

**H-2 Petition Fee
Structure is
Inequitable and
Contributes to
Processing Errors**





DHS OIG HIGHLIGHTS

H-2 Petition Fee Structure Is Inequitable and Contributes to Processing Errors

March 6, 2017

Why We Did This Audit

United States Citizenship and Immigration Services' (USCIS) H-2 program enables employers to petition to bring temporary non-immigrant workers into the United States. We performed this audit to determine whether the fee structure associated with H-2 petitions is equitable and effective.

What We Recommend

We are making three recommendations to the USCIS Director to improve the H-2 petition fee structure and vetting process.

For Further Information:
Contact our Office of Public Affairs at (202) 254-4100, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov.

What We Found

USCIS' H-2 petition fee structure is inequitable and contributes to processing errors. Federal guidelines indicate that beneficiaries should pay the cost of services from which they benefit. However, USCIS charged employers a flat fee of \$325 per H-2 petition (\$460 as of December 23, 2016), regardless of whether it was to bring one or hundreds of temporary nonimmigrant workers into the United States. Each worker listed on a petition must be vetted through an extensive adjudication process, for the most part within 15 days.

USCIS officials told us their systems do not capture the time to adjudicate petitions with various numbers of workers, which is needed to equitably set the H-2 petition fee. As such, USCIS instituted the flat fee structure because it is easy to manage. USCIS also did not limit the number of named temporary nonimmigrant workers that can be included on a single H-2 petition, despite the processing time requirement.

This flat fee structure has created disparities in the costs employers pay to bring foreign workers into the United States. It can be more burdensome for small employers or others who petition to bring in a single worker for whom the fee exceeds the processing cost as compared to large petitioners. Conversely, employers seeking to bring in multiple named workers pay disproportionately less as their petitions can be labor intensive, taking days and sometimes weeks to complete. Large petitions are complex and error prone when adjudicators rush to process them within required time frames. Prompt USCIS action to assess a more equitable fee structure or limit the number of named workers listed per petition would help eliminate disparate costs to employers, reduce the potential for errors, and better align agency processing costs.

USCIS Response

USCIS concurred with all three recommendations.



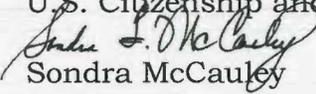
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Washington, DC 20528 / www.oig.dhs.gov

March 6, 2017

MEMORANDUM FOR: Lori Scialabba
Acting Director
U.S. Citizenship and Immigration Services]

FROM: 
Sondra McCauley
Assistant Inspector General
Office of Information Technology Audits

SUBJECT: *H-2 Petition Fee Structure is Inequitable and
Contributes to Processing Errors*

Attached for your action is our final report, *H-2 Petition Fee Structure is Inequitable and Contributes to Processing Errors*. We incorporated the formal comments provided by your office.

The report contains three recommendations aimed at improving the H-2 petition fee structure and vetting process. Your office concurred with all three recommendations. Based on information provided in your response to the draft report, we consider recommendations 1 through 3 open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts.

Please send your response or closure request to OIGITAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Tuyet-Quan Thai, Director, at (425) 582-7861.

Attachment



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Abbreviations

CBP	U.S. Customs and Border Protection
CLAIMS 3	Computer Linked Application Information Management System
DOL	Department of Labor
ELIS	Electronic Immigration System
GAO	Government Accountability Office
OIG	Office of Inspector General
OMB	Office of Management and Budget
TLC	Temporary Labor Certification
USCIS	United States Citizenship and Immigration Services



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Background

The United States Citizenship and Immigration Services (USCIS) is the primary agency in the Department of Homeland Security that oversees lawful immigration to the United States. USCIS' H-2 program enables employers to petition to bring temporary nonimmigrant workers into the country. As a fee-for-service organization, USCIS has the authority to recover the full cost of processing immigration benefits.¹

USCIS processes H-2 visas as well as about a dozen other visa classifications using form I-129, Petition for a Nonimmigrant Worker. Five of these visa classifications require that the petitioner submit a separate form for each worker, such as H-1B specialty occupation workers; O-1 alien of extraordinary ability in arts, science, education, business, or athletics; and R-1 religious workers. Others, such as P-1 visas for internationally recognized athletic/entertainment groups, allow the petitioner to file for multiple workers on each form. USCIS sets the petition for a nonimmigrant worker fee using historical data and projections to determine the average cost of processing each form. In this audit, we focused on H-2 temporary agricultural and nonagricultural worker petitions.

The H-2 program entails the participation of multiple Federal agencies. Typically, an employer has to first obtain an approved temporary labor certification (TLC) from the Department of Labor (DOL) to hire temporary agricultural and nonagricultural workers. Upon DOL certification, the employer files with USCIS the TLC along with a petition to bring in workers up to the maximum number certified by DOL. The employer may request specific workers by name (named workers), indicate that a certain number of workers are needed without providing specific names (unnamed workers), or petition for a combination of both.² Following USCIS approval of the petition, workers lacking visas generally report to the Department of State for interviews to obtain their visas. Other workers who already have visas—generally workers already in the United States who are extending their employment period or applying to work for a new employer—can report directly to work at the time the petition is filed on their behalf or on the date authorized by DOL and USCIS.

¹ In 1988, Congress created the *Immigration Examinations Fee Account*, establishing the authority to recover the full cost of immigration benefits processing.

² There are certain situations where H-2A and H-2B workers are required to be named, specifically, workers who 1) are currently in the United States, 2) are from non-eligible countries, 3) must meet minimum job requirements, or 4) are exempt from the H-2B cap as returning workers.



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The Government Accountability Office (GAO) and the DHS Office of Inspector General (OIG) have both reported previously on issues related to the H-2 program. In 2009, GAO reported that costing methodology improvements would provide USCIS with a more reliable basis for setting fees.³ GAO made six recommendations to help USCIS improve its costing methodology. In 2011, DHS OIG reported that USCIS could improve fraud training to support its adjudication of nonimmigrant workers petitions.⁴ USCIS concurred and subsequently implemented all GAO and OIG recommendations.

We performed this audit to determine whether the fee structure associated with H-2 petitions is equitable and effective.

