

THE ECONOMIC IMPACT OF H-2B WORKERS



LABOR, IMMIGRATION &
EMPLOYEE BENEFITS DIVISION
U.S. CHAMBER OF COMMERCE

ImmigrationWorks
USA



ABOUT THE U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce is the world's largest business federation representing more than 3 million businesses of every size, sector, and region. The Chamber's Labor, Immigration & Employee Benefits Division formulates and analyzes the Chamber's policy in the areas of labor law, immigration, pension and health care. The Division regularly participates in, and sometimes chair, national coalitions to help define and shape national labor, immigration and employee benefits policy. More information at www.uschamber.com/issues/lieb_policy.



ABOUT IMMIGRATIONWORKS USA

ImmigrationWorks USA is a national federation of small business owners advocating immigration reform. The organization links 25 state-based, pro-immigration business coalitions: employers and trade associations from Florida to Oregon and from every sector of the economy that relies on immigrant workers. IW coordinates and supports these groups as they fight for better immigration law in Washington and in the states. The organization's twin goals: to educate the public about the benefits of immigration and build a mainstream grassroots constituency in favor of reform.

FOREWORD

October 28, 2010

The Labor, Immigration & Employee Benefits division of the U.S. Chamber of Commerce and ImmigrationWorks USA are pleased to present this important study of the economic impact of the H-2B visa program.



Many American businesses could not function without the H-2B program. Small, medium-sized and large employers in every region of the country count on it to keep their businesses open and growing, and to create opportunities for U.S. workers.

Yet the program is under constant attack by critics, who all too often make a case based on rhetoric and hypothetical scenarios, not hard economic data.

This report uses original economic analyses to examine the true economic effects of the H-2B program.

The study's principal findings: that contrary to critics' claims, the H-2B visa program does not depress wages of U.S. workers in similar occupations, and H-2B workers do not take jobs from their U.S. counterparts.

Supplementing these core findings is testimony from employers who use the program and also several illustrative profiles – of an H-2B employer, an H-2B worker and a community that depends on an H-2B workforce. This anecdotal material demonstrates the many benefits of the program but also the frustrations of dealing with its bureaucratic and regulatory complexity.

Employers who use the H-2B program are employers determined to follow the law. H-2B and other temporary worker programs provide a legal workforce for U.S. companies when U.S. workers are unavailable. The programs also allow foreign workers looking for an honest way to make a living to enter the country in a safe, controlled manner. In other words, the programs don't just keep the U.S. economically competitive, they also contribute to border security and enhance the rule of law.

Congress and the administration should be looking for ways to expand and improve temporary worker programs – not adding layers of bureaucracy and additional regulations that make the programs all but impossible to use.

This report leaves no doubt about what must be done: cut burdensome regulation, streamline processing and make temporary worker programs more sensitive to changing U.S. labor market needs.

Sincerely,



Randel K. Johnson
Senior Vice President
Labor, Immigration & Employee Benefits
U.S. Chamber of Commerce



Tamar Jacoby
President & CEO
Immigration Works USA



THE ECONOMIC IMPACT OF H-2B WORKERS

EXECUTIVE SUMMARY

The H-2B program allows employers to bring low-skilled foreign workers into the United States to fill temporary and seasonal jobs in sectors other than agriculture. Large and small employers in every state and in a wide variety of industries turn to the program when they cannot hire enough U.S. workers.

H-2B visa holders play a small role in the U.S. economy. The number of visas is capped at 66,000 per year, and H-2B workers account for less than one-tenth of one percent of total U.S. employment.

Despite the small size of the program, many employers who use it say their businesses would have to downsize or close if H-2B workers were not available. And H-2B visas are essential to several regional seasonal industries that sustain the economy in their states: seafood processing on Maryland's Eastern Shore, restaurants and inns on Nantucket and ski resorts in Colorado, among other businesses.

The H-2B program is subject to much criticism from labor unions and others who claim that it allows employers to exploit foreign workers and undermines American workers whose wages suffer as a result. Economic analysis conducted for this report finds no evidence to support these claims. This study does, however, find that the program could be significantly improved by streamlining its complex requirements and making it more responsive to market forces.

Companies must meet a complicated set of requirements before they can hire H-2B visa holders, including making extensive efforts to recruit U.S. workers. Employers must file paperwork with four government agencies. They must obtain temporary labor certification from the Department of Labor (DOL), and their petition for a foreign worker must be approved by U.S. Citizenship and Immigration Services (USCIS). Businesses must demonstrate that their need for a foreign worker is temporary, and they must pay at least the government-mandated prevailing wage for the job.

These requirements are onerous for any company, but particularly for the small and medium-sized businesses that anecdotal evidence suggests make the heaviest use of H-2B visas. (Large corporations and staffing agencies also use the program, but the average employer applies for just 15 workers a year.)

Still, despite the complex requirements, the demand for H-2B workers exceeds the number of visas available almost every year.

The H-2B program offers an important safety valve for employers who need workers on a temporary basis when U.S. workers are not available.

- In a survey of H-2B employers conducted for this report by ImmigrationWorks USA and the U.S. Chamber of Commerce, respondents indicated that they hire H-2B workers primarily because few U.S. workers are interested in temporary or seasonal work. According to employers, the physically demanding nature of many seasonal jobs also makes them unappealing to many U.S. workers.
- An original economic analysis conducted for this report concludes that the number of H-2B workers increases when local labor markets tighten. In other words, far from taking jobs from Americans, H-2B visa use correlates with *higher* U.S. employment rates. The analysis compared state-by-state data on H-2B admissions with state unemployment and employment growth during the period from 2006 to 2009. The comparison



showed that the number of H-2B workers admitted increases as unemployment rates fall and employment growth accelerates. Specifically, in the average state, when employment growth increased by 1 percentage point, employers brought in 216 additional H-2B workers. This is consistent with responses to the ImmigrationWorks-Chamber survey indicating that the H-2B program helps employers fill positions when U.S. workers are scarce.

- Employers report that the benefits of using the program go beyond providing them with needed workers.
- According to survey respondents, H-2B workers create jobs for Americans. By augmenting the volume of business being done by the company, visa holders often allow employers to hire more U.S. workers for skilled, year-round jobs. This claim is consistent with a 2008 case study of the Maryland crabbing industry that found the H-2B program preserved and sustained jobs.
- The program can reduce uncertainty for employers who struggle to meet customer demand with an uncertain and fluctuating local workforce. Survey respondents commented that if the H-2B program did not exist, they would have to turn away business when not enough U.S. workers are available.
- Survey respondents praised H-2B workers' reliability and productivity. Many commented that H-2B workers are as competent as U.S. workers.
- Hiring the same workers year after year helps reduce businesses' recruitment and training costs.

There is no empirical support for claims that the H-2B program adversely affects U.S. workers. Indeed, the DOL will not approve an employer's application for H-2B workers unless it concludes that U.S. workers will not be adversely affected. And shrinking or eliminating the program would likely hurt Americans more than it would help them, reducing job opportunities for U.S. workers.

This report addresses many concerns and misconceptions about the H-2B program.

- A second original economic analysis conducted for the report shows that increases in the number of H-2B workers do not negatively affect U.S. workers' employment or earnings growth. The analysis compared wages in sectors that rely heavily on H-2B visa holders with wages in other industries that hire few or no temporary workers. The results: according to the analysis, the number of H-2B workers in a given field has no negative effect on U.S. workers' employment or earnings. Specifically, the results indicate that a 1 percentage point increase in H-2B workers in a given occupation in a given year is associated with wages in that occupation increasing 0.05 percentage points faster than they otherwise would have over the next calendar year, and with employment also increasing 0.05 percentage points faster. These are small effects – not surprising since H-2B is a small program. But the fact is, the direction is positive – the H-2B program is not having an adverse impact on U.S. workers.
- One-third of the respondents to the ImmigrationWorks-Chamber survey said they would reduce operations or close completely if they were not able to hire H-2B workers. Doing so would reduce jobs for U.S. workers.
- The H-2B program includes significant worker protections for both U.S. and foreign workers.
- Concerns about abuses by staffing agencies and foreign recruiters can be addressed through enforcement of existing regulations without major changes to the program.

Employers who hire H-2B workers make some valid complaints about the program. Addressing these concerns would make it more efficient.



- Respondents to the ImmigrationWorks-Chamber survey reported that in most years the annual cap of 66,000 H-2B visas is too low to meet business needs.
- Respondents complain that the program is so complicated and difficult to apply for that it discourages many small businesses from using it.
- The program’s complexity creates a market for staffing agencies, which bring in large numbers of H-2B workers and subcontract them out to smaller companies.
- Streamlining and simplifying the program’s requirements would make it more efficient and reduce the burdens it imposes on employers. Streamlining would also reduce the need for staffing agencies and the problems associated with them.
- Making the cap more flexible and basing it on the fluctuations of the market would make the program more efficient and enhance its economic benefits.

The economic analysis conducted for this report demonstrates that the H-2B program does not adversely affect U.S. workers’ employment or earnings. Employers consistently indicate that the program enables them to fill jobs that are not being filled by U.S. workers. Employers also report that using the program enables them to hire more U.S. workers for relatively higher-skilled jobs that support or rely on positions held by H-2B workers.

