

## ***Advocacy Recommends DOL Consider Phase-In Options for New Increased H-2B Wages Based on the Employer Size and Economics***

On March 17, 2011, the Office of Advocacy (Advocacy) filed a comment letter with the Department of Labor (DOL) regarding its final 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/>.

- On January 19, 2011, the DOL issued a final rule changing the wage methodology under the H-2B visa program, increasing the wages by industry for H-2B workers by \$1.23 to \$9.72 per hour, effective for wages paid for work performed on or after January 1, 2012.
- On October 27, 2010, Advocacy submitted a public comment letter on DOL's proposed rule on the H-2B visa program. Advocacy commented that the wage increases finalized by DOL will hurt seasonal small businesses that are seeking a legal means to hire foreign workers due to the shortage of available U.S. workers willing to do unskilled and temporary work, and may shut small businesses out of this vital program.
- In the final rule, DOL specifically welcomed information from the public on the feasibility and implementation of phasing in the higher wages. However, DOL noted that the agency was not considering phase-in options based on the size or economic state of the employer. Advocacy recommended that DOL consider the viable options of a phase-in of these increased wages based on the size or economic state of the employer, pursuant to Section 603(c) of the Regulatory Flexibility Act.
- Advocacy would support any significant regulatory alternative to this final rule recommended by small entities or DOL that would actually minimize the impact of this rule on small entities.

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](mailto:Janis.Reyes@sba.gov) or by phone at 202-205-6533.