Results of Audit

USCIS' H-2 petition fee structure is inequitable and contributes to processing errors. Federal guidelines indicate that beneficiaries should pay the cost of services from which they benefit. However, during our audit fieldwork, USCIS charged employers a flat fee of \$325 per H-2 petition, regardless of whether an employer petitioned to bring one or hundreds of temporary nonimmigrant workers into the United States.⁵ Each named worker on a petition then has to be vetted through an extensive adjudication process, for the most part within 15 days.

USCIS officials told us their systems could not capture the time spent to adjudicate petitions with various numbers of workers. This information is needed for USCIS to equitably set the H-2 petition fee. Consequently, USCIS instituted the flat fee structure because it is easy to manage. With this decision, USCIS did not limit the number of named temporary nonimmigrant workers that can be included on a single H-2 petition, despite the standard time required to process multiple-worker petitions.

USCIS' flat fee structure has created disparities in the costs employers pay to bring foreign workers into the United States. It can be more burdensome for small employers or others who petition to bring in a single worker for whom the fee exceeds the processing cost as compared to large petitioners. Conversely,

³ *Costing Methodology Improvements Would Provide More Reliable Basis For Setting Fees* (GAO-09-70, January 2009)

⁴ *The U.S. Citizenship and Immigration Services' Adjudication of Petitions for Nonimmigrant Workers (I-129 Petitions for H-1B and H-2B visas)* (OIG-11-105, August 2011)

⁵ On December 23, 2016, USCIS increased the fee to \$460 to adjudicate form I-129 *Petition for a Nonimmigrant Worker*. U.S. Citizenship and Immigration Services Fee Schedule, 81 Fed. Reg. 73294 (Oct. 24, 2016). All references to the petition fee in this report refer to the \$325 fee that was in place at the time of our fieldwork.



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employers seeking to bring in multiple named workers pay disproportionately less though their petitions are generally labor intensive, taking days and sometimes weeks to complete. Large petitions are also complex and error prone when adjudicators rush to process them within required time frames. Prompt USCIS action to assess a more equitable fee structure or limit the number of named workers allowed on each petition would help eliminate disparate costs to employers, reduce the potential for errors, and better align agency processing costs.

Federal User Fee Guidelines

According to Federal law, fees should be fair and based on the cost to the government and the value of the service provided to the recipient.⁶ Federal user fee principles state that agencies should assign costs in a way that is equitable to those who use and benefit from the services provided. Specifically, Office of Management and Budget (OMB) Circular A-25 implements the law by requiring that each identifiable recipient be assessed a user charge that is at least as great as the cost to the Government for providing such services.⁷ Similarly, GAO's user fee principles recommend that agencies charge different fees to different users commensurate with the costs of providing services to these users. We believe that in the case of USCIS, the fees employers pay for individual H-2 petitions, whether to bring one or multiple foreign workers into the United States, should be commensurate with the time and effort required to adjudicate the requests.

H-2 Petition Fee and Adjudication Process

Instead of formulating the H-2 fee based on the cost of the services to the Government or its value to the employer, USCIS charges employers a flat fee for each H-2 petition, regardless of whether an employer petitions to bring one or hundreds of temporary nonimmigrant workers into the United States. Each named worker on a petition then has to be vetted through an extensive adjudication process.

Flat H-2 Fee Structure

USCIS charged a standard processing fee of \$325 for each petition that an employer submitted for seasonal and temporary agricultural workers (H-2A)

⁶ 31 United States Code 9701(b)

⁷ OMB Circular A-25 Revised, *User Charges* (July 8, 1993)



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and nonagricultural workers (H-2B) to work in the United States.⁸ There is no limit on how many named temporary nonimmigrant workers an employer can request to bring in on a single USCIS petition. The same fee applies whether the petition is small (1 to 10 workers), medium (11 to 40 workers), or large (more than 40 workers); or whether the petition takes minutes, days, or weeks to adjudicate.⁹ Effectively, some employers pay \$325 to petition to bring in one worker each while other employers pay as little as 50 cents per named worker for their multiple-worker petitions. As such, the flat fee is not consistent with Federal guidelines that beneficiaries pay for the full (or actual) cost of services provided or that established user fees be based on costs and benefits.

Complex Adjudication Process

USCIS follows a complex process to adjudicate temporary nonimmigrant worker petitions. USCIS must vet each employer who submits a petition as well as the name of each worker listed on the petition. According to USCIS' adjudication procedures, each named worker on a temporary worker petition has to be vetted for national security, criminality, and immigration issues.

The USCIS adjudicative process includes:

- entering petition data such as petitioners name and address and identifying information for each worker requested into the Computer Linked Application Information Management System (CLAIMS 3);¹⁰
- vetting the employer exists and potentially derogatory information;
- reviewing copies of passports, visas, and other documentation to validate the identity of each worker, if included;
- identifying and verifying the potential worker's aliases;
- vetting the potential worker through applicable criminal and immigration databases, such as TECS,¹¹ to ensure that the worker is admissible;

⁸ H-2B employers must also pay a \$150 fraud prevention and detection fee for each petition, which is set by statute. Funding generated by this fee is used for fraud prevention and detection in immigration benefit requests and not used to recover USCIS processing costs.

⁹ The additional effort is particularly important for petitions with named workers that USCIS must vet as part of the adjudication process. The Department of State is responsible for vetting unnamed workers included in H-2 petitions, requiring no additional effort by USCIS.

¹⁰ CLAIMS 3 is a case management application used by USCIS to track the adjudication of applications and petitions for most immigration benefits and services except those related to asylum and naturalization.

¹¹ TECS (not an acronym) is an automated enforcement and inspections system that provides access to a large database of information for law enforcement and border inspection purposes. TECS supports DHS and other Federal users, and can exchange information automatically with several U.S. Government systems.

