

STRENGTHENING PROTECTIONS FOR H-2B TEMPORARY WORKERS

REPORT OF THE H-2B WORKER PROTECTION TASKFORCE

OCTOBER 2023



THE WHITE HOUSE
WASHINGTON

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Workers are the foundation of our nation’s economy. The Biden-Harris Administration is committed to supporting good jobs with strong protections for all workers—including those in our nation’s temporary foreign labor programs. Workers in the H-2B temporary labor program work alongside U.S. workers in some of our country’s most critical occupations. Too often, H-2B workers face structural disincentives to report or leave abusive conditions, and they often lack resources to exercise their rights when exploitative employment situations arise. This vulnerability not only harms H-2B workers, but also undermines wages and working conditions for all workers.

In October 2022, the White House launched the H-2B Worker Protection Taskforce to strengthen protections for workers in the H-2B program. The White House-led Taskforce brings together agencies that play leading roles in the H-2B program—including the Departments of Labor, Homeland Security, and State—to identify actionable sub-regulatory proposals to improve the H-2B program. The Taskforce’s work focuses on three key challenges: (1) threats to H-2B program integrity; (2) H-2B workers’ fundamental vulnerabilities, including their limited ability to leave abusive employment situations without jeopardizing their immigration status; and (3) the impermissible use of the H-2B program to avoid hiring U.S. workers. The Taskforce held listening sessions with key stakeholders—including worker advocates, unions, immigration- and migration-focused groups, and researchers—and solicited written recommendations on sub-regulatory actions in the Taskforce’s three key focus areas.

This report details new actions the Taskforce agencies will undertake to address these challenges. These Taskforce deliverables will not only improve protections for H-2B workers but also help ensure fair wages and working conditions for *all* workers are protected.

The H-2B Temporary Nonagricultural Worker Program

The H-2B program permits employers to temporarily hire noncitizens to perform nonagricultural labor or services in the United States. The employment must be of a temporary nature, such as a one-time occurrence, seasonal need, or intermittent need.

Multiple agencies play a role in the H-2B process. Employers seeking H-2B workers must take a series of steps to test the U.S. labor market to allow the Department of Labor (DOL) to certify to the Department of Homeland Security (DHS) that there are not enough U.S. workers who are able, willing, qualified, and available to perform the temporary work for which they seek a prospective foreign worker—and that the employment of the H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. DOL and DHS assess whether an employer has met the requirements to sponsor foreign workers in the H-2B program, and DOL enforces against violations of program conditions and requirements. The Department of State determines a worker’s eligibility for an H-2B visa, and DHS determines whether to admit that worker into the United States as an H-2B worker. All three agencies have a role in investigating violations related to fraud and abuse in the H-2B program.

In addition, the U.S. Agency for International Development (USAID), State, and DOL can support the worker protection mission of the Taskforce through their respective close collaborative relationships with certain governments and migrant workers advocates in workers’ home countries. While H-2B workers come to the United States from many nations, DOL, State, and USAID can promote ethical recruitment and enhance transparency in the process for H-2B workers coming from Mexico and the Northern Central American (NCA) countries of El Salvador, Guatemala, and Honduras. Key activities include supporting these governments’ effort to regulate private recruiters; ensure strong labor law enforcement in countries of origin; and support a state-based model of worker identification, vetting, and matching to H-2B employers.

The H-2B program has a statutory limit, or cap, on the number of H-2B workers permitted each fiscal year. Congress has set the cap at 66,000 workers per year, and in recent years has authorized additional workers (most recently, in fiscal year 2023, up to roughly 64,700 supplemental H-2B workers).¹

Despite program requirements and regulations, H-2B workers face structural disincentives to reporting or leaving abusive conditions, and often lack power to exercise their rights in the face of exploitative employment situations. The Biden-Harris Administration is committed to protecting all workers from exploitation and abuse; securing their ability to participate in investigations of potential labor violations if they wish to do so; and to ensuring, consistent with law, that employers do not refuse to appropriately recruit or hire U.S. workers who are able, willing, qualified, and available to perform the temporary work.

