

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

On June 4, 2013, the Office of Advocacy (Advocacy) filed a comment letter with the U.S. Department of Homeland Security (DHS) and the U.S. Department of Labor (DOL) regarding its interim final rule entitled, *Wage Methodology for Temporary Non-Agricultural Employment-H-2B Program, Part 2*.

A complete copy of Advocacy's letter to DOL can be accessed at:

<http://www.sba.gov/advocacy/816>.

- The H-2B visa program allows non-agricultural employers facing a shortage of U.S workers to hire temporary low skilled workers from foreign countries. DOL has issued a series of guidance documents and rules over the years discussing the method of calculating the prevailing wage determination (PWD) for H-2B workers, based on data from the Occupational Employment Statistics (OES) wage survey compiled by the Bureau of Labor Statistics; these rulemakings have been subject to multiple lawsuits and Congressional actions. In April 2013, DOL issued an Interim Final H-2B rule effective immediately, which calculated the PWD utilizing a one-tier system, based on the arithmetic mean wage for each occupation in the OES survey. DOL estimates that the average wage increase for H-2B workers is \$2.12 per hour or 21.4 percent.
- Small businesses have expressed directly to Advocacy the concern that this interim final rule which immediately increases H-2B worker wages will disrupt their business operations mid-season; as a result, they believe that they may have to reduce their operations or close completely. For example, small landscape employers have signed seasonal contracts with clients based on lower wage rates and cannot pass on this increase; they also believe that these higher labor rates will be applicable to their entire U.S. workforce. Small seafood and meat processing employers report that they operate on narrow margins and cannot compete with foreign competition with these high labor rates. Small lodging companies have not received their H-2B housekeepers during their busy season.
- Advocacy urges DOL to consider significant alternatives to this rulemaking recommended by small entities in the docket, such as different calculations of prevailing wage determinations, which would meet the agencies' objectives without jeopardizing small business.

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