.

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### Department of State

- Conducts briefings of workers after they are approved for a visa
- Provides “Know Your Rights” brochures
- Conducts information campaigns

### DOL

- Participates in Consular Partnership Program

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## Federal Agencies Provide Services and Immigration Relief

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### Legal Services Corporation

- Full legal aid services available to all H-2A, H-2B workers working only in forestry, and all victims of human trafficking

### Health and Human Services

- Authorizes victims of human trafficking to access federally-funded benefits and services

### Department of Justice

- Provide funding to grantees which provide victim services
- Immigration relief through T- and U-visas

# Most DOL Enforcement Efforts Targeted to H-2A

DOL investigated more H-2A employers than H-2B employers

	H-2A	H-2B
Percentage of visas issued	55	45
Percentage of total H-2 investigations	90	10

DOL reasons for discrepancy:

- Wage and Hour (WHD) has had the authority to investigate H-2A employers for a longer time (since 1987 v. 2009 for H-2B)
- WHD conducted an H-2A evaluation in 2010-2012
- H-2A workers are more likely to receive employer-provided housing, making them easier to reach
- H-2B workers are spread across more industries

## **Ability to Bar Ineligible Employers May Be Limited by 2-Year Statute of Limitations**

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- DOL may bar employers who have committed certain violations for up to 3 years
- Two years may elapse before the case has been investigated or gone through the court system
- Our analysis found the median length of investigations in FYs 2009 – 2013 was 24 months

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## Conclusions

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Collected information is not shared across agencies or always used by agencies to improve program effectiveness

- DHS does not provide standard information on occupations
- DHS does not make job information available to workers or advocates
- DOL does not use all of the information it collects to screen employers nor share the information with DHS and State

Unclear whether enforcement resources targeted appropriately

- DOL's enforcement strategy is more focused on H-2A than H-2B
- DOL does not collect data on effect of statute of limitations

## Recommendations

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Collected information is not shared across agencies or always used by agencies to improve program effectiveness

- DHS should use an standard occupation classification system
- DHS should make job information from approved petitions available to workers and worker advocates
- DOL should use all available employer-related information to screen new applications for debarred employers
- DHS and DOL should share data (implemented January 2017)

Enforcement can be improved

- DOL should review enforcement efforts and conduct a national evaluation of H-2B employers
- DOL should collect data on whether 2-year statute of limitations restricts use of debarment





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# Thank You

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