¹ U.S. Citizenship and Immigration Services, “Cap Count for H-2B Nonimmigrants,” <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-for-h-2b-nonimmigrants> (last accessed September 28, 2023).

Additional Biden-Harris Administration Actions to Protect H-2 Workers

The Taskforce deliverables build upon and complement several recent Biden-Harris Administration actions to improve the H-2 programs and better protect H-2B nonagricultural workers—as well as H-2A agricultural workers, who face many of the same vulnerabilities.

In June 2022, DOL, State, and USAID issued “Guidance on Fair Recruitment Practices for Temporary Migrant Workers” to assist governments of countries of origin, recruiters, and employers in achieving fair recruitment of workers bound for employment in the United States under the H-2 programs.² The guidance also serves as a resource to help retailers and others identify, mitigate, respond to—and ultimately help prevent—abuses in the worker recruitment process by actors in their supply chains.

In January 2023, DHS announced the Process Enhancements for Supporting Labor Enforcement Investigations to help ensure noncitizen workers who are victims of, or witnesses to, violations of labor rights can access a streamlined and expedited deferred action request process.³ This process strengthens efforts to hold unscrupulous employers accountable, and improves DHS’s longstanding practice of using its discretionary authority to consider labor and employment agencies’ requests for deferred action on a case-by-case basis. Deferred action protects noncitizen workers, including H-2 workers, from threats of immigration-related retaliation from exploitative employers.

In September 2023, the Biden-Harris Administration published two Notices of Proposed Rulemaking (NPRMs) designed to significantly strengthen worker protections in the H-2 programs. DOL published a proposed rule focused on the H-2A temporary agricultural worker program which would add new protections for worker self-advocacy, clarify when a worker’s termination is “for cause,” strengthen whistleblower protections, improve workers’ access to safe transportation, make foreign labor recruitment processes more transparent, and enhance DOL enforcement authorities, among other steps.⁴

² Departments of Labor, Department of State, and U.S. Agency for International Development, “Guidance on Fair Recruitment Practices for Temporary Migrant Workers” (June 2022), <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2022/06/ILAB20220565.pdf>.

³ Department of Homeland Security, “DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations” (January 13, 2023), <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations>.

⁴ Department of Labor, “U.S. Department of Labor Announces Proposed New Rule to Strengthen Protections for Temporary Farm Workers” 88 FR 63750 (September 12, 2023), <https://www.federalregister.gov/documents/2023/09/15/2023-19852/improving-protections-for-workers-in-temporary-agricultural-employment-in-the-united-states>.

DHS also proposed a rule to modernize and strengthen the H-2A and H-2B programs.⁵ Under the proposal, employers who violate H-2 program requirements—including failure to demonstrate their ability and intent to follow requirements—may be ineligible to employ H-2 workers. The proposal would also clarify and strengthen prohibitions on employer- and recruiter-imposed fees in the H-2 programs while increasing consequences for violators, protecting workers from incurring exploitive debts and preventing abuse. The proposed rule would also extend grace periods for H-2 workers seeking new employment, preparing for departure from the United States, or seeking a change of immigration status. Additionally, the proposed rule would make it easier for workers to transition from one H-2 position to another, by making H-2 portability permanent. This would also enable employers who are in need of workers to hire certain H-2 workers who are already lawfully in the United States while the employer’s H-2 petition for the worker is pending.

These actions, combined with the Taskforce deliverables detailed below, significantly advance the Biden-Harris Administration’s commitments to empowering and improving workplace conditions for all workers, including H-2 workers, and to managing safe, orderly, regular, and humane migration.

