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THE SEASONAL EMPLOYMENT NEEDS OF SMALL TOURISM BUSINESSES AND H-2B VISA POLICY

HEARING

BEFORE THE

SUBCOMMITTEE ON ECONOMIC GROWTH, TAX AND CAPITAL ACCESS

OF THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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THE SEASONAL EMPLOYMENT NEEDS OF SMALL TOURISM BUSINESSES AND H-2B VISA POLICY

WEDNESDAY, JUNE 12, 2013

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON ECONOMIC GROWTH,
TAX AND CAPITAL ACCESS,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:00 p.m., in Room 2360, Rayburn House Office Building. Hon. Tom Rice [chairman of the subcommittee] presiding.

Present: Representatives Rice, Chabot, Coffman, Mulvaney, Payne, Schneider, Barber, and Keating.

Chairman RICE. Good morning. Thank you for being here today. Thank you especially to our witnesses for appearing before our Committee, and we look forward to your testimony.

Our small businesses in the tourism industry need to significantly increase their workforce during peak seasons. For businesses in my district, the high season is well under way. South Carolina's Grand Strand is one of the top tourist destinations in the country but has a fairly small, year-round work population. From April to August, Myrtle Beach hotels, resorts, restaurants, and other tourism-related businesses are welcoming vacationing guests from across the country. Having a well-trained and reliable staff is a critical component to having a successful seasonal business.

Companies located in small, often rural towns, that rely heavily on tourism to sustain the local economy, have a difficult time finding enough local workers to fill seasonal jobs.

Employers that cannot find American workers to fill these seasonal jobs rely on H-2B visa programs to supplement their local workforce. The H-2B visa program allows businesses to bring in temporary foreign workers to fill lesser skilled, non-agricultural jobs. H-2B visas are capped at 66,000 per year nationwide. While the program is relatively small, it is heavily relied upon by small, seasonal businesses, including those in the tourism industry.

Utilizing the H-2B program is a time-consuming and costly process which involves several agencies, including the Department of Labor and Department of Homeland Security. Unfortunately, these departments are making the process even more difficult during a critical time for small businesses.

Both the Department of Labor and the Department of Homeland Security recently suspended H-2B visa applications for a month. Although processing was restarted in late April, the suspension of the program caused a backlog. Some small businesses that were expecting their H-2B workers to arrive before Memorial Day are still waiting. Being short-staffed is leading to a strain on existing resources of small businesses.

In addition, a recent regulatory change that is immediately effective changes the way wages are calculated for H-2B workers and U.S. workers recruited in connection with the H-2B process. Businesses that have received new wage rates from the Department of Labor since the new rule was implemented are seeing an average wage increase of 32 percent according to a nationwide survey. The impact of the increased cost is especially significant for small businesses that have set up their seasonal rates or have existing contracts. These businesses that operate on thin margins have little or no flexibility to offset the increased labor costs.

I am very concerned that the H-2B program may be regulated out of existence. That would have a dire effect on small businesses that rely on this program to supplement their local workforce to meet their seasonal hiring needs.

I look forward to hearing from our witnesses today about the H-2B visa program and its importance to small tourism businesses, as well as how the recent suspension of the program and regulatory change will affect small businesses that rely on the program.

I now yield to Congressman Payne for his opening remarks.

Mr. PAYNE. Good afternoon. Thank you, Mr. Chairman, for calling this hearing today. And thank you to the witnesses for joining us to offer their insight and experience on H-2B visa program.

This program is a critical tool for many businesses to find the labor they need during peak seasons when American workers are not available to fill the positions. However, it is our job in Congress to create the right balance between promoting economic growth, protecting the rights of all workers, and supporting American jobs.

Businesses large and small take advantage of the H-2B visa program to fill seasonal jobs in nonagricultural sectors for which they cannot find American workers. Companies in landscaping, forestry, tourism, seafood processing, and housing construction industries have high demand for H-2B visas. In order for a business to participate in the guest worker program, they must first try to recruit American workers. If they can prove that there is a valid labor shortage for these types of jobs, then they can receive a certification from the Department of Labor. They also have to pay farm workers the prevailing wage in the industry and insure good working conditions.

However, in these difficult economic times, we need to ensure that the nearly 12 million American workers that are unemployed have access to good jobs with wages and that protect workers' rights. We need a system that allows small businesses the access to the labor that they need while protecting the wages and the working conditions of these workers, whether they are American or foreign.

The recent regulatory changes issued by the Department of Labor and the Department of Homeland Security have changed the

methodology used to calculate the wages guest workers are paid. Small businesses have legitimate concerns about how these changes will impact them. The court mandated suspension of the H-2B visa program this spring created an uncertainty for many of the businesses who take advantage of the program, and many work that the new rule will disrupt small business operations because they have already signed contracts based on lower labor costs. They operate in narrow margins and are dependent on these foreign workers that they might not be able to get according to the Small Business Administration's Office of Advocacy. In theory, this program could be a great resource to both businesses and temporary guest workers if it is finely tuned to the market's needs and adequately supports businesses and workers, immigrant and American alike.

Unfortunately, the program today has flaws that allows bad players to abuse the program and the workers that participate in it. I have heard numerous stories proving that some employers are using this program to exploit foreign workers, failing to pay the appropriate wages and overtime needed, and also not supplying the safety equipment that these employees need. This unlawful behavior undercuts American workers and American businesses that are playing by the rules.

Take, for example, the more than 500 skilled Indian H-2B guest workers who were lured to the United States by the shipyard company Signal International. After the promise of green cards, family visas, and fees up to $20,000, Signal recruited these workers to come to the U.S. to repair oil rigs after the damage from Hurricane Katrina. These workers were forced to live in work and labor camps under harsh conditions and were bunked 24 people to a room. They were threatened with deportation if they complained. When the workers accused Signal of illegal human trafficking, the company reported them to the immigration authorities. This is not fair to those workers, and it is not fair to Signal's competitors that were following the law.

Thankfully, not all businesses that participate in the H-2B visa program are bad actors like Signal, but for many, this case has come to represent some of the flaws and pitfalls for immigrants and for employers in the H-2B temporary guest worker program.

As this Committee considers this new rule, and as Congress debates changes to our immigration system, we must ensure American businesses have the labor they need while making certain that workers are protected as well. We also need to make the American workforce our number one priority, and we should not undercut these American workers. It is a reality that the economic growth for small businesses depends on an immigrant workforce to fill the labor demands caused by shortages in various U.S. sectors.

American small business owners are the largest employers in the nation and are impacted greatly by immigration reform. I believe we should address these issues in a comprehensive reform that will ensure small businesses' access to the workforce while at the same time meeting the labor needs and maintaining functional laws that will modernize America's immigration system.

This hearing will present both sides of this critical issue so we can properly understand the advantages and challenges of the H-

2B visa program as both houses of Congress debate immigration reform.

With that, I look forward to hearing your testimonies. Thank you, and I yield back my time, Mr. Chairman.

Chairman RICE. Thank you, sir. If additional members have opening statements prepared, I ask they be submitted for the record.

I would also like to take a minute to explain the timing lights to you all. You each have five minutes to deliver your testimony. The lights in front of you will start out green. When you have a minute remaining it will turn yellow, and when your time is up it will turn red. If you are close to the end, obviously, we will be a little lenient on the time. Nobody is going to throw a hook out there.

Our first witness is my friend, Brad Dean. Brad is the president and CEO of the Myrtle Beach Area Chamber of Commerce in South Carolina. The Myrtle Beach Area Chamber of Commerce has more than 2,700 members and serves the business community throughout the Grand Strand from Little River to Pawleys Island. Before joining the Myrtle Beach Area Chamber of Commerce, Mr. Dean opened and ran the Hard Rock Café in Myrtle Beach. Currently, he serves on the board of directors of the South Carolina Tourism Alliance. I will also tell you Mr. Dean is an innovator in tourism. He has done wonderful things with our area and I am very proud to have him in our area.

Welcome, Mr. Dean. You have five minutes to present your testimony.

STATEMENTS OF BRAD DEAN, PRESIDENT & CEO, MYRTLE BEACH AREA CHAMBER OF COMMERCE; SARAH M. DIMENT, OWNER, THE BEACHMERE INN; WILLIAM SPRIGGS, CHIEF ECONOMIST, AFL-CIO; JANE NICHOLS BISHOP, PRESIDENT, PEAK SEASON WORKFORCE.

STATEMENT OF BRAD DEAN

Mr. DEAN. Well, thank you, Chairman Rice, Ranking Member Payne, and other members of this Committee. As Congressman Rice mentioned, I am Brad Dean from Myrtle Beach, South Carolina. The organization that I represent serves in businesses that employ over 50,000 American workers in South Carolina, and I appreciate your invitation to testify today on a matter that is important to businesses throughout America, and particularly Myrtle Beach, South Carolina, and that is the seasonal employment needs of small businesses in our tourism industry.

Myrtle Beach is a small town. We only have about 30,000 residents, but this year we expect to welcome more than 15 million visitors to our community. As you might imagine, tourism is a huge economic generator for our community. A $7 billion annual economic impact supports over 74,000 jobs in our small community, and as you might expect, it also pays for a lot of important public services like police, firefighting, and education, and infrastructure. One challenging aspect of our tourism industry is the seasonality. We will conduct more than 60 percent of our business in the months of June, July, and August, and while we welcome that in-

flux into our community in the summer months, that certainly presents some unique challenges for our community. And one of those challenges is the handling of employment for small businesses during the peak season.

To attract employees, local businesses take a number of steps each year. They advertise in newspapers, online websites. They host job fairs and participate in their own independent hiring events. They also hire students who re-enter the workforce for the summer; retirees who re-enter the workforce, albeit temporarily; and they also employ workers from outside our county and actually help to pay for transportation to bring those workers to and from the job.

Yet despite our best efforts, seasonal jobs remain unfilled each and every year. We have found ourselves needing temporary seasonal workers in both good and bad economic times. The economic reality for us is very simple. During our peak tourism season, when business doubles or triples and several thousand jobs are added to our community, we do not have enough American workers to fill our temporary employment needs. The H-2B visa program, which supplies approved temporary workers at a fair wage, is essential to our economic success. The businesses that I represent pay competitive wages and successfully hire thousands of hard-working Americans for both full-time and part-time jobs. They pay seasonal workers a market-based wage that is documented and approved by the federal government, and though the H-2B program is often complex and costly for small businesses, it is a necessary tool for our local businesses. It creates a win-win scenario for our business community. Employers find reliable, trained temporary workers to fill temporary jobs which would otherwise go unfilled; temporary workers voluntarily come here to earn a fair wage, pay taxes, and learn our language and our customs; American workers enjoy full-time pay and benefits in businesses that succeed in part by the hiring of H-2B visa workers; and our economy benefits by optimal business activity and the fair collection of all taxes owed. Unfortunately, the opposite is also true. If temporary jobs go unfilled, everyone loses.

While our businesses willingly use the current H-2B visa program out of necessity, the process for hiring an H-2B visa worker could be improved upon. We would encourage Congress to consider opportunities to improve the efficiency of this program, streamlining some of the onerous requirements and making it less burdensome for small- and medium-sized businesses. And we should seek to prevent the processing delay experienced by small businesses using this program. This year, the uncertainty in agency action and the regulation of the program presented a barrier for a lot of businesses that we are experiencing right now at the peak of our summer season. Seasonal hiring was deterred for several weeks, and that has made a lengthy, costly process even longer and more costly.

Critics of the program might try to confuse the issue and make this part of the immigration debate or suggest that this is simply about displacing American workers, but that is not true. The real issue here is about jobs and enabling American small businesses to do what they do best—create jobs and put American workers back

to work. Let me assure you that a guest worker program is not a luxury; rather, it is a business necessity. And without the H-2B program, a seasonal tourism destination, like Myrtle Beach, South Carolina, will struggle. But with it, we enjoy a level playing field and our businesses are given a fair chance to succeed.

In closing, Mr. Chairman, Ranking Member, and members of this Committee, I humbly offer you a gentle reminder that the laws you create can provide small businesses greater confidence and clarity, a willingness to grow and invest and the opportunity to succeed. Likewise, you can create laws that stifle growth and limit job creation. I encourage you to bear in mind the needs of small businesses, the single largest creator of jobs in America today. Recognize that for communities dependent upon a seasonal tourism industry, temporary guest workers are a business necessity, and the H-2B visa program is one very small but important part of a successful economy and should be given fair consideration.

On behalf of the nearly 3,000 businesses I represent, I encourage you to make this a priority, and I thank you for your time.

Chairman RICE. Thank you, Mr. Dean.

Our second witness is Sarah Diment, owner of The Beachmere Inn in Ogunquit, Maine. She is a third generation innkeeper. For 76 years, members of Ms. Diment's family have owned and operated The Beachmere Inn, which is located 87 miles north of Boston on the coast of Maine. Ms. Diment was honored recently with a Real Hero award from the American Red Cross of Maine, Southern Maine chapter for assistance she provided to the families affected by Hurricane Sandy.

Welcome. You have five minutes to present your testimony.

STATEMENT OF SARAH DIMENT

Ms. DIMENT. Thank you for having me, Chairman Rice, and ranking members of the Committee.

As you have heard, I am a third generation hotel owner from Ogunquit, Maine—it is not easy to say—and I do appreciate you inviting me here to speak to you about seasonal employment needs.

We operate a year-round, 73-room property in Ogunquit. We have been using the H-2B program on and off for over 10 years as we have had a very difficult time hiring seasonal workers to support our housekeeping needs during the peak summer and fall seasons. This year, we had to drop out of processing due to the application that was stuck in limbo when the DOL stopped processing earlier this year. We could not wait with uncertainty to find out if we would get our approvals.

Ogunquit is located only 87 miles north of Boston and six hours from New York City. Yesterday, I left my office at 10:30 and I was in downtown D.C. by 3:00. We are a very popular community resort. We operate at almost 100 percent occupancy for July, August, and September, dropping down to a nice 85 percent occupancy in October. That is a lot of guests, rooms, meals, and amenities that we provide daily.

Tourism is the primary industry in our region and is the number one industry in Ogunquit. We have 1,100 residents in Ogunquit. We have 44 restaurants and over 2,500 hotel rooms. I clearly do not pull from our local community in order to assist us for hiring.

There are many neighboring towns to compete with for employees—Kennebunk, York, Wells, Biddeford all pull from one area that has the most employees to offer for hiring, and that is Sanford, Maine, a community of approximately 22,000 residents. That is a big town for us.

