

Question for The Panel

Would transparency help?

Two witnesses at this hearing pointed in their testimony to a lack of publicly available information on nonimmigrant worker programs. In fact, some of the analysis discussed at the hearing involved data that was available only through FOIA, a process I know can be slow, difficult, and expensive.

The hearing discussed a number of incidents of apparent abuse of nonimmigrant visa programs for high-skilled workers. These abuses raise the obvious question of whether the American people are seeing an indication of systemic problems or a small number of unscrupulous companies abusing fundamentally sound programs. And it is worth pointing out that the potential for abuse goes beyond visa programs targeted at high-skilled workers. If anything, visa programs that allow employers to bring in workers without significant skills lend themselves even more to abuse.

Whether your goal is reforming nonimmigrant visa programs or simply rebuilding Americans' confidence in these programs, increased transparency could be an important part of the solution.

- a. In your view, would it help to make more information regarding nonimmigrant worker visa programs available to the public without the need to rely on the FOIA process?**

b. Can you talk about what kinds of data should be made available and how such data could be used?

A good database is the first requirement for any reasonable analysis which, in turn, is important for policy. In this area, which is fundamentally about labor market impact, it is striking that we lack the types of information that has become the sine qua non of labor market analysis of the U.S. workforce, of vital information for all manner of policy. It is peculiar that data readily available on the U.S. workforce is not available for the guestworker labor force.

In this regard, it would seem a minimum to have the same data available for the H1B, L, OPT, and other guestworker programs that is standard labor market information typically provided by Census/BLS. This would include:

- (1) demographic information – gender, age, race/ethnicity;
- (2) education – degrees, school awarding the degree, field of degrees
- (3) employment – occupation, industry, years of work experience in occupation; tenure at current employer, salary, hours and weeks worked, usual work week, date of first employment for current employer; date of first employment in U.S. in current visa; previous employment history
- (4) establishment – employer/firm, establishment of employment (standard UI record information), industrial classification of establishment

It is further important that these data be collected because at the moment we have no actual employment data on many, if any, of workers in the different visa programs (H1B, L, OPT). The only data available is *prospective* employment data reported by the employer to the Labor Department in the labor condition application before employment begins. In fact, we do not even know if the person on the approved application was actually employed/actually came to the U.S. The State Department and the Department of Homeland Security collect large amounts of valuable data on (1) through (4) listed above, but they are not made available to the public. Even when members of the public are able to access some of those data through a successful FOIA, we find that the information is missing key elements which are collected. In part, this is because data collected by USCIS is collected in paper format, and then only some of those data (selected by USCIS) are transferred and stored in an electronic format. Whatever is not stored electronically is then impossible to obtain even via FOIA, because the information is literally on pieces of paper in boxes stored by USCIS. For example, FOIA's of L-1 data do not have the wages employers promise to pay their L-1 workers, nor is detailed occupational information available. USCIS also uses an outdated coding system for occupations, which thwarts efforts to assess the labor market impact of some guestworker programs. Rather than using the Standard Occupational Classification system that the Labor Department uses for labor condition applications and labor certifications, USCIS uses outdated DOT codes, the "Directory of Occupational Titles," which groups diverse occupations into overly broad groupings. In its recent report on the H-2A and H-2B programs, the GAO highlighted these exact problems in the lower-skilled temporary foreign worker programs:

While DHS's USCIS petition data are more accurate than DOL data in terms of the number of workers requested, information about the type of occupations those workers are requested to fill is not coded and maintained electronically using a standard occupational classification system. Specifically, when USCIS officers enter information

into their database (CLAIMS 3) to approve the final number of H-2 workers they do not denote in CLAIMS 3 the SOC information provided on the DOL certification, which is submitted with the petition. Instead, they recode the job title from the employer's petition using an occupational classification system with 15 broad categories. These categories may be further divided into 1 to 12 occupational codes for a total of 83 detailed occupations, as opposed to DOL's 840 detailed occupations... Officials said USCIS's current occupational system predates DOL's use of the SOC system to classify occupations on labor applications. However, the broad and overlapping categories within USCIS's occupational classification system make it difficult to distinguish the occupations filled by H-2A workers versus H-2B workers even though these programs are targeted to fill occupations in different sectors of the economy.¹

If, as some have suggested, a non-trivial share of H1B approved applications are never filled/the worker is never employed in the U.S., better data from the Departments of State and Homeland Security would provide the information needed to adjust policies to better meet demand.

Employment information more generally, such as wages and better occupation and industry detail, would also provide the necessary information to understand labor market dynamics such as whether guestworkers are replacing or complementing the existing workforce; the nature of jobs filled by guestworkers, and the impact on wages and employment. Therefore these data—much of which the government already collects in one of three federal agencies—should be published on an annual basis for all of the major visa classifications that authorize employment for nonimmigrants, including B-1, H-2A, H-2B, H-1B, L-1A, L-1B, O-1, P-1, E-2, F-1 OPT, as well for the employment-based (EB) green card preferences.

¹ U.S. Government Accountability Office, *H-2A AND H-2B VISA PROGRAMS: Increased Protections Needed for Foreign Workers*, GAO-15-154, (March 2015), at 22.