Taskforce Objectives and Actions

To address the three key challenges noted in the introduction, the Taskforce’s work focused on identifying deliverables at the sub-regulatory level—complementing recent actions by the Administration described above—that can achieve meaningful change in the near-term to medium-term. Guided by stakeholder input, agency expertise, and Administration values, the Taskforce identified action items to meet these challenges and advance five objectives: (1) protecting workers involved in labor disputes, (2) better leveraging existing program data, (3) reducing workers’ vulnerability to employers and recruiters, (4) increasing workers’ access to key information, and (5) establishing an ongoing Interagency H-2 Worker Protection Working Group to promote worker protections in the H-2 programs.

While the Taskforce was created to focus specifically on the H-2B program, many of the same challenges, vulnerabilities, and opportunities for improvement exist in the H-2A program. Where immediately feasible, the Taskforce’s deliverables will cover H-2A as well as H-2B workers. In other cases, the Interagency H-2 Worker Protection Working Group described in Objective 5 will explore whether and how to extend additional actions to H-2A workers.

⁵ Department of Homeland Security, “Modernizing H-2 Program Requirements, Oversight, and Worker Protections” 88 FR 65040 (September 23, 2023), <https://www.federalregister.gov/documents/2023/09/20/2023-20123/modernizing-h-2-program-requirements-oversight-and-worker-protections>.

Objective #1. Ensure protection for H-2 workers engaged in labor disputes with their employers and increase workers' ability to support labor enforcement investigations fully and effectively.

H-2 workers' ability to remain and work in the United States is dependent on the continuity of their employment with the sponsoring employer. For that reason, H-2 workers have limited options, and may be reluctant to report violations, engage in labor disputes, or support labor enforcement investigations against their employers.

Furthermore, H-2 workers are only permitted to stay in the United States for a specific period—typically ending on the date on which the employer specifies they no longer need the worker's services. Staying past that date can result in multiple adverse immigration consequences, including possible denial of a subsequent visa to return to the United States, or restrictions on changing to another nonimmigrant status within the United States. Therefore, even when workers do report violations, they may feel pressure to leave the United States to avoid such consequences—which limits DOL and DHS's access to them when the agencies investigate labor abuses.

Under DHS's Process Enhancements for Supporting Labor Enforcement Investigations, noncitizen workers who are victims of, or witnesses to, the violation of labor rights, can access a streamlined and expedited deferred action request process. Deferred action provides the worker permission to stay in the United States and apply for employment authorization that would allow them to work for another employer. However, until deferred action is granted, a worker involved in a labor dispute has none of those benefits and is susceptible to removal or retaliation by an abusive employer. This may discourage H-2 workers experiencing a labor dispute from accessing this process.

Refraining from reporting violations due to a fear of retaliation not only harms the individual worker—it also creates unfair labor market conditions and perpetuates the commission of unlawful and inhumane acts by employers, such as wage theft and unsafe working conditions, and chills workers' ability to organize and collectively bargain to improve such conditions.

Key actions on behalf of H-2 workers engaged in labor disputes include:

- **Action 1.1.** DHS and State will clarify that a worker who has remained in the United States after the expiration of the period of admission identified in their Form I-94⁶ due to

⁶ Form I-94 is the DHS Arrival/Departure Record issued to nonimmigrants coming temporarily to the United States. The individual must exit the U.S. on or before the departure date on the I-94. U.S. Customs and Border Protection, "I-94 Automation," https://www.cbp.gov/sites/default/files/assets/documents/2021-Jul/I-94_Automation_Fact_Sheet_Jul2021.pdf.

a workplace labor dispute will not be negatively impacted solely for these reasons when applying for a subsequent visa or a change of nonimmigrant status.

