

Advocacy Recommends that the Labor Department Consider Small Business Alternatives for New H-2B Visa Requirements

On May 17, 2011, the Office of Advocacy (Advocacy) filed a comment letter with the Department of Labor (DOL) regarding its proposed rule which creates new requirements under the H-2B visa program. A complete copy of Advocacy's letter to DOL may be accessed at: <http://www.sba.gov/advocacy/816>.

- The H-2B visa program allows non-agricultural employers who face a shortage of U.S. workers to gain access to temporary and seasonal unskilled foreign workers. This program is used by small businesses in the landscaping, hotel, construction, amusement, restaurant and forestry industries. To hire an H-2B worker, employers must first recruit U.S. workers. They must pay the foreign workers a salary that will not adversely affect the wages and working conditions of similarly employed U.S. workers.
- Previously, in January 2011, DOL finalized a rule that increased the wages for H-2B workers by \$3-\$10 an hour, starting January 1, 2012. Advocacy submitted a comment letter to DOL citing the potential harmful economic impacts of these wage increases on small H-2B employers.
- In March 2011, DOL released a rule that proposes the following requirements on H-2B employers: 1) adoption of a bifurcated application process with a registration phase (evaluating temporary need) and an application phase (recruitment); 2) increased recruitment period and requirements; 3) minimum payment guarantees for workers ($\frac{3}{4}$ of every month and 35 hours a week); 4) payment for worker transportation and housing (for certain workers); and 5) payment of H-2B wages and benefits to corresponding U.S. workers.
- Advocacy believes that DOL's Initial Regulatory Flexibility Analysis underestimates the costs and burdens of these requirements, which could make it more difficult for small employers to utilize this program. The agency's analysis also does not consider the cumulative impact of these requirements with the recently finalized DOL rule that will increase H-2B wages, even though both of these rules may be implemented in the same season. Advocacy recommended that DOL consider significant alternatives to this rule recommended by small entities that would meet the agency's objectives without jeopardizing 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.