

H-2A Temporary Agricultural Worker Program American Sugar Alliance Symposium

August 2026

Office of Foreign Labor Certification
Employment and Training Administration
United States Department of Labor



Disclaimer

This presentation is intended for training use only and does not carry the force of legal opinion.

The Department of Labor is providing this information as a public service. This information and any related materials are presented to give the public access to information on the Department of Labor programs. You should be aware that, while we try to keep the information timely and accurate, there will often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. The *Federal Register* and the *Code of Federal Regulations* remain the official source for regulatory information published by the Department of Labor. We will make every effort to keep this information current and to correct errors brought to our attention.

Department of Labor

Overview of the Immigration Process



- ▶ Immigration and Nationality Act (INA) regulates the admission of foreign nationals into the U.S.
- ▶ Secretaries of Homeland Security (DHS) and State (DOS) designated as principal administrators of the INA.
- ▶ Several types of employment-based visas require employers to first obtain a labor certification from the Secretary of Labor (DOL).
- ▶ DOL plays a key statutory role in certifying to DHS and DOS that:
 1. There are not sufficient qualified U.S. workers who are available for the job; and
 2. Employment of the foreign worker will not adversely affect the wages and working conditions of U.S. workers similarly employed.

STEP 1 Obtains a labor certification from **DOL**



- Generally, employer conducts a labor market test with the State Workforce Agency (SWA) where work will be performed.

STEP 2 Obtain an approved petition from **DHS** for a specific worker or number of workers in the visa classification to be employed by the employer.



STEP 3 After receiving DHS petition approval, the employer typically engages foreign labor recruiters and the worker applies with a **DOS** consulate abroad for a visa.



STEP 4 After receiving the visa from a DOS consulate, workers arrive at a port of entry where **DHS's Customs and Border Protection** verifies eligibility for admission and length of stay.



Department of Labor

Office of Foreign Labor Certification - Overview



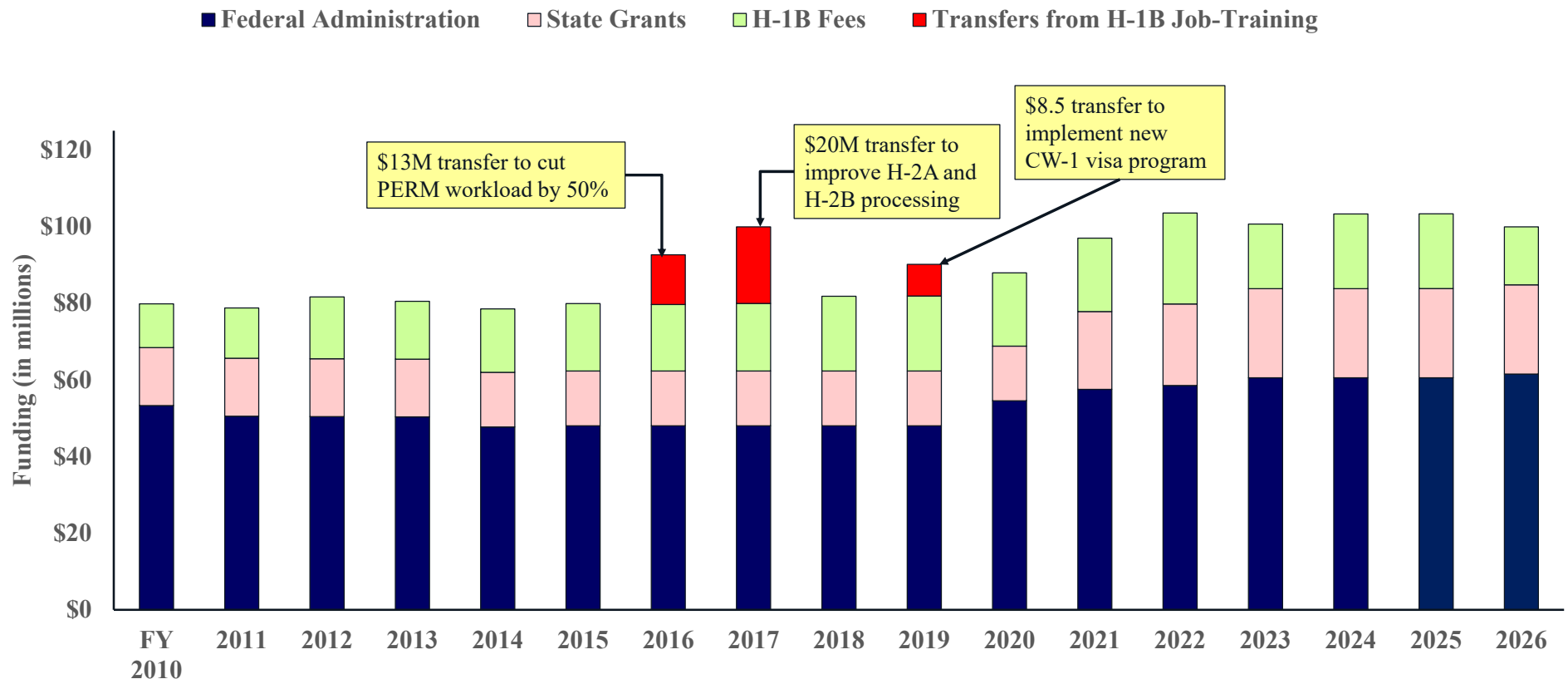
- ▶ Secretary of Labor delegates authority to issue labor certifications to ETA's Office of Foreign Labor Certification (OFLC).
- ▶ OFLC administers employment-based visa programs at two levels:
 - **Federal Administration**
 - Receive and process employer labor certification applications
 - Conduct compliance audits
 - **State Administration**
 - Review and place job orders to recruit U.S. workers.
 - Perform housing inspections and conduct surveys to set prevailing wages and work standards in the H-2A program.
- ▶ OFLC receives and processes employer-filed applications **electronically** through its Foreign Labor Application Gateway (FLAG) System <https://flag.dol.gov>.
- ▶ A National Prevailing Wage Center handles all prevailing or minimum wage determinations.
- ▶ OFLC programs are divided into two major types:
 - **Immigrant**
 - Permanent (PERM) “Green Card” Program
 - **Non-Immigrant**
 - H-1B, H-1B1, E-3 Skilled Occupation Visas
 - H-2A Temporary Agricultural Visa
 - H-2B Temporary Non-Agricultural Visa
 - CW-1 Temporary Non-Immigrant CNMI
 - D-1 Longshore Crewman Visa in U.S. Ports