- **Action 1.2.** For H-2 workers involved in labor disputes and present in the United States under a current, valid temporary labor certification, DHS will expedite its consideration of workers' requests for prosecutorial discretion and DOL will expedite consideration of Statements of Interest identifying these worksites, where appropriate.
- **Action 1.3.** DHS will inform labor enforcement agencies about the existing interagency parole process that enables the agencies to contact DHS and seek consideration for parole for a worker outside of the United States who has been identified as willing and needed to support an investigative or other enforcement interest. DHS will help facilitate federal labor enforcement agency access to this existing interagency parole process.
- **Action 1.4.** To mitigate workers' concerns about accessing H-2 jobs in the future, USAID will work with the governments of Northern Central American (NCA) countries to prioritize matching of workers who left their H-2 positions during a labor dispute to new H-2B positions.

Objective #2. Leverage existing data to increase transparency and reduce the vulnerability of H-2 workers.

The Departments of Homeland Security, Labor, and State all collect important information on H-2 workers and their employers, including when H-2 workers are admitted to the country and where they work. Without disclosing personally identifiable or other sensitive information, agencies share some of this data publicly, such as in DHS's recently enhanced [H-2B Data Hub](#) and [H-2A Data Hub](#). However, there is no central repository where data is collected and shared across agencies, hindering their ability to respond to labor law violations, enforce against employer fraud, and prevent worker abuses, including human trafficking. Nongovernmental organizations may also lack sufficient public information to engage in effective outreach and advocacy efforts.

Similarly, comprehensive data on the gender composition of the H-2 programs is critical to agencies' efforts to prevent discrimination and enforce our labor laws. Although agencies collect data on H-2 workers' gender, that information is not centralized. Existing data can be leveraged to improve gender equity, which is critical to ensuring that women workers have equal access to the full benefits and protections of H-2 jobs. In recent years, women have comprised less than 15

percent of the H-2B workforce and less than 5 percent of the H-2A workforce.⁷ Women H-2 workers are also disproportionately concentrated in lower-paying industries, such as hospitality and domestic work, and in more poorly compensated jobs overall. High-quality, public-facing information about the gender composition of H-2 programs is also essential for stakeholders—including worker advocates and researchers—to inform outreach and advocacy efforts, as well as efforts to address sexual harassment and gender-based violence.

Key actions to leverage existing data to reduce H-2 workers' vulnerability, including to gender inequities, include:

- **Action 2.1:** DHS, DOL, and State will share and integrate data regarding H-2B workers to the extent authorized by law, regulations, and applicable policies. This includes which workers are hired to fill specific temporary labor certifications, when those workers are admitted to the country, and their intended worksite. U.S. Citizenship and Immigration Services (USCIS) will explore options to further increase transparency in the H-2B program, including, but not limited to, through the H-2B Data Hub. The Department of State will publish appropriately anonymized data on a quarterly basis to inform outreach and advocacy efforts.
- **Action 2.2.** DHS, DOL, and State will collect and aggregate existing data on H-2 workers by gender, sector, and occupation, and share this information internally between the three agencies to inform outreach and enforcement efforts, including efforts to enforce anti-discrimination laws. Collection and sharing of data will occur in accordance with applicable laws, regulations, and policy.
- **Action 2.3.** State will publish anonymized, aggregated data on H-2 workers by gender, sector, and occupation on a quarterly basis to inform stakeholder research, outreach, and advocacy.
- **Action 2.4.** The White House will convene regular briefings with labor organizations, advocates, and other stakeholders to increase transparency and reduce worker vulnerability. These briefings can inform stakeholder outreach and advocacy efforts to protect workers in the H-2 programs.

⁷ Department of Homeland Security, “Nonimmigrant Admissions by Selected Classes of Admission and Sex and Age: Fiscal Year 2021,” downloaded from <https://www.dhs.gov/immigration-statistics/readingroom/NI/NonimmigrantCOAsexage> (last accessed October 2023).

Objective #3. Reduce workers' vulnerability to exploitation from labor recruiters and employers.