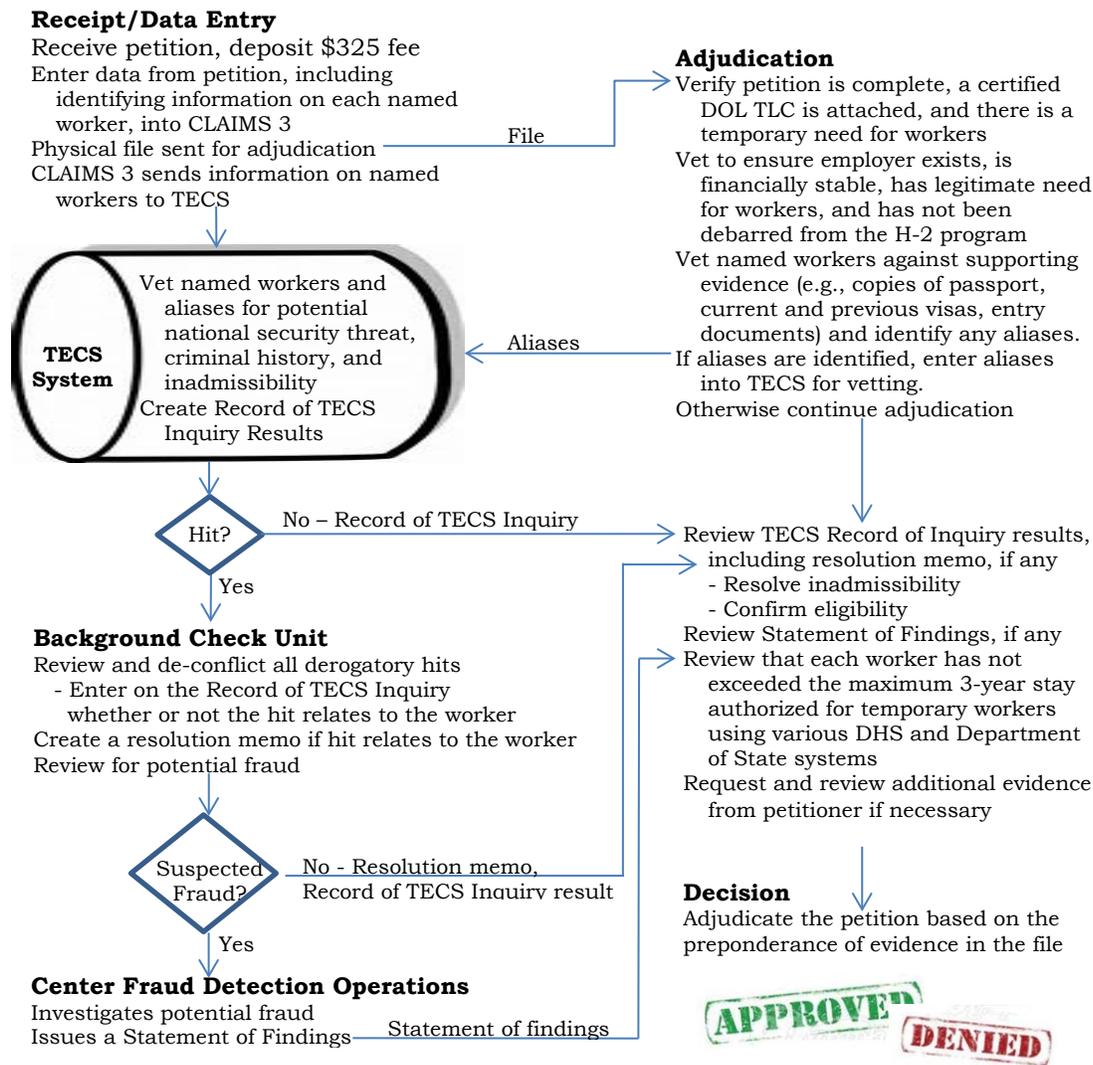


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- resolving instances where the potential worker is linked to derogatory terrorist or criminal information;
- examining details of each worker’s previous entry and exit information to ensure that the worker spent at least 3 months outside the United States for every 3 years of work inside the United States;
- reviewing the petition for potential fraud; and
- approving or denying the petition based on the information reviewed.

Figure 1 illustrates the extensive USCIS adjudication procedures for temporary H-2 nonimmigrant worker petitions.

Figure 1: General Adjudication Process for H-2 Nonimmigrant Worker Petitions



Source: DHS OIG analysis of USCIS H-2 adjudication procedures



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Although these procedures are extensive, nearly all H-2 petitions must be adjudicated within 15 days. Specifically, due to the seasonal nature of agricultural work and the need for timely processing, USCIS' goal is to adjudicate within that established time frame all H-2A agricultural petitions listing named workers. The normal processing time for H-2B non-agricultural petitions is 30 days; however, 82 percent of employers elect to pay a \$1,225 premium processing fee, set by statute, to have their petitions adjudicated within 15 days.¹² The 15-day time frame applies equally to petitions to bring in 1 worker, 10 workers, or hundreds of workers. The availability of this flat fee, no matter how many named workers USCIS has to vet, contributes to additional inequities.

Reasons for the H-2 Petition Fee Structure

USCIS officials cited a number of reasons for instituting the flat fee structure. Specifically, they said USCIS systems were not designed to capture the time it takes to adjudicate petitions of differing size and complexity, which is necessary to equitably set the H-2 petition fee. According to USCIS, prior to 1998 the H-2 fee structure had been set somewhat arbitrarily. In response to the *Chief Financial Officer Act of 1990* and subsequent Federal Accounting Standards Advisory Board publication that requires the use of activity-based costing to set fees, USCIS instituted the flat fee structure in 1998 because it was easier and simpler for their system to capture processing time at the aggregated I-129 form level instead of by visa type. With this decision, USCIS did not limit the number of temporary nonimmigrant workers that can be included on a single H-2 petition, despite the added time needed to process each petition. As of the time of our audit, 18 years later, USCIS still has not designed a system to capture cost data at a finer level of detail.

USCIS Systems Did Not Capture Needed Data

USCIS charges a flat fee as its systems were not designed to capture the time necessary to process, review, and adjudicate petitions with different numbers of workers. Specifically, USCIS designed the legacy CLAIMS 3 to track petitions, not capture data in a way that provides timely and reliable management information. For example, CLAIMS 3 captures information from H-2 petitions such as the petitioner's name and address, the number of workers requested, and their names as appropriate. CLAIMS 3 also tracks processing information including the dates of receipt and adjudication decision,

¹² The premium processing service fee was established by Congress to provide certain premium-processing services to business customers and to make infrastructure improvements in the adjudications and customer service processes. It was not designed to recover USCIS' processing costs.