OFLC Budget and Workload

Trends in Funding, FY 2010 – FY 2026 (CBJ)



Inflation-adjusted funding for OFLC decreased 17% from FY 2010 to FY 2026



NOTE: For more details, please see the [FY 2027 DOL Budget submission to Congress](#).

For Government Training Use Only

OFLC Budget and Workload

FY 2026 Funding Levels and Uses

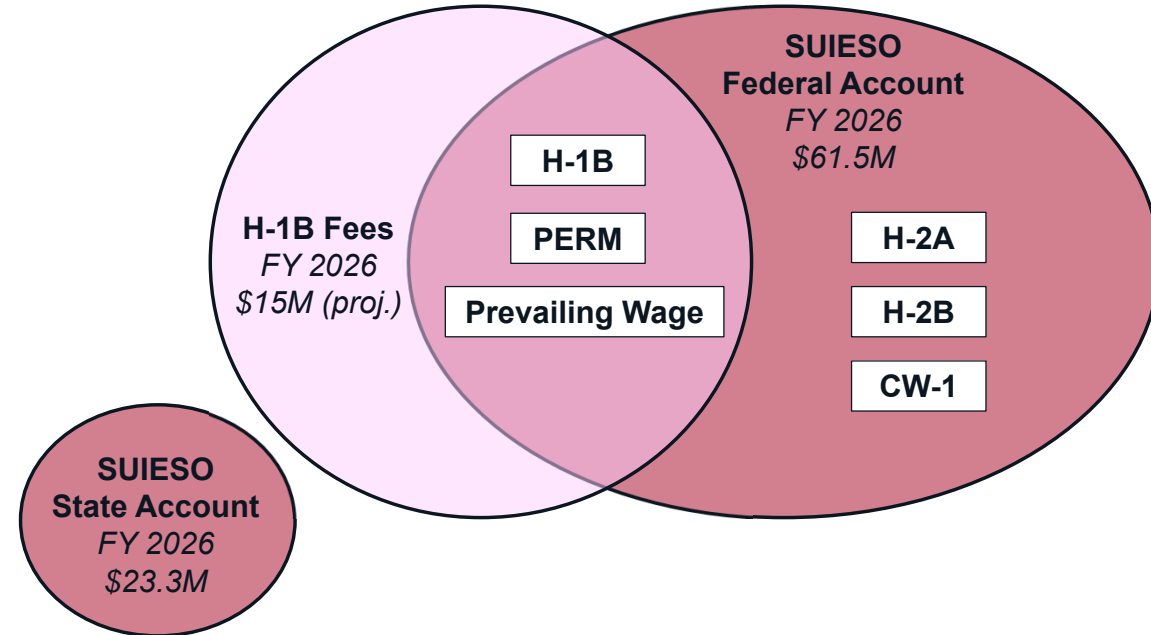


FUNDING SOURCES

- ▶ **Appropriations:** Congress enacts distinct funding for OFLC Federal Administration and State Grants through the SUIESO Account. Funding is not adjusted based on changes in workload.
- ▶ **H-1B Fees:** 5% of H-1B application fees collected by DHS are remitted monthly to DOL to support OFLC operations.
- ▶ **H-2A Fees:** Collected since 1986, deposited into General Treasury, and Secretary of Labor cannot access funds to offset H-2A program costs until Congress authorizes an account.

