



BRIEFLY...

DOL NEEDS TO IMPROVE DEBARMENT PROCESSES TO ENSURE FOREIGN LABOR PROGRAM VIOLATORS ARE HELD ACCOUNTABLE

September 30, 2020

WHY OIG CONDUCTED THE REVIEW

Prior OIG investigations have shown foreign labor programs are susceptible to fraud and abuse, and unscrupulous employers misusing the Foreign Labor Program to engage in human trafficking, with victims often exploited for economic gain. The Department of Labor (DOL) is responsible for ensuring that admitting foreign workers to work in the U.S. will not adversely affect the job opportunities, wages, or working conditions of U.S. workers. The Department's Employment and Training Administration (ETA) and the Wage and Hour Division (WHD) conduct investigations and audits to identify program employers who should be debarred. Debarment is part of a broader effort to confront entities committing visa program fraud and abuse. We were concerned about the Department's debarment processes.

WHAT OIG DID

Given our concerns, we conducted a review to answer the following question:

Has DOL's debarment process held H-1B, H-2A, H-2B, and PERM employers accountable for violating laws and policies to ensure U.S. workers, foreign workers, and employers who followed laws and regulations are protected?

To answer this question, we analyzed foreign labor program investigations, audits, and violations; interviewed DOL officials; reviewed applicable laws and regulations; and evaluated DOL's debarment processes. Our results focus on the temporary certification programs: H-1B, H-2A, and H-2B.

WHAT OIG FOUND

The Department needs to improve its debarment processes to ensure the full protection of U.S. and foreign workers and employers who followed laws and regulations and hold violators accountable. We based this determination on the following:

DOL has not fully used its H-1B investigation process to determine debarment. WHD cannot initiate investigations unless it receives a complaint from an aggrieved party or a credible source. Additionally, the Secretary has authority to initiate investigations, but the Department has never utilized this option. Not exercising the Secretary's authority to initiate investigations and WHD's inability to initiate any investigation can prevent DOL from holding H-1B program violators accountable.

DOL has not established a risk-based process for determining the number of H-2A and H-2B applications to audit. The current selection process does not use data analytics or account for risk when selecting applications to audit. ETA has not documented any risk factors considered before initiating an audit; thus, it is difficult to determine if the applications audited were the most likely to result in violations eligible for debarment.

WHAT OIG RECOMMENDED

We made four recommendations to the Department. For the H-1B program, develop a way of using the Secretary options to initiate H-1B investigations, define a process for assessing willfulness; and work with Congress to change a restrictive authority to launch investigations. For the H-2A and H-2B programs, use data analytics to establish and document a risk-based audit process.

DOL agreed with our recommendations.

READ THE FULL REPORT

<https://www.oig.dol.gov/public/reports/oa/2020/06-20-001-03-321.pdf>