From Portland, Maine, to the New Hampshire border, there are 18,000 hotel rooms that need to be cleaned on a daily basis during the summer and the fall season. Starting level housekeeping wages earn anywhere from $9 to $10 to start. I have never paid minimum wage since I have joined the business in 1995. We currently have 14 housekeepers, but we need 17 to run our operation smoothly. As we employ mostly working mothers, we make accommodations for part-time and flexible hours to keep them employed year-round. We are a year-round business. We offer benefits for our employees, retirement plans, vacation pay, sick time, and reviews to keep them—to encourage growth and leadership within the departments.

H-2B workers are essential to our operation, and they are seen by our employees as a critical backup they need during the summer and fall months. I have tried to recruit in many ways for seasonal housekeeping. I do the normal advertising through the Internet, newspapers, and so forth, but I have also tried to reach out to college students. Unfortunately, the closest educational facility is 22 miles but yet takes 40 minutes to commute from. College students are focused on resume-building starting in freshman year. They are primarily taking internships during the day and working in a job at night. Housekeeping needs to be done during the day.

Last weekend, I tried to recruit high school graduates when I attended my cousin's graduation in Bangor, Maine, and not one student was interested in coming down to work for the summer as a housekeeper. We have also tried to recruit in Northern Maine, where I placed ads up in the county, which brought in a few interested applicants, but unfortunately, because it is a seasonal job and the high cost of housing in a very resort community, I was not able to bring them down for the short term that they would be here. The complications of bringing their family or leaving them behind quickly made these jobs undesirable.

H-2B workers are paid the same rate as those we hire from the American workforce. They are in some instances even paid more as they have been returning for season after season. We built new housing for them in 2008, some with ocean views, all within a 100-foot walk of our property. They are eligible for retirement benefits, workers' comp insurance, bonuses, as well as weekly shopping trips to be able to purchase for their families at home.

Hiring H-2B workers is not easy or inexpensive. We pay up to $3,100 in agency fees, as well as $1,700 in USCIS fees related to processing of that paperwork. All transportation is paid by us, to and from their home country. Prevailing wage that was determined for us earlier this year before we dropped out was $9.39 an hour. That was in February. It was then revised to $10.54 an hour in May. That is an increase of $1.15 an hour. I am well into my season at that point. I have already published my rates and I have already hired and have committed to hotel rooms at rates. I am not able to change my revenues based on change in cost for employees.

The impact of not having H-2B workers for our property this season is already being felt. We have had to move to a six-day workweek, we are pulling employees from various departments, and we are not able to have full coverage in all of the areas. That means that my GM, as well as myself, are cleaning rooms. Not having seasonal coverage puts my entire team at a pace that is not conducive to lasting the season. Housekeeping is not an easy, sedentary job. H-2B workers come with the knowledge that they are here for a short time to help us cover a seasonal job.

Thank you for your time. I am happy to answer any questions.

Chairman RICE. Thank you, Ms. Diment.

I will now yield to Congressman Payne to introduce the next witness.

Mr. PAYNE. Thank you, Mr. Chairman.

The next witness, William Spriggs, serves as the chief economist to the AFL-CIO and is a professor and former chair of the Department of Economics at Howard University. Bill assumed these roles in August of 2012, after leaving the Executive Branch of the U.S. Government. Before August, Bill was appointed by President Barack Obama and confirmed by the U.S. Senate in 2009, to serve as assistant secretary of the Office of Policy at the United States Department of Labor, taking a leave of absence from Howard University to do so. At the time of his appointment, he also served as chairman of the Health Care Trust for UAW retirees of the Ford Motor Company and as chairman of the UAW retirees of the Dana Corporation Health and Welfare Trust and on the Joint National Academy of Sciences and National Academy of Public Administration Committees on the fiscal future of the United States, and also as a senior fellow of Community Service Society of New York. Mr. Spriggs' previous work experiences include roles leading economic policy, development, and research as a senior fellow and economist at the Economic Policy Institute; as senior vice president for the National Urban League, an over a 100 year old leading civil rights NGO in the U.S.; as a senior advisor for the Office of Government Contracting and Minority Business Development for the U.S. Small Business Administration; as a senior advisor and economist for the Economics and Statistics Administration for the U.S. Department of Commerce; and as an economic—wow, you have been busy—and also as an economist for the democratic staff of the Joint Economic Committee on Congress; and as a staff director for the Independent Federal National Commission for Employment Policy. While working on his Ph.D. in Economics from the University of Wisconsin, Bill began his labor career as co-president of the American Federation of Teachers Local 3220 in Madison, Wisconsin. He is a member of the National Academy of Social Insurance and the National Academy of Public Administration.

Mr. Spriggs.

STATEMENT OF WILLIAM SPRIGGS

Mr. SPRIGGS. Thank you. And thank you very much, Chair, for inviting me and giving me this opportunity to testify before your Committee. On behalf of Richard Trumka and the whole AFL-CIO family, we want to make sure on the record that we share our condolences with Congresswoman Chu in the loss of her mother. And

we are very sorry that she could not be here and we hope that you will be able to convey to her our concerns at this time.

I want to thank the ranking member and Mr. Keating, Mr. Schneider, Mr. Barber for joining us as well.

Today we stand over five years into the wrath of the Great Recession. The number of payroll positions in American remains over 2.4 million less than in January 2008. At the rate of job creation last month, it would take more than 13 months to get back to the pre-recession level of employment, meaning a net job growth of zero jobs over almost a six and a half year period. In the interim, America's labor force has grown over one and a half million and will grow larger over the next year. The result is a backlog of Americans looking for jobs, over 11.7 million Americans.

The brunt of the difficulty in the labor market has fallen on young workers, who are suffering from the lowest levels of employment on record in American history. Fewer than 38 percent of 18- and 19-year-old Americans have a job. That is the lowest ever in American history. Among those 20 to 24, the share of jobs is below 61 percent, well below the full employment levels when the figures should be 13 percentage points higher. And for those with jobs, wages have been essentially flat, rising only three percent over this period when adjusted for inflation.

So to put it bluntly, we are still in the midst of an American jobs crisis, especially for entry level jobs for young Americans. It has never been more crucial for America's policymakers and Congress and the administration to pull together to ensure job opportunities for the almost 12 million Americans looking for work and to protect the wages of those at work, many of whom are working part-time but would like to work full-time.

An important policy would be for Congress to join with the administration to ensure that job opportunities being created are fully available to millions of Americans looking for work while protecting the wages of those people. Straddled with court cases and appropriation blocks from Congress, the administration has delayed several times the implementation of new rules over the use of temporary, non-immigrant workers in entry level jobs like young Americans desperately need.

Over the course of the recovery, Congress has worked with the administration to pass various tax cuts aimed at helping small business in particular add workers, ranging from the Small Business Jobs Act, to the HIRE Act. These tax cuts have given small business extra incentives to add workers to their payrolls, but these efforts will be undermined if the jobs are given to non-immigrant temporary workers or if workers are brought in with wages to undercut the competitiveness of small businesses struggling to take advantage of the tax cuts and boost their local economy.

The loser when wages are set low by a few firms are not just Americans denied job opportunities but the hardworking businesses and their employees fighting to restore an economy that works for everyone. The economic analysis done by the Department of Labor to study its interim final rule found that there are just on average 79,000 H-2B positions that are open in the United States that are being applied for. Unfortunately, the regulations for the program have been caught on struggles that have hurt busi-

nesses that may have need of the program and delayed policymakers from coalescing around a sound set of policies that protect the Americans looking for jobs and need access to them.

The courts have not accepted the premise that the Department of Labor could adopt multiple wage levels for the jobs typical of the H-2B program. The findings of the court appeared consistent with BLS characterization of these jobs as having relatively lower skills compared to many jobs and therefore, a wage structure that does not reflect skill differences. The source of the Department's wage rule is the Occupational Employment Statistics administration studies is a huge database that covers over 1.2 million different U.S. establishments and captures 62 percent of employment. Given the size of the samples and the technical issues involved in designing a proper probability-based sample similar to the BLS, the need for accurate, reliable, and replicable results in policymaking mean that the costs are really prohibitive for employers to do such studies. If employers pay below the average wage for an occupation, they really lower the wages for the area, and so I think the Department has set the wage at the correct level.

More could be done to protect the wages of American workers. We need to think about those businesses that have entered into collective bargaining agreements with their workers. We have to think about those employers who are federal contractors and are trying to live up to rules under the Davis-Bacon Act and Service Contract Act wage rules. Unfortunately, many H-2B workers gain access to the program through foreign labor recruiters who illegally charge the worker fees. Many H-2B workers then arrive in America already in debt. The result is that much of those foreign workers earn has to be repatriated to pay for foreign labor agents and recruiters. This is why it is important to coalesce around a rule that can work for everyone and protect us from that kind of abuse.

I just want to conclude by pointing out that yes, the tourism industry is an important industry in the United States. That means that we should be sure that our policies are giving Americans the best opportunity to acquire the jobs, experience, and skills to excel in industries we want to promote through public policy. To maximize the potential for gathering the full value added or the industry, it is essential that we turn to the millions of unemployed Americans for these jobs. Yes, the demand for these jobs is seasonal, but to young people looking for entry-level positions, these are good steps. And to many companies hiring Americans in the tourism industry, it is very important to keep them protected from low-wage competition that undercuts their efforts to protect and promote middle-class American values.

Thank you.

Chairman RICE. Thank you, sir.

At this time I would like to yield to Congressman Keating to introduce the next witness.

Mr. KEATING. Well, thank you, Chairman Rice and Representative Payne. I also want to thank Chairman Graves and Ranking Member Velázquez and also keep Ranking Member Chu in our thoughts today.

I have the privilege of introducing one of our esteemed witnesses, Jane Bishop, who is a constituent of mine. Jane is the founder and

president of Peak Season Workforce. Peak Season Workforce is a family-owned small business based in Mashpee, Massachusetts on Cape Cod and was created to fill a demonstrated local need in understanding the complexities of government filings to successfully obtain H-2B work visas. Over the years, Peak Season Workforce has grown from assisting transportation and hospitality businesses on the Cape and islands of Martha's Vineyard in Nantucket to representing scores of businesses in New England and across the nation to fill seasonal jobs with international workers when American workers were not available. Known affectionately as Mama Visa, Jane brings in exceptional knowledge of federal and state visa rules and decades of experience previously working in D.C. as the president of an international student travel agency. She was an authorized federal visa signer and a successful innkeeper on Cape Cod. So I welcome her and welcome the opportunity to introduce her. And I would take note that I am in the midst of taking testimony in the Ethics Committee and I might be leaving. It has nothing to do with anyone's testimony.

Thank you, Mr. Chair. I yield back.

STATEMENT OF JANE NICHOLS BISHOP

Ms. BISHOP. Good afternoon, Chairman Rice and Congressman Payne. Thank you for holding this important hearing and for the opportunity to present testimony. I also want to thank my congressman, Bill Keating, of Massachusetts, for his presence here today and for his untiring support of the small businesses that employ H-2B international workers.

My name is Jane Nichols Bishop. I am the president of Peak Season Workforce of Mashpee, Massachusetts, on Cape Cod. For more than a decade, we have successfully helped seasonal tourism-based businesses navigate the intricate government filing process to successfully obtain H-2B work visas. We do not charge international workers any fees. Our fees are paid by employers exclusively. Incidentally, we are a small, family-run business with just three employees, including myself. I represent more than 100 employers seeking H-2B work visas to supplement their American workforces during peak visitor seasons.

I represent, for example, hotels, motels, inns, bed and breakfast establishments, restaurants, clam shacks, pizza shops, public transportation operator, coffee shops, and golf courses. All of them experience a significant increase in business during the season. These businesses depend on workers with H-2B visas to fill essential jobs. My client employers that use H-2B international workers are not able to find enough U.S. workers to fulfill their staffing needs. They use workers from abroad to supplement, not replace, Americans in their workforce. Each of my employers hires American workers but does not have enough of them during their busy season.

This year, small businesses encountered a particularly vexing problem that threw a last-minute monkey wrench into the application process and caused costly delays of many visa applications. On March 21, a federal judicial ruling ordered the Labor Department to stop issuing new prevailing wages because of an alleged flawed methodology that has been used successfully since 2008. The Labor

and Homeland Security Departments responded by freezing all pending applications for up to 45 days. This stopped the H-2B application process in its tracks and created a major approval backup at U.S. embassies worldwide. Businesses could not get their H-2B staff approved and were left without help at the start of the season. Today, 25 to 30 of my small business clients still wait for final approval while the season is in full swing.

Because we are experiencing delays now, some small tourism-based businesses are taking extreme measures to survive. These include turning business away because of staff shortages.

Here is an example. Along the New England coast there is a small inn with a restaurant. Here, the middle of June, the owner has been unable to offer dinner because her H-2B cooks are stuck in the approval process. She is losing reservations. In fact, there was a planned wedding reception that could not go on because of inadequate staff. The owner has resorted to cleaning guestrooms herself while her H-2B housekeepers are waiting in their home countries for approval.

When some of this year's approvals resumed at the Labor Department, business were told flat out to pay their H-2B workers much higher wages in order to continue with the program. For most of our businesses, the new mandated wages went up 10 to 34 percent per hour. In dollar amounts, we saw an increase of $3 to $8 per hour per employee, including American workers who do the same jobs.

Businesses cannot survive with this type of sudden labor cost increase. All of this from a Labor Department that told the ruling judge that subsequent wages would increase "at most, $2.12 per hour." Over the past two years, Congress has repeatedly blocked the Labor Department from implementing prevailing wage increases that burden struggling small businesses. We strongly encourage Congress to act again. Please encourage the Departments of Labor and Homeland Security to rescind the interim final rule and replace it with a more reasonable approach to setting wages as was done under 2008 regulations. One approach might be the H-2B wage language that is included in S.t4, the immigration bill currently being debated in the Senate. It is also important that the Departments implement a new and more reasonable approach to setting wages without shutting down the H-2B program and causing further processing delays on already struggling small businesses.

As you know, small businesses are the backbone of the U.S. economy. Many in popular tourism destinations are dependent on international workers with H-2B visas to have successful seasons. They cannot thrive without adequate staff and with the uncertainty of when they will become available. Businesses cannot show a successful bottom-line if they are hobbled by bureaucratic delays and decision-making that imposes unreasonable and noncompetitive wage rates.

