

Congress of the United States

Washington, D.C. 20515

November 7, 2024

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington DC 20548

Dear Mr. Dodaro:

The H-2A visa program allows employers to fill temporary agricultural positions with foreign workers when qualified U.S. workers are not available to perform the work. Employers have become increasingly frustrated with the Department of Labor's (DOL) regulations that make the program unnecessarily difficult to use. We are writing to request that the Government Accountability Office (GAO) review the effectiveness of the H-2A visa program.

Employers who seek to hire H-2A workers must submit applications to DOL for the specific jobs they intend to fill. Among other things, the employers must demonstrate (1) that there are not sufficient U.S. workers who are qualified and available to perform the work and that (2) employing foreign workers will not adversely affect the wages and working conditions of similarly employed workers in the United States.¹

The H-2A visa program has grown significantly in recent years. DOL has reported that the number of applications it received from employers for H-2A workers went from almost 12,000 in fiscal year (FY) 2018 to over 21,000 applications in FY 2023—a roughly 75 percent increase. In FY 2023, DOL certified more than 378,000 positions, compared to approximately 243,000 certified positions in FY 2018.²

According to a 2021 U.S. Department of Agriculture (USDA) report, most farmers pay workers the H-2A visa program's minimum wage, which is known as the adverse effect wage rate (AEWR).³ In February 2023, DOL revised its methodology for determining the AEWR.⁴ The new approach separates wage rates for field and livestock workers from wage rates for all other non-

¹ DOL, WAGE & HOUR DIV., H-2A: TEMPORARY AGRICULTURAL EMPLOYMENT OF FOREIGN WORKERS, <https://www.dol.gov/agencies/whd/agriculture/h2a>.

² DOL, EMP. & TRAINING ADMIN., OFF. OF FOREIGN LAB. CERTIFICATION, H-2A TEMPORARY AGRICULTURAL LABOR CERTIFICATION PROGRAM - SELECTED STATISTICS, FY 2018, https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected%20Statistics_FY2018_Q4.pdf; *id.*, H-2A TEMPORARY AGRICULTURAL PROGRAM – SELECTED STATISTICS, FISCAL YEAR (FY) 2023, https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2023_Q4.pdf.

³ USDA ECON. RESEARCH SERV., EXAMINING THE GROWTH IN SEASONAL AGRICULTURAL H-2A LABOR 26 (Aug. 2021), <https://www.ers.usda.gov/webdocs/publications/102015/eib-226.pdf?v=9274.8>.

⁴ Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, 88 Fed. Reg. 12,760 (Feb. 28, 2023).

range agricultural jobs. In addition, DOL now uses two separate surveys—the USDA’s Farm Labor Survey and the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics—to inform its rates.

Employers have expressed concerns about the affordability of employing H-2A workers under the AEWL regulations. Many have cited the AEWL methodology and overall cost structure as the number one issue facing their farms, thereby preventing them from using the H-2A visa program.⁵ In March 2024, the House Agriculture Committee’s Agricultural Labor Working Group issued its final report with policy recommendations on the challenges facing farmers in meeting its workforce needs.⁶ Among many recommendations, this report recommended further study of the H-2A program, including the AEWL.⁷

In light of the challenges facing farmers and of DOL’s requirements in the H-2A visa program, we are interested in learning more about the impact of the AEWL on employers and workers. We request that GAO address the following questions:

1. To what extent does implementation of the AEWL impact employers’ ability to access and utilize the H-2A program?
2. What is known about the positive or negative effects of H-2A wage, housing, and transportation requirements on U.S. workers similarly employed?
3. What steps is DOL taking, or should it be taking, to ensure proper implementation of the AEWL rules?
4. What are stakeholders’ and experts’ views on the AEWL and potential alternatives?

Thank you for your consideration of this request.

Sincerely,



Virginia Foxx
Chairwoman
Committee on Education and the Workforce



Glenn “GT” Thompson
Chairman
Committee on Agriculture

⁵ COMM. ON AGRIC., AGRIC. LAB. WORKING GROUP, INTERIM REPORT 17 (Nov. 7, 2023), https://agriculture.house.gov/uploadedfiles/house_committee_on_agriculture_-_alwg_interim_report_-_final_-_11.7.23.pdf.

⁶ *Id.*, FINAL REPORT WITH POLICY RECOMMENDATIONS (Mar. 7, 2024), https://agriculture.house.gov/uploadedfiles/alwg_final_report_-_3.7.23.pdf.

⁷ *Id.* at 8-9.