

Advocacy Recommends DOL Consider Regulatory Alternatives that Would Minimize the Small Business Impacts of New H-2B Rule

On October 27, 2010, the Office of Advocacy (Advocacy) filed a comment letter with the Department of Labor (DOL) regarding its proposed rule, *Wage Methodology for the Temporary Non-Agricultural Employment in the H-2B Program*. A complete copy of Advocacy's letter to DOL may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- The H-2B program allows non-agricultural employers facing a shortage of U.S. workers to have access to temporary unskilled workers from foreign countries during seasonal or peak times. On August 30, 2010, the U.S. District Court in the Eastern District of Pennsylvania ordered DOL to promulgate new regulations for determining the prevailing wage rate in the H-2B program subject to the notice and comment requirements of the Administrative Procedure Act.
- DOL's proposed rule changes the methodology for establishing the prevailing wage rate for H-2B workers. The current wage methodology for H-2B workers is based on four-tiered wage levels in the Occupational Employment Statistics wage survey compiled by the Bureau of Labor Statistics within a particular job type. DOL is proposing to move to a one-tiered system, based on the arithmetic mean wage rate, which will average all of the survey's wage rates in a job type across a range of experience and skill levels. DOL estimates the following hourly wage increases by industry associated with this proposed rule: Landscaping services, \$3.60; Janitorial services, \$3.72; Food services and drinking places, \$1.29; Amusement, \$1.37; and Construction, \$10.61.
- DOL published an Initial Regulatory Flexibility Analysis for the proposed rule. Advocacy believes that this analysis is inadequate because it does not adequately capture: 1) the number of small entities affected by the rule, 2) the economic impact of this rule on small entities and 3) does not include any significant regulatory alternatives to the rule.
- On October 20, 2010, Advocacy hosted a small business roundtable attended by DOL staff and small business stakeholders. All participants expressed concerns that the proposed rule, if finalized, would have detrimental consequences for their businesses. Advocacy recommends that DOL consider the regulatory alternatives to this rulemaking provided by small entities at the roundtable that would accomplish the agency's goals without harming small businesses.

For more information, visit Advocacy's Web page at <http://www.sba.gov/advo>, or contact Assistant Chief Counsel Janis Reyes by email at Janis.Reyes@sba.gov or by phone at 202-205-6533.