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or dates of request for additional evidence or referral to the fraud unit. However, CLAIMS 3 does not capture the time an adjudicator spends processing a petition, which is the information needed to equitably structure the H-2 fee and provide better assurance of processing cost recovery.

USCIS' Performance Reporting Tool also did not capture the needed processing information. USCIS uses the Performance Reporting Tool to track adjudication hours charged to process specific forms, such as a petition for a nonimmigrant worker. However, the tool does not collect data on the number of workers listed on a petition or the time required to adjudicate petitions of various sizes.

In 2015, USCIS' California and Vermont Service Centers implemented additional procedures to better track the time adjudicators spent processing H-2A and H-2B petitions for staffing allocation purposes. The new process aggregated local production hours each day by benefit type, but did not contain the details necessary to enable equitable fee-setting. For example, the local production data for a single day could show that an officer spent 3.5 hours processing six H-2A petitions or 4 hours processing six H-2B petitions. However, if the workload of 6 petitions contained 4 single-worker petitions, 1 petition for 7 workers, and 1 petition for 12 workers, the new tool was unable to derive accurately the time it took to process each type of petition.

USCIS officials recognized the limitations inherent in the H-2 fee structure and supporting systems. They discussed plans to perform more in-depth analysis of immigration benefit requests and the H-2 fee structure once petitions could be processed in the new Electronic Immigration System (ELIS).¹³ This new case management system was intended to eventually replace CLAIMS 3 and other USCIS legacy systems, with the capability to collect and provide the data needed to equitably structure the H-2 petition fee. However, at the time of our 2016 audit, the temporary worker petition was not expected to transition to ELIS for at least another 3 years. Consequently, USCIS' plans to conduct a new fee study based on more robust information from ELIS would not be possible for several more years. Recent OIG reports show that USCIS faces tremendous challenges with ELIS; therefore, the 3-year estimate is likely optimistic.¹⁴

¹³ ELIS is a centralized, web-based, electronic case management system being developed to automate USCIS processing of certain immigration benefit requests. ELIS is designed to transform USCIS business operations from a "transaction-centric" model to a "person-centric" model using unique customer accounts.

¹⁴ *Better Safeguards Are Needed In USCIS Green Card Issuance* (OIG 17-11, November 2016); *USCIS Automation of Immigration Benefits Processing Remains Ineffective* (OIG 16-48, March 2016); and *U.S. Citizenship and Immigration Services Information Technology Management Progress and Challenges* (OIG 14-112, July 2014).



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USCIS Management Decisions

In 1998, USCIS established the flat fee to simplify the H-2 filing process. Since 2010, this fee has been set at \$325. Prior to 1998, USCIS calculated the H-2 fee based on the number of workers an employer sought to bring into the United States. Specifically, USCIS charged a base fee as well as an additional fee for each named worker on the petition. In some instances, however, the graduated fee structure resulted in the submission of petitions with the wrong fees, resulting in USCIS returning the erroneous petitions, which incurred delays in the adjudication process and, according to USCIS, added costs to the agency in the areas of mailing, time, and manpower returning erroneous payments.

USCIS officials explained that the 1998 change to the flat fee structure was to improve administrative efficiency and avoid petitioner confusion on how much to pay. With this decision, USCIS did not limit the number of temporary nonimmigrant workers that could be included on a single H-2 petition. Previously, petitioners claimed difficulties with a graduated fee structure; clear directions from USCIS should eliminate this confusion. According to USCIS, although prior to 1998 the H-2 fee structure had been set somewhat arbitrarily, the post-1998 fee schedule was USCIS' first attempt at complying with the *Chief Financial Officer Act of 1990*¹⁵ by setting fees using activity-based cost estimates. This act requires that USCIS review its fees on a biennial basis to ensure full recovery of the projected costs of adjudicating all immigrant and nonimmigrant applications and petitions. To accomplish this, USCIS collects performance information at the form level to establish its fees which, according to USCIS, allows them to determine the full cost of processing form I-129. Specifically, based on historical performance data and projections, USCIS averages the cost of processing all form I-129 nonimmigrant worker petitions across the range of small and large petitions in efforts to recover the cost of processing all nonimmigrant worker requests. Given that USCIS cannot predict how many named workers will be included on each H-2 petition, USCIS cannot ensure total cost recovery. Without the information needed to set a fee based on the number of named workers requested on one petition or the time required to process a petition with multiple named workers, setting a limit on the number of named workers per petition could potentially help address the inequity, at least as a temporary measure.

Unlike USCIS, the Department of State and DOL each structure their user fees to be more reflective of their costs. Both Departments have roles in H-2 visa processing and apply fees that are dependent on the number of workers

¹⁵ Public Law 101-576, Nov. 15, 1990.



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requested by the petitioners. For example, in 2016, the Department of State charged \$190 for each visa it issued. As of fiscal year 2015, DOL charged a base fee of \$100 to process each labor certification for temporary agricultural workers, plus a graduated fee of \$10 per worker added to the certification, up to a maximum of \$1,000. Although the DOL fee was not intended to recover processing costs, this graduated fee reflects the additional costs associated with processing labor certifications with multiple workers.

Inequities and Errors in H-2 Petition Processing

The flat fee structure has created inequities in the costs employers pay to bring foreign workers into the United States. The complexity of multiple-worker petitions directly contributes to increased processing time and adjudication effort for multiple-worker petitions compared to single-worker petitions. This means disparities in processing time, effort, and complexity for single versus multiple-worker petitions, with no assurances of full cost recovery for all adjudication services provided. Rushed adjudication to meet the 15-day processing time standard, especially in the case of multiple-worker petitions, has led to errors that can have national security implications. Prompt USCIS action to set a more equitable fee or limit the number of named workers per petition would help eliminate disparate costs to employers, better align agency processing costs, and reduce the potential for errors.

