

The Honorable Thomas E. Perez
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Secretary Perez:

I am hearing from small and seasonal businesses in my district that they continue to have problems with the Department of Labor's H-2B certification process. These problems include continued processing delays and DOL's continued resistance to implementing changes to the H-2B regulations that were included in the fiscal 2016 Consolidated Appropriations Act (PL 114-113). I have outlined these concerns below and would appreciate your prompt attention to these matters, as they are vitally important to the survival of the small businesses that use the H-2B program.

As you know, Seasonal businesses will suffer greatly if they cannot get their workers at the start of their busy season. Many small businesses are encountering very significant delays that will jeopardize their operations and their American and H-2B workers.

Processing Delays

I understand that under current regulations, DOL is supposed to issue Notices of Acceptance and Deficiency (NOAs and NODs) within 7 calendar days of receiving the submission. However, I have heard from many constituents that they are still waiting for a response from DOL after several weeks.

- What is the current backlog of NOAs and NODs?
- What steps is DOL taking to promptly clear any backlog and to ensure that the seven day timeframe is met?

I have heard repeated reports about the unreliability of the iCert system including slow service or temporary outages, which is making it difficult for employers to get Prevailing Wage Determinations.

- What steps is DOL taking to address the reliability and capacity of the iCert system?

An employer cannot file the request for labor certification (Form 9142 – Appendix B) without a certified prevailing wage determination (PWD) from DOL. I understand that DOL is taking 60 days or more to process PWD's. Delays in receiving PWDs can delay the entire process and result in significant losses for

employers that are not able to hire their workers on time. Prior to the new regulations, DOL was taking 30 days to issue PWDs.

- What is the current timeframe for DOL to process PWDs?
- Are there any PWDs that are still pending beyond 60 days?
- What steps is DOL taking to shorten the timeframe for issuing a PWD?
- Will DOL commit to work toward a 30-day timeframe for issuing PWDs, as was the case prior to the 2015 program regulations?

Employers can only file a request for foreign labor certification request between 75 and 90 days before their date of need. DOL does allow for the filing of emergency requests less than 75 days before an employers date of need based on natural disasters or other similar factors.

- In light of the fact that DOL essentially shut down the H-2B program from December 18 until January 5, will DOL allow employers to file labor certification requests less than 75 days before their date of need on an emergency basis to accommodate for delays and ensure that employers can get their workers on time?

Wage Surveys

On January 5, DOL issued guidance on prevailing wage surveys. If DOL takes 60 days or more to review wage surveys, as it does to issue PWDs based on readily available Occupational Employment Statistics (OES) data, most employers would not receive their workers on time.

- How long will it take for the Department to review wage surveys?
- What steps is DOL taking to ensure that wage surveys are promptly reviewed?

Defacto Enforcement

PL 114-113, "None of the funds in this Act shall be used to enforce the definition of corresponding employment found in 20 CFR 655.5 or the three-fourths guarantee rule definition found in 20 CFR 655.20, or any references thereto. Further, for the purpose of regulating admission of temporary workers under the H-2B program, the definition of temporary need shall be that provided in 8 CFR 214.2(h)(6)(ii)(B)."

The new 9142 Appendix B form released by DOL says that even though DOL cannot enforce these provisions by law, employers must still follow them. It also leaves open the possibility that DOL could try to retroactively enforce these provisions after the end of the fiscal year.

Further, employers are required to post a poster provided by the Department of Labor that outlines the rights of H-2B workers and corresponding workers. It is my understanding that DOL has not amended this poster to remove the references to the regulation's $\frac{3}{4}$ guarantee and corresponding employment provisions.

The qualifying language on 9142 Appendix B and the poster are in themselves an act of defacto enforcement and in direct contradiction to Congressional intent.

- Will DOL amend the form and poster to remove these troubling provisions?
- Will DOL provide Congress with an assurance that it will not retroactively enforce the corresponding employment and $\frac{3}{4}$ guarantee provisions of its regulations retroactively after September 30, 2016?

I appreciate your prompt responses to all of these questions. Small seasonal employers (in my district and across the country) face grave economic losses if they do not receive their H-2B workers on time or if they face future enforcement action from regulations that Congress explicitly stated that DOL may not enforce.