Thank you for your time. I will be pleased to answer any questions that you have.

Chairman RICE. Thank you, Ms. Bishop.

Now comes the part where we put you on the frying pan.

I have a few questions. And Mr. Spriggs, I want to start with you. I am a little confused about your testimony. Are you saying that the H-2B program is bad law and should be eliminated? Or do you think it provides a valid piece of the employment picture for small businesses in these areas that have low populations and big tourist destinations?

Mr. SPRIGGS. Chairman, thank you. And thank you for the opportunity to clarify my testimony since I rushed through it so much and I appreciate you doing that.

Let me be clear. The big problem is, as was mentioned, an uncertainty around regulation. But the regulation has to be the correct regulation. And I believe the correct regulation includes paying wages that are the average wage for the occupation for which the worker would come in. Otherwise, the wages are lowering the average lower wage in the area. It is just the arithmetic of it.

Chairman RICE. Let me clarify.

Mr. SPRIGGS. Yes.

Chairman RICE. So you are saying that the H-2B is a valid program. It is good law. You are questioning about the regulations; correct?

Mr. SPRIGGS. That is correct. And part of the regulations that are not being implemented would have further improved two key elements. One, the recruitment of American workers; the other is the oversight of foreign labor recruiters. Many employers here in the U.S. do not see those foreign labor recruiters. They are invisible to them. They do not know what those recruiters are doing, and we need the ability to have oversight over the use of them. So I am not saying that the law is bad, but the proper regulation needs to be in place. The sooner Congress and the administration can coalesce around rules that protect the wages of American workers, ensure real recruitment of American workers, and end the abuse of foreign labor recruiters, the sooner I think we have a program that can help everyone.

Chairman RICE. We thought we were coalesced until the spring of this year and somehow we got uncoalesced. I guess the administration made the decision we were not coalesced. Thank you, sir.

Mr. Dean, Ms. Diment, let me ask you, what is the problem? Why do we not just hire American workers? Why do we need this program?

Mr. DEAN. Well, Mr. Chairman, as you point out, we want to hire American workers. The businesses I represent want to hire full-time, permanent American workers. We would like to see those numbers grow, and I suspect everyone here today would agree with that. The simple fact of the matter is this—that when you see a seasonal tourism destination, like your community, Myrtle Beach, where millions of visitors come in a short period of time, we just simply do not have the labor and it takes a different business model.

Let me put it in perspective that perhaps Congress can relate to. Just imagine if three out of every five of your committee hearings, three out of every five of your office visits, and three out of every five of your pieces of legislation you pass had to get passed or occur in the months of June, July, and August. I dare say that you would staff and operate your offices and your committees differently, and

that is what we face. The simple fact of the matter is we do not have the number of American workers to fill those jobs during the peak season, and we simply have to utilize the H-2B visa program. It is a small, but very important part of our seasonal tourism economy.

Chairman RICE. Ms. Diment.

Ms. DIMENT. I would say in Maine the seasonality issue and the fact that we are so rural just does not allow us to have enough workers to be able to fill the jobs in the season. And it is not that we do not want to hire American workers and we have 75 to 85 percent of our workforce is American workers. We are looking to shore them up during the busiest time of the year when we have 50,000 people in our town on a daily basis. Having the resources to pull from is the problem in many rural communities around the country who are operating in these great destinations that people come to because they are out of the way, yet these rural destinations do not have the workforce available to support the demands of the traveling public.

Chairman RICE. Thank you, Ms. Diment.

Ms. Bishop, do these workers get paid less than American workers would in the same job in the same circumstance?

Ms. BISHOP. No. In fact, they are paid more. There is something called prevailing wage. Prevailing wage is a wage that is much more than minimum wage and in fact, businesses that use it are at a disadvantage, competitive disadvantage, because they do have to pay so much more than someone who does not participate in an H-2B program. The problem now is that the new prevailing wages are going up while the season is already in swing. It has already started.

Chairman RICE. Who determines the prevailing wages, the innkeeper?

Ms. BISHOP. The Department of Labor if you participate in the H-2B program.

Chairman RICE. So the Department of Labor tells you what you have to pay?

Ms. BISHOP. That is correct. It tells the employers that the wage is—well, in the case of one client it went from $15 an hour—no, I am sorry, excuse me—$13 an hour to $21 an hour. That is 21 workers this client now has to pay $21 an hour. His fees are not set for that wage.

Chairman RICE. And let me clarify one other thing. If somebody participates in this and they hire these foreign workers at this wage, do the American workers that work there get paid less?

Ms. BISHOP. No. If an American is doing the same job, they also must be paid prevailing wage. So if you were paying a wage of—so I can use round figures—$10 an hour to Americans, prevailing wage came in at $11 an hour, even the Americans, if they are doing the same job, now get $11 an hour.

Chairman RICE. So just so I can be crystal clear about this, if somebody elects to participate in the H-2B program, then the Department of Labor sets the wage rate they have to pay, then everybody—everybody—American, foreign, whether they come through this program or not, get paid that prevailing wage. Is that correct?

Ms. BISHOP. That is correct.

Chairman RICE. Thank you.

Mr. Dean, in your experience, why don't American workers apply for the seasonal jobs you are seeking to fill? Could you elaborate on the responses that your members get from American workers to their recruiting efforts?

Mr. DEAN. Sure. Thank you, Mr. Chairman. That is perhaps one of the most common questions about this program—why is it when we have an unemployment rate in our community that will range anywhere between 8 and 12 percent this year do these jobs go unfilled? I suspect that part of the reason is that the workers that are unemployed are working for full-time, permanent jobs. Now, that is the main source of jobs in our community, but most of those unemployed are not looking for a job that lasts 60 to 90 days. And it may be that some of them have found that they can subsist on other government programs like unemployment insurance for that time as opposed to entering the workforce.

I cannot speak for other communities, but what I can tell you, in Myrtle Beach, South Carolina, we have thousands of college students who enter the summer workforce. We have retirees who reenter the workforce. We bring employees from outside the county in and even still that is not enough. So clearly, there is a gap between the number of workers needed and the number that we are able to hire. And many of those who are unemployed are just simply choosing not to participate in a competition for these jobs. Most of the businesses would prefer to hire a local employee but that has never been possible in good and bad economic times, and therefore, we need the seasonal tourism employees to help our tourism businesses succeed during the peak season.

Chairman RICE. Thank you, Mr. Dean.

At this time I am going to yield to Mr. Payne for his questions.

Mr. PAYNE. Thank you, Mr. Chairman.

You know, in light of the topic that was just being discussed, Mr. Spriggs, it has been suggested that the impact of the H-2B program on our economy has been to depress wages for both domestic and foreign workers. Can you explain in detail how the recent Department of Labor regulations addresses the wage issue and explain how they can impact small businesses?

Mr. SPRIGGS. Yes, thank you.

So the wage is set at the average wage for that particular occupation in that particular metropolitan area. Or if it is rural, then that particular nonmetropolitan area. The Occupational Employment Statistics survey that is used is big enough to pinpoint very specific occupations. So in the cases of food preparation workers, that is one category. A bus boy is another job category. A short order cook is a different category. So it is able to fine tune to very precise occupations and on a basis of a very large survey of employers covering over 1.2 million American establishments, 62 percent of American employment, we are able to accurately tell you what is the average wage of people in that occupation in that specific substate area. So that is what is the prevailing wage. If you offer wage below that, you are lowering the average wage in that occupation in that very specific region.

Now, some areas use H-2B workers but there are many tourist areas that do not. Atlantic City, near you, does not have any H-

2B applications on record for fiscal year 2012. We know Nevada, which is in a remote area as well, zero. Tunica, Mississippi, zero. So this is not something that is used universally in the tourism industry or in tourism locations. My area where I went to high school, Virginia Beach, almost all of those H-2B visa applications are for landscaping. There is only one for food prep workers.

So this is not a universal model for how resort areas work. But we do need to have rules that we agree on, and I think the more sound policy—becuase these occupations are very finely tuned—is to have just the average wage. What has happened is back in 2008, the courts ruled that using a four-tier wage level and arguing that some workers could be brought in under the guise that there is some lower tier within being a bus boy did not make economic sense. The Department of Labor had not made a case for the four-tier wage level, and in reviewing the four-tier wage level, the Department rejected the idea that there were four different wage levels for these very narrow bands of occupations and that the average wage made the most sense.

Mr. PAYNE. Okay. Now, Ms. Diment, critics of the H-2B program argue that American workers could fill these positions but we are hearing that might not be the case. You know, how rigorous are your recruitment activities around that, and do you feel that they go beyond existing recruitment requirements? How vigorous do you attempt to recruit American workers?

Ms. DIMENT. Weekly to daily. Honestly, it will depend on what is happening at the hotel at the time. We are obviously pulling people to work in housekeeping right now, so there are times when my general manager cannot put out her advertising for housekeepers because she is working in housekeeping.

We are recruiting all of the time. We are talking to our employees every day about who they know, who could they recommend, who could come in. However, I do have to screen people. I am asking housekeeping to clean rooms with personal belongings and not everyone is appropriate for the job. People who come in may decide that a seasonal job is not what they are looking for, and the purpose of H-2B for us is to support our year-round workforce. So I am not offering year-round jobs right now. I am looking to fill and support the people who are already there, the American workforce that is already working for us. Barring dragging people from Bangor, Maine, last weekend, I have done everything I can think of at the moment.

Mr. PAYNE. So basically, you use it just to supplement during your peak time of business and your primary workforce is American?

Ms. DIMENT. Seventy-five to 85 percent. Without the H-2B right now it is 100 percent. But I am also working short. I see this as a supplement. I see this as a time when we are competing with every other hotel, restaurant, retailer, amusement park for summer business on the coast of Maine. Eighteen thousand hotel rooms are a lot of rooms to clean every day in the summertime. We just do not have the population and the availability of Americans during the height of the season.

Mr. PAYNE. Okay. And can you further explain how the move from the self-attestation to a certification-based model in the DOL rules could harm your ability to obtain these visas?

Ms. DIMENT. So you are speaking of prevailing wage?

Mr. PAYNE. Yes.

Ms. DIMENT. We set our rates in advance in the coastal communities. Most of our people come to us year after year. They reserve reservations a year in advance. And we base our rates based on our forecast and our budget as most small businesses do. So when the prevailing wage comes in not until the spring, I have already set my rates in the December beforehand. So I am already working in a gray area as to what I am going to be paying any workers who are coming in to supplement our regular workforce. There is already a level of ambiguity there. When they came in this year, the initial prevailing wage came in at a range that is appropriate for my area and what we pay for housekeeping. It was then modified to be about $1.15 more. That is an expense to my biggest department that has to be paid to not only H-2B employees but to our American workers, and it then ripples out into every other department who says why are you paying housekeeping more than you are paying a person in the food service department or an entry level front desk employee or a person who we hire in the maintenance department to clean up trash and clean off the lawn chairs?

So it is a bigger picture overall for us. It affects every person who works at the hotel. It also sets me up as having unfair competition for the hotel next door who might be 50 rooms but has chosen not to utilize the H-2B program for whatever reason. Their costs are much lower than ours, yet they probably have set their rates at the same time that we have set ours.

Mr. PAYNE. Okay. So Mr. Spriggs, once again, I understand that the critics of the H-2B visa program believe that it has a negative effect on American workers. They suggest that employers prefer temporary workers to keep costs low. While I believe cost is a factor, could it also be that more Americans are advancing their education so they do not seek temporary work?

Mr. SPRIGGS. In the current labor market, Americans are very desperate, and so I do not think that is the issue. And as I mentioned before, this is not a model everywhere. Tunica, Mississippi, is a very remote area but they do not use the H-2B program in Tunica, Mississippi. So I think it is particular to certain areas. And I would say the program, while we have model employers here and the people here are honest, hardworking businesses, we know there are many violations of the program where the program has been abused. And the regulations need to reflect those who misuse the program and hurt those who are trying legitimately to run their businesses. Without the implementation and the clarity for all employers of clear set rules so we do not have violations that no one on this panel would agree with, no one on this panel would agree that foreign labor recruiters should be extorting the workers who are working for them, but you need regulations in order to weed out those violations of those foreign labor recruiters. You need regulations to avoid those who are abusing the program. And so we need Congress to coalesce with the administration on these meaningful corrections to a program that we have on record, these many

violations that you mentioned in your opening statement. Those are facts. They have happened. And we need regulations to avoid those.

Mr. PAYNE. Absolutely. I think that is very important. As Mr. Spriggs stated, for Ms. Diment and Ms. Bishop, and Mr. Dean, we want to try to weed out the people that are not playing by the rules that you are playing, and that is the root of a great deal of my concern. You are doing everything you need to do but there are people that are in your industry and your competition that are cutting corners. And I think that is where Congress and the administration come in and try to level that playing field.

And Mr. Dean, the cap for non-agricultural foreign workers is only 66,000 people. The program has to contend with a wide range of industries and a growing need for labor. Certainly, specialty and smaller firms may not have the same access as larger companies. How do you see the tourism industry growing in terms of the workforce and demand or lack thereof?

And just on a personal note, I was in Myrtle Beach for the first time, my first time in South Carolina, several months ago for the Congressional Black Caucus Institute met there and got to hear your presentation. So I know you are recruiting, and I know your tourism business, you are a great advocate. But to my question.

Mr. DEAN. Certainly. Well, we're delighted you were able to make it. As you are probably aware, in the middle of the summer, Myrtle Beach is the ad hoc capital of the state of New Jersey with as many New Jersey license plates that frequent there.

The cap is a challenge for us. It would seem to me that it is a relatively arbitrary level that could and should be reviewed regularly. In our community, we will not hire the number of temporary seasonal workers we need, and that has been true for several years, even in the recessionary environment that we face. Now, our tourism industry has grown more than most in recent years, but the simple fact of the matter is, Congressman, that the cap, while we understand it needs to be regulated and there does need to be a mathematical analysis of those workers necessary, in the Myrtle Beach area the cap tends to be a limit that limits us far too much. Now, part of that may be the timing of our season. Part of it may be the fact that I represent a lot of independently owned businesses, a lot of third and fourth generation businesses.

And one other point I would offer, I think you make a great point on the regulation, and all of us agree that Congress does have a role and responsibility to regulate this, but I would offer this, that for those few businesses that are not following the rules, just because rules are being broken does not mean the system is broken, and I am glad to hear this Committee express your appreciation for those small businesses that are following the rules. We certainly should regulate this reasonably but we should not punish those who are playing by the rules just simply because others have chosen not to. Thank you.