Disparities in Costs to Employers

USCIS' H-2 flat fee has created inequities in the amounts employers pay to bring foreign workers into the United States. By not charging a fee based on the number of named workers requested on a petition, USCIS is effectively allowing large petitioners to pay only a fraction of what it costs to adjudicate their petitions, while charging small petitioners disproportionately more. In some instances, for every dollar a small petitioner paid for named workers, certain large petitioners paid less than one cent. We made this determination based our analysis of CLAIMS 3 data for the period October 2012 through February 2016. During this time frame, USCIS received a total of 13,293 petitions from employers seeking H-2 visas for 111,328 named workers.¹⁶ We did not include unnamed workers in our analysis, as they do not represent a national security and admissibility processing or vetting burden for USCIS.

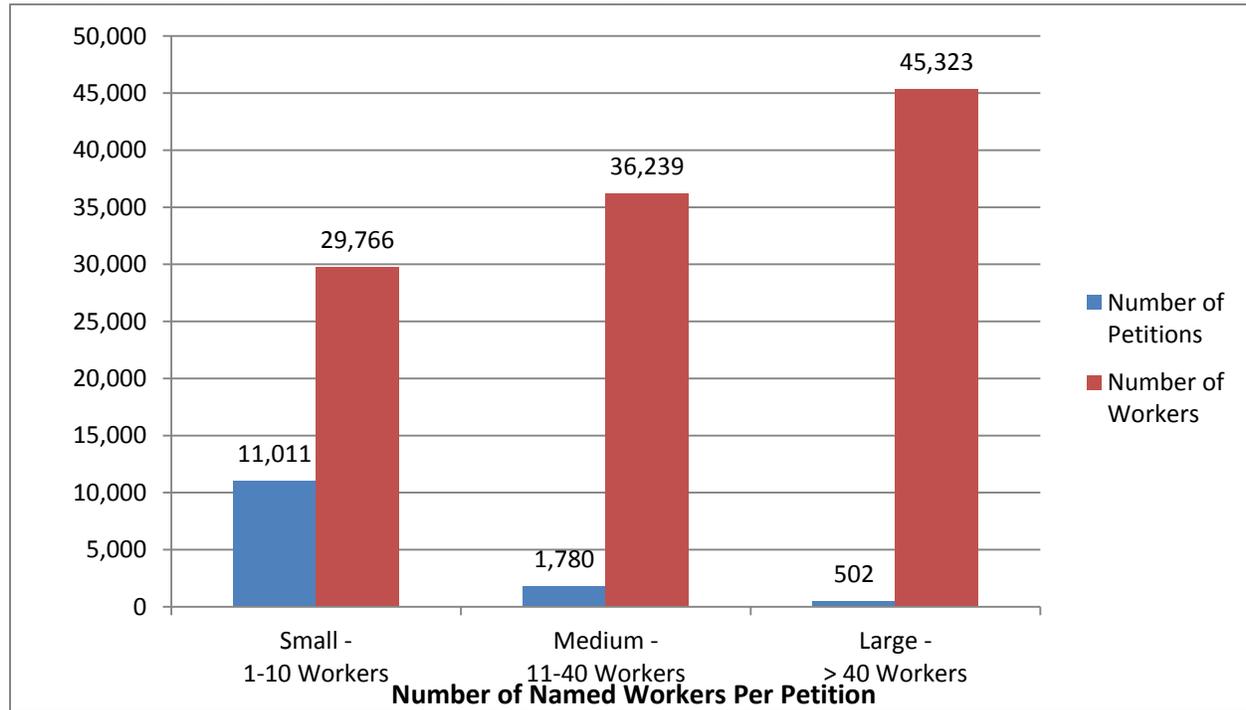
¹⁶ In addition to the named workers, USCIS processed about 31,500 petitions for over 590,000 unnamed workers. In the case of petitions with unnamed workers, USCIS vets the employer but relies entirely on the Department of State to vet these workers for issues of security and immigration.



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Figure 2 depicts the total 13,293 H-2 petitions grouped into categories of small, medium, and large based on the number of workers named in each petition.

Figure 2: Frequency of H-2 Petitions by Size, Based on the Number of Named Workers Included in Each Petition



Source: DHS OIG analysis of USCIS CLAIMS 3 data related to H-2 petitions processed from October 2012 through February 2016

As Figure 2 illustrates, the frequency of H-2 petitions decreased (from 11,011 to 502) as the number of named workers included on the petitions increased (from 29,766 to 45,323) across our groupings of small, medium, and large petitions. Our analysis of CLAIMS 3 data disclosed that medium-sized petitions for 11 to 40 workers, and large petitions including more than 40 workers, accounted for the vast majority (73 percent) of the named workers that USCIS vetted from October 2012 through February 2016. However, they accounted for only \$741,000 of the fees collected.

We found huge inequities between the small and large petitions filed. In effect, small petitioners filing for one or a few named workers subsidized companies that submitted large petitions. Specifically, 11,011 of the total 13,293 H-2 petitions (83 percent) were small requests to bring in 1 to 10 workers. Collectively, these employers paid \$325 per petition, for a total of over \$3.5 million. These small petitions covered only 29,766 of the 111,328 workers (27 percent) named in the petitions we reviewed.



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Conversely, employers seeking to bring in multiple named workers per petition paid disproportionately less per worker. Specifically, 502 of the total 13,293 H-2 petitions (4 percent) were large petitions for 40 or more named workers.¹⁷ On average, the small petitioners paid \$120 per worker, compared to the large petitioners who paid just \$3.60 per worker.

We also found that a small number of employers tended to file very large petitions with more than 100 named workers. In fiscal year 2015 alone, 23 employers requested over 9,000 named workers in 43 petitions, or an average of 213 workers per petition. This represented nearly a 55 percent increase over the number of very large petitions filed during each of the previous two years and a 70 percent increase in the number of workers requested. Two employers in particular submitted petitions requesting more than 600 named workers per petition. On average, these employers paid USCIS 50 cents to vet each named worker. In other words, these employers paid a fraction of a penny for every dollar that a small petitioner paid for foreign workers. This disparity can be more burdensome and unfair for small employers or others who petition to bring in a single worker at a time, especially when the fee exceeds the processing cost when compared with large petitioners.

