



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.