FY 26 FUNDING & ALLOWABLE USES

- ▶ Each funding source can only legally be used for certain visa program activities.



State grants used to conduct H-2A housing inspections, review job orders, and conduct prevailing wage surveys

OFLC Budget and Workload

FY 2027 CBJ and Program Priorities



FY 2027 BUDGET

- ▶ **Establish OFLC as Independent DOL Agency:** Centralize DOL immigration functions by transferring OFLC from ETA to Department with Secretary's Office of Immigration Policy.
- ▶ **Federal Account:** \$2M proposed increase for 10 additional federal staff to stabilize and reduce OFLC case processing times.
- ▶ **State Account:** No proposed change in State Workforce Agency funding; maintains funding level dating back to FY 2023.

PROGRAM PRIORITIES

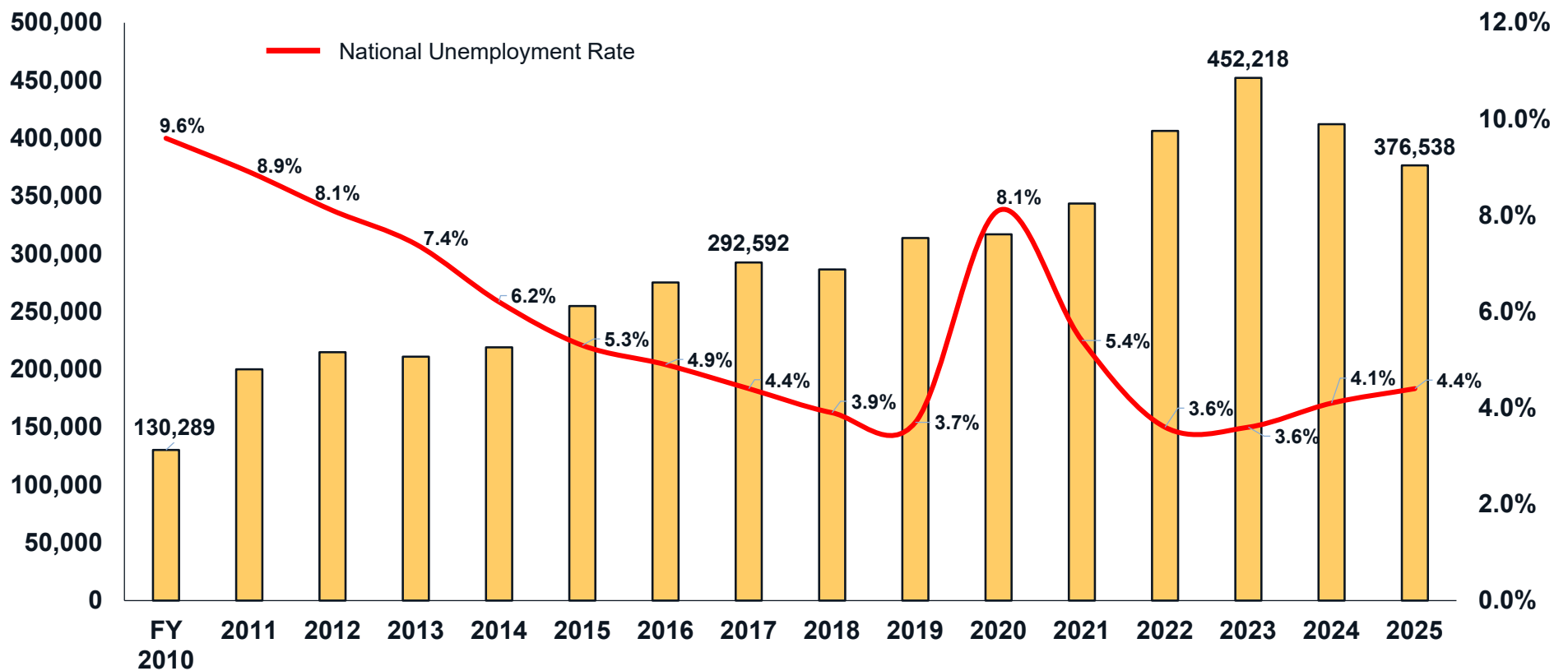
- ▶ **Maximize Production Capacity:** Stabilize federal staffing levels; authorize overtime pay; and continue staff cross-training for H-2A/H-2B "peak season" filing surge.
- ▶ **Technology Innovation:** Invest in FLAG system to improve customer service and processing; shift to PAY.GOV for fees.
- ▶ **Maintain Public Trust:** Stakeholder engagements/webinars, Congressional assistance, and routine public disclosure of program and performance data.

OFLC Budget and Workload

Trends in Labor Certification Applications vs. Unemployment Rates



Workload Remains Significantly High Compared to FY 2010



NOTE: Excludes H-1B, H-1B1, and E-3 programs (averaging 500,000 applications annually over last 5 years) because those visas do not require a labor certification and are administered through H-1B fee revenues remitted to DOL from DHS.