According to a study conducted by migrant worker advocates, a majority of H-2 workers reported paying recruitment fees; current U.S. immigration and labor regulations prohibit such fees.⁸ These fees can cause many H-2 workers to incur substantial debts before they arrive in the United States—leaving them less able or willing to report poor working conditions or leave abusive situations because doing so could mean loss of income. Furthermore, advocates have documented widespread examples of gender discrimination by private recruiters associated with U.S. employers.⁹ These practices perpetuate a cycle of exploitation, discrimination, and exclusion.

Currently, the information agencies collect on recruiters is insufficient to effectively prevent and enforce against illegal practices such as the collection of prohibited recruitment fees and gender-based discrimination. Although employers are required to submit recruiter information to DOL and DHS, in practice many employers leave the field on the relevant forms blank and do not provide the information later in the process. This makes it difficult to hold unscrupulous recruiters accountable, leaving workers vulnerable to abuse.

Furthermore, although certain information regarding impermissible recruitment practices is regularly shared across agencies, some gaps in this exchange of information remain—including sharing existing data on complaints against recruiters submitted by workers who are outside of the United States. For example, only some of the information collected on impermissible recruitment practices by the State Department's in-country consular posts is transmitted to other agencies.

Key actions to reduce workers' vulnerabilities to unscrupulous recruitment practices include:

- **Action 3.1.** DHS will make changes to immigration forms to enhance the collection of information on recruiters. This information will be shared with DOL to help prevent and enforce against abuse and exploitation by unscrupulous recruiters.
- **Action 3.2.** State will share best practices among consular posts and increase information sharing with DOL and DHS about allegations of impermissible recruitment practices gathered outside the United States to strengthen enforcement processes.

⁸ Department of Homeland Security, “Modernizing H-2 Program Requirements, Oversight, and Worker Protections” (September 20, 2023), <https://www.federalregister.gov/documents/2023/09/20/2023-20123/modernizing-h-2-program-requirements-oversight-and-worker-protections>.

⁹ See, for example, Centro de los Derechos del Migrante, Inc., and Penn Law Transnational Legal Clinic, “Engendering Exploitation: Gender Inequality in U.S. Labor Migration Programs” (January 2018), (<https://cdmigrante.org/wp-content/uploads/2018/01/Engendered-Exploitation.pdf>).

- **Action 3.3.** USAID will work with NCA governments to establish a debriefing survey for a sample of returning workers, to help identify misconduct they may have experienced in the recruitment process or at the worksite, and will share results with members of the Interagency H-2 Worker Protection Working Group described in Objective 5.

Objective #4. Empower workers by improving their access to information.

Many H-2B workers lack adequate information about their rights. As a report to DOL’s Wage and Hour Division observed, “workers in many of the industries with the highest levels of noncompliance are often the most reluctant to trigger investigations through complaints due to their immigration status, lack of knowledge of rights, or fears about employment security.”¹⁰ Since 2008, the Department of State has tried to bridge this knowledge gap by developing and disseminating the Wilberforce pamphlet,¹¹ which provides workers with information about their legal rights and available resources in the United States—including critical information about the National Human Trafficking Hotline. This year, State and DOL took important steps to update the pamphlet and further enhance workers’ access to information¹²—but more could be done to ensure workers know their rights.

Workers also often lack information about the status of the immigration petitions filed by their prospective employers. Because the employer is the petitioning party, USCIS sends notices relating to the petition to the employer—but not to the worker on whose behalf the petition was filed. Thus, workers must rely on their employer for vital information regarding the status of their immigration petition, which further increases the control that employers have over H-2B workers.

Additionally, U.S. and H-2 workers alike lack access to up-to-date information about prospective employers and H-2B-eligible job opportunities. This lack of transparency means U.S. workers have little information about jobs that should be accessible to them under law. For H-2 workers, it means they often cannot find alternative employment opportunities in the United States if they need to leave an abusive employment situation.