Mr. PAYNE. Chairman, I yield back.

Chairman RICE. Thank you, sir.

Mr. Mulvaney.

Mr. MULVANEY. Thank you, Mr. Chairman. And thank you to everybody for coming out. I always am impressed with people will-

ing to take the time out of their schedules to come, especially long distances from Maine and South Carolina to do this. It is extraordinarily helpful. What you are doing today is helping to drive the debate. It does not look like it is very well attended, but these reports will go out to all members of Congress. These things will be printed and reported by the folks who are here, and this will become part of the debate on this program and probably on a larger discussion of immigration, which we will talk about in a second.

I am also glad you are here to talk about the H-2B program because I am not as familiar with it as I am the H-2A program. My district is more agriculturally oriented than it is tourist. It sounds to me like there is a lot of overlap. I talked to my farmers. They had some of the same difficulties about the change in prevailing wages in the middle of the season. They talk about the delay. I was not aware that the DOL had actually stopped processing. I know that in the past several seasons they have delayed processing, and whereas the program used to be able to reliably produce legal migrant workers in six weeks, and if you asked for those migrant workers seven weeks before the peach crop came in you could usually count on getting your folks in. When they switched that from six weeks to six months, we have actually seen businesses in my district go out of business because of that delay, whereas some folks have the opportunity to sort of stretch and get through if you are relying on this program for 90 percent of your workforce during your peak times. Again, you have got folks talking about 60 percent of your business during the summer. If 90 percent of your business comes during a particular harvest season and you cannot get the workers, then you are quite literally out of business. So I appreciate the input.

Just out of curiosity, Ms. Bishop, you probably know a good bit about the program. My farmers have to provide food and housing, and to a certain extent maybe even clothing to their legal migrant workers under the H-2A program. Is it similar in the H-2B or not?

Ms. BISHOP. The H-2Bs do not have to provide housing, but almost all of my clients do provide subsidized housing because it is difficult to find housing when you are coming from a foreign country and you do not know the area. So if you are going to run a business that participates in H-2B, you have usually secured housing. It is seasonal housing, and it is also offered to American workers in the newspaper ads that they run and in the job bank listings so that if Americans are able to take the jobs and they cannot say, gee, I do not have housing, well, we have subsidized housing for you.

Mr. MULVANEY. In the Ag program you have to be able to establish that you have taken certain steps in order to attract American workers to the jobs. Do the same rules apply here?

Ms. BISHOP. They are very similar rules. The job needs to be posted on the statewide job bank for at least 10 days. There needs to be two very detailed newspaper ads, not the little tiny ad but the big expensive ones that tell you everything about the job, and that needs to run on two days during that 10-day period, one of them being a Sunday. And any American that applies for that job, you do everything you can to get that American in to be interviewed. Anything from scheduling the interviews to a time that is

appropriate for the worker who wants to come and take your job or try to take their job, and chances are that in all that I do and all the ads that I have placed, we can run ads and receive absolutely no Americans apply for it. And some of these jobs are $12 to $15 an hour jobs with flexible schedules and I cannot get a single American to apply for it.

Mr. MULVANEY. My farmers tell the same story. There is a farmer who has actually kept the paperwork on the last 1,000 workers who showed up to pick peaches, and he can prove to you in writing that one of them lasted more than a week. So I think what I am hearing here is the same I hear from my farmers, which is they would much rather hire American citizen workers. It is cheaper, it is easier, it is more effective, but doing this is a last resort.

Mr. Spriggs, I have got one question for you. When we talk about that database, if we have the database for busboys in the Myrtle Beach market, we have this average wage. They can look at it and there is an average wage. Some folks are making 10, some folks are making 12, some folks are making 14, right? IS that how it pretty much works? Without those specifics. Okay? Why are you arguing for a system that pays migrant workers more than American workers?

Mr. SPRIGGS. No.

Mr. MULVANEY. You are. I mean, if there are three workers in the market—one makes 8, one makes 10, and one makes 12, and those are three American workers, and you are arguing that a migrant worker should make the average—that is $10—you are arguing that that person should make more than the American worker making $8.

Mr. SPRIGGS. Let us remember the previous answer. So you are paying the average because that is the average wage for the area, and the simple math is that if you bring in people below the average, you are pulling down the average. An American who works at that establishment then must be paid the same wage that you are offering to the H-2B worker.

Mr. MULVANEY. And the American who works across the street is going to be making less.

Mr. SPRIGGS. It is a free labor market and Americans are aware of the wage distribution, but the idea here is that we do not want to pull down the average wage of Americans. And if you bring in a set of workers——

Mr. MULVANEY. Actually, you would not be pulling down the average wage of Americans. If they are making 12, 10, and 8——

Mr. SPRIGGS. If you have 12, 10, and 8, and you bring in somebody who makes 8, now the simple math, right, is now you have just lowered the average.

Mr. MULVANEY. No, I have not, because my three Americans——

Mr. SPRIGGS. Yes. You have two——

Mr. MULVANEY. Excuse me, sir. My three Americans who are there are still making 8, 10, and 12. I have not drawn down the salaries or wages of any American. I have—yes, I have paid the migrant worker lower than the average, but the three Americans who

were in that market beforehand are still making 8, 10, and 12. None have seen their wages come down.

Mr. SPRIGGS. The average wage for the occupation has now shifted down.

Mr. MULVANEY. True.

Mr. SPRIGGS. If I come—if I come——

Mr. MULVANEY. But the average wage received by Americans is the same.

Mr. SPRIGGS. If competition is that we are going to have—lower the average wage in the area, then yes, you will affect future Americans who go to look for the job.

Mr. MULVANEY. I am glad to hear the AFL-CIO is arguing for wage competition.

Mr. Dean, very quickly, and to you, Ms. Diment, tell me what this means for growth—for your businesses, Mr. Dean, and yours in particular, Ms. Diment. Are you able to grow your businesses if you cannot find people to work?

Mr. DEAN. Congressman Mulvaney, as you well know, in tourism, this is a service industry. It is not a manufacturing industry where we can turn the assembly line off. We have to serve our customers 24 hours a day, 7 days a week, 52 weeks a year. If you cannot provide the necessary labor to serve your customers, then you simply cannot accommodate them. The best case scenario is that you underperform. The worst case scenario is that your business actually declines instead of growing. And in our view, the system has worked well in the past. It could work better, but the old adage, "if it ain't broke, don't fix it" applies here.

Mr. MULVANEY. Ms. Diment, what are the chances of you growing your business in the current labor environment?

Ms. DIMENT. None. I take people out of other departments to assist the department that is short-staffed, and thus, I am not able to get them to do jobs that would increase the revenue or increase the sales and the availability of what they are doing. So if my food service people are in stripping rooms out to get them ready for the next guests, I am not selling food and beverage. So there is no growth.

Mr. MULVANEY. Thank you. Thank you, Mr. Chairman. Sorry to go over on my time.

Chairman RICE. No problem. Thank you, Mr. Mulvaney.

Next, we have Congressman Barber.

Mr. BARBER. Thank you, Mr. Chairman. And thank you to all of our witnesses for being here today. This is a very important area of discussion back home in my community.

My first question, Mr. Spriggs, is for you. Let me just explain a little bit about the community I represent. First of all, I would have to say there is nothing I agree with more than we have to find jobs for Americans. We are making progress. It is way too slow. Way too many people in my community are out of work, and they need it, and we need to do everything we can to grow their opportunity.

The tourism industry in my community in Tucson and southern Arizona is a very big deal. It accounts for $2.3 billion in spending just in metropolitan Tucson alone, and I am concerned that those businesses who have a peak season that starts around October and

goes through March—no one really wants to come there in August. Believe me. I am dreading going back in August myself. But clearly, we have a very important peak period and we need to fill in.

So Mr. Spriggs, my question to you is in your opinion what more can we do—we in Congress and we in our communities, to help better match up American job seekers with our small tourism businesses? What more can be done?

Mr. SPRIGGS. I appreciate the question.

It is one thing to say I posted a job on the Internet. It is another to actually reach the American workers who are unemployed. And while people feel that they are meeting the needs of the regulation, it is clear when we see job openings appear, if Wal-Mart says that they are looking for workers, people line up around the block. So there is a level of publicity that we know works in reaching American workers. We do not see in the record, if you look at fiscal year 2012, any H-2B applications from Tunica, Mississippi, which is a very rural area. So the idea that Americans will not do this type of work, well, Americans do this type of work. In Reno, Nevada, there are no H-2B applications. People in America do this kind of work. We are a hard-working people in America.

So I think it is the ability to really reach Americans, and the problem is that we are bottling up the regulations that the Department of Labor was trying to put in place to improve the process of recruiting and reaching American workers. It is not just the Department's fault. There are court cases. Congress has consistently intervened into the implementation of the rules. So creating the crises that these businesses are suffering through now is the result not of the administration but of the courts and of Congress interfering with the implementation of a set of rules that would have improved the recruitment of American workers and would have prevented the abuse of foreign labor recruiters that we know turns this program into a very ugly type of program. Those things have to be cleaned out.

Mr. BARBER. Thank you, Mr. Spriggs.

My next question is for both Mr. Dean and Ms. Bishop. Same question. Let me just set it up this way.

My wife and I were former small business owners for 22 years. We never had to use this visa program, but many of our community do. We hear on this Committee a lot about the amount of red tape and bureaucracy that hurts small businesses from developing, from growing, and I really want to make sure that we are doing everything we can to reduce or eliminate it.

So Mr. Dean and Ms. Bishop, the same question. You had spoken about the inefficiencies within the H-2B program, including paperwork, long processing delays. Could you give us specific recommendations of what we should do, what we can do to streamline the program and make it easier for small tourism businesses who need the program while still guaranteeing the protection of American jobs?

Mr. DEAN. Thank you, Congressman. I am glad to hear that question because I think that is what a lot of small businesses are asking you to do is to make this process more efficient.

In our community, we actually have hoteliers who will start this hiring process in October for a temporary seasonal employee that

actually arrives in June, an eight month period. I suspect that part of the reason for that is because of the recruiting that has to go on, and we agree with that. We do not question that at all. I also suspect that part of the reason for that may be the fact that you can have as many as four governmental agencies involved in this process. Now, some of that, referencing the ranking member's comments earlier, is because of that necessary oversight that the federal government has to provide to protect American workers. We understand that. We embrace that. We certainly agree with that. But there may well be some opportunities to reduce the paperwork and the handoffs between the agencies, and also to consider perhaps a slightly reduced administrative process for those returning workers. Not all of the workers that come for the seasonal jobs are returning workers but many of them are. In fact, many return to the same properties year after year after year, so it might well provide some opportunities not only for those businesses but for the federal government agencies involved to make the process more efficient in that regard.

Mr. BARBER. Mr. Chairman, with your indulgence may I ask Ms. Bishop to respond?

Chairman RICE. You are indulged.

Mr. BARBER. Thank you, sir.

Ms. Bishop, please.

Ms. BISHOP. There are a few things that can make this program much more streamlined. We agree with the process in that you do need to make sure and test the market for American workers, but in many seasonal areas there is negative population growth, negative. Or the population may be in our area 66 percent is over the age of 65 or under the age of 17. They are not there.

But as far as the process, I think one of the things that would be very helpful is for the U.S. embassies to just let returning workers drop off their passports, do their fingerprints, and then approve them. They are coming repeatedly. You can check a record on a computer that shows that they paid their taxes, they did not overstay their visas, they worked their jobs. They did everything correctly. You do not need to schedule an embassy appointment that is two to three to four weeks later, making the workers arrive much later. That would be a great thing if we could get the State Department to do that.

I think the other thing that would be really well done if we could do it is when we do the third step of this four step process, which is Department of Homeland Security, it would be great if we could e-file those applications and pay for those with a debit card instead of having to file documents this much to get 10 workers into the country. That would be a big lifesaver because the Labor Department, to their credit, is now doing an e-filing process for both the prevailing wage and both the labor certificates, and we embrace that. We think that is great. Now let us get the other agencies to do the same and we would be very happy.

Mr. BARBER. Well, thank you for that last suggestion. I am on the Oversight Subcommittee of the Homeland Security Committee. I will definitely take that up and see what we can do.

Thank you so much, Mr. Chairman.

Chairman RICE. Thank you, sir.

I want to thank our witnesses for their testimony and participation today. While the H-2B visa program is relatively small, it is a vital source of temporary, legal foreign workers used by small businesses that cannot find enough American workers to fill their seasonal job openings. The temporary suspension of the program and the mid-season wage rate increase pose real challenges for small tourism businesses. We will continue to work with the small business community to ensure that the Department of Homeland Security and the Department of Labor examine whether increasing labor costs on small businesses utilizing this program is appropriate given the slow economic recovery.

I ask unanimous consent that members have five legislative days to submit statements and supporting materials for the records.

Without objection, so ordered.

This hearing is now adjourned.

[Whereupon, at 2:23 p.m., the Subcommittee was adjourned.]

APPENDIX

June 10, 2013

U.S. House of Representatives
Small Business Subcommittee on Economic Growth, Tax and Capital Access
2361 Rayburn House Office Building
Washington, DC 20515

Re: **Temporary Non-Agricultural Employment of H-2B Visa Workers**

Mr. Chairman and Members of this Subcommittee, thank you for the opportunity to join you today. My name is Brad Dean and I reside in Murrells Inlet, South Carolina, a part of South Carolina's 7th congressional district. I am the President and CEO of the Myrtle Beach Area Chamber of Commerce, a membership organization that serves nearly 3,000 businesses which employ more than 50,000 Americans. Our organization is a proud member of the U.S. Chamber of Commerce, the American Hotel and Lodging Association, and the US Travel Association. We work closely with these groups, and other pro-business groups, as well.

I appreciate your invitation to testify today in this hearing entitled "*The Seasonal Employment Needs of Small Tourism Businesses and H-2B Visa Policy*." The topic of employment, and specifically, the need for an efficient, effective process to allow small businesses to legally hire temporary workers to fill seasonal jobs and supplement a core base of employment is of great importance throughout America, particularly in communities like Myrtle Beach.