For Government Training Use Only

H-2A Agricultural Visa Program

FY 2025 Workload Statistics and Historical Trends

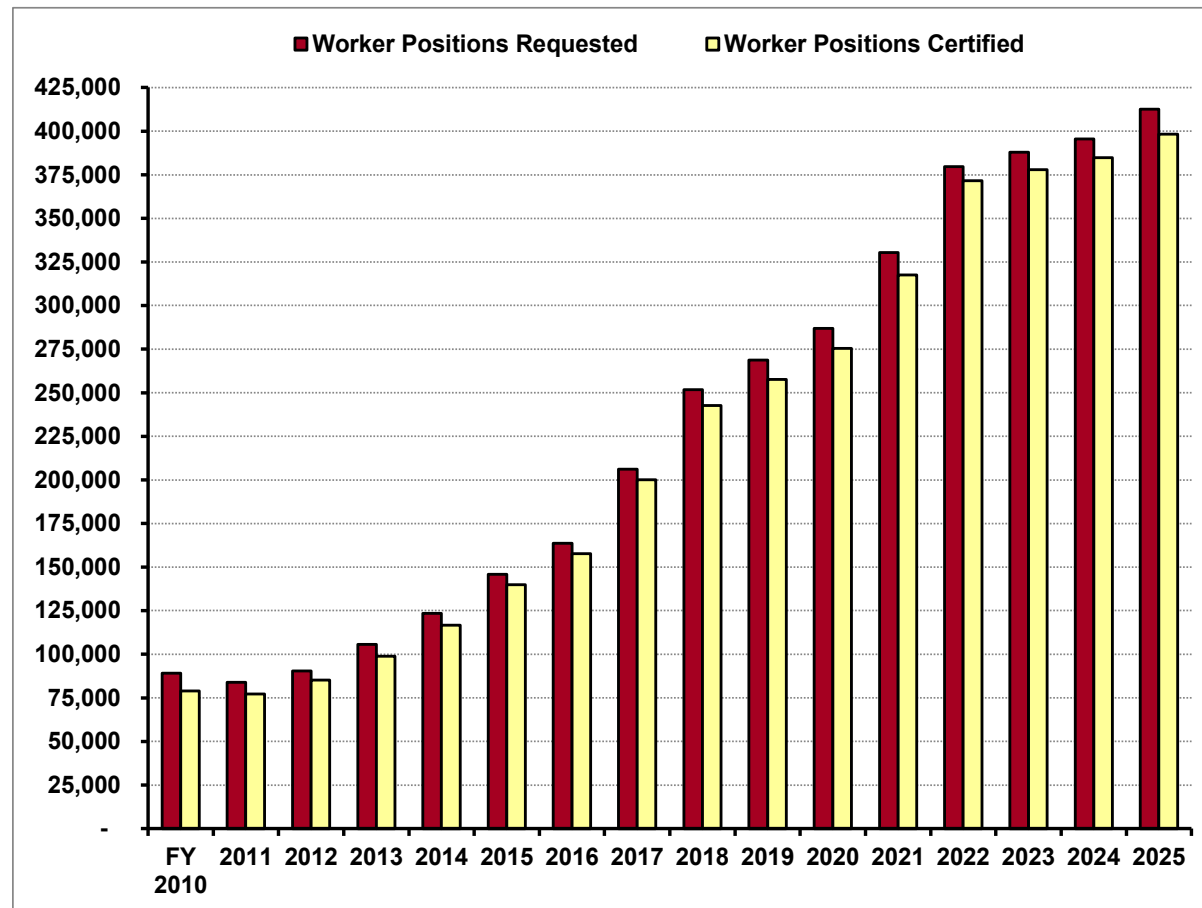


► Program Highlights

- **No visa cap**
- 24,526 applications processed
- Post-filing labor market test through 50% of work contract period
- 99% certification rate (148 denials)
- 398,58 workers certified
 - 43% Farm Labor Contractors