Despite these benefits, the number of H-2B workers is capped at a very low level, and employers must jump through a complex and onerous set of hoops in order to have access to visas. The program’s economic benefits could be significantly enhanced by simplifying these complex requirements and making the cap more flexible and responsive to market forces.

THE H-2B PROGRAM

The H-2B program allows U.S. employers to hire foreign workers to fill nonagricultural jobs on a temporary basis. An H-2B visa allows an employer to bring a foreign worker into the U.S. for up to 10 months at a time. Most of these workers are relatively low-skilled and work in seasonal jobs, often in geographic areas where the number of available U.S. workers is limited.

Employers’ use of the H-2B program has grown significantly since it was created by the 1986 Immigration Reform and Control Act (IRCA) – to the point that H-2B workers are now essential to the operation of several U.S. industries. The landscaping industry is the largest employer of H-2B workers. Other sectors that depend heavily on the program include the crabbing industry on Maryland’s Eastern Shore, the hospitality sector on Nantucket, ski resorts in Colorado, and nursery and forestry operations in all 50 states. In addition to hiring H-2B workers for seasonal jobs, all of these industries also hire U.S. workers, both during their peak seasons and year-round.

The H-2B program is part of the alphabet soup of U.S. immigration policy, one of the three principal programs that allow employers to bring temporary workers into the United States. The other two most widely used temporary worker visa programs are H-2A, which allows employers to bring in low-skilled agricultural workers for up to one year, and H-1B, which allows employers to bring in skilled workers with college degrees or specialized knowledge for at least three years. A worker with an H-2B visa can typically work for a U.S. employer for up to ten months, although the worker can move to other H-2B certified jobs and remain in the U.S. for up to three years. Unlike H-1B workers, an individual on an H-2B visa cannot apply for permanent residence while living and working in the U.S.



The H-2B Process

The H-2B process involves a complicated set of requirements and deadlines that businesses and foreign workers must meet.

- First, a company must request the prevailing wage for the specific occupation and geographic area from the Department of Labor’s National Prevailing Wage and Helpdesk Center. This process can take up to 30 days. The prevailing wage is the average wage paid to workers in a given occupation in a given area, as determined by DOL.
- Companies must then recruit U.S. workers to fill open positions. At a minimum, an employer must run two ads for the job in a newspaper in the area of intended employment, including in a Sunday edition if possible. The employer must also post the job with the State Workforce Agency. None of this required recruitment may begin more than 120 days before the need for the H-2B worker. The employer must advertise for at least ten days. The company must keep detailed records of the recruitment process, hire all qualified U.S. workers who apply and document the number of positions it was unable to fill. The employer must keep recruitment records for three years and may be audited by DHS or DOL at any time.
- If an employer is unable to fill the advertised job with a U.S. worker, the company may file an application with DOL for temporary labor certification (ETA Form 9142). This six-page form requires employers to demonstrate that their need for foreign workers is temporary – either a “one-time occurrence” or a “seasonal” or “peak-load” or “intermittent” need. They must specify precisely what the desired workers’ job duties and wages will be, detail their efforts to recruit U.S. workers and attest that similarly-employed U.S. workers will not be adversely affected by employment of H-2B workers. Historically, it has taken an average of 60 days for DOL to process an application.
- If a company’s labor certification application is approved, the employer then can petition the Department of Homeland Security (DHS) to admit a specified number of H-2B workers. Employers file their petition for a “nonimmigrant,” or temporary, worker (Form I-129) with the DHS’ U.S. Citizenship and Immigration Services division. The fee is currently \$320 plus an additional \$150 for fraud prevention and detection. The I-129 form is 26 pages long, at least nine pages of which must be completed by employers petitioning for an H-2B visa.
- USCIS accepts petitions for consideration only if the H-2B visa cap for the year has not yet been reached. The cap was reached every fiscal year between 2004 and 2008, typically within four months of the start of the filing period.
- After the employer’s petition is approved, there are further requirements for the foreign worker – a third application process, this one at the State Department.
- A foreign worker who is outside the U.S. must apply to the State Department for an H-2B visa. This typically requires an in-person interview at a U.S. embassy or consulate. The prospective worker must be able to demonstrate that he or she intends to return home after his or her visa expires. If approved, the foreign worker receives an H-2B visa and can then apply to U.S. Customs and Border Protection for admission.



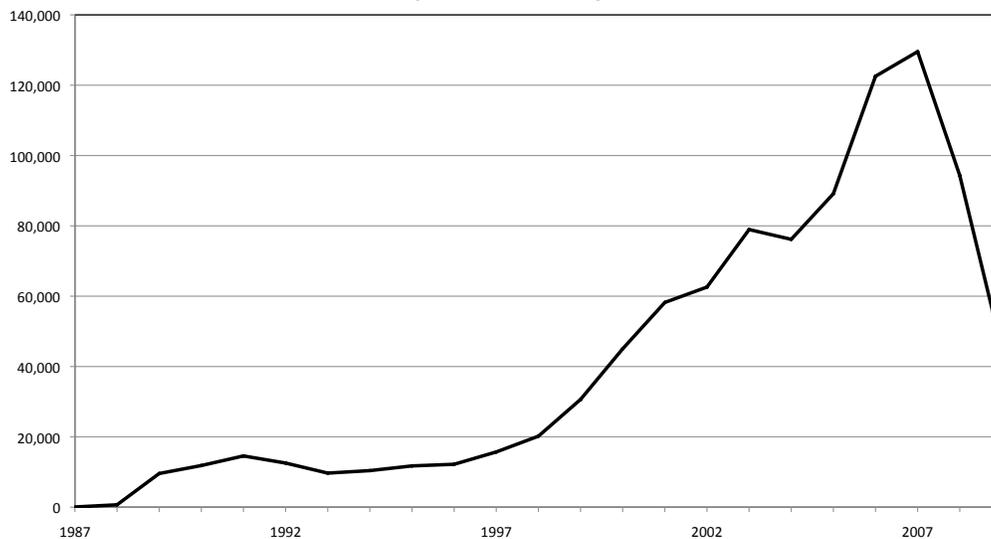
Like almost all temporary and permanent visas, the H-2B program is limited: there’s a quota on the number of visas available each year. In 1990, Congress capped H-2B visas at 66,000 per fiscal year. This cap was hit first in FY 2004 and then again in each of the following four years. Once the cap is hit, USCIS stops accepting temporary worker petitions, and no more visas are issued until the next fiscal year. If USCIS has already accepted more petitions than the number of visas available by the time the cap is hit, the agency holds a lottery to allocate the visas.

In 2005, in response to complaints about the binding visa cap and its possibly devastating effects on several specific seasonal industries, Congress passed the Save Our Small and Seasonal Businesses Act, making two important changes to the H-2B program. The first change split the 66,000-visa annual quota in two and allocated each half to one half of the fiscal year, making 33,000 visas available on a first-come, first-served basis in October and another 33,000 available in April. This helps ensure that employers whose need for H-2B workers begins relatively late in the fiscal year – for example, summer resorts – have an equal chance of securing H-2B workers. Unused visas do not roll over to the next fiscal year, but since 2005 any visas not used in the first half of a fiscal year have rolled over to the second half.

The second change, passed on a more experimental basis – it would expire after a year if not renewed – allowed employers to bring in significantly more H-2B workers each year by exempting workers who had participated in the program in previous years from counting against the annual visa cap. From 2005 through 2007, “returning” H-2B workers who had already been counted against the cap in the previous three years were granted H-2R visas and were exempt from the cap of 66,000. The exception led to a large increase in the number of H-2B visas issued in 2006 and 2007 (see *Figure 1*). The returning worker exemption was renewed once, in 2006, but it expired at the end of the 2007 fiscal year and has not been reauthorized by Congress in the years since.

Figure 1

**H-2B VISAS ISSUED
(FY 1987 - 2009)**



The number of visas rose steadily in the late 1990s, then fell dramatically in 2007 with the expiration of the returning-worker exemption and the onset of the recession.

Includes H-2B renewals and H-2R visas issued from 2005 through 2008.
Data for 2009 are preliminary estimates.
SOURCES: www.travel.state.gov/xls/NIVIssuedFYs1989-2009-Detailed.xls and www.travel.state.gov/pdf/NIVClassIssued-DetailedFY1987-1991.pdf.

The H-2B program started off small but has grown dramatically over time.

The program got off to a slow start, probably for two reasons. First, the legislation that created it also legalized almost three million unauthorized immigrants already living and working in the U.S., providing an ample supply of low-skilled foreign workers for seasonal employers to draw on. Second, employers were initially reluctant to use



the H-2B program because of its complexity. Over time, IRCA legalization beneficiaries moved into other jobs, so employers needed a new source of unskilled workers. Employers eventually became more familiar with the H-2B program, and the application process was streamlined under the Bush administration.