BACKGROUND

Myrtle Beach is a small town of approximately 30,000 permanent residents. Several surrounding communities are tied economically to Myrtle Beach but the entire population of the Myrtle Beach area is still small by most standards. Despite our small permanent population, the Myrtle Beach area is a major tourism mecca, welcoming more than 15 million visitors each year. As you might expect, tourism is our number one industry.

Visitors come to Myrtle Beach to enjoy the 60 miles of beautiful, pristine beaches, 100-plus championship golf courses, and a wide array of amusements, attractions, dining, shopping, and entertainment options. While the activities and amenities are a draw, Myrtle Beach has been fortunate to enjoy a high repeat visitation rate, due in part to the extraordinary southern hospitality our visitors enjoy during each trip.

But there's another reason Myrtle Beach is so popular: it is one of the most affordable destinations in America, a place where the average American family can travel for that American birthright, the summer vacation, to make memories that will last a lifetime while staying within their travel budget. Myrtle Beach is a place where you can spend a lot of time without spending a lot of money. That's more important today than ever before.

P.O. Box 2115 • 1200 North Oak Street • Myrtle Beach, South Carolina 29578 • (843) 626-7444
www.MyrtleBeachAreaChamber.com • www.VisitMyrtleBeach.com

In Myrtle Beach, tourism accounts for an annual economic impact of nearly Seven Billion dollars and supports 74,000 jobs in our area. As you might expect, the tourism industry generates millions of dollars to help fund important public services and necessary infrastructure. While Myrtle Beach tourism has a huge economic impact, the underlying industry is made up of many small businesses. In fact, most of our employers are independently-owned businesses, many of which are in the third or fourth generation of family ownership.

We are in the service business. Our local economy depends upon it. Our jobs depend upon it. Because of the importance of tourism as a tax generator, our teachers, police officers, firefighters and infrastructure depend upon tourism, as well.

OUR TOURISM WORKFORCE

A key element of good customer service is the ability to attract and retain a reliable workforce. Unlike a business that can simply increase, decrease, or altogether stop its production levels, tourism has no assembly line. Our industry operates 365 days a year, 24 hours a day. We are required to perform at all times, ensuring our guests have an enjoyable experience. Because we are dependent upon people spending their discretionary earnings on a travel experience that occurs whenever they desire, providing the services Americans desire is paramount to our success.

One very interesting – and challenging – aspect of our tourism industry is its seasonality. Approximately 60 percent of our business is conducted between June and August. This means that our industry is subject to significant peaks and valleys of economic activity. A typical business will see their volume of business activity double or triple from spring to summer, almost overnight. To put it in a perspective that Congress can relate to, imagine if Congress was required to hold 60% of your hearings and office visits and pass 60% of your legislation in June, July and August. The way congressional staff, committees, and offices operate would change considerably.

This extreme seasonality is both a blessing and a curse. We are thankful for the opportunity to host so many Americans during the summer, but it is not uncommon to watch our local community swell to a population that is 10 to 15 times its normal size during peak season. As you might expect, this presents many unique challenges.

Local businesses must anticipate these extremes when planning for their future. A key consideration is the hiring of both permanent and temporary positions. While the businesses we serve naturally welcome the opportunity to hire permanent, year-round employees, these same businesses recognize that they must "staff up" for the summer season. Simply put, adapting to fluctuations in the level of business activity is a survival tactic for our local businesses.

This effort entails a number of recruitment strategies. Our businesses hire college students from the local university and technical college and other students returning home for the summer. We are also a retirement community and some retirees re-enter the workforce to

work during the summer months. Further, among the use of other recruitment programs, many local businesses hire workers from outside our county, providing the workers with transportation to bring them to and from the job.

Yet, despite our best efforts, there are never enough workers to fill the open jobs. We have found ourselves needing temporary, seasonal workers in both good and bad economic times. In recent years, our total employment has grown 15 to 25 percent due to the addition of seasonal jobs. The economic reality is simple: during our peak tourism season, when business levels double or triple and several thousand jobs are added, we do not have enough American workers to fill our temporary employment needs.[1]

H-2B VISA PROGRAM

The H-2B visa program, which supplies approved temporary workers at a fair wage, is essential to our economic success. Let me be absolutely clear: this is a jobs issue, not an immigration issue.

The businesses we represent pay competitive wages and successfully hire thousands of hard-working Americans for both full-time and part-time jobs. They pay seasonal workers a market-based wage that is documented and approved by both the state and federal government. However, even while paying a market-based wage, our businesses still cannot find enough workers during the summer months, which makes our use of the often complex and costly H-2B visa program necessary. Businesses must anticipate and plan for hiring levels several months in advance. These businesses must work through as many as four governmental agencies to hire an H-2B visa worker. For temporary hiring that begins in May, some businesses will start the recruiting process in October of the prior year. The businesses run employment advertisements in local newspapers, online news sites and in trade publications. They also promote through independent hiring events, community job fairs and social media.

Our local businesses often do not have the internal resources or expertise to handle H-2B visa hiring in-house, so most rely upon an outside third party placement agency. This adds even more costs to an already lengthy and costly process.

So why use the H-2B visa program? The answer is simple: we cannot find enough American workers to fill the open positions. As a result, temporary guest workers are an essential part of our seasonal employment base. Our local economy cannot function optimally without them.

Despite its shortcomings, the H-2B visa program provides a trained (or trainable) employee at a time when our businesses need them. Often, these workers travel to America from foreign tourism industries that enjoy the opposite seasonality (e.g. in Jamaica, their level of tourism

[1] The overwhelming majority of the 6,000-8,000 businesses that seek to utilize the H-2B visa program annually are small businesses that apply for an average of 15 H-2B workers annually. *See* "The Economic Impact of H-2B workers," U.S. Chamber of Commerce and Immigration Works (October 2010).

tends to be slow when we are busy, and vice versa). This presents a unique, balancing effect which benefits everyone involved.

CURRENT EMPLOYMENT OF SEASONAL TEMPORARY WORKERS

We understand and accept the premise that businesses must pay the greater of the actual wage or the prevailing wage. Until this year, that standard had been relatively problem-free for our local industry. From what we have been told, changes made in calculating the prevailing wage caused an unexpected, unnecessary hold-up in application processing, and this has negatively impacted our local businesses that depend upon H-2B visa workers. While our local industry needs more H-2B visa workers this year than in previous years, I expect the actual number of positions filled will be at or below last year's level, leaving jobs unfilled in 2013.

These are not jobs that can, or will, be outsourced to another state or nation. If these jobs go unfilled, the level of service will suffer, and businesses will underperform. Ultimately, this will undermine the very business model within which we operate, making businesses less likely to hire more permanent, full-time employees. In this sense, H-2B visa workers enhance the overall business operation, which helps fuel hiring of full-time, permanent American workers. Furthermore, any unnatural intrusion into the economic model will ultimately raise the cost of conducting business, which ultimately gets passed onto the consumer. And, for a tourism destination like Myrtle Beach, where value and affordability are a key part of our business success, the average American could be squeezed out of their summer vacation experience.

WAGE IMPACT OF H-2B VISA EMPLOYMENT

Critics of this program might wonder why businesses don't just pay higher wages to fill open jobs. Market forces dictate an appropriate wage, and the jobs filled by temporary guest workers are paid a fair wage approved by the federal government. You might be surprised to learn that temporary guest workers are being hired in Myrtle Beach today at an hourly wage rate that exceeds the federal minimum wage by 10 to 25 percent. In fact, we know of very few businesses that hire temporary or permanent workers at minimum wage.

The idea that businesses can choose between paying a higher wage or simply not filling a job is a false choice. Industry and market conditions can, and should, determine the prevailing wage, as with other industries, and we find most businesses accepting of the prevailing wage or actual wage calculation, as overseen by the Department of Labor. In my view, the process has worked well prior to this year, and we should strive to allow that to continue.

EMPLOYMENT IMPACT OF H-2B VISA EMPLOYMENT

Critics of this program might suggest that these temporary H-2B visa workers displace American workers. This is simply not true. The jobs we struggle to fill are temporary seasonal jobs which

last 60 to 90 days. The American workers seeking employment in our community are not looking for temporary jobs; they want full-time permanent employment.[2]

The H-2B Visa Worker program provides a series of balanced benefits for all involved:

- Employers find reliable, trained workers who eagerly enter our workforce for a short period of time, providing a necessary means of filling open jobs which would otherwise go unfilled.
- The temporary workers voluntarily participate in a world-class tourism industry, earning a fair wage to provide for their families while learning our language and customs.
- American workers benefit by enjoying full-time pay and benefits in businesses that succeed, in part, by the hiring of H-2B visa workers.
- Our economy benefits from optimal business activity and fair collection of taxes, required to be paid by the temporary workers, by state and federal governments.

This truly represents a Win-Win situation for all involved.

Likewise, the opposite is true. If temporary service jobs go unfilled, everyone loses – including the business, its employees, and its customers. Also, due to the economic importance of tourism, our local economy and at-large community will be negatively impacted.

IMPROVEMENTS TO THE H-2B VISA WORKER PROGRAM

While our businesses use the current H-2B visa program out of necessity, the process for hiring an H-2B worker could be improved upon. Suggested improvements include:

- Improve the efficiency of the process by streamlining the program's complex requirements. Employers must meet a complicated set of requirements before they can hire H-2B visa workers including making extensive efforts to recruit U.S. workers, filing paperwork with four government agencies, obtaining temporary labor certification from the Department of Labor (DOL), and gaining approval of their petition for a foreign worker by U.S. Citizenship and Immigration Services (USCIS). Employers must demonstrate that their need for a foreign worker is temporary, and they must pay at least the government-mandated prevailing wage for the job. These requirements are onerous for any company and simplifying the program's requirements would make it more efficient and reduce the burdens it imposes on many small and medium sized employers. [3]
- Prevent the processing delay experienced by small businesses using the program this year caused by uncertainty in agency action and regulation of the program. Seasonal

[2] In fact, certain studies have actually been able to draw a direct correlation between the H-2B program and the hiring of U.S. workers. *See* Douglas W. Lipton. "An Economic Analysis of Guest Workers in Maryland's Blue Crab Industry." University of Maryland's 2008 Maryland Sea Grant Extension Brief.

[3] For additional information on the H-2B hiring process, *See* "The Economic Impact of H-2B workers," U.S. Chamber of Commerce and Immigration Works (October 2010).

hiring for 2013 was deterred for several weeks and that has already impacted our local market.

CONCLUSION

The main issue concerning H-2B visa workers is not the prevailing wage rate. It's not about unfair employment practices. It's not about displacing American workers. The real issue at hand is about small businesses and the jobs they create to employ American workers.

A guest worker program is not a luxury. Rather, it is a business necessity. Specifically, the H-2B visa program is necessary for a seasonal tourism destination like Myrtle Beach, South Carolina. Without this program, we would struggle. With the program, we enjoy a level playing field and our businesses are given a fair chance to succeed.

It appears to me that in the contentious political environment within which you operate, compromise is difficult, if not impossible. And, it is not lost upon most of us that this Congress, along with the current administration, are prepared to pass some form of comprehensive immigration reform, a landmark accomplishment for our nation that is long overdue. Additionally, the Myrtle Beach Area Chamber of Commerce in working with the U.S. Chamber of Commerce has put its full support behind comprehensively reforming our nation's broken immigration system into one that drives job creation and economic growth by both better meeting the needs of employers and better utilizing the unique talents of people here and abroad.

With all of this in mind, I humbly offer this gentle reminder that the laws you create can cultivate a climate that provides small businesses greater confidence and clarity, a willingness to invest and grow, and the opportunity to succeed. Likewise, you can pass laws that stifle growth and limit job creation. I encourage you to rise above the partisan arguments and petty politics which could deter you from acting responsibly by, and for, the single largest creator of jobs in America: our small businesses.

Recognize that for some tourism-dependent communities, temporary seasonal hiring is a business necessity. The H-2B visa program is one very small part of a successful economy and should be given fair consideration in your deliberations.

I thank you for your time and considerations of this very important topic.

Brad Dean

Brad Dean
President & CEO

Testimony of Sarah M. Diment

Before the Subcommittee on Economic Growth, Tax and Capital Access

Committee on Small Business

U.S. House of Representatives

June 12, 2013

Dear Mr. Chairman Rice, Madam Ranking Member Chu, and Members of the Committee:

Thank you for inviting me here today to speak on "The Seasonal Employment Needs of Small Tourism Businesses and H-2B Visa Policy." My name is Sarah Diment, a 3rd generation hotelier at The Beachmere Inn, in Ogunquit Maine, southern York County. Our complex of buildings offers various accommodations from hotel rooms and suites to a full service cottage. We have 73 rooms to service daily. I hope to put a face on the challenges of running a business in a seasonal community on the coast of Maine and the difficulties we have in staffing for the peak summer and fall months and what that means to my own business and to our industry.

Ogunquit is a seasonable tourist destination, located 87 miles north of Boston and is within a three-hour drive of the most populated areas on the East Coast. We are only a six-hour drive from New York City, where many of our July and August guests originate.

Ogunquit offers miles of pristine white sandy beaches, a famous 1-mile walk along the ocean called Marginal Way, and a working fishing cove surrounded by restaurants and shops. We cater to visitors who return for generations. This past week I spoke to a guest who has been coming to our Inn since the last 1960's. Tourism is the principal source of income for many York county residents and businesses and is heavily relied upon during the summer months to help businesses survive the quiet winter season.

We are in the business of hospitality. There are no excuses for not having a clean room, working amenities, or proper food service when our guests arrive. They don't care if we are short-handed or that we cannot find help during the season. They expect and deserve a perfect stay, as they are paying for it. During the past 10 years or so it has been increasingly difficult to find help in the housekeeping department during the summer and fall months. Our business peaks from mid May to the beginning of November. During 2012, we had a monthly occupancy of May 15–31 83.96%, June 78%, July 99.8%, August 99.9%, September 98.5%, October 84%.

We currently employ 14 people in the housekeeping department (2 part-time, 1 supervisor and 11 Americans who average 30–35 hours or more). Typically we require 17 full time housekeepers to make the department run smoothly. As we employ mostly single mothers, our average of 30–35 hours is based on accommodations we must make for family and childcare situations. We had used the H-2B program for the past 10 years or so, but due to the changes in rules we opted out of the program last year.

We attempted to apply for visas this year, but due to the "hold" on petitions (and issues that may affect us next year if we were to drop out once the processing at the Department of Labor had begun) we chose to withdraw our petition. We could not wait with uncertainty as to when our petition would be approved for this coming season.