Disparities in Processing Time for Large Versus Small Petitions

Employers pay the same fee regardless of how long it takes USCIS to process, review, and adjudicate a petition. Processing voluminous information and vetting multiple named workers in a large petition can be labor intensive, taking days and sometimes weeks to complete. The \$325 petition fee is not effective because it is not commensurate with the time and effort required to process such large petitions. Figure 3 depicts the considerable difference in the amount of documentation that can be included in individual H-2 petitions, often based on the number of named workers contained in the petition packages, although employers pay the same \$325 processing fee.

¹⁷ Within this population, 39 employers filed 104 very large petitions each requesting over 100 workers for a total of 20,603 named workers.



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Figure 3: Example of a Petition for One Worker as Compared with a Petition for Hundreds of Named Workers



Source: DHS OIG photo of two petitions, a single petition (left) requesting 1 worker compared with a request for over 600 named workers

In the photo, the small binder on the left shows a petition for one worker, which took minutes to process. In contrast, the 35 thick binders on the right represent a petition including more than 600 named agricultural workers. This employer paid about 50 cents per worker for USCIS to process, which required reviewing tens of thousands of pages of supporting documentation. Although a petition with more than 600 named workers was not the norm, we reviewed more than 100 medium-to-large petitions during our audit. Of the files we reviewed, a petition for more than 50 named workers typically comprised 3 to 4 thick binders.

Our analysis showed the disparity in processing time required for a small petition versus a multiple-worker petition can be significant. For example, according to USCIS production data, one adjudicator charged 8 hours and 45 minutes to process a petition with 29 named workers in one day. The next day, the same individual adjudicated 14 small petitions in slightly less than 8 hours. On the first day, USCIS collected \$325 for a petition that required a full



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day to process while the following day USCIS collected \$4,500 for processing 14 petitions.¹⁸

Large petitions with named workers may be more complex to process than a series of small petitions. This is because, for large petitions, USCIS adjudicators have to examine reams of documents to identify each passport and visa for review. They also are more likely to have to resolve TECS hits for criminality or inadmissibility issues among multiple named workers included in a large petition. For example, a petition including 298 named workers that we reviewed contained nearly 120 TECS hits, which required substantial effort and time to resolve the derogatory information on the hits. Adjudication supervisors informed us that large petitions sometimes require that adjudicators be taken “off line” for days at a time to adjudicate just one petition. In extreme cases, to meet the processing time standard, USCIS has to split up the petition among several officers so that the vetting process might be less overwhelming and repetitive for a single officer.

USCIS adjudicators expressed frustration concerning the flat H-2 fee regardless of petition size. Almost every adjudicator we interviewed believed there should be an upper limit to the number of workers per petition. They believed that a reasonable number of workers would allow them to better manage their workloads, at the same time ensuring more equitable treatment of petitioners. When asked what they considered a reasonable petition size for multiple named workers, one officer told us that a maximum of 10 workers was usually manageable within a normal workday. Other officers generally agreed.

Error Prone Processing

The expectation that USCIS adjudicate all H-2 petitions within a standard time frame is not realistic and can lead to improper processing. As previously discussed, USCIS procedures require that adjudicators complete processing of the vast majority of H-2 petitions within 15 calendar days, no matter how many named workers are requested on each petition. USCIS immigration officers generally took time and due care to review temporary worker petitions in detail. For example, we found disclosed evidence that visas and passports were manually compared to each other and to the petition and other information that the petitioner submitted.

However, adjudication of large petitions with hundreds of named workers had resulted in errors that can have national security implications. Specifically, our review of 107 medium to large H-2 case files found that 24 percent contained

¹⁸ In this example, all 15 petitions were for temporary agriculture workers.



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errors, ranging from incomplete vetting of employers and workers to immigration fraud and failure to conduct background checks. For example, we found that USCIS failed to vet four named workers for criminality and admissibility issues, and had approved the renewal of visas for workers who had committed fraud to obtain their original visas.¹⁹ Table 1 summarizes the errors we encountered during our file review.

Table 1: Summary of Errors in H-2 Petition Processing

Error	Remarks	Number of Separate Petitions
Background check	<p>Either USCIS did not conduct background checks on all named workers, or evidence did not exist confirming TECS hits were resolved.</p> <ul style="list-style-type: none">• 3 petitions contained 4 workers whose names were not vetted in TECS.• 1 large petition contained no evidence that 90 workers were vetted in TECS. The file had no Record of TECS Inquiry to show if hits occurred or resolution memoranda to verify their resolution.• 4 petitions contained no evidence that TECS hits were resolved.• 1 petition had 4 resolution memoranda but no record of TECS inquiry to confirm only 4 hits existed.	9
Fraud	Individuals obtained their visas fraudulently. USCIS approved them for extensions. Documentation confirming the fraud had been filed prior to the visa renewals.	2
3-Year Stay	Evidence suggested that workers had exceeded the 3-year stay allowed for H-2 visas without returning home for the mandatory 3-month period as required.	9
Employer Vetting	USCIS failed to resolve unacceptable results after vetting the employer through USCIS' vetting system or evidence that unacceptable results had been resolved did not exist.	6

Source: DHS OIG review and analysis of USCIS H-2 immigration files

As Table 1 shows, full vetting of named workers' current or past actions, such as ties to terrorism, was not always done to support visa approvals. For example, we found that USCIS approved workers who had exceeded their 3-year stay or committed visa fraud. Four workers listed on two separate petitions, one containing 214 workers and the other containing 99 workers, were identified by the U.S. Customs and Border Protection (CBP) as having

¹⁹ These 4 workers were listed on three large petitions with 76, 87, and 182 named workers.



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committed fraud after admission into the United States. USCIS' Background Check Unit referred the potential fraud to the agency's Fraud Detection and National Security, Center Fraud Detection Operations, which confirmed immigration fraud had occurred and reported the information to adjudicators.²⁰ However, officers did not use this information during the adjudication process and improperly renewed visas for these individuals. Supervisors we interviewed cited the size of the H-2 petitions as well as conflicting language in the investigative Statement of Findings as probable causes for the errors.