As *Figure 1* shows, demand exploded in the late 1990s, and the number of H-2B visas issued each year rose steadily until the end of the H-2R program and the onset of the recession in 2007. The H-2B program's growth reflects the country's relatively strong economic growth during much of this period. As U.S. unemployment rates fell and labor markets tightened, the program became increasingly important to businesses in seasonal and other economic sectors. With the economy booming, employers needed more workers. U.S. workers found it possible to move easily into other, better jobs. And more and more employers turned to the H-2B program, which more than quadrupled in size from 1997 through 2007, but has dropped since the recession.

Employers must meet a complex set of requirements before they can hire H-2B workers. These include recruiting U.S. workers, paying the prevailing wage and receiving approval from DOL, USCIS and the State Department. (See *p.5, The H-2B process, for details.*)

- Under certain circumstances, a temporary position being filled by an H-2B worker can be extended – to last for up to three years instead of the typical ten months. In such cases, the employer must retest the labor market annually to see if any U.S. workers are interested in the position before the company can hire an H-2B worker again.

Foreign workers also must meet certain requirements. Most importantly, prospective workers must be able to demonstrate to a U.S. embassy or consulate that they do not have “immigrant intent” – that they intend, that is, to return home after their H-2B visas expire. This is not easy. In FY 2009, according to the State Department, more than 30 percent of prospective foreign workers who applied for H-2B visas were turned down. Foreign workers must come from an approved list of countries. Mexicans accounted for the lion's share of workers admitted in FY 2009 – more than all of the other sending countries combined. But workers also came from Jamaica, Guatemala, the Philippines, South Africa and the United Kingdom, among other nations. Any worker who has held an H-2B visa for three years is required to leave the U.S. and remain outside the country for at least three months before seeking readmission under the H-2B program.

All in all, hiring an H-2B worker requires dealing with four separate government agencies: the State Workforce Agency, DOL, DHS and the State Department. Within DOL, employers must deal with the National Prevailing Wage and Helpdesk Center and the National Processing Center. Within DHS, employers must get permission from USCIS and workers must gain approval from Customs and Border Protection. The level of detail and complexity in all four agencies' H-2B regulations is astounding. The instructions for the labor certification application, ETA Form 9142, run ten pages, while the DOL final rules for the labor certification process issued in December 2008 fill 50 pages in the Federal Register. The instructions for Form I-129, the USCIS petition for a nonimmigrant, or temporary, worker, run 23 pages.

“Even though we hire an agent to guide our H-2B petition through the four government agencies involved, it is very time-consuming for our office staff. There are many government hoops to jump through, much paperwork is required and the requirements change each year.”

–Landscape in Texas





THE EMPLOYER

Jorge Maldonado, 49, the owner of Maldonado Landscape & Irrigation in New Braunfels, Texas, has been in the landscaping business all of his adult life.

He started out as a teenager, working for his father in Kerrville, Texas, then moved with the family business to New Braunfels, a small city between San Antonio and Austin. The company provides a range of services, from mulch and topsoil work to installing irrigation systems.

Maldonado said H-2B workers have been essential to the growth of the business over the years. The company does a lot of work for nearby military bases and public schools, which often need large jobs done quickly.

“They expect and demand high quality,” Maldonado said. “Without H-2B workers, we couldn’t rely on getting the job done.”

Maldonado says he has tried to hire local workers but cannot find enough who want to do seasonal work. So he turned to the H-2B program twelve years ago. He generally employs between 20 and 30 foreign workers each year, and they do everything from watering and digging to working with heavy equipment.

Several of his H-2B employees have been with the company “from the get-go,” Maldonado says, and they return every year, enabling him to give them more complex tasks as they gain experience.

He watches over them carefully in their first and second years to see if they are on time and reliable and catch on quickly to their assigned tasks. Those who do are rewarded with more responsibility when they return the third year.

Much as he appreciates the H-2B program, Maldonado also complains bitterly about it. Paperwork that needs to be processed if he is to get workers on time is frequently delayed by one government agency or another – he has to deal with four to obtain every visa. He would prefer it if workers could stay for 10 months out of the year, but usually it’s only eight.

Worst of all, Maldonado says, is the uncertainty. He’s never sure that his annual application is going to get through the process before the program’s annual cap of 66,000 visas is reached and the Department of Homeland Security stops issuing visas.

“If that cap were to be expanded, all employers would feel a lot more at ease,” he said.

Maldonado is also troubled by restrictions that the state of Texas imposes on H-2B workers. What frustrates him most: in Texas, visa holders cannot get drivers’ licenses for their personal use. Maldonado hires drivers to transport his workers from place to place, but he believes they should have the right to drive legally to get to and from work and see their families.

“It’s not a fair shake,” he said. “We as a community and a country are benefitting from the work they do. They pay taxes. They contribute to Social Security. And we’re benefitting more than we imagine. People need to understand - we’re talking about legal immigrants who are contributing to society.”



The H-2B process requires precise and exacting timing on the part of employers. The windows during which they must advertise for workers and file the recruiting report required for a labor certification are specified and short. An employer cannot begin recruiting workers more than 120 days before the company is going to need an H-2B worker, and the firm must advertise for at least 10 days.

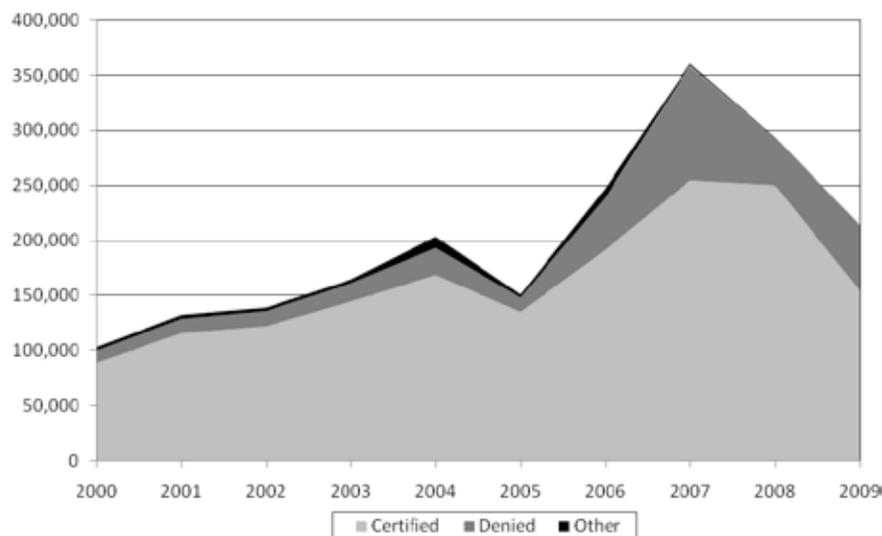
The clock can easily run out on employers seeking temporary workers. A company cannot submit its labor certification application until it has completed the recruitment process and found it impossible to hire enough U.S. workers. Historically, it has taken an average of 60 days for DOL to process these applications, leaving the employer just 50 days before its need for temporary workers kicks in – a need often determined by inexorable seasonal changes. During that period, the employer must still file a temporary worker petition, get it approved by USCIS and find an appropriate foreign worker for the job. Then that worker must apply to DHS and to the State Department, receive approval from both agencies and travel to the United States.

Despite the difficulties involved, the demand for H-2B workers usually far outstrips the limited number of visas available. *Figure 2* shows the number of positions for which H-2B workers were requested each year since FY 2000. (The numbers are based on labor certification applications filed with DOL.) Although only 66,000 visas were available in most of these years, in FY 2009 employers submitted requests for more than 214,000 positions. Indeed, the number of labor certification applications has far exceeded the number of visas available every year for the past decade.

The DOL does not simply rubber-stamp applications – on the contrary. The light gray area in *Figure 2* is the number of positions approved each year. The dark gray area is the number of positions rejected. (“Other” positions are those for which the application was remanded or withdrawn). The bigger the dark area relative to the total in a given year, the higher the denial rate was that year – a rate that has increased dramatically over time. In FY 2009, more than 25 percent of applications were denied.

Figure 2

**H-2B APPLICATIONS
(Labor certification applications FY 2000 - 2009)**



Demand for H2B visas far exceeds the supply. The Department of Labor denies a large fraction of applications before they are even considered by the immigration service, USCIS.

Data are by number of positions requested.
"Other" includes positions for which the application was remanded to either the employer or the state or was withdrawn.



BENEFITS OF THE PROGRAM

The H-2B program is critically important for many businesses that have difficulty finding U.S. workers to fill temporary jobs. This is particularly true in seasonal industries. Comments from H-2B employers attest to the need for foreign workers in physically demanding seasonal jobs, often in remote locations, that many U.S. workers will not take.



“The benefit of H-2B to our company has been a legal, stable and motivated work force. We would much prefer to hire only American workers. It would be much cheaper and easier for us to use American workers if they were willing to do our jobs. The problem is that American workers are not willing to do these jobs. We have hired dozens and dozens of American workers. Only a handful have ever even shown up for work. Of those, we have never had one last more than two days. Without a consistent H-2B labor pool, we would not have been able to grow our business and create the good American jobs that we have created.”