It also concerns me that the wages for these positions are set at the federal level by the Department of Labor, a wage called the "Prevailing Wage" which is not commensurate with the wages paid by hoteliers in my area. Maine minimum wage is currently $7.50 per hour; federally, the minimum wage is $7.25 per hour. I had to research minimum wage rates, as I don't think I've ever paid someone minimum wage at my inn. We start our housekeepers, with no experience necessary, at $9.00 to $10.00 per hour, with those having some cleaning experience starting at the higher end.

Before dropping out of the program this year, the prevailing wage for housekeeping was determined to be $9.39 per hour based on the determination give to us by the Department of Labor on February 15, 2013. Then the Department of Labor revised that figure to $10.54 per hour, communicated to us on May 20, 2013. That's an increase of $1.15 an hour in a three-month span. We determine room rates by December of the year prior, rates that we provide to our guests, and rates our guests expect us to honor. We cannot change the room rates to accommodate a wage increase in the largest department at our Inn now that the season has already begun. We work within a budget, as most prudent small business owners do. I'm also troubled that this rate is targeted at only the properties who utilize the H-2B program. Because we have more rooms than say, a fellow competitor at the property next door of 35 rooms, we have to pay our American and H-2B workers more. That smaller hotel may not need seasonal help to get through the summer, but because we do, and, because we find those people through the H-2B visa program, we are penalized with a higher wage. This wage also applies to my American workers, which in the short run is a good deal for them. However, once they leave us for other employment or to pursue another career, they will quickly find that entry-level work in many industries in Maine does not start at $10.54 per hour. It seems that we are creating a false expectation, one that does not reflect entry-level wages in our area. This new higher wage would affect the benefits I would offer, the level I contribute toward health insurance and retirement plans and how we allocate revenues going back into the Inn's capital improvements.

For 2013, we have been actively recruiting through employee referrals, newspaper ads, and online recruiting efforts since March with these results:

Responses to our housekeeping ads: 16

No-shows for interviews: 9

Interviews conducted: 7

Reference checks indicated not hirable: 2

Candidates who came in to interview but showed obvious lack of interest: 2

Job offers declined: 2

Candidates who were hired for other positions in the hotel: 1

Number of housekeepers hired through advertising: 0

Number of housekeepers hired through employee referrals: 3

We had once tried to recruit American workers by advertising in northern Maine, where unemployment levels were higher and in-

dustries such as paper mills and manufacturing were closing. We experienced some inquiries but they were mostly from workers who had families they did not want to leave behind. Housing in the summer months is next to impossible to find at a reasonable rates, thus we were unable to provide family housing that would be affordable based on the one person working a seasonal position. We quickly realized that lack of affordable housing and the seasonal nature of the job made these positions undesirable. This past weekend, I tried recruiting housekeepers while attending my cousin's graduation in Bangor, Maine. Although I was prepared to let them leave mid August to start college and drive to Bangor to get them, I could not get any takers. There genuinely seemed to be a lack of enthusiasm in doing housekeeping work.

Locally, as of January 2013, Ogunquit had 1,098 registered voters with 44 restaurant establishments and 65 hotels/B&Bs/inns representing 2,561 hotel rooms, not counting rental homes and condos. The median age in our town is approximately 61.7 years old. We currently have more hotels rooms than residents. At the height of the season, we can see up to 50,000 people in town, including overnight visitors as well as day-trippers.

Many have asked why we don't hire students. As our coastal town is not near any college campuses, recruiting from those attending summer school has proven fruitless. The University of New Hampshire is 27 miles away, a 40-minute commute; the University of Southern Maine is 38 miles to the north, a 55-minute drive; and, the University of New England is 22 miles, a 46-minute drive. Many college students are working in internships for the summer, as they must shore up their resumes far in advance of graduation in this difficult job market. The high cost of college tuition has caused many of those students to work an internship during the day and take job during the evenings. Housekeeping must be done during the day. Housekeeping is no longer a job that is valued nor sought by college students.

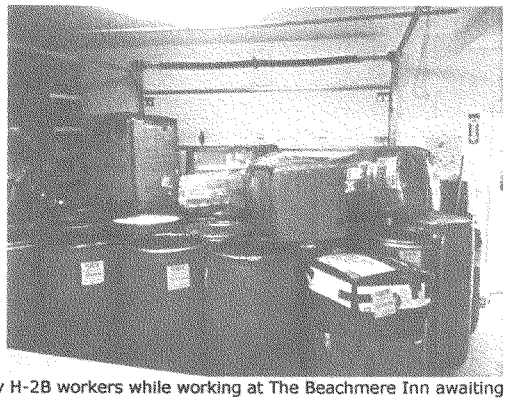
So we turn to surrounding communities as a source in hiring. We compete not only with the other 65 hotels/B&Bs/inns in our town, but also with well known summer vacation spots such as Kennebunkport, Old Orchard Beach, York, Biddeford Pool and more.

There are about 18,000 hotel rooms south of Portland, Maine to the New Hampshire border. That does not include the demands for the hiring needs of retail shops, restaurants or attractions that are looking for seasonal help to operate during the summer months. We primarily recruit from the Sanford area, a 20-mile drive that takes about 35 minutes. Sanford has equally easy access to Kennebunkport, Wells, Ogunquit and Biddeford for job opportunities, yet there were only 20,798 residents there in 2010. Smaller communities surrounding Sanford are also sources of recruitment, but the primary area of available applicants is in Sanford. Clearly, we do not have the human resources available to work at just the hotel industry to clean rooms given the demographics of our region and the competition for the other jobs, seasonal or year round.

Hiring H-2B workers is not an easy, or inexpensive way of recruiting employees. We pay approximately $3,100 in agency fees and $1,700 for USCIS fees to process the paperwork. We also pay the transportation costs for each worker to Ogunquit Maine, from their home country. The myriad paperwork, applications, verification and costs make this program one of the more expensive ways to find housekeepers. This is a complicated and expensive program to use, but is one that has been able to fulfill our seasonal needs and support our American workers.

That being said, the H-2B housekeepers who have worked for us are treated as we would any employee. They are paid wages that are comparable to our local workforce, if not more, based on their years of service, just as any American worker would be. They are provided housing (which we built in 2007) with an apartment offering 2 bathrooms, washer/dryer, full kitchen (with 3 refrigerators) AC, TV, and, from some rooms, ocean views. Workers walk 75 feet to the housekeeping office in our main building to report for work. They only pay $80.00 a week for rent (everything included, except food) and are provided transportation by one of our staff members for weekly shopping trips to local grocery stores and big box retailers.

They are afforded all of the same benefits that our local seasonal workers are offered. They are eligible for our Employee Retirement program after the obligatory waiting period. This past season, the employer contribution was 11% of the employee's gross yearly wages. This retirement program is funded 100% by The Beachmere Inn. They pay taxes and remit Social Security weekly deductions even though they will never be able to use the benefits. They work hard to earn money to shop for goods that they then send home to support their families.



Goods purchased by H-2B workers while working at The Beachmere Inn awaiting shipment to Jamaica

In October 2011, our four H-2B workers shipped 25 barrels and 5+ boxes of goods back to Jamaica. Everything in this shipment was a result of the money they earned while here in the U.S. That's a lot of shopping for just four women. This is money that is rolled right back into our economy and is something to be said for these hard working employees. They also pay a U.S. shipping company to send everything back, at a cost of $75.00+ a barrel.

The impact of not being able to shore up our year-round staff during the summer and fall affects us in many ways. We often

have to pull staff members from other departments in to assist housekeepers, thus delaying work that should be done in their own departments. We have turned to a 6-day workweek for our year-round housekeeper, which impacts them for childcare, gasoline costs and physical exhaustion. If any of you have ever tried housekeeping, it's not a job for the faint of heart. It is a physical job, where you are on your feet most of the day with many tasks requiring bending, kneeling, lifting, twisting and turning. Asking our year round staff to work more to cover the seasonal needs means we are taxing them physically and putting them at risk for injury due to the sheer nature of the job. Or should we shut down rooms to shield them from the work and overtime?

I am now analyzing what services I may not be able to offer (or have to reduce) for this season, as I will not have the staff to do it all. Staff removed from one area to help in another area means we will not be able offer all programs we might wish to. Making these choices is going to hinder what I can do later this season in capital improvements, employee resources and purchases of goods and services for the amenities we may drop.

The H-2B program is a supplement to our year-round American workforce, allowing our business to operate at full capacity so that we can be as successful as we can be, rolling revenue and benefits back into the workforce and our local economy.

We didn't get to celebrate 75 years of operation by not employing Americans and do not plan on continuing to operate without our valued local employees at the helm; however, operating without proper seasonal staffing will force us to make drastic changes. H-2B staffing is not a luxury; it is critical for the operation and growth of my business and for the many other businesses in Maine who realize a dramatic seasonal increase in their businesses.

I hope you can see that we are not using this program as an easy fix, but as a critical business need for the employment, not a displacement or infringement on the success of our year-round American workers. Thank you very much for the opportunity to testify. I am happy to answer any questions you may have.

Sarah Diment, Owner
The Beachmere Inn
Ogunquit, Maine

Statement of William E. Spriggs, Ph.D.

Chief Economist, American Federation of Labor and Congress of Industrial Organizations

Testimony before the Subcommittee on Economic Growth, Tax and Capital Access

Of the House Committee on Small Business

Hearing on "Help Wanted Seasonal Employment Needs of Small Tourism Businesses"

Wednesday, June 12, 2013

Thank you Chairman Rice for this opportunity to appear before your subcommittee. And thanks also to Ranking member Congresswoman Chu for this chance to explain the plight of the millions of unemployed Americans looking for a chance at any work.

Today we stand over five years into the wrath of the Great Recession. The number of payroll positions in America remains over 2.4 million less than in January 2008. At the rate of job creation last month, it would take more than thirteen months to get back to that pre-recession level of employment—meaning a net job growth of zero jobs over an almost six and a half year period. In the interim, America's labor force has grown over 1.5 million, and will grow larger over the next year. The result is we have a backlog of Americans looking for jobs—officially 11.7 million. The brunt of the difficulty in the labor market has fallen on young workers who are suffering from the lowest levels of employment on record; fewer than 38 percent of 18 and 19 year olds have jobs, and among those 20 to 24 the share with jobs is below 61 percent, well below full employment levels when the figure should be thirteen percentage points higher. And, for those with jobs, wages have been essentially flat, rising only three percent over this period when adjusted for inflation.

So, to put it bluntly, we are still in the midst of an American job crisis; especially for entry level jobs for young Americans. It has never been more crucial for America's policy makers—in Congress and in the Administration—to pull together to insure job opportunities for the almost 12 million Americans looking for work, and to protect the wages of those at work, many of whom are working part-time but would like to work full-time.

An important policy would be for Congress to join with the Administration to insure that job opportunities being created are fully

available to the millions of Americans looking for work, while protecting the wages of working people. Straddled with court cases and appropriation blocks from Congress, the Administration has already delayed several times the implementation of new rules over the use of temporary, non-immigrant workers in entry level jobs like young Americans desperately need. Over the course of the recovery, Congress has worked with the Administration to pass various tax cuts aimed at helping small businesses, in particular, add workers—ranging from the Small Business Jobs Act to the HIRE Act. These tax cuts have given small business extra tax incentives to add workers to their payrolls. But, these efforts will be undermined if the jobs are given to non-immigrant temporary workers, or if workers are brought in with wages to undercut the competitiveness of small businesses struggling to take advantage of the tax cuts and boost their local economy.

The loser when wages are set low by a few firms are not just Americans denied job opportunities, but the hard working businesses and their employees fighting to restore an economy that works for everyone. The economic analysis done by the Department of Labor to study its interim final wage rule for the H-2B non-agricultural temporary, non-immigrant work visa program showed the Department on average certified employers for 79,305 H-2B positions in FY 2011 and FY 2012. So, the bulk of businesses need protection from this program being abused to gain competitive advantage.

Unfortunately, the regulations for the H2B program have been caught in a struggle between courts and Congress. This has hurt businesses that may have need for the program, and delayed policy makers from coalescing around a sound set of policies that protect the over 11 million unemployed Americans seeking jobs in having access to jobs created, in part, by numerous recent tax changes to benefit small business in creating those jobs.

The courts have not accepted the premise that the Department of Labor should adopt multiple wage levels for the type of job typical of the H-2B program.[1] The finds of the court appear consistent with the Bureau of Labor Statistics characterization of these jobs has having relatively lower skill levels compared to many jobs, and therefore have a wage structure that does not reflect skill differences.

The source of the Department of Labor's wage rule data is the Occupational Employment Statistics report of the Bureau of Labor Statistics. The OES is a huge data base that collects information on occupations and wages for about 800 different occupational categories. The sample size of the survey is large enough to generate estimates at the national, state and sub-state level, including for every metropolitan and non-metropolitan area in a state. The sample is from establishments of every size, so that small establishments are included, and across all industries—except agriculture, fishing, forestry and private households. The sample averages data over a three year period to insure that it is representative for detailed occupations in small geographic areas. These steps yield a

[1] *CATA vs. Solis,*__,F.Supp.__,2013 WL 1163426, *13 (E.D. Pa. 2013) (CATA II)

data set of over 1.2 million different U.S. establishments and captures about 62 percent of employment. Given the size of the samples, and the technical issues involved in designing a proper probability-based sample similar to the Bureau of Labor Statistics, the use of employer wage surveys should be strongly discouraged. The need for fair, accurate, reliable and replicable results in policy making means it would not be efficient or optimal to use inaccurate surveys and the cost of such an accurate survey is prohibitive for employers.

If an employer pays below the average for an occupation in their area, they lower the average for the occupation in that area. So, the Department of Labor is correct in setting the wage for certification of an H-2B visa at the average for the occupation in an area. Further, the setting of low wages feeds into a self-fulfilling prophecy. It is possible to model the behavior of someone searching for a job, acquiring knowledge of job openings and wages in their area. When the workers do their job search, they will, in-a-away mimic the survey of the Bureau of Labor Statistics; though they are unlikely to look at as many firms, or replicate the probability sampling that the Bureau conducts. In the end, the worker searching for a job will arrive at a good estimate of the average wage in their occupation in their area. If their search is rational, they will try for the jobs with the highest wages. So, the worker, in doing their search, will turn down wages that are below average, knowing what the distribution of wages looks like; when they encounter wages that are below average, that time spent in that search will slow their search for a job, and they will spend more time unemployed. It will also be frustrating for the employer who offers low wages, because they will have to review applicants who are, in the end, uninterested in the job offer. Over time, the workers who will settle on the lower wages are likely to have been unemployed longer, and are likely to appear less skilled to employers than the workers who matched with the employers paying closer to the average wage or higher. So, employers who set the wage too low will either think there are no available workers, or do not wish to hire the workers who are left available at the low wage.