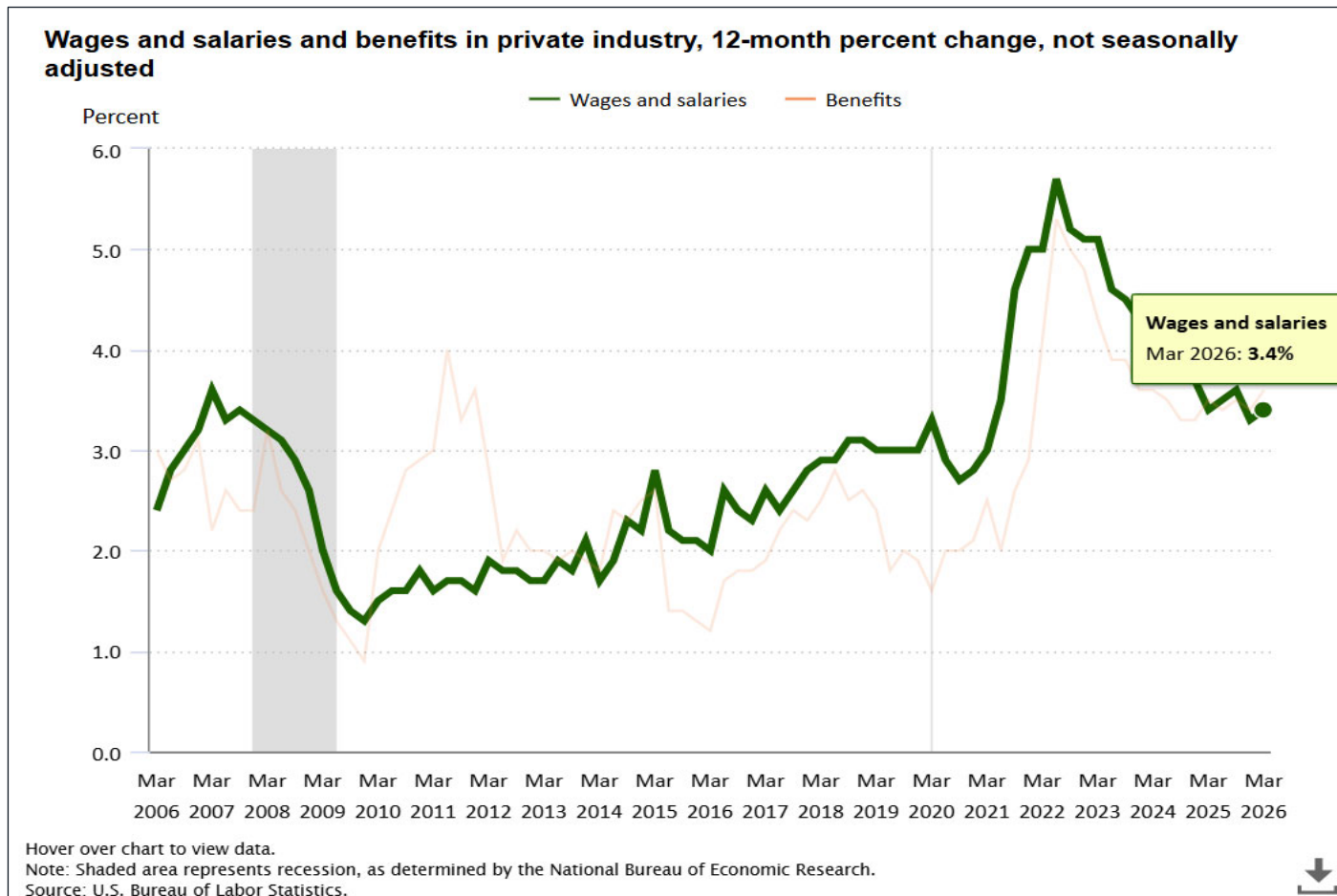
► Top States of Employment

	<u>FY 2010</u>	<u>FY 2025</u>
Florida	4,542	56,934
Georgia	4,874	42,723
California	2,839	35,138
Washington	4,248	34,560
North Carolina	18,299	26,123



H-2A Agricultural Visa Program

Trends in 12-Month Change in ECI, 2006 - 2026



H-2A Agricultural Visa Program

English Proficiency for Operating Commercial Motor Vehicles



- ▶ On May 14, 2026, OFLC published Frequently Asked Questions (FAQs) regarding English language proficiency (ELP) requirements for workers engaged in operating commercial motor vehicles (CMVs).
- ▶ The FAQs remind employers about long-standing Department of Transportation (DOT) requirements that any person, which includes a foreign national, shall not operate, nor shall a motor carrier require or permit an individual to operate, a CMV unless they possess the necessary qualifications to do so.
- ▶ Beginning June 15, 2026, any H-2A job order/application where workers are expected to operate a CMV should include language in the job order (Form ETA-790A) that is consistent with the DOT standards under 49 C.F.R. § 391.11(b)(2) concerning ELP.

ELP Requirement Example:

Worker must be able to read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals in English, respond to official inquiries, and make entries on reports and records.

A copy of the FAQs are available on the OFLC website at:

<https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/ELP-FAQs-Publication.pdf>



H-2A Agricultural Worker Program

Applications - Filing Tips

DO:

- **Read the Form ETA-790/790A instructions carefully** to submit as complete and accurate application as possible!
 - Edit requests and amendments **will** delay the process
- Explain drug testing / background checks
 - If marked “yes” in Section B of the Form ETA-790A , submit an explanation to clarify whether it will be done pre-hire or post hire
- Communicate regarding housing unit issues
 - Example: If a housing unit has not been inspected by the SWA and you have enough certified housing to cover the number of workers requested, you may request removal of the housing unit to allow the application to move forward.