Apart from these errors, we found that USCIS does not require vetting of worker aliases found on CBP's Arrival/Departure Information System printouts for national security, criminality, and immigration issues. If such alias vetting were done, it might provide USCIS with additional derogatory information to consider during H-2 petition processing.

We also disclosed evidence that employers seeking to bring foreign workers were improperly vetted. USCIS vetting processes should ensure that the employers exist, are financially viable, are in need of the number of workers requested on their petitions, and are not debarred from participating in the H-2 program. However, USCIS does not require adjudicators to vet the underlying employers for petitions filed by an agent or association on behalf of multiple employers. Of the 74 large petitions we reviewed, 20 were filed by agents or associations representing as many as hundreds of employers. In these cases, USCIS vetted the organizations that filed the petitions, but did not vet the underlying employers. Without vetting the underlying employers, USCIS risked allowing fraudulent or insolvent employers to use the H-2 program to obtain foreign workers.

Conclusion

This report illustrates the inequities that occur in H-2 petition processing, both in the fees paid by employers for foreign workers and in the disparate time USCIS uses to process small and large petitions. Because this report represents only a small portion of the benefits that USCIS processes via form I-129, which USCIS uses to establish its fee, this report may constitute the first in a number of reports to identify inequities in USCIS' fee structure.

²⁰ The Center Fraud Detection Operations documents the result of investigations in a Statement of Findings that is placed in the H-2 case file.



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Recommendations

We recommend that the USCIS Director:

Recommendation 1: Track H-2 petitions with named workers, including receipt numbers and time necessary for data entry, adjudication, background check, and fraud detection, if required, to determine on average how long it takes to process each worker so that USCIS can evaluate a more equitable fee structure.

Recommendation 2: Consider limiting the number of named beneficiaries that can be listed on each H-2 petition to help address inequity between small and large petitions until a more comprehensive resolution can be instituted and to limit USCIS' exposure to large petitions subject to 15-day processing.

Recommendation 3: Vet underlying employers when an agent or association files H-2 petitions on their behalf to mitigate the risk of approving temporary nonimmigrant workers for employers who are not eligible for inclusion in the H-2 program.

Management Comments and OIG Analysis

In the formal written comments on a draft of this report, the Acting Director of United States Citizenship and Immigration Services concurred with all of our recommendations. Following is a summary of USCIS management's response to each recommendation and our analysis. We included a copy of the comments in their entirety in appendix B. We also obtained technical comments to the draft report, which we addressed and incorporated in the final report, as appropriate.

Recommendation 1: Track H-2 petitions with named workers, including receipt numbers and time necessary for data entry, adjudication, background check, and fraud detection, if required, to determine on average how long it takes to process each worker so that USCIS can evaluate a more equitable fee structure.

USCIS Comments to Recommendation 1: USCIS concurred with this recommendation. USCIS agreed with the OIG's conclusion that the fees employers pay for individual H-2 petitions should be commensurate with the time and effort required to adjudicate these requests. However, USCIS stated that existing USCIS tracking systems were not designed to capture the time it takes to adjudicate petitions of differing size and complexity, including those



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with named beneficiaries. Although a more in-depth analysis of the H-2 fee structure could be possible with a new electronic case management system, USCIS stated that implementing such a system will take time. Instead, USCIS would consider limiting the number of named beneficiaries that can be listed on each H-2 petition as an alternate solution to fulfill the intent of this recommendation. USCIS expected this process will be completed by June 30, 2018.

OIG Analysis of Agency Comments to Recommendation 1: Given prior OIG reports highlighting USCIS' challenges in modernizing through the development of the Electronic Information System, we agree that relying on this system to provide a more in depth analysis of H-2 fees would take considerable time. We further agree that USCIS' alternative plan to consider limiting the number of named beneficiaries that an employer can request on each H-2 petition would help reduce the inequity between small and large petitions. This recommendation is resolved but will remain open until USCIS completes the steps described in its response to OIG recommendation 2. In addition, we encourage that USCIS continue to seek long-term solutions to increase its ability to capture detailed cost data to inform its H-2 petition fee setting activities.

Recommendation 2: Consider limiting the number of named beneficiaries that can be listed on each H-2 petition to help address inequity between small and large petitions until a more comprehensive resolution can be instituted and to limit USCIS' exposure to large petitions subject to 15-day processing.

USCIS Comments to Recommendation 2: USCIS concurred with recommendation 2 and agreed to consider limiting the number of named beneficiaries that can be listed on each H-2 petition. USCIS planned to convene a working group consisting of subject matter experts to consider the policy, operational, and legal implications of such a change. USCIS stated it would explore options, including possible regulatory changes. USCIS expected this process will be completed by January 31, 2018.

OIG Analysis of Agency Comments to Recommendation 2: We agree that USCIS' plan to convene a working group to consider limiting the number of beneficiaries that can be listed on each H-2 petition is the necessary first step to address inequities between small and large petitions until a more comprehensive resolution can be instituted. This recommendation is resolved but will remain open until USCIS provides evidence that it has implemented needed policy or limited the number of beneficiaries that can be named on each petition.



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Recommendation 3: Vet underlying employers when an agent or association files H-2 petitions on their behalf to mitigate the risk of approving temporary nonimmigrant workers for employers who are not eligible for inclusion in the H-2 program.

USCIS Comments to Recommendation 3: USCIS concurred with this recommendation and agreed to vet underlying employers when an agent or an association files H-2 petitions on their behalf. According to USCIS, this should include verifying whether employers exist and are financially viable, have a legitimate need for workers, and are not debarred from the H-2 program. USCIS recognized that such vetting would entail manual system searches, require additional resources, and result in USCIS requesting additional evidence from the employers themselves to address potential eligibility concerns. USCIS expected this process will be completed by January 31, 2018.

OIG Analysis of Agency Comments to Recommendation 3: USCIS' proposed actions should fulfil the intent of recommendation 3. As such, this recommendation is now resolved but will remain open until USCIS provides documentation to show the planned actions have been completed.



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Appendix A

Objective, Scope, and Methodology

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of reports prepared as part of our oversight responsibility to promote economy, efficiency, and effectiveness within the Department.