More could be done to protect the wages of American workers and the competitiveness of the businesses that work hard to hire Americans. The OES is an excellent source for getting estimates of wages. But, if wages are offered to foreign workers that are below the wages set between employers and employees in a collective bargaining agreement, then the competitive position of those firms is at risk from an employer trying to undercut the profitability of the unionized establishment by paying a lower wage to foreign workers. And, those businesses that contract with the federal government and are paying prevailing wages, either under the Davis Bacon Act or the Service Contract Act, are similarly being undercut by firms paying lower wages to foreign workers.

Unfortunately, many H-2B workers gain access to the program through foreign labor recruiters who illegally charge the workers fees. Many H-2B workers, then, arrive in America already in debt. The result is that much of what those foreign workers earn has to be repatriated to repay the foreign labor recruiter in their home

country. That means that rather than circulate their wage money in the local American economy, much of their pay has to be sent back home. This in turn depresses the local economy, because tourism—which can be a great net exporter for our country—is being offset by "importing" the labor value added of the industry. Organizations like the Southern Law Poverty Center have uncovered too many cases of abuse of the program under its existing rules.[2] Efforts by the Administration to monitor and fight against this type of misuse of the workers and of the H-2B program are unfortunately not being implemented because of battles in the courts and with Congress.

Tourism is an important industry for the United States. That means we should be sure that our policies are giving Americans the best opportunities to acquire the jobs, experience and skills to excel in industries we want to promote through public policy. To maximize the potential for gathering the full value-added of the industry, it is essential that we turn first to the millions of unemployed Americans for these jobs. Yes, the demand for these jobs has seasonal variation, but to young people looking for entry level positions, these are good steps. And, to the many companies hiring Americans in the tourism industry it is very important to keep them protected from low-wage competition that undercuts their efforts to protect and promote middle class American values.

[2] Southern Poverty Law Center, *Close to Slavery, Guest Worker Programs in the United States,* 2013 edition, accessed on the internet (June 10, 2013): http://www.splcenter.org/sites/default/files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf.

Testimony of Jane Nichols Bishop

Before the Subcommittee on Economic Growth, Tax and Capital Access

Committee on Small Business

U.S. House of Representatives

June 12, 2013

The Seasonal Employment Needs of Small Tourism Businesses and H-2B Visa Policy

Thank you very much Chairman Rice and Ranking Member Chu for your leadership in holding this important hearing. I would also like to thank full committee Chairman Graves and Ranking Member Velázquez.

My name is Jane Nichols Bishop, and I am the president of Peak Season Workforce of Mashpee, Massachusetts on Cape Cod. For more than a decade, Peak Season Workforce has successfully helped seasonal tourism-based businesses navigate the intricate government filing process to successfully obtain H-2B work visas. Peak Season Workforce currently represents more than 100 employers seeking H-2B work visas to supplement their American work forces during peak visitor season. Incidentally, we are a small, family-fun business with just three employees including myself.

We represent hotels, motels, inns, bed & breakfast establishments, restaurants, clam shacks, pizza shops, a public transit operator and coffee shops. All of them experience a significant increase in business during their seasons. We also work on behalf of small businesses that support them and their customers. These include commercial laundries, bike rental shops, golf courses, retail stores, ice cream parlors, party rental companies, landscapers, trash haulers, and a bulk paper supplier. These businesses depend on workers with H-2B visas to fill essential jobs such as housekeepers, front desk clerks, cooks, short-order cooks, food preparation workers, dishwashers, dining room attendants, servers, laundry workers, retail and stock clerks, tent installers, landscapers, trash collectors and shuttle bus drivers.

Let me make this clear: my client employers that use H-2B international workers are not able to find enough U.S. workers to fulfill their staffing needs; they use workers from abroad to supplement—not replace—Americans in their work force. Each one of our 100+ employers hires American workers but does not have enough of them during their busy season.

Small businesses located in seasonal destinations, such as Cape Cod and the coast of Maine, have between five and eight months on average to earn a year's worth of revenue. Some of these businesses chose to stay open during the non-seasonal months with a

limited number of American staff. Others are open only for the season and close in off-season months.

Seasonal small businesses wish they had more American workers from their immediate areas. They cannot rely anymore on high school or college students due to their school schedules. Most colleges start classes in early-to-mid August, and students must return to school while seasonal businesses remain busy through the summer and fall "shoulder" seasons. This often extends to the Columbus Day, three-day weekend in October and for some businesses, beyond that into Thanksgiving. Child labor laws correctly restrict the amount of labor young high school students can provide. And the reality today is that college students often seek professional summer internships related to their fields of study so they have a better chance of getting a professional job when they graduate. Regrettably, lower skilled jobs cannot compete.

Working-age adults and retirees who live in popular tourist areas are not interested in entry-level jobs that are temporary in nature and often without benefits. Seasonal work is often physically demanding and can be challenging work for retirees who may want easy part-time jobs.

This year, small businesses encountered a particularly vexing problem that threw a last-minute monkey wrench into the application process and caused costly delays of many visas applications. On March 21, a federal judicial ruling ordered the Labor Department to stop issuing new prevailing wages because of an allegedly flawed methodology that had been used successfully since 2008. The Labor and Homeland Security Departments responded by freezing all pending applications for up to 45 days. This stopped the H-2B application process in its tracks and created a major approval backup at U.S. embassies worldwide. Businesses could not get their H-2B staff approved and were left without help at the start of this season. Today, 25–30 of my small business clients still wait for final approval while the season is in full swing.

Any time there is even a one-day approval delay at either the Labor Department or at the Department of Homeland Security, it can add up to a week's delay in embassy clearances. Because we are experiencing delays now, some small tourism-based businesses are taking extreme measures to survive. These include turning business away because of staff shortages. Other examples:

- Paying excessive amounts of overtime to American workers to cover the shifts of the missing H-2B workers
- Closing restaurants one day a week because there is not enough staff to rotate all shifts over seven days
- Cutting out a meal service, often at brunch or lunch
- Shuttering part of the dining room because the kitchen can't handle the orders with existing staff
- Opening later or closing early
- Taking blocks of sleeping rooms out of service for hotel/motel guests because there is not enough staff to clean the rooms
- Requiring managers and owners to do the work of missing H-2B staff

Along the New England coast, there is a small inn with a restaurant that is feeling the brunt of these problems. Now, at the middle of June, the owner has been unable to offer the dinner service because her H-2B cooks are stuck in the approval process. She is losing reservations. In fact, there was a planned wedding reception that could not go on because of inadequate staff. The owner has resorted to cleaning guest rooms herself while her H-2B housekeepers are waiting in their home countries for approval.

On the island of Nantucket, off the coast of Massachusetts, an accommodations business had 27 guest rooms occupied over Memorial Day weekend and no H-2B staff to clean rooms, change linens and prepare breakfast.

Please understand that despite these problems, Cape Cod, the coast of Maine and other destinations are open for business, and visitors should not be deterred from coming. The ocean is still there, meals are being served, and the days are warm and nights are cool. The chambers of commerce are eager to welcome and serve guests.

When this year's approvals resumed at the Labor Department, businesses were told flat-out to pay their H-2B workers higher wages in order to continue with the program. For most of our businesses, the new mandated wages went up ten to 34 percent per hour. In dollar amounts, we saw an increase of $3 to $8 per hour per employee, including American workers. Businesses cannot survive with this type of sudden labor cost increase. Tourism businesses already have set their budgets for the year and fixed their rates for their services. In some cases, an entry-level worker with no experience will now make more per hour than their supervisors do under the new prevailing wage rates. This will cause a ripple effect, because supervisors will not work for less than the workers they manage. All of this from Labor Department who told the judge that wages would not increase ... "at most, $2.12 per hour".

Employers already pay more to American and H-2B workers because they must adhere to prevailing rates versus state and federal minimum wage requirements. This puts them at a competitive disadvantage with companies that choose not to employ H-2B workers. Now with the supplemental wage requirements, H-2B employers face payroll costs that are significantly higher than those elsewhere in their communities. It is simply not sustainable.

Over the past two years, Congress has repeatedly blocked the Labor Department from implementing prevailing wage increases that burden struggling small businesses. We strongly encourage Congress to act again. Please encourage the Departments of Labor and Homeland Security to rescind this interim final rule and replace the regulation with a more reasonable approach to setting wages as was done under the 2008 regulations. One approach might be the H-2B wage language that is included in S. 744, the "Border Security, Economic Opportunity, and Immigration Modernization Act immigration," currently being debated in the United States Senate. It is also important that the Departments implement a new more reasonable approach to setting wages without

shutting down the H-2B program and causing further processing delays on already struggling small businesses.

On November 18, 2011 Congress enacted the Consolidated and Further Continuing Appropriations Act, 2012, Public Law 112–55, 125 Stat. 552 (November 2011 Appropriations Act) which was a spending bill that contained Department of Labor's appropriations. It prohibited Labor Department from using funds to implement, administer or enforce the 2011 wage rule. Subsequent appropriations bills for Labor Department have continued the prohibition on the implementation of the 2011 wage rule. The prohibition will end after September 30, 2013, unless Congress again acts to extend the prohibition, preferably sooner rather than later.

As you know, small businesses are the backbone of the U.S. economy. Many in popular tourism destinations are dependent on international workers with H-2B visas to have successful seasons. They cannot thrive without adequate staff or with the uncertainty of when staff will become available. Businesses cannot show a successful bottom line if they are hobbled by bureaucratic decision-making in Washington that imposes unreasonable and uncompetitive wage rates.

Statement of
Shawn McBurney, Senior Vice President of Governmental Affairs
American Hotel & Lodging Association
For The
Committee on Small Business Subcommittee on Economic Growth, Tax and Capital Access
United States House of Representatives
Hearing on
"The Seasonal Employment Needs of Small Tourism Businesses and H-2B Visa Policy"
June 12, 2013

On behalf of the American Hotel & Lodging Association and our members throughout the United States, thank you for allowing me to comment on an acute problem in our industry – the ability to locate and hire lower-skilled workers.

Serving the hospitality industry for more than a century, AH&LA is the sole national association representing all sectors and stakeholders in the lodging industry, including individual hotel property members, hotel companies, student and faculty members, and industry suppliers.

AH&LA's membership ranges from the smallest independent properties to the largest convention hotels with a high degree of franchising and independent ownership. Every hotel or motel in our country is unique due to factors that include size, type, location, services offered, clientele, ownership, and status as an independent or chain affiliate.

Background on Lodging Industry

In 2011, the lodging industry generated $137.5 billion in total revenue, supported 1.8 million jobs, and represented 1% of U.S. GDP. The leisure and hospitality sector is the fifth largest employer in the United States and with the lodging industry alone poised to add 141,000 jobs in the next 7 years according to the U.S. Bureau of Labor Statistics (BLS).

The hospitality sector serves as a top 10 industry in 48 out of 50 states providing employment, investment, and opportunity and leading economic recovery with 12 consecutive quarters of growth and providing job creation in every region of the country.

We are proud that the lodging industry offers career growth potential for our employees where they can rise from entry level to management without the need for a college diploma.

Lodging Industry Recruitment and Retention Efforts

The lodging industry invests heavily in attracting and retaining more employees. For more than 60 years, the American Hotel & Lodging Educational Foundation (AH&LEF) has been the primary source of financial support for industry-related scholarships and maintains school-to-career and workforce development initiatives. The Foundation awarded $7.4 million in scholarships to hospitality management students with $514,500 being awarded in 2012 alone.

Hoteliers spend considerable time, money and resources attempting to fill the jobs they are creating. They advertise in local papers, attend job fairs, work with community-based organizations, canvas job centers, and recruit at military bases, high schools, and colleges. The industry is a leader in both the welfare-to-work and school-to-work efforts, and AH&LA has partnered with prominent organizations to promote careers in lodging.

Despite the generous pay and growth potential the lodging industry offers, many jobs in lodging go unfilled due to the growth of our industry and workers seeking employment in other sectors of the economy.

Lodging employers can legally bring in some temporary workers from abroad through educational and other visas, but not nearly enough to fill all their vacancies. Neither option provides a long-term solution to our worker shortage.

Experience with H-2B Program

While worker shortages are common among hotels throughout the country, the problem is most acute in seasonal properties. This is especially true for many resorts. The ability to keep their doors open and retain their full-time employees is contingent upon making enough money during their peak season to offset the rest of the year when their business is slow.

During their busy seasons, they must supplement their permanent staffs with temporary seasonal employees. In order to fill these positions, they spend thousands of dollars and hundreds of hours in aggressive recruitment. Unfortunately, there are not enough American workers available to fill those positions despite generous pay and benefits offered.

At one time, employers could rely on college students and other individuals who would accept temporary jobs on a seasonal basis. That is no longer the case, however. School and seasonal scheduling has changed – properties have lengthened their seasons into spring and fall, while school years have lengthened, making students simply unavailable. In addition, many students no longer prefer to work in traditional "summer" positions.

As a result of this dramatic decline in workers willing to accept temporary positions, many hoteliers have been forced to turn to the federal government's H-2B worker program as a final option to find short-term workers.

Although it is a complex, time-consuming and expensive process that requires employers to navigate through three separate federal and one state government agency, seasonal employers have turned to the program because their season, and therefore their entire business, depends on the ability to fill temporary seasonal jobs.

Regulations Making H-2B Program Unusable

In the past, the H-2B program worked well. It worked well for hoteliers who could not find local workers to fill temporary seasonal jobs. It worked well for the H-2B workers who took those temporary seasonal jobs, often coming back year after year. It also worked for full-time American workers whose jobs were supported by those H-2B workers.

However, for the last four years the U.S. Department of Labor (DOL) has undertaken several initiatives against the H-2B program and small, seasonal businesses that rely on the program for access to temporary workers.

On January 19, 2011, DOL issued a rule ("2011 wage rule") that would artificially inflate H-2B labor costs by more than 50% or higher in many cases. Seasonal hotels operate on thin profit margins and such a dramatic increase in labor costs, which bears no relation to economic reality, threatens their ability to operate and jeopardizes full-time workers.