Finally, workers may be unaware of wages owed to them as a result of enforcement actions by DOL or other labor enforcement agencies—and may benefit from additional information or

¹⁰ David Weil, “Improving Workplace Conditions through Strategic Enforcement” (May 2010), <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/strategicEnforcement.pdf>.

¹¹ Department of State, “Know Your Rights,”

<https://travel.state.gov/content/dam/visas/LegalRightsandProtections/Wilberforce/Wilberforce-ENG-100116.pdf>.

¹² In August 2023, DOL launched MigrantWorker.gov (TrabajadorMigrante.gov), a cross-agency central hub of information and resources responding to migrant workers’ questions throughout their labor migration experience—from pre-departure and recruitment to work in United States and upon return home.

facilitated connection to these agencies, particularly if workers are no longer in the United States.¹³

Key actions to improve workers' access to information about their labor rights and access to resources, job opportunities, petition status, labor protections, and owed wages include:

- **Action 4.1.** DOL and State will identify and develop resources designed to provide workers information about their rights under H-2 programs and will share this information with other federal agencies. DHS will use these resources and create digital content that is accessible through the CBP One app; expand its distribution of printed content; and include information about DHS's Process Enhancements for Supporting Labor Enforcement Investigations in certain H-2B worker education and outreach materials.¹⁴ In consultation with members of the Interagency H-2 Worker Protection Working Group established in Objective 5, USAID programs will strengthen the pre-departure "know your rights and resources" training for workers recruited through the NCA governments—including by incorporating presenters from civil society organizations—and maximize dissemination of rights information.
- **Action 4.2.** DHS and State will highlight and enhance mechanisms for certain H-2B workers to access information regarding their current immigration status and the status of pending petitions filed by their prospective employers.
- **Action 4.3.** Contingent on the allocation of appropriate resources, the U.S. government will provide workers—including U.S. and H-2B workers—with real-time information about available job opportunities by sharing information about employers who have received a labor certification and may still need workers in connection with that certification through a new or updated website.
- **Action 4.4.** USAID, in consultation with DOL, will work with NCA governments to develop mechanisms to facilitate DOL's efforts to locate and notify returned workers who were recruited through the governments of back wages owed to them as a result of labor agency enforcement, or other recourse stemming from labor enforcement actions.

¹³ In March 2023, DOL launched a pilot program with Mexico's Ministry of Labor to share information and coordinate efforts to return earned back wages collected by DOL's Wage and Hour Division to Mexican migrant workers who were in the United States under the H-2A temporary agricultural worker program. Actions in this Taskforce report build on DOL's ongoing work to put money in the hands of workers who have earned it.

¹⁴ Department of Homeland Security, "DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations" (January 13, 2023), <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations>.

- **Action 4.5.** DOL will widely disseminate MigrantWorker.gov (TrabajadorMigrante.gov) through U.S. embassies and consulates in Mexico, Northern Central America, and other countries that frequently send workers through the H-2B program—as well as foreign government consulates in the United States through the Consular Partnership Program—in partnership with migrant worker advocates and organizations.

Objective #5. Establish a standing Interagency H-2 Worker Protection Working Group.

Workers and their advocates have expressed strong interest in a direct and consistent line of communication with White House and agency officials to identify and address challenges and opportunities in the H-2 programs. A standing Interagency H-2 Worker Protection Working Group, led by the White House, that regularly engages with and is available to stakeholders would help address this need. In addition to periodic stakeholder meetings, the Working Group would be responsible for implementation of the deliverables in this Taskforce report—and exploring potential new deliverables. The Working Group will be comprised of representatives of the Taskforce agencies, including DOL, DHS, State, and USAID, as well as other agencies as determined by the White House and Working Group members.

Action 5.1. The White House will establish a standing Interagency H-2 Worker Protection Working Group, which will meet periodically with external stakeholders, serve as a key point of contact in the Administration on H-2 worker protection issues, deliver public briefings identified in Action 2.4, and guide implementation of the deliverables described in this Taskforce report.