–Forestry contractor in a southeastern state

In order to learn more about employers’ perceptions of the H-2B program, ImmigrationWorks USA and the U.S. Chamber of Commerce conducted a survey: five short questions distributed among H-2B employers in July and August 2010. The survey asked how many H-2B workers the company had hired in the last three years and what types of jobs those workers held. It included two open-ended questions about the benefits of using the program and asked what if any problems employers had experienced. Another open-ended question asked what employers would do if they were not able to hire H-2B workers. Participation was voluntary, and results could be submitted via email, fax or the internet. A total of 367 employers responded.

The majority of H-2B employers who responded to the survey noted that temporary foreign workers are reliable and hard-working. Many also praised these workers’ productivity: a benefit that offsets the cost of bringing them into the United States. Respondents appreciated that H-2B workers were willing to work seasonal jobs and then return home when the season ended.



The H-2B program reduces companies' training and turnover costs. Many survey respondents complained about high turnover among U.S. workers. Managers reported that when workers quit, their companies have to turn away business until they can find new workers and train them. Most H-2B workers stay for the duration of their visas, providing a stable and reliable workforce. In addition, survey respondents said that bringing back the same H-2B workers each year helps them to reduce training costs.

“The H-2B program has provided us with legally-authorized, reliable workers. The same workers have continued to return annually and therefore are already properly skilled and trained. They pass their pre-employment drug screen, show up every day and are willing to work extended hours and weekends, when necessary.”

–Manager for a horticultural service firm headquartered in Ohio



Still another important benefit of the program is that it offers companies a way to hire foreign workers when U.S. labor markets tighten. The program increases labor market flexibility by allowing businesses to bring in foreign workers when U.S. workers move up to better, higher-paying jobs during economic expansions.

But the advantages of the H-2B program extend far beyond the particular company that uses the visas. Not only does the program give employers a way to hire foreign workers when U.S. workers are not available; it also helps create jobs, increasing opportunities for U.S. workers. As many respondents to the ImmigrationWorks-Chamber survey explained, hiring H-2B workers allows them to sustain and expand the volume of business they do, and this in turn enables them to hire more U.S. workers, often for higher-skilled supervisory, clerical and sales positions. These jobs pay well above the minimum wage, and many are year-round.

More than one-third of survey respondents indicated that if they were unable to hire H-2B workers, they would have to cut back operations or close their business entirely – and fire U.S. workers as a result. Many respondents also noted that if they were unable to hire H-2B workers, they would have to shift some U.S. workers from supervisory jobs to positions requiring heavy manual labor and that this could jeopardize the economic viability of their businesses. Still others noted that if they were unable to bring in H-2B workers, they might turn to unauthorized immigrant labor or foreign students – not U.S. workers.

“If we are not able to get legal seasonal workers, we have only 2 choices: #1 Hire illegal, undocumented workers, #2 Go out of business.”

–Landscape and irrigation contractor in Kansas

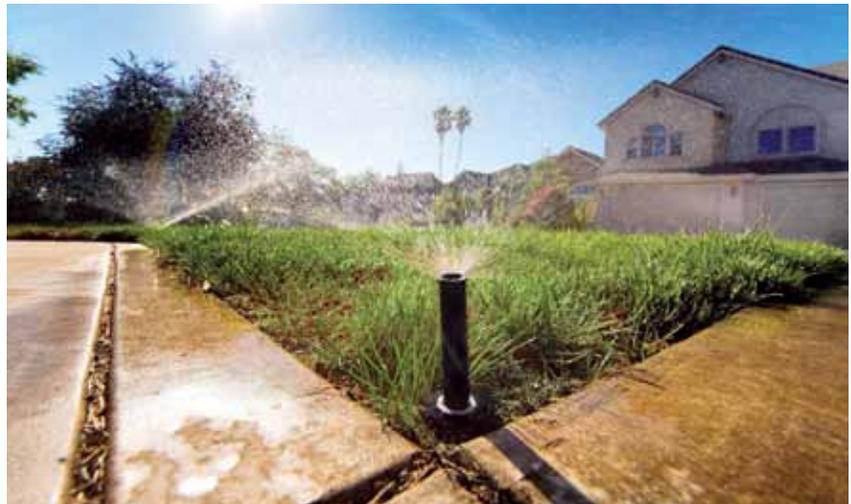
The results of the ImmigrationWorks-Chamber survey are consistent with a study of Maryland's blue crab processing industry conducted by the University of Maryland's Sea Grant Extension program in 2008.¹ That survey used Maryland state data on the multiplier effects of local industries and found that every H-2B worker employed in a



Maryland seafood processing plant supported 2.5 additional jobs in the state, some in the crabbing sector, others in supporting industries and elsewhere in the local economy.

“We were constantly unable to get our work completed because of employees not showing up for work. With the H-2B program, we have been able to have consistent workers and in turn have hired more full-time salaried Americans for year-round positions.”

–*Landscaper in Pennsylvania*



According to employers, the H-2B program has economic benefits not only for participating firms but also for the broader economy. Most significantly, it appears to enable employers to hire more workers – not just foreign workers but also U.S. workers. Critics claim that the opposite is true – that the program costs U.S. workers jobs and drives down wages. The next section evaluates the merits of these claims.

ADDRESSING CRITICS’ CLAIMS

Critics of the H-2B program make a number of allegations. Some argue that the main reason employers use the H-2B system is because it allows them to hire workers who are cheaper than native-born workers. Others claim that allowing employers to bring in foreign workers adversely affects the wages and employment of U.S. workers. Still others argue that employers use H-2B workers for permanent, not temporary, jobs. And others focus their criticism on the staffing agencies that bring in H-2B workers and subcontract them out to other companies, charging that these agencies abuse the system and engage in illegal recruiting practices. This report finds little evidence to support most of these claims, and others can be addressed through relatively small, procedural reforms to the H-2B program.

CLAIM: Employers hire H-2B workers because they’re cheaper

Some critics allege that the main reason employers use the H-2B system is because it allows them to hire workers who are cheaper than native-born workers. But the truth is H-2B workers are rarely cheaper than U.S. workers. Extensive regulations strictly enforced by DOL insure that employers do not pay H-2B visa holders less than they pay comparable native-born workers. The program’s prevailing wage requirement mandates that employers must pay foreign workers no less than the average wage paid to similar US workers doing the same job in the same geographic area. An elaborate system of worker protections also makes it difficult to use H-2B visa holders to undercut Americans. (See page 13, *H-2B Worker Protections*). These protections are extensive and costly for employers. And if anything, the costs associated with the program – costs of recruitment, labor certification and obtaining a visa – make hiring H-2B visa holders more expensive than hiring U.S. workers.



H-2B Worker Protections

The H-2B program protects temporary foreign workers from abuse by extending to them many of the same rights extended to U.S. workers and creating additional rights specific to H-2B workers.

Like U.S. workers, H-2B workers enjoy the following rights:

- They must be paid time and a half for overtime work. (Some positions are exempted, but very few H-2B workers hold them.)
- Employers may not discriminate against them or pay them differentially on the basis of sex, race, national origin, religion or disability.
- Employers must comply with all health and safety regulations. They cannot deduct the cost of safety equipment from workers' pay. In most cases, employees who are injured at work must receive free medical treatment and part of any wages lost while they are incapacitated.
- The right to join a union or engage in collective bargaining.

Additional rights specific to H-2B workers include:

- H-2B workers must be paid the DOL-mandated prevailing wage in their occupation and area.
- They must be employed full-time, typically at least 30 hours per week.
- Employers may not require workers to pay for any recruitment costs or fees related to the company's labor certification application.
- An employer must pay for the return transportation to the country of origin of any H-2B worker who is dismissed before the end of the authorized work period.
- Although it is not required by H-2B program regulations, DOL currently takes the position that employers must pay all of the visa and transportation costs incurred by H-2B workers coming to the United States. (The U.S. Fifth Circuit Court of Appeals ruled this fall that employers are not responsible for those costs, but it remains to be seen how DOL will implement the ruling.)

H-2B workers have limited rights in some other respects. Unlike many other temporary visas, such as the H-1B visa for skilled workers, H-2B visas do not allow for dual intent. H-2B visa holders cannot apply for a green card to remain permanently in the United States. Although an H-2B worker may transfer to other H-2B-approved employers and have the term of his or her visa extended, the H-2B visa is employer-specific. If the foreign worker does not report to work for five consecutive days without the employer's consent, the employer is required to notify DOL and USCIS within two work days after discovering that the worker has absconded.

“If I could find U.S. workers, I would. It would be less costly to the company to hire reliable U.S. workers, but some U.S. workers do not want to do manual labor.”

—*Human resource manager in New York state*



But if employers do not hire H-2B workers to save on costs, why do they hire them? According to employers who responded to the ImmigrationWorks-Chamber survey, it's because they cannot find enough native-born workers to keep their businesses running and meeting customer demand. Survey respondents reported that the seasonal nature of the jobs on offer combined with the physical demands of the work make the jobs unappealing to U.S. workers. The protracted downturn has made a difference, easing the problem for some employers in some locations. But other companies report that they still have difficulty finding qualified U.S. workers to fill empty slots. Survey respondents who operate seasonal businesses, such as restaurants and motels in resort areas, seem to find it particularly difficult to staff their operations. Many noted that students are not available for the entire season, that the local labor force is too small to meet peak demand and that adult workers typically want permanent employment, not seasonal jobs. According to these employers, the H-2B program offers them a way to fill their employment needs on a temporary basis when too few U.S. workers are available.