H-2A Agricultural Worker Program

Applications - Filing Tips

DO:

- Review the qualifications and requirements listed and provide additional information at the time of filing, as appropriate:
 - Up to 6 months of experience acceptable for range work, but more—or other unusual requirements—will likely require further explanation/information. See 20 CFR 655.210(b)

Most Helpful	Less Than Helpful
Surveys	Why the employer prefers the qualification
Advertisements for similar positions	Letters discussing general practices or not backed by data
O*NET	



H-2A Agricultural Worker Program

Applications - Filing Tips

DO:

- Review the duties and conditions of the job opportunity offered to ensure **all** fit the scope and purpose of the herding or production of livestock on the range regulations. See 20 CFR 655.200.
 - Work is closely and directly related to herding and/or production of livestock
 - Work is performed on the range for the majority (more than 50%) of the workdays in the work contract period
 - Work activities generally require the workers to be on call 24 hours per day, 7 days a week

H-2A Agricultural Worker Program

Applications - Filing Tips



Current Surety Bonds for H-2ALCs – Appendix B

<u>Number of H-2A Workers to be Employed</u>	<u>Adjusted Bond Amount</u>
Less than 25 workers	\$8,627.03 = $\$5,000 \times (\$15.96 \div \$9.25)$
25–49 workers	\$17,254.05 = $\$10,000 \times (\$15.96 \div \$9.25)$
50–74 workers	\$34,508.11 = $\$20,000 \times (\$15.96 \div \$9.25)$
75–99 workers	\$86,270.27 = $\$50,000 \times (\$15.96 \div \$9.25)$
100–149 workers	\$129,405.41 = $\$75,000 \times (\$15.96 \div \$9.25)$
150 or more workers	\$129,405.41 + \$63,840.00 (80 hours $\times$ 50 workers $\times$ Average AEWR) multiplied by each additional set of 50 H-2A workers over 100



H-2A Agricultural Worker Program

Applications – Important Issues

Issue 1: Adverse Effect Wage Rate (AEWR)

- The new AEWRs are in effect. The wage offer must be at least equal to the highest of the wage sources listed in 20 CFR 655.120:
 - AEWR the Department publishes at least once annually, typically in December, and posts on OFLC's website.
 - Current AEWR effective August 3, 2026 with a two-week delay for the Kansas injunction plaintiffs. **17 plaintiff states (AR, FL, GA, ID, IN, IA, KS, LA, MO, MT, NE, ND, OK, SC, TN, TX, VA), Miles Berry Farm, and members of the Georgia Fruit and Vegetable Growers Association (GFVGA).**
 - Agreed-upon collective bargaining wage, if applicable
 - The applicable minimum wage imposed by Federal or State law or judicial action

Resource: The AEWRs for all occupations can be found on [H-2A Adverse Effect Wage Rates \(AEWRs\) | Flag.dol.gov](#)

Louisiana Rates:

U.S. Skill Level I= **\$10.42**

H-2A Skill Level I= **\$9.14**

U.S. Skill Level II= **\$15.81**

H-2A Skill Level II= **\$14.53**



H-2A Agricultural Worker Program

Applications – Important Issues

Issue 2: Temporary or Seasonal Need Assessment

■ Temporary Need

- ***DHS definition of a temporary or seasonal nature.***

- Employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations.
- Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year.

Good Practices:

- ✓ Assess your filing history and job opportunity to determine if a Statement of Temporary Need should be attached to your application.
- ✓ It is highly recommended that the employer provide a statement supporting its temporary need when:
 - There are any changes to your requested dates of employment from previous years; and/or
 - The employer is a “first-time” filer and the nature of the need for workers to perform the job is not obviously seasonal or temporary.



H-2A Agricultural Worker Program

Applications – Important Issues

Issue 4: Meals for Workers

– Provision of Meals

- Employer must provide 3 meals a day to workers or furnish free and convenient cooking and kitchen facilities
- Giving workers cash or a stipend, or providing access to third-party vendors is not acceptable
- Identify any third-party providers (i.e., caterers) and briefly explain the arrangements made with the vendor to provide meals

– Requesting Approval for Higher Meal Charges

- Explain the method(s) used and provide documentation showing itemized costs directly related to the preparation and serving of meals
- Costs related to transportation, profit/overhead, capital depreciation or other similar costs cannot be shifted to workers



H-2A Agricultural Worker Program

Applications – Important Issues

► **Meals for Workers – Disclosure on Job Order**

- Providing kitchen facilities for workers to prepare meals

Good Practice (excerpt from an approved H-2A Job Order, Section E):

Employer does not provide meals. Employer will provide free, convenient and fully equipped with refrigerator, stove, pots, pans utensils and counter space cooking and kitchen facilities to workers living in employer provided housing, which will enable workers to prepare their own meals. Employer will also provide free transportation once per week to/from closest town or city to buy food, banking services, and other necessities.

- **Have a contingency plan!** Disclose to workers how meals will be provided, including any appropriate meal charges, in the event kitchen facilities become temporarily inoperable or otherwise unavailable



H-2A Agricultural Worker Program

Applications – Important Issues

Petitions for Higher Meal Charges 655.173

- When requesting a higher meal charge, the employer should do the following:
 - The employer may file a petition with the CO to request approval to charge more than the applicable amount set under [paragraph \(a\)](#) of this section.
 - To request approval to charge more than the applicable amount set under [paragraph \(a\)](#) of this section, the employer must submit the documentation required by either [paragraph \(b\)\(1\)\(i\)](#) or [\(ii\)](#) of this section. A higher meal charge request will be denied, in whole or in part, if the employer's documentation does not justify the higher meal charge requested.

