



Highlights of [GAO-06-720](#), a report to congressional requesters

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 report 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. We interviewed officials and analyzed data from all three agencies.

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 also 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-06-720.

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

H-1B VISA PROGRAM

Labor Could Improve Its Oversight and Increase Information Sharing with Homeland Security

What GAO Found

While Labor's H-1B authority is limited in scope, the agency could improve its oversight of 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. About one-third of the applications were for workers in computer systems analysis and programming occupations. By statute, Labor's review of the applications is limited to searching for missing information or obvious inaccuracies and it does this through automated data checks. However, our analysis of Labor's data found certified applications with inaccurate information that could have been identified by more stringent checks. 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. Additionally, approximately 1,000 certified applications contained erroneous employer identification numbers, which raises questions about the validity of the application. 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 the process of randomly investigating willful violators of the program's requirements.

Labor, Homeland Security, and Justice all have responsibilities under the H-1B program, but Labor and Homeland Security could better address the challenges they face in sharing information. Homeland Security reviews Labor's certified application 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. Homeland Security 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. Additionally, current law precludes the Wage and Hour Division 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 \$7,200 in penalties.