“H-2B workers are taking positions that U.S. workers see as too menial. U.S. workers thus go to our more advanced and high paying jobs.”

–*Quarry operator in New York state*



If these employers are telling the truth – that they hire H-2B workers only when they cannot find Americans – then their use of the program should diminish when more U.S. workers become available. And in fact, this is exactly what happened during the recent recession. The number of H-2B visas issued declined sharply when the recession hit, and it continued to drop as the downturn dragged on (see *Figures 1 and 2*). Although employers' profits were squeezed, they did not turn to the H-2B program as a source of less expensive labor – as you would have expected if the critics were right that businesses use H-2B workers because they are less costly than Americans. And there is little evidence that many H-2B employers turned instead to unauthorized workers – according to the Pew Hispanic Center, the number of people entering the U.S. illegally fell sharply during the downturn, as did the size of the unauthorized population in the United States.

Employers reacted to the recession by using fewer H-2B workers. And the program responded appropriately, self-correcting as the demand for H-2B visas dropped. As the recession dragged on, many employers who had completed the H-2B application process – whose labor certification applications and temporary worker petitions had already been approved by DOL and USCIS – opted not to bring some of these already authorized workers into the country. And by August 2009, USCIS found itself sitting on a surplus of some 25,000 visas – so many that it reopened the filing period for H-2B petitions after having earlier announced that it had received enough petitions to meet the cap.

This historical evidence is persuasive, but not conclusive. And in order to further investigate why employers hire H-2B workers, an original economic analysis conducted for this study examined the demand for H-2B workers across the 50 states.

The key variable was the business cycle, which differs in its impact from state to state, raising and lowering unemployment at differing rates and times and affecting the number of U.S. workers available to seasonal employers. The goal of the analysis was to determine whether H-2B demand varied with these local ups and downs. After all, if



employers bring in foreign workers when it is difficult to hire U.S. workers, the number of H-2B workers in a state should increase when labor markets tighten – when unemployment falls and employment growth accelerates. But if employers are bringing in H-2B workers for other reasons, the demand for visa holders should not vary significantly with the business cycle.

The data on H-2B use came from USCIS, which tabulates the number of foreign workers admitted on H-2B visas going to each of the 50 states. The data on state unemployment rates and state employment growth came from DOL's Bureau of Labor Statistics. The data covered all 50 states plus the District of Columbia for FY 2006 through FY 2009. (See the *Appendix* for more detail.)

The results of the analysis support the argument that the H-2B program provides a way for employers to hire foreign temporary workers when they cannot find U.S. workers. From 2006 through 2009, the number of H-2B workers in a given state increased when the state's unemployment rate fell and its employment growth accelerated. In the average state, when the employment growth rate increased by 1 percentage point, employers brought in 216 additional H-2B workers. And when the unemployment rate increased by 1 percentage point, employers brought in 286 fewer visa holders. These findings are consistent with responses to the ImmigrationWorks-Chamber survey. Employers turn to the H-2B program to alleviate their difficulty finding workers when U.S. labor markets are tight – not, as critics claim, because H-2B workers are inherently cheaper to hire than Americans.

“Because we are a seasonal employer, the H-2B program helps us fill positions that local candidates do not find desirable. A local candidate will accept a seasonal job only until he/she finds a full-time year-round position.”

*–Manager of a private club
in Florida*



CLAIM: H-2B workers undermine U.S. workers' wages

The H-2B regulations include an array of provisions aimed at protecting U.S. workers from competition from low-wage foreign workers. The purpose of the certification process is to guarantee that no employer brings in an H-2B worker unless there is a shortage of U.S. workers willing to do the job. The DOL must certify that no qualified U.S. workers are available and that the foreign worker's employment will not adversely affect similarly employed U.S. workers. Employers must pay H-2B workers at least the prevailing wage (the average wage in a given occupation in that geographic area), and they must actively recruit U.S. workers at that wage before filing their labor certification application. With limited exceptions, the employer may not lay off similarly employed U.S. workers in the 120 days before an H-2B visa holder starts work or in the 120 days after that start date.

Still, despite these protections, some critics believe that the H-2B program harms U.S. workers' employment and undermines their earnings. No existing research systematically examines the truth of this claim. And what research exists is based largely on anecdotes, case studies or flawed methodologies. For example, the Employment Policy Institute looked at seven occupations with large numbers of H-2B workers and concluded that real wages were stagnant in those occupations between 2000 and 2007. But this tells us little. After all, the same was true for low-skilled workers across U.S. occupations during this period – regardless of how many H-2B workers the sector employed.



THE WORKER

Juan Romo del Alto, 33, first heard about the H-2B program eight years ago from a friend in Mexico City, and he decided to give it a try.

Getting to the United States wasn't easy, especially that first year. But through his friend he landed a job in New Orleans, where he worked for a summer at a landscaping company. That fall, like the other H-2B workers employed by the landscaper, he returned home to Mexico. The next spring, again through someone he knew, he was offered a slot at Borst Landscaping & Design, in Allendale, N.J. He still goes home to Mexico every fall, but he has come back to work for Borst every summer since.

Allendale is a residential suburb northwest of New York City, and Borst Landscaping is a relatively small operation with 55 workers, roughly half of them H-2B visa holders.

The most Romo del Alto could earn in Mexico, he says, is \$30 a day, and that's working sun-up to sundown. In New Jersey, he makes \$17.75 per hour.

Using the money he's earned at Borst, he has been able to buy a house at home in Mexico and provide for his wife and two children. "I'm able to save money and support my family and give them what they need," he said through an interpreter. "I'm very appreciative."

Mark C. Borst, the founder of the company, has been using the H-2B program for more than a decade, and he says he can hardly imagine keeping his business open without the workers it provides.

"They're great employees," he said. "They're loyal. They respect the program. They become key people to your organization – they definitely hit a point where they are assets. It would really put a burden on my company not to have them."

Both Borst and Romo del Alto complain about the paperwork involved in the H-2B process.

Even before he could come to the U.S., Romo del Alto remembers, he had to find and convince a U.S. employer to send him a letter offering him a job. There were several applications to fill out, routine now but bewildering at first, and he had to prove to officers at the consulate in Mexico that his ties to home were so strong that he would return there when the summer ended, not remain in the United States.

Romo del Alto sounds anxious and frustrated just talking about the process.

Still, he says, it was worth it.

He has been given more and more responsibility each year at Borst, he says, and now tries to help newer workers learn the ropes.

His only regret: he wishes he could stay year-round. He wants to apply to become a permanent U.S. resident, but the H-2B program does not allow that.



To fill this research vacuum, a second original economic analysis conducted for this study compared wages in sectors that rely heavily on H-2B visa holders with wages in other industries that hire few or no temporary workers. The goal was to investigate how the number of H-2B workers in a given job affects U.S. workers' employment and earnings.

The study looked at three critical variables for each of 503 different occupations: the annual growth of hourly earnings among native-born workers in each occupation, the annual growth in the number of native-born workers in that occupation and the number of H-2B visa holders employed in the occupation. The occupations ran the gamut from chief executives (an occupation with no H-2B workers) to cooks and grounds maintenance workers (occupations with many H-2B workers). The analysis was done at both the state and national levels and covered the period from 2000 through 2009.

The data on U.S.-born workers' earnings and employment came from the Current Population Survey, a survey of some 50,000 households conducted monthly by the Census Bureau on behalf of the Bureau of Labor Statistics. The data on H-2B workers came from approved H-2B labor certification applications tabulated by the Foreign Labor Certification Data Center. (More detail on the study's data, statistical methodology and results can be found in the *Appendix*.)

If it is true that the H-2B program harms U.S. workers' labor market opportunities, the growth rate of U.S. workers' wages and employment should be smaller in occupations that employ many H-2B workers than in occupations that employ few or none.

The results do not indicate that this is the case.

On the contrary. The analysis shows that the number of approved H-2B workers expressed as a fraction of total employment in a given field in a given fiscal year is not negatively related to the growth of U.S. workers' employment or earnings over the next calendar year. Indeed, at the national level, the number of H-2B workers admitted in a given year is correlated with *stronger* wage and employment growth in occupations that rely heavily on the program. Specifically, the results indicate that a 1 percentage point increase in the percentage of H-2B workers in a given occupation in a given year is associated with wages in that occupation increasing 0.05 percentage points faster than they otherwise would have over the next calendar year, and with employment also increasing 0.05 percentage points faster. These are small effects – not surprising since the H-2B program is small. But the fact is, the direction is positive – the H-2B program is not having an adverse impact on U.S. workers.

At the state level, there was no significant relationship between the number of H-2B workers in a given occupation and the wage or employment growth in that sector. In other words, this analysis found no evidence that admitting more H-2B workers significantly slows or boosts either employment or earnings growth among native-born workers – it has no effect one way or another.