Good Practice: It is most efficient and highly recommended to submit the higher meal charge request at the time of filing.



H-2A Agricultural Worker Program

Applications – Important Issues

Issue 5: Pre-Determination Amendments to Applications

- The application for Temporary Employment may be amended prior to certification for:
 - Increases in number of workers.
 - Minor changes to the period of employment.
- When submitting an amendment request, it is best to do submit a separate document or email titled amendment request instead of attaching it along with the final recruitment report to avoid the certification from being issued without the amendment.

Good Practice: It is best to file the request separate from the Recruitment Report package.



H-2 Visa Programs

Protecting Workers and Program Integrity

▶ Worker Rights Posters

EMPLOYEE RIGHTS UNDER THE H-2A PROGRAM

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

The Immigration and Nationality Act (INA) allows for the employment of temporary non-immigrant workers in agriculture (H-2A WORKERS) only if the employer and the workers agree to be mutually protected. To ensure that U.S. workers are not adversely impacted, H-2A WORKERS and OTHER WORKERS employed on an H-2A work contract or by an H-2A employer in the same agricultural work as the H-2A workers have the following rights:

DISCLOSURE

- To receive accurate, **WRITTEN INFORMATION** about the wages, hours, working conditions, and benefits of the employment being offered.
- To receive this information prior to getting a visa and no later than on the first day of work.
- To receive this information in a language understood by the worker.

WAGES

- To be **PAID** at least twice per month at the rate stated in the work contract.
- To be informed, in writing, of all **DEDUCTIONS** (not otherwise required by law) that will be made from the worker's paycheck.
- To receive an itemized, written **STATEMENT OF EARNINGS** (pay stub) for each pay period.
- To be guaranteed employment for at least **THREE-FOURTHS** (75%) of the total hours promised in the work contract.

TRANSPORTATION

- To be provided, upon completion of 50 percent of the work contract period, reimbursed for reasonable costs incurred for transportation and daily meals to the place of employment.
- Upon completion of the work contract, to be provided or paid for return transportation and daily meals.
- For workers living in employer-provided housing, to be provided **TRANSPORTATION**, at no cost to the worker, between the housing and the worksite.
- All employer-provided transportation must meet applicable safety standards, be properly insured, and be operated by licensed drivers.

HOUSING

- For any worker who is not reasonably able to return to his/her residence within the same day to be provided **HOUSING AT NO COST**.
- Employer-provided housing must meet applicable safety standards.
- Workers who live in employer-provided housing must be offered three meals per day at no more than a DOL-specified cost, or provided free and convenient cooking and kitchen facilities.

ADDITIONAL PROVISIONS

- To be provided state **WORKERS' COMPENSATION** insurance or its equivalent.
- To be provided, at no cost, all **TOOLS, SUPPLIES**, and equipment required to perform the assigned duties.
- To be **FREE FROM DISCRIMINATION** or discharge for filing a complaint, testifying, or exercising your rights in any way or helping others to do so.
- Employers **MUST** comply with all other applicable laws (including the prohibition against hiring workers' passports or other immigration documents).
- Employers and their agents **MUST NOT** receive payment from any worker for any costs related to obtaining the H-2A certification from the Department of Labor.
- Employers **MUST** display this poster where employees can readily see it.
- Employers **MUST NOT** lay off or discharge any employed U.S. workers within 60 days of the date of need for H-2A workers.
- Employers **MUST** file any eligible U.S. worker who applies during the first 90 percent of the approved work contract period.

Workers who believe their rights under the program have been violated may file confidential complaints.

For additional information:
1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor Wage and Hour Division

EMPLOYEE RIGHTS UNDER THE H-2B PROGRAM

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

The Immigration and Nationality Act (INA) allows for the employment of temporary, non-immigrant workers in non-agricultural jobs or services (H-2B WORKERS). Employment of non-immigrant workers is subject to the requirements for the employment of H-2B WORKERS only if the wages and working conditions of U.S. workers would not be adversely affected.

Non-immigrant workers have the following rights under the program:

- H-2B WORKERS and OTHER WORKERS** performing substantially the same work included in the H-2B job order or substantially the same work as that performed by the H-2B workers, except for certain long-term existing employees and certain employees under a collective bargaining agreement or individual employment contract.

