

Advocacy Recommends that DOL Reconsider the Impact of a Proposed Acceleration of the Effective Date for the New H-2B Wage Methodology

On July 6, 2011, the Office of Advocacy (Advocacy) filed a comment letter with the Employment and Training Administration of the U.S. Department of Labor (DOL) regarding DOL's proposed rule: *Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program; Amendment of the Effective Date*; 76 Fed. Reg. 37686 (June 28, 2011). A complete copy of Advocacy's letter to SBA may be accessed at <http://www.sba.gov/advocacy/816>.

- On January 19, 2011, DOL issued a final rule changing the wage methodology for the temporary non-agricultural employment of foreign workers under the H-2B visa program ("Wage Rule"). This rule increased the wages for H-2B workers by \$1.23 to \$9.72 per hour, for work performed on or after the effective date of the final rule, January 1, 2012.
- On June 28, 2011, in an attempt to comply with a court's order, DOL published a proposed rule that accelerates the effective date of the Wage Rule by three months from January 1, 2012, to October 1, 2011. DOL certified that accelerating the effective date of the rule will not have a significant economic impact on a substantial number of small entities.
- Advocacy has previously submitted three public comment letters regarding changes to the H-2B program, citing small business concerns that these changes will have a significant economic impact on a substantial number of small businesses. Advocacy argued that the wage increases 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 public comment letter of July 6, 2011, Advocacy recommended that DOL reconsider its decision to certify the proposed rule because, with no supporting data or other analysis, DOL lacked the factual basis for certification as required by the RFA. Furthermore, DOL's certification of the proposed rule contradicted the analysis in its own final rule of January 19, 2011.
- Advocacy also recommended DOL extend the deadline for submission of written comments to give the public a meaningful opportunity to comment. Advocacy believes that the 11-day comment period is inadequate for a rule that is expected to have a significant economic impact on small businesses.

For more information, visit Advocacy's web page at <http://www.sba.gov/advocacy>, or contact Assistant Chief Counsel, Major L. Clark, III by email at Major.Clark@sba.gov or by phone at 202-205-7150.