Other research reinforces these results, finding little conclusive evidence that immigration of any kind, temporary or permanent, adversely affects U.S. workers' employment or earnings. A voluminous economics literature uses sophisticated methodologies to examine how inflows of foreigners affect U.S. workers' labor-market outcomes. These studies have looked at inflows of immigrants in general, at permanent residents, at refugees and at H-1B workers – just not H-2B workers. And most of this research concludes that immigration has either no effect or a small effect on competing native-born workers.

Among the best known of these studies is by Gianmarco Ottaviano, professor of economics at the Università Commerciale Luigi Bocconi in Milan, and Giovanni Peri, professor of economics at the University of California at Davis.² Published by the National Bureau of Economic Research in 2008, their study examines the effect of immigration to the United States during the period from 1990 to 2006. Its principal finding: that an increase in immigrants has little effect even on the wages of the most similar U.S. workers, those without a high school diploma – no more than



minus 0.1 percent to plus 0.6 percent a year. For a worker earning \$25,000 a year – the median wage for a full-time, year-round male worker without a high school diploma – this translates into a range of minus \$25 to plus \$150 per year. The effect is so small largely because immigrants and native-born workers are different. They tend to have different skills, work in different sectors, live in different parts of the country – and by and large, they complement rather than compete with each other.

Other studies suggest that immigration has some negative effect on less-skilled U.S. workers' earnings and employment. But these negative consequences are more than offset by the broader economic benefits of immigration. The same 2008 study by Ottaviano and Peri concluded that immigration raised average wages among native-born workers, skilled and unskilled, by 0.6 percent. The researchers' explanation: when immigrants take low-skilled, low-paying jobs, they free U.S. workers to do higher-skilled, higher-paying work – and indeed in many cases, the immigrants' presence helps create and support those better jobs. One of the biggest beneficiaries of immigration has been college-educated mothers who hire immigrants to provide child care that enables them to reenter or stay in the workforce. The population as a whole also benefits from immigration through lower prices for goods and services provided by foreign workers.

What would happen if employers were not able to bring in temporary foreign workers? Many business owners would be forced to move operations outside the country or shut down completely. In a few industries – the few instances where it's possible – some jobs might be mechanized. Still other employers might hire unauthorized workers – a distinct possibility, according to responses to the ImmigrationWorks-Chamber survey. Or they might raise prices for the goods and services they produce. None of those alternatives help the average American.

CLAIM: H-2B workers are not truly temporary

Still other critics question whether H-2B visa holders are truly temporary. Although employers must establish that their need for foreign workers is indeed short-term – either a “one-time occurrence” or a “seasonal” or “peak-load” or “intermittent” need – some employers turn to the program year after year. Critics charge that this indicates the employers are using the program to fill permanent, not temporary, jobs.

This concern is without merit. Recurrent demand does not violate the rules of the H-2B program. After all, a job can be both temporary and recurring. Many of the seasonal jobs that employers use the H-2B program to fill are just that – temporary and recurring. And this is precisely what makes them undesirable to many U.S. workers. Few workers with other alternatives will take a one-time, seasonal, peak-load or intermittent job. And when they do, according to many H-2B employers, they often quit as soon as they find a permanent job that offers more stability.

“This program fills positions that U.S. workers don't want to do when the economy is strong. Recruiting is very difficult during times of economic growth; even today, U.S. workers are still a challenge to retain.”

–Manager at a pavement marking company in North Carolina





CLAIM: Unscrupulous businesses and staffing agencies abuse visa holders and undermine Americans

Still other critics – among the most vocal – complain that unscrupulous employers and staffing agencies abuse the H-2B program.

Many of these critics' complaints focus on what they allege are illegal recruitment practices. H-2B employers find prospective employees in a variety of ways. Some recruit their workers themselves, traveling abroad to interview prospects or relying on existing workers to tap family members. Others hire foreign recruiters to interview and select applicants on the ground in Mexico or Jamaica or some other sending country. Still others rely on U.S.-based staffing agencies that bring in large numbers of temporary foreign workers and hire them out on contracts to smaller employers. Labor certification applications indicate that large staffing agencies are not the dominant H-2B employers. Among applications approved in FY 2009, the median number of H-2B workers requested was 15, and only one application for more than 500 workers was approved. But the program's critics train much of their fire on the staffing agencies and on foreign recruiters.

Some of the critics' concerns are understandable. With millions of foreign workers desperate to enter the U.S., it is easy to see how recruiters might take advantage of them. Anecdotes suggest that some foreign recruiters require illegal payments from aspiring H-2B workers. And critics are correct that it can be difficult to address this sort of exploitation because the illicit activity would occur abroad.

An extensive web of regulations attempt to limit illegal recruitment practices. DOL and DHS regulations adopted in 2008 prohibit employers from requiring H-2B workers to pay any recruitment-related fees as a condition of obtaining employment. Additional DOL regulations require that employers' contracts with foreign recruiters explicitly forbid the recruiters from seeking or receiving payments from prospective employees. Employers must attest that H-2B workers have not paid any fees to a recruiter. If they learn that a worker has done so, they must reimburse the worker. If DOL's Wage and Hour Division finds that an employer, attorney or agent had knowledge of or had reason to know of such payments, it can assess fines and penalties and bar those individuals or companies from the H-2B program.

Despite all of these rules, concerns persist. But there are a number of ways that the problem could be addressed further. State Department officers who interview H-2B applicants before admitting them are already obligated to inform them of their rights, but the officers could be mandated to make more of an effort and to make sure the applicants understand the warnings. The State Department and DOL could increase oversight of foreign recruiters. And businesses that violate the law should face appropriate sanctions.

Also subject to criticism are the staffing agencies that bring in large numbers of foreign temporary workers and hire them out on contracts to other employers. Critics claim that these agencies commit fraud, abuse foreign workers, exhaust the limited quota for H-2B workers and skew wage rates, both for H-2B visa holders and for U.S. workers.

New regulations issued by DOL in late 2008 address many of the critics' concerns about staffing agencies. The regulations require that agencies and their clients prove that their need for workers is truly temporary. The rules also bar staffing agencies from moving H-2B visa-holders from one company to another as a way to keep them in the U.S. on a year-round basis. And DOL routinely audits H-2B employers, barring those who repeatedly break the law from participating in the program. Over time, these restrictions are likely to reduce the number of H-2B workers subcontracted out by agencies to other companies.

But arguably the best way to control abuses by staffing agencies would be to eliminate the burdensome bureaucracy that makes them necessary in the first place. It's no mystery why seasonal employers, particularly small business owners, turn to staffing agencies: they spare business owners from having to master the complexities of applying for labor certifications and petitioning for foreign workers. Several respondents to the ImmigrationWorks-Chamber



survey reported that contractors help companies hire H-2B workers when the annual cap has been met – and that they are increasingly turning to them as the rules get more complex. Simplifying the rules would reduce employers’ need for staffing agencies and limit any distorting effect on the labor market.

“The process has become so labor-intense that it discourages participation on the part of quality employers. Those of us who are ethical employers, of both full-time and temporary workers, have had to resort to utilizing temp agencies. This is not the best process for us or for the workers involved.”

–Resort manager in Missouri

THE PROGRAM’S HURDLES AND INEFFICIENCIES

Although employers’ responses to the ImmigrationWorks-Chamber survey pointed to many benefits of the H-2B program, their comments also suggested problems – inefficiencies, unnecessary hurdles, burdensome costs, expensive delays and more. H-2B employers are an interested party with an evident stake in how visas are issued. Still, their perspective yields important insights that can be used to help improve the program.

Several aspects of the H-2B program limit its attractiveness to businesses that could benefit from participating. Employers responding to the ImmigrationWorks-Chamber survey described the system as complicated, time-consuming, costly and inefficient. Many reported that the cap of 66,000 visas per year was too low to meet their labor needs. Others complained that uncertainty as to whether they would be able to get H-2B workers hobbled their operations and stymied business growth. Still others pointed to delays in DOL, DHS and State Department processing, inconsistent decision-making by government agencies, lack of guidance and frequent changes to the program’s regulations. One respondent commented that the myriad requirements and restrictions of the H-2B program make it almost impossible to be in full compliance.

“The biggest problem is the inability to get timely approval of petitions. In addition, the volume of paperwork required is ridiculous, especially when it is asked for repetitively.”

–Restaurant manager in South Dakota



Any missteps in the complicated application process can mean delayed approval or visas denied – both extremely costly for employers. Even a short delay can leave a business without workers during a critical window in its sector’s seasonal cycle – think about an amusement park still short of workers when the summer season kicks off on Memorial Day. And in most years, a delay in the application process can also mean failure to get a worker before the visa cap is reached.



“The number one problem is not knowing if I will get the visas each year. I put a lot of time and money into applying for the visas each year and you never know if you are going to get them.”