DISCLOSURE

- To receive accurate, **WRITTEN INFORMATION** about the wages, hours, working conditions, and benefits of the employment being offered.
- To receive this information before getting a visa in the case of H-2B workers outside the U.S., but no later than the first day of work for other workers.
- To receive this information in a language understood by the worker.
- To be **PAID** at least every two weeks at the rate indicated in the job order for all hours worked from the worker's paycheck.
- To be informed in writing of all **DEDUCTIONS** (not otherwise required by law) that will be made from the worker's paycheck.
- To receive an itemized, written **STATEMENT OF EARNINGS** (pay stub) for each pay period.
- To be guaranteed employment or payment for at least **THREE-FOURTHS** (75%) of the hours promised in the job order every 90 days, except for a leave period or job order under 90 days.

WAGES

- To be provided, upon completion of 50 percent of the job order period, reimbursed for reasonable costs incurred for transportation and subsistence including lodging incurred on the employer's behalf and meals from the worker's home to the place of employment.
- To be provided, upon completion of 50 percent of the job order period, reimbursement for the first workweek of employment.
- Upon completion of the job order or if terminated early for any reason, to be provided or paid for return transportation and subsistence.
- All employer-provided transportation must meet applicable safety standards.

TRANSPORTATION AND VISA EXPENSES

- To be provided, at no cost, all **TOOLS, SUPPLIES**, and equipment required to perform the assigned duties.
- To be **FREE FROM DISCRIMINATION** or discharge for filing a complaint, testifying, or exercising your rights in any way or helping others to do so.
- Employers and their agents **MUST NOT** request or receive payment from any worker for any costs related to obtaining the H-2B certification from the Department of Labor.
- Employers **MUST NOT** have sought H-2B workers during a strike or lockout at any of the employer's workplaces within the geographic area listed in the job order.
- All employers **MUST NOT** place H-2B workers outside the geographic area or the occupation listed in the job order.
- Employers **MUST** display this poster where employees can readily see it.
- Employers **MUST NOT** lay off or discharge any employed U.S. workers within 120 days before the job order through the end of the job order.
- Employers **MUST NOT** lay off or discharge any eligible U.S. worker within 21 days before the start of the job order.
- Employers **MUST** comply with all other applicable Federal, State, and local laws (including the prohibition against hiring workers' passports or other immigration documents).

Workers who believe their rights under the program have been violated may file confidential complaints.

For additional information:
1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-889-5627
WWW.DOL.GOV/WH

U.S. Department of Labor Wage and Hour Division

▶ Worker Rights' Cards

WHD U.S. Department of Labor
WAGE AND HOUR DIVISION

This card summarizes legal protections and requirements for H-2A workers.

H-2A For more information call toll-free:
1-866-4US-WAGE (1-866-487-9243) or
visit our website at **www.dol.gov/whd**

Legal Protections for H-2A Workers

Available in [English](#) and [Spanish](#)

WHD U.S. Department of Labor
WAGE AND HOUR DIVISION

This card summarizes legal protections and requirements for H-2B workers.

H-2B For more information call toll-free:
1-866-4US-WAGE (1-866-487-9243) or
visit our website at **www.dol.gov/whd**

Legal Protections for H-2B Workers

Available in [English](#) and [Spanish](#)

- H-2A poster in English/Spanish/Haitian Creole at:
<https://www.dol.gov/agencies/whd/agriculture/h2a>
- H-2B available in English and Spanish at:
<https://www.dol.gov/agencies/whd/immigration/h2b>



H-2 Visa Programs

Protecting Workers and Program Integrity

▶ Reporting Violations of H-2 Labor Certifications

- File a complaint with the DOL Wage and Hour Division (WHD) by calling the toll-free helpline at **1-866-4US-WAGE (1-866-487-9243)**.
- Visit the WHD for more information at <http://www.dol.gov/agencies/whd>

▶ Reporting Violations of Discrimination Based on Immigration Status or Citizenship

- For questions about the anti-discrimination provisions of the INA, call the DOJ Immigrant and Employee Rights (IER) section using the toll-free helpline at **1-800-255-8155**.
- Visit the DOJ-IER to file a charge at <https://www.justice.gov/crt/filing-charge>

▶ Reporting Human Trafficking

- File a report with the National Human Trafficking Hotline (NHTH) by calling the toll-free helpline at **1-888-373-7888**.
- Visit the NHTH for more information at <https://humantraffickinghotline.org/>

▶ Reporting DOL Immigration Fraud or Program Abuse

- File a report with the DOL Office of Inspector General (OIG) by calling the helpline at **1-202-693-6999** or toll-free at **1-800-347-3756**.
- Visit the DOL-OIG to file a report at <https://www.oig.dol.gov/hotlinecontact.htm>



How Can We Help You?

► FLAG System Support

- Contact Login.gov at <https://www.login.gov> for technical issues with account creation, signing in, or changing Login.gov settings.
- Contact DOL FLAG Helpdesk for any technical problems filing applications at <https://flag.dol.gov/support/contact>.

► H-2A/H-2B Program Support

- Contact the OFLC Program Helpdesk for any questions related to the processing of H-2A/H-2B applications at tlc.chicago@dol.gov.

► OFLC Website

- “Subscribe” to receive program updates via e-mail at <https://www.dol.gov/agencies/eta/foreign-labor>.

