



VIA ELECTRONIC SUBMISSION

July 18, 2022

Brian D. Pasternak
Administrator, Office of Foreign Labor Certification
Employment and Training Administration
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

RE: Docket No. ETA-2022-0004, Exercise of Time-Limited Authority to Increase the Numerical Limitation for Second Half of FY 2022 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers [RIN: 1205-AC10 and 1615-AC79]

Dear Mr. Pasternak:

Associated Builders and Contractors hereby submits the following comments to the U.S. Department of Labor and the U.S. Department of Homeland Security in the above-referenced

professionals compose 99% of construction firms in the United States; they build 63% of U.S. construction, by value, and account for 68% of all construction industry employment.³

In addition to small businesses that build private and public works projects, ABC also has large member companies that contract directly with federal, state and local governments to successfully build projects subject to government acquisition regulations and subcontract work to qualified small businesses that meet federal, state and local government small business contracting goals.⁴

ABC's diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

Background

On May 18, the DHS and the DOL issued a temporary rule increasing the total number of noncitizens who may receive an H-2B nonimmigrant visa.

Accompanying this temporary rule is a requirement that:

When a job is in a traditionally or customarily unionized occupation or industry and during the time the SWA is actively circulating the job order, the employer must affirmatively contact the nearest American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) office covering the area of intended employment to provide written notice of the job opportunity and request assistance in recruiting qualified U.S. workers who may be interested in applying for the job opportunity.⁵

ABC's Response to the Temporary Rule

Outside of the temporary rule, extensive requirements alr(o)-3(r)-9sb.0000y327ori

The temporary rule calls for contacting the AFL-CIO in a customarily unionized occupation or industry. It is not clear why construction is included in the list of these occupations when more than 87% of the construction industry is comprised of workers who have already chosen not to join a union.⁶

ABC has additional concerns with the requirement for employers to contact their local AFL-CIO, as the AFL-CIO has been an organization starkly opposed to the H-2B visa program and to the expansion of these visas under the new temporary rule. Providing this non-governmental, typically partisan organization with the final decision on an H-2B application sets a dangerous precedent, and ABC is concerned that this new requirement in the temporary rule could resurface in a final rule impacting the future of the H-2B visa program.

According to ABC's analysis, the construction industry will need to hire an additional 650,000 additional workers on top of the normal pace of hiring.