–Landscaper in Maryland

The uncertainty involved in the H-2B process creates inefficiencies and worse. Employers who do not know whether they will be able to get visas have difficulty making plans. And regulations meant to prevent abuse can create perverse incentives. For example, anxiety about meeting the annual cap may encourage employers to petition for H-2B workers they aren’t sure they will need just in case their business takes off or some of their workers quit after the quota is hit.

The complexity of the H-2B program also leads to unintended outcomes. It discourages an untold number of small businesses from using the program. It creates incentives to hire lawyers and other consultants. Larger companies that require large numbers of H-2B workers are in a position to bear these costs, but small businesses are at a distinct disadvantage – with consequences for them and ultimately for the economy. Many respondents to the ImmigrationWorks-Chamber survey complained that mounting costs – the ever-changing prevailing wage requirement, travel costs, visa fees, recruitment expenses, lawyer and consultant fees – were coming close to making participation in the program prohibitively expensive.

“There is significant red tape, confusion, inconsistency in how the program works and what is needed to get approved.... If the law was simplified, we wouldn’t have to hire an attorney each year to sort through the yearly changes to the law.”

–Manager in the hospitality industry



The recruitment process for U.S. workers is also inefficient. The precise timing requirements and the long lag between recruitment and the start of the work period make the seasonal jobs being advertised even less attractive to U.S. workers – remember employers start recruiting 120 days before the worker is needed. Employers who successfully recruit U.S. workers worry that they will not show up three or four months later when the job begins. Since these jobs are temporary, many U.S. workers are likely to continue searching for a permanent job while waiting for the temporary job to start – and as a result, employers may be stuck without any workers when their peak season starts.

MAKING THE PROGRAM MORE EFFICIENT

The H-2B program clearly needs improvement – and making it more efficient would serve the country’s economic interests. Far from harming U.S. workers’ employment or earnings, the program appears to create and preserve jobs in some sectors. It also lowers prices for the labor-intensive goods and services produced by industries that hire H-2B workers – to the benefit of U.S. consumers.



THE COMMUNITY

Maryland is famous for its tasty blue crab, which is harvested from the Chesapeake Bay and is the state's official crustacean. What few people realize is that the crab cakes and other delicacies produced by Maryland seafood processors are made possible by a heavy reliance on seasonal H-2B workers.

For many generations, young Maryland girls worked alongside their mothers picking Chesapeake crabmeat out of shells – tedious, painstaking manual work. But like much of rural America, the region has changed. More young people leave in search of work, they want a different kind of career. Fewer locals are available or interested in jobs in the seafood-processing plants. And so, starting in 1991, the plants began turning to H-2B workers.

Before a Maryland company can hire an H-2B worker, it must advertise widely and make every effort to hire American workers. The processing plants must pay a government-mandated “prevailing wage” of \$7.25 an hour, and with piece work, pickers can earn significantly more. The workers, most of them from Mexico, pick crab eight hours a day, five or six days a week. They and their employers pay taxes on their income. And when the season ends in the fall, the workers return home to Mexico. Many of them come back season after season.

Maryland isn't the only state that hires H-2B worker for seafood processing. Employers in Virginia and North Carolina also use the program. But Maryland's processors rely on it far more heavily. Together, the 25 seafood plants on the Chesapeake Bay employ as many as 500 H-2B workers a year, and these employees are widely credited with sustaining the industry. The crabmeat processing industry contributes between \$25 and \$30 million to the Maryland economy every year. According to employers, seasonal workers are responsible for three-quarters of the crab picked at Chesapeake processing plants. The plants operate on narrow profit margins, and the H-2B program allows them to remain globally competitive.

F. Levi Ruark, president of the National Bank of Cambridge, Md., explains how essential these H-2B workers are. They sustain the processing plants, and the plants sustain everyone else: from the financial institutions that lend them money to the restaurants that serve their product to visiting tourists – not to mention the grocery stores and other businesses where the foreign workers shop. Without the H-2B workforce, Ruark told *The Baltimore Sun* last year, “I could see a great downturn in our economy.”

If you add it all up, according to University of Maryland economist Douglas Lipton, each foreign worker sustains 2.54 American jobs in the surrounding community. If the H-2B program shut down and those workers could not return, Lipton estimates, it would put more than 1,250 Americans out of work.

That's unthinkable, Maryland crabbers say – except that it almost happens every year. The H-2B program is capped at 66,000 workers a year, and Maryland seafood processors must compete with seasonal employers in many other fields, including landscaping, construction and tourism across the 50 states. Companies can't file a request for a visa more than 120 days before they need workers. If enough other employers in other sectors apply first, Maryland seafood processors are out of luck – and some years, the cap has been reached even before the picking plants were allowed to apply.



Responses to the ImmigrationWorks-Chamber survey and the original economic analysis conducted for this report point to the same conclusion: the two most problematic aspects of the H-2B program are the rigid cap and the burdensome paperwork. Both make it difficult for the program to fulfill its stated objective – enabling employers to bring in temporary foreign workers when they are unable to find enough U.S. workers to meet their business needs. And both problems can be addressed relatively easily.

First, the cap. The main problem with a fixed quota is that it restricts employers from bringing in workers when they need them most. Good economic times squeeze seasonal employers from two directions. When the economy is booming, U.S. workers can find other jobs, and few are interested in temporary or seasonal positions. And meanwhile, the demand for many labor-intensive goods and services increases. The two forces combine to push up employers' demand for H-2B workers. But a fixed cap cannot adjust, no matter how strong the economy or how desperate the employers' need for workers. This inflexibility constrains economic growth.

A more efficient approach would be to link the H-2B visa cap to the business cycle. The history of the H-2A and H-2B programs underlines the point: market forces work better than arbitrary ceilings to limit worker flows, and there is little risk that employers will bring in more temporary workers than they need. The H-2A program, which enables employers to hire temporary agricultural workers, has no cap. Yet at no time in the past decade has the number of visas issued under the program exceeded 65,000 per year – and some years, it was as low as 30,000. Similarly, in FY 2005 and 2006, when non-farm employers were allowed to bring in returning H-2B workers without counting them against the 66,000-visa cap, the number of workers admitted remained less than one-tenth of one percent of total U.S. employment.

If there must be a cap, it should be based on market forces. The number of visas available should rise when the economy grows and demand for H-2B workers increases – and it should shrink during hard times when fewer seasonal workers are needed. Some commentators propose measuring labor demand monetarily – not by mandating wage rates, which would distort the market, but by replacing burdensome certification requirements with a visa auction or a fee paid by employers for each foreign worker they hire.³ Alternatively, the cap could be designed to move up and down in sync with some other, proxy measure of economic activity: the national unemployment rate, GDP growth, growth in sectors that typically hire large numbers of H-2B workers – or perhaps some combination of the three. Once the formula for the cap was determined, there should be no need for Congress, an independent commission or any government agency to intervene – the cap would move up and down automatically with the business cycle.

Second, the paperwork. There can be little question about the need to make the H-2B program more efficient by streamlining its paperwork requirements. The application process should be simplified for employers who have participated in the program before. In cases where there are no concerns about a company's previous compliance with the program, the requirements should be eased – both the labor certification and the temporary worker petition process could be expedited. Employers who have been audited and found to be in compliance should also be entitled to an expedited process. And all employers seeking visas should be able to file their applications electronically.

Another way to increase the H-2B program's efficiency would be to streamline the recruitment process for U.S. workers. The precise timing requirements make it difficult for employers to hire U.S. workers. The process is expensive for employers. It's antiquated, relying on newspaper ads and state employment agencies. And it generally yields few, if any, U.S. workers. Simplifying the paperwork requirements seems unlikely to harm U.S. workers, and it would benefit small businesses, reducing the need to hire lawyers and staffing agents to navigate the system.

Finally, when contemplating changes, policymakers should step back and view the H-2B program in the broader context of U.S. immigration policy. Current policy severely restricts the number of low-skilled workers who can enter the U.S. legally – whether on temporary, permanent or family visas. Temporary programs are small and burdened by excessive paperwork. Permanent visas for low-skilled workers are virtually non-existent. Only 5000 are available



each year, and any accompanying family members count against that cap. In practice, the only avenue open to low-skilled foreigners who want to settle in the U.S. permanently are family-based visas. But most family-based admission categories have long queues – often as long as five to 10 or even 20 years – and not all potential immigrants have relatives who can sponsor them.

No wonder hundreds of thousands of foreign workers risk their lives every year trying to enter the U.S. clandestinely. The number of visas available to low-skilled workers simply bears no relation to the flow generated by market forces and required to meet U.S. labor demand. Improving the H-2B visa system can help alleviate this bottleneck – but only by so much. Eventually it must be accompanied by other, broader reforms to the U.S. immigration system.



CONCLUSION

The H-2B program plays a small role in the U.S. economy – H-2B visa holders account for less than one-tenth of one percent of total employment. But the program is crucial to a wide array of seasonal and other employers who would have difficulty meeting their labor needs if they were unable to hire temporary foreign workers.

Employers must clear extensive hurdles to bring in H-2B workers. They must file a labor certification application with the Department of Labor, then file a petition for a temporary worker with U.S. Citizenship and Immigration Services. Only when both applications have been approved can the employer begin to search for suitable foreign workers, who must be approved by the State Department before entering the United States. The process is complex, time-consuming, costly and inefficient.