The objective of our audit was to determine whether the fee structure associated with H-2 petitions is equitable and effective. We interviewed USCIS officials from Service Center Operations, the Office of the Chief Financial Officer, the Office of Performance and Quality, and the California and Vermont Service Centers regarding user fees charged for the Petition for a Nonimmigrant Worker (Form I-129). We discussed with these officials USCIS' fee study, the final rule that established the current fee in 2010, and adjudication procedures and vetting processes. We also reviewed relevant criteria, policies, and procedures and conducted a walkthrough of the Form I-129 adjudication process for H-2A and H-2B status visas.

We selected a non-representative sample of 320 transactions (petitions) using a stratified methodology to capture petitions that had been processed at both service centers and contained multiple levels or ranges of beneficiaries (workers). We physically reviewed transactions (petitions) onsite at the service center that had adjudicated each file to obtain clarification when necessary. During our transaction reviews, we determined whether the files contained an approved TLC, assessed USCIS' vetting of employers and named workers, as well as other requirements such as the 3-year maximum stay rule.

We requested and obtained USCIS' CLAIMS 3 data for October 1, 2016, through February 2016 and conducted a data reliability assessment. Upon completion of our assessment, we found the partial FY 2016 data sufficiently reliable for the purpose of our audit. We had obtained FY 2013-15 data for previous audits and also found the data sufficiently reliable. We requested local production data from USCIS service centers related to H-2 adjudication processing time. Because USCIS only recently began collecting this data in FY 2015, our attempt to verify that the data contained all FY 2015 petitions was unsatisfactory. However, we found the data sufficient to show specific examples of an officer's time charged to adjudicate certain petitions. Although we obtained USCIS' National File Tracking System data, we did not use the data in this report nor did we conduct reliability tests.



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We conducted this performance audit between April and October 2016 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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Appendix B
USCIS Comments to the Draft Report

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

FEB 06 2017

MEMORANDUM FOR: John Roth
Inspector General
Office of Inspector General

FROM: Lori Scialabba *Lori Scialabba*
Acting Director
U.S. Citizenship and Immigration Services

SUBJECT: **Management's Response to the Office of Inspector General's
Draft Report: "H-2 Petition Fee Structure Is Inequitable and
Contributes to Processing Errors"**
(Project No. OIG-15-027-ITA-USCIS)

Thank you for the opportunity to review and comment on this draft report. U.S. Citizenship and Immigration Services (USCIS) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

As noted in the report, immigration and naturalization benefit fees charged to applicants and petitioners primarily fund USCIS. USCIS' current fee-setting approach conforms to, and is compliant with, the Chief Financial Officers Act of 1990, and the Federal Accounting Standards Advisory Boards' Statement of Financial Accounting Standards Number 4, Managerial Cost Accounting Concepts and Standards for the Federal Government.

USCIS would like to emphasize that the inequities and potential processing errors described in the draft report are limited to H-2 petitions involving multiple *named* beneficiaries. Since petitions involving unnamed workers do not, by definition, require USCIS to expend additional resources in determining individual workers' eligibility, there is no increased workload involved in adjudicating H-2 petitions involving such multiple unnamed workers. This is an important distinction in any discussions regarding the processing of H-2 petitions, as well as the associated agency costs.

USCIS concurs with all three of the OIG's recommendations, and detailed responses to each recommendation are found in the attachment to this memo. Technical comments were previously provided under separate cover. Thank you again for the opportunity to review and comment on this draft report, and please feel free to contact me if you have any questions.



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**Attachment: DHS Management Response to Recommendations
Contained in [Project No. OIG-15-027-ITA-USCIS]**

Recommendation 1: Track H-2 petitions with named workers, including receipt numbers and time necessary for data entry, adjudication, background check, and fraud detection, if required, to determine on average how long it takes to process each worker so that USCIS can evaluate a more equitable fee structure.

Response: Concur. USCIS agrees that the fees employers pay for individual H-2 petitions should be commensurate with the time and effort required to adjudicate these requests. The current USCIS tracking systems, however, are not designed to capture the time it takes to adjudicate petitions of differing size and complexity, including those with named beneficiaries. A more in-depth analysis of the H-2 fee structure could be possible with a new electronic case management system. Given the inevitable time constraints associated with implementing a new electronic case management system, USCIS will instead consider limiting the number of named beneficiaries that can be listed on each H-2 petition as an alternate solution to fulfill the intent of this recommendation. (Please see the response to Recommendation 2 below). Estimated Completion Date (ECD): June 30, 2018.

Recommendation 2: Consider limiting the number of named beneficiaries that can be listed on each H-2 petition to help address inequity between small and large petitions until a more comprehensive resolution can be instituted and to limit USCIS' exposure to large petitions subject to 15 day processing.

Response: Concur. USCIS agrees to consider limiting the number of named beneficiaries that can be listed on each H-2 petition. USCIS will convene a working group consisting of subject matter experts to consider the policy, operational, and legal implications of such a change. Considerations could include, among other things, possible regulatory changes at 8 CFR 214.2(h) that would facilitate timely processing of H-2 petitions consistent with adequate vetting of employers and named beneficiaries and placing limits on the number of named beneficiaries for other nonimmigrant classifications. ECD: January 31, 2018.

Recommendation 3: Vet underlying employers when an agent or association files H-2 petitions on their behalf to mitigate the risk of approving temporary nonimmigrant workers who are not eligible for inclusion in the H-2 program.

Response: Concur. USCIS agrees that vetting should include all underlying employers, whether an agent or an association is filing H-2 petitions on their behalf. Such vetting should establish that the underlying employers exist and are financially viable, have a legitimate need for the requested workers, and have not been debarred from the H-2 program. USCIS anticipates that any expansion of our current vetting of employers will require manual searches in the Validation Instrument for Business Enterprises (VIBE) to identify prior violations by employers and may require additional resources for the Background Check Units at USCIS Service Centers. This is also likely to result in an increase in the number of Requests for Evidence sent to H-2 petitioners to address eligibility concerns identified in VIBE. ECD: January 31, 2018.



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Appendix C
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Appendix D
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