

Concerns with the Department of Labor's NPRM
Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program
(RIN 1205-AB61) 75 Fed. Reg. 61578 (Oct. 5, 2010)

I. DOL's Claimed Rationale for the Rule is Fatally Flawed

- A. Rulemaking clearly exceeds the scope of the Order in *CATA v. DOL*.
- B. DOL failed to provide the public with an opportunity to comment on any facts, data or analysis supporting its conclusion of wage depression.
- C. Readily-available data demonstrates the H-2B program does not cause wage depression.
 - 1. Department's own data shows no wage depression.
 - 2. Econometric analyses clearly demonstrate there is no wage depression as a result of the H-2B program. See Report accompanying Chamber comments.
- D. H-2B program cannot by definition result in adverse affect (wage depression) for U.S. workers
 - 1. DOL certifies H-2B applications as having no adverse effect.
 - 2. H-2B employment is so miniscule in the overall economy (and in specific industries) that it cannot result in wage depression.

II. DOL's Proposed Regulatory Solution is Arbitrary

- A. New definition of "Prevailing Wage" really means "Highest Wage."
- B. DOL ignores significant flaws in Davis-Bacon Act, Service Contract Act, and OES surveys and considers them all equally valid and applicable to all employers.

III. DOL Failed to Properly Analyze the Impact and Alternatives

- A. DOL impermissibly failed to evaluate the impact on small businesses.
 - 1. Mandated 50% increase in wages will devastate businesses
 - 2. See comment from SBA Office of Advocacy.
 - 3. DOL ignored its own data on small businesses using H-2B.
 - 4. DOL ignored the experience of American Samoa and CNMI
- B. DOL failed to consider less burdensome alternatives

Therefore, limit the Final Rule only to what is required by *CATA v. DOL* -- That is (1) whether OES data should be used and (2) whether 4 skill levels should be used in the H-2B program. Include all other elements of this NPRM in the forthcoming comprehensive H-2B rulemaking in order to allow meaningful public participation.