Despite these problems, in most years the demand for H-2B workers far exceeds the annual cap of 66,000 workers. Based on a survey of H-2B employers conducted by ImmigrationWorks USA and the U.S. Chamber of Commerce, employers hire H-2B workers for temporary jobs because they cannot find enough U.S. workers to meet their labor needs. Employers view H-2B workers as reliable and hard-working.

An original economic analysis conducted for this report finds no evidence that the H-2B program harms native-born workers' employment or earnings. On the contrary, if the program did not exist, some seasonal employers – most of whom hire U.S. workers along with foreign workers – would go out of business. There is also no evidence that H-2B workers are a less expensive substitute for U.S. workers. Concerns about abusive subcontracting and illegal recruitment practices can be addressed through changes to the program.

Nothing hinders economic growth more than employer uncertainty – including uncertainty about whether or not there will be enough workers available to meet business needs. The goal of the H-2B program should be to limit this uncertainty – all the more important in today's weak economic climate. The H-2B program can best achieve this goal by enabling employers to hire foreign workers when U.S. workers are unavailable, not by imposing unrealistically low visa caps or prohibitive paperwork.

This report proposes several improvements to the H-2B program, all designed to make it more efficient. The cap should be more flexible and linked to market forces. The paperwork requirements should be simplified. Both changes would enhance the program's contribution to the U.S. economy.

Finally, policymakers should view the H-2B program in the wider context of U.S. immigration policy. Current policy severely restricts the number of low-skilled workers who can enter the U.S. legally, and the number of visas available, permanent and temporary, bears no relation to the flow generated by market forces and required to meet U.S. labor needs. Improving the H-2B visa system can help alleviate this bottleneck – but only by so much. Eventually it must be accompanied by other, broader reforms to the U.S. immigration system.

APPENDIX ON DATA AND METHODS

Data. The H-2B labor certification application data are from <http://www.flcdatacenter.com/CaseH2B.aspx>. These data are a public-use version of ETA Form 9142. The data were expanded from the number of applications to the number of positions. In FY 2007 through FY 2009, partial certifications were possible, and the number of positions certified was created accordingly.

The USCIS data on H-2B workers admitted (based on I-94 forms) are from the Yearbook of Immigration Statistics, <http://www.dhs.gov/files/statistics/publications/yearbook.shtm>.

The fraction of H-2B visa applications that were denied is based on State Department data from <http://www.travel.state.gov/pdf/FY2009NIVWorkloadbyVisaCategory.pdf>.

Data on H-2A visa issuances are from the State Department, http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html.

Data on state-level seasonally-adjusted unemployment rates and employment levels are from the Bureau of Labor Statistics, www.bls.gov. The employment data are nonfarm employment from the Current Employment Statistics survey. The monthly data were converted to simple averages by fiscal year.

Data on natives' employment and earnings are based on the Current Population Survey Merged Outgoing Rotation Survey (CPS MORG) data from the National Bureau of Economic Research, <http://www.nber.org/morg/annual/>. Earnings were corrected for inflation using the annual personal consumption expenditures price deflator from the Bureau of Economic Analysis, www.bea.gov. The CPS data were merged with the number of certified H-2B labor certification applications by occupation by converting the Dictionary of Occupational Titles occupation codes into the CPS occupation codes using crosswalks available at www2.ed.gov/rschstat/eval/rehab/support/doc-soc.xls and <http://www.bls.gov/cps/cenocc.pdf>. The crosswalk and merge resulted in data on 503 occupations.

Methods. The relationships between the number of approved H-2B positions as a fraction of total employment and natives' employment and earnings are based on analysis of the H-2B labor certification application data and the CPS MORG data. The analysis was done at the national and the state level. From the CPS MORG data, employment and real hourly earnings growth rates were calculated at the detailed occupation level for each calendar year during 2000-2008. Those data then were compared with the number of H-2B workers in the base year in that occupation divided by total employment in the base year in that occupation (e.g., the growth rate of employment and earnings from 2008 to 2009 was compared with the number of H-2Bs in FY 2008 divided by total employment in 2008). This comparison was done by regressing employment and earnings growth rates on the number of certified H-2B applications as a fraction of total employment in that occupation, occupation, year and (if state-level) state fixed effects in ordinary least squares (OLS) regressions. Standard errors are robust and clustered on the occupation to control for heteroscedasticity. The regression results are as follows, with standard errors in parentheses:

	Employment growth rate	Earnings growth rate
H-2B workers, national	.047 (.004)	.053 (.005)
H-2B workers, state	.047 (.032)	.006 (.008)

Note: Each coefficient is from a separate regression.

The results show that having more H-2B workers in a given occupation does not significantly affect employment or earnings growth among natives in that occupation. If having more H-2B workers adversely affected natives' labor market outcomes, the estimated coefficients would be negative and statistically significantly different from zero,



which is not the case here. The results are robust to only including occupations that ever had an H-2B worker certified during 2000-2009, which excludes many relatively high-skilled occupations. They also are robust to examining the level of H-2B workers in an occupation instead of the share. The state-level results also are robust to including interactions between the state and year fixed effects to control for state-specific economic shocks.

These results are subject to at least two caveats. First, the number of H-2B workers may be endogenous in the regressions, with shocks to employment and earnings growth rates affecting the number of H-2B workers relative to total employment. There is no obvious candidate instrument to control for this potential endogeneity, but including occupation and year fixed effects should help control for any endogeneity. Second, the H-2B data are approved labor certification applications, not all of which result in actual H-2B workers. Also, there is not a perfect one-to-one correspondence between positions and workers; strictly speaking, the LCA data are positions, not workers, and an H-2B worker may hold more than one position in a given year.

The relationships between demand for H-2B workers and the state unemployment rate and employment growth rate are based on OLS regressions of the number of H-2B workers admitted from USCIS data for FY 2006-2009 (the period available) on the unemployment rate or the employment growth rate and state fixed effects. Standard errors are robust and clustered on the state to control for heteroscedasticity. The regression results are as follows, with standard errors in parentheses:

	H-2B admissions
Unemployment rate	-286.207 (71.124)
Employment growth rate	215.719 (62.399)

Note: Each coefficient is from a separate regression.

The results show that H-2B admissions are negatively related to the unemployment rate and positively related to the employment growth rate in a state. The estimates are statistically significantly different from zero at conventional levels. As the unemployment rate increases by 1 percentage point, the number of H-2B workers admitted falls by 286. As the employment growth rate increases by 1 percentage point, the number of H-2B workers admitted rises by 216. As a caveat, the USCIS data are based on I-94 data on admissions and do not necessarily include all H-2B workers (particularly renewals and returning workers).

ENDNOTES

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ABOUT THE AUTHORS

MADELINE ZAVODNY

Madeline Zavodny is a professor of economics and chair of the economics department at Agnes Scott College in Decatur, Georgia. She is also a research fellow of the Institute for the Study of Labor in Bonn, Germany. She has been an associate professor of economics at Occidental College in Los Angeles, California, and a research economist at the Federal Reserve Banks of Atlanta and Dallas. She is a co-author of *Beside the Golden Door: U.S. Immigration Reform in a New Era of Globalization*, (AEI Press, 2010). Her research on immigration also has been published in the *Journal of Labor Economics*, *Journal of Development Economics*, *Journal of Policy Analysis and Management*, *Industrial and Labor Relations Review*, and *Demography*, among others. She received an undergraduate degree in economics from Claremont McKenna College and a PhD in economics from the Massachusetts Institute of Technology.

WITH TAMAR JACOBY

Tamar Jacoby is president and CEO of ImmigrationWorks USA, a national federation of small business owners working to advance better immigration law. She is also a nationally known journalist and author. Her articles have appeared in *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *The Weekly Standard* and *Foreign Affairs*, among other publications, and she is a regular guest on national television and radio. She is author of *Someone Else's House: America's Unfinished Struggle for Integration* and editor of *Reinventing the Melting Pot: The New Immigrants and What It Means To Be American*, a collection of essays about immigrant integration. From 1989 to 2007, she was a senior fellow at the Manhattan Institute. Before that, she was a senior writer and justice editor for *Newsweek*. From 1981 to 1987, she was the deputy editor of *The New York Times* op-ed page.

ABOUT THE EDITOR

MICHAEL DENDAS

Michael Dendas serves as Manager of Immigration Policy at the U.S. Chamber of Commerce. In this capacity, he is responsible for the management of border security, employment verification, employment-based visas, and travel and tourism issues. Prior to this role, Mr. Dendas served as Coordinator for Labor and Immigration in the Chamber's Labor, Immigration & Employee Benefits Division. Dendas graduated from Trinity College in Hartford, CT and currently resides in Washington D.C.



LABOR, IMMIGRATION &
EMPLOYEE BENEFITS DIVISION

U.S. CHAMBER OF COMMERCE

1615 H Street, NW
Washington DC 20062-2000

ImmigrationWorks
USA

737 Eighth Street, SE, Suite 201
Washington, DC 20003