Because of the harm it would do to the economy, that rule was first blocked by a temporary restraining order issued by the United States District Court For The Northern District of Florida, Pensacola Division. Subsequently, Congress blocked the rule in Public Law 112-74 (and renewed by another statute which is still in effect).

A conference report accompanying the legislation which blocked the initial issuing of the rule included the following language:

> Section 546 prohibits any funds from being used to implement, administer, or enforce the 'Wage Methodology for the Temporary Non-agricultural Employment H–2B Program" prior to January 1, 2012, to allow time for Congress to address this rulemaking. In making prevailing wage determinations for the H–2B nonimmigrant visa program for employment prior to January 1, 2012, the conferees direct the Secretary of Labor to continue to apply the rule entitled "Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes" published by the Department of Labor on December 19, 2008 (73 Fed. Reg. 78020 et seq.).

DOL issued another rule on February 21, 2012 ("program rule") after the first rule was blocked. The new rule was scheduled to go into effect on April 23, 2012 and would make the H-2B program virtually unusable by dramatically increasing its costs and complexity for small, seasonal employers.

Because that rule was so harmful, a Federal District Court in the Northern District of Florida issued a nationwide preliminary injunction barring the DOL from implementing it. DOL appealed that decision and the United States District Court of Appeals for the Eleventh Circuit affirmed the decision of The United States District Court for The Northern District of Florida (Pensacola Division) agreed and found that DOL has no rulemaking authority involving the H-2B program. In its decision, The Eleventh Circuit noted that DOL's claim that it did have that authority was "absurd."

Congressionally-Blocked Rule Reissued

Despite Congress (and a court) blocking the 2011 wage rule and a federal court finding DOL has no rulemaking authority over the H-2B program, DOL along with the U.S. Department of Homeland Security, ignored those actions are issued a "new" wage rule on April 24, 2013 that is essentially the same as the 2011 wage rule. The rule was made effective upon publication which followed a 30-day suspension of the program.

Even though DOL announced the end of its 30-day long suspension of H-2B application suspension on May 24, employers did not begin receiving their revised prevailing wage determinations until several weeks later, leaving very little opportunity to fully gauge the harm being done to hoteliers throughout the country.

What evidence we have been able to gather is significant. The methodology based on the final interim rule has resulted in revised PWDs artificially inflating the rate for the position of housekeeper aide in California by 27.9%, a food preparer in New Jersey by 58%, a cook in Massachusetts by 16.5%, and a housecleaner in Massachusetts by 31.2%.

The "New" Wage Rule Retroactively Increases Costs After Prices Were Set

Compounding the harm being done is the fact that as businesses, hotels factor in their projected labor costs when determining the price of rooms, conferences, and other events. Many of those events are scheduled long in advance with fixed prices (based on projected costs, including labor). By arbitrarily inflating labor costs after prices had been based on previously established rates, the final interim rule threatens the continued viability of hotels nationwide and puts the jobs of their full-time American workers in jeopardy.

Other Methodology Should Be Used Until Further Action By Congress Is Taken

The final interim rule should be rescinded and replaced with a rule that includes the 2008 wage methodology as directed by Congress, the methodology as noted in the legislative text of S.744, the "Border Security, Economic Opportunity, and Immigration Modernization Act" as introduced in the United States Senate on April 16, 2013, or the methodology that was outlined in the "Employment and Training Administration, Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs, Revised May 9, 2005."

Hotels are in the hospitality business. Hospitality cannot be outsourced or automated. Employees remain the lifeblood of our businesses and it is critical that a legal process is created so that there is access to foreign workers when no Americans are available.

Thank you very much for allowing us to comment on this vitally important issue to our industry.

June 10. 2013

The Honorable Tom Rice-Chairman

The Honorable Judy Chu-Ranking Member

2361 Rayburn House Office Building Washington DC 20515

Dear Chairman Rice and Ranking Member Chu,

This year marks my family's 35th anniversary providing quality customer service to our traveling guests who frequent this small seasonal vacation community in Ogunquit Maine.

In no way would this have been possible without the present H-2B program. This program enables employers in the hospitality industry to legally apply for a seasonal workforce which enables us to buoy are permanent workforce of domestic workers.

I remind the committee that this is a quota based program of no more that sixty-six thousand of legally approved workers who are allowed to enter the US and work once an employer has proven a need to the DOL that it cannot find domestic workers to fulfill the seasonal positions for their businesses.

Consistent with this, each year we enter into extraordinary efforts to recruit domestic workers, thru newspaper advertising, job fairs, listings with state agency's job banks, etc. only to minimally find a few or no workers. Those typically hired do not last more than a week or two at best due to the lack of interest in this type of work.

Having said that, many businesses have had to turn to the H-2B program and initiate a challenging and expensive process to implement this program to secure and meet its seasonal worker requirements.

Unfortunately, the U.S. Department of Labor (DOL) has targeted the H2-B program for virtual elimination. The department has issued a series of rules which in a matter of time will make the program virtually economically unusable for many employers.

An example is that the new prevailing wage which has just been instituted by the DOL has now retroactively mandated a 28 % wage increase in our Housekeeping Department

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www.anchoragebythesea.com

wages which had previously been established at the beginning of our program application for 2013. How can any business operate, forecast and establish operating budgets for a year and then with no notice, institute a change establishing an immediate financial burden with only the business to absorb the cost.

We have worked creatively trying to sustain our full time year-round workforce especially during the ongoing recessionary climate; however, we simply cannot continue to absorb the massive regulation and cost changes and complexities as imposed by the DOL on the H2B program.

The H-2B program is essential to the economic vitality of our business. These rules threaten our year round operations and the jobs of our full time employees. The H-2B worker program not only allows us to maintain our business in the absence of local workers willing to accept the seasonal positions, it also provides a great benefit for my full time workers whose position requires support from seasonal workers.

In many cases, during our off-season and in the time of Holidays, winter vacations and weekends we find ourselves having to turn away business due to a limited workforce which inhibits our ability to provide the quality services our customers have come to enjoy, as well a revenue stream that would help support a higher expense ratio during the this period. During these times, management personnel must fill in these positions to help support the business fluctuations that sometimes occur. These are isolated periods but critical in sustaining a business during our off season.

Tourism is Maine's largest industry and as of one of Maine's largest resort properties we continue to be dependent on the H-2B program. If this program is compromised, our business, our guests, the American worker, American vendor's, Federal and State Governments all loose in a way more than anyone could imagine. The financial implications would be staggering.

Please prevent the DOL from placing a stranglehold on businesses by limiting their ability to hire foreign, seasonal workers. Having been in business for 35 years, I know that this directive will ultimately result in declining customer service, poorer industry standards and a culminating decrease in revenues generated which will surely cause a shrinking of the economic growth and well being of this country.

Thank-you very much for your time and the painstaking job you do for our great country.

Sincerely,

Michael Ramsey
Proprietor
mr@anchoragebythesea.com

BILTMORE®

June 7, 2013

The Honorable Tom Rice, Chairman
The Honorable Judy Chu, Ranking Member

Committee on Small Business Subcommittee on Economic Growth, Tax and Capital Access
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rice and Ranking Member Chu:

Greetings, thank you for the opportunity to comment on proposed wage & hour changes to the H2B visa program. This program has been critical to our staffing needs at Biltmore over the past 13 years of utilization. The proposed increase is seen as detrimental to the continued opportunity of H2-B worker employment for the following reasons:

- This proposal will alter all starting wages to meet the highest of the prevailing wage, federal minimum wage, or state and local minimum wage. In the past we have had to research and meet or exceed the prevailing wage as stated. This has resulted in company-wide increases in our Dining Room Attendant positions in past years.
- Increased wages for the H2-B program equals increased wages in local/current staff within the same visa position, which is a tremendous monetary undertaking for the company. For example, to hire 6 H2-B workers as DRA's, will also mean the hourly increase for the current 40-50 DRA's on staff. This chart represents a real-life annual look at the financial impact this proposed wage increase would have on our current labor numbers and wages for the two positions we are preparing to apply to receive H2-B petitions for. This data is from actual payroll reporting for the past 12 month period:
    - Dining Room Attendants: 40 employees with average hourly wage of $6.38/hour + tips
        Total hours for the year = 31,315.30
        Total hours X $.96 (15% wage increase of average hourly wage) = $30, 063

— Housekeeping: 47 employees with average hourly wage of $9.22/hour
Total hours for the year = 52782.70
Total hours X $1.38 (15% wage increase of average hourly wage)
= $72, 840

- The DOL projections expect prevailing wage increases in the food services positions to increase by $1.29.hr, and by $3.72/hr within the janitorial (housekeeping) positions. In past years we have filed for visa petitions in both these two areas.
- This projected wage analysis shows an average per hour cost of approximately 10-15%.
- Many feel that this proposal is intended to increase the cost of the program to a level unbearable and unfeasible for continued participation and possible elimination of the H2-B program in the future.
- The past changes in the program were targeted to correct the companies that were abusing the integrity of the program and the workers, whereas this proposal is extending the cost beyond the limits of company participation and affordability.
- The current program is structured in a four-tier wage based on level of experience layout. This will be eliminated with the proposal and wages will be set at a median average of the four tiers as a starting wage.
- Our stand would be to maintain the prevailing wage determination as currently stated and utilized within the DOL and established by the Occupational Employment Statistics survey.

I would like to ask for a letter of support, or communication you see as most productive, from your office to accompany our response to the DOL. Your confirmation of action is requested and greatly appreciated.

Sincerely,

Chris Maslin

Chris Maslin
Director of Staffing & Training
Biltmore Company
One North Pack Square
Asheville, NC 28801

Butler Landscaping

1242 Grove Road · Pittsburgh, PA 15234
Phone (412)884-1801 Fax (412)884-1808

June 11, 2013

Dear Chairman Rice and Ranking Member Chu:

As businessman since 1984 and using the H2b program since 1998, the wage rule will hurt my business,as a commercial contractor. My bids are done sometimes a year in advance. The rule will add 20% of unbudgeted cost to jobs and labor, causing additional hardships in a slow economy that will never be recovered. These things impact a lot of American workers that are permanent employees to my company. Please don't allow these wages to impact my business more than the economy has already done. Thank you for your time in this matter of importance to me, my family, my business and my employees welfare.

Sincerely,

Roy Butler
Butler Landscaping

STATEMENT OF
Deb Hawkinson, President
The Forest Resources Association Inc.
to
The House Committee on Small Business
Subcommittee on Economic Growth

Hearing on the Seasonal Employment Needs of Small Tourism Businesses and H-2B Visa Policy
Rayburn House Office Building, Room 2360

June 12, 2013

The Forest Resources Association Inc. is a nonprofit trade association concerned with the safe, efficient, and sustainable harvest of forest products and their transport from woods to mill. FRA represents wood consumers, independent logging contractors, wood dealers, and the owners and managers of forests, as well as businesses providing products and services to the forest resource-based industries.

FRA appreciates the opportunity to make a statement on the importance of a workable H-2B guestworker program and on the problems the recently issued "Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, Part 2" interim final rule published in the *Federal Register* on April 24, 2013 presents for forestry contractors and forest-related businesses, large and small, and on the communities that depend on them.

The H-2B visa program is a crucial support to the wood supply chain, in that guestworkers from Mexico and Central America undertake virtually all of the hand-planting of tree seedlings in the United States, as well as significant on-the-ground work in pre-commercial thinning and herbicide spraying, in situations in which U.S. citizens and resident aliens are unavailable.

The loss of this important cohort would cause severe damage to the U.S. forest resource, and to the industry and communities it supports. The forest products industry is our country's seventh largest manufacturing sector and a major component of value-added manufacturing, comprising production of pulp and paper, building products, bio-energy, and many specialty products and subsidiary industries. It also provides markets for approximately 10 million private forestland owners, who provide the greater part of forest industry's wood supply.

The "emergency" Wage Methodology published on April 24 essentially raises wages for H-2B forestry guestworkers to an extent that puts the contractors employing them out of business.

Forest landowners are not in a position to absorb costs from forestry contractors on the scale proposed, with wage increases exceeding 20% in most jurisdictions and in some cases—Arkansas, Idaho, and Virginia, for instance—exceeding 60%.

Forest product manufacturers compete in a global market. They will not be able to pass this kind of cost increase on to customers, and this limitation will limit what landowners can pay contractors for reforestation.

Undercutting forest products manufacturers' raw material base in this way will depress that sector dramatically and lead to mill closures and severe job losses for U.S. workers. Setting wage levels for forestry guestworkers beyond labor market realities will not boost wages for low-skilled U.S. workers—who, in any case, have never shown any interest in reforestation work, for reasons unrelated to wage levels, specifically:

- Being itinerant, the work does not foster a connection with a community;
- The work is not year-round;
- The work does not lead to advancement within an organization.

On the other hand, if raw material cost increases force mill closures, well-paid, year-round manufacturing jobs will disappear.

The other obvious consequence of obstructed reforestation will be the conversion of forestland to other uses.

FRA recommends that DHS and DOL rescind the existing "emergency" rule and replace it with a Wage Methodology similar to the December 19, 2008 H-2B rule entitled "Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers), and Other Technical Changes."

Please do not hesitate to contact me for further information, or to elucidate any point in this statement.

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June 11, 2013

The Honorable Tom Rice, Chairman
The Honorable Judy Chu, Ranking Member
Committee on Small Business
Subcommittee on Economic Growth, Tax and Capital Access
2361 Rayburn House Office Building
Washington, DC 20515

Re: H-2B Program Benefits Small Business Hoteliers

Dear Chairman Rice, Congresswoman Chu and other Small Business Committee Members:

Thanks very kindly for considering the value of the H-2B Program on Small Business and allowing Sarah Diment, owner of the Beachmere Inn in Olgunquit, Maine, to speak to your Committee. A few weeks ago when Speaker Boehner and Congressman Southerland were in our area, my family had an opportunity to share with them the value of the H-2B Program and our concerns about its viability with the newly proposed rules. As a small seasonal resort hotel/motel owner/operator in business for 46 years, we have used the H-2B Program for over 10 years, and it is essential to the viability of our 5 hotel properties in Panama City/Beach, Florida. Were it not for H-2B workers filling housekeeping positions, our family would not still be in business. When we built our first 50 unit motel in 1967 with my grandmother's life savings of $30,000 and a Small Business Administration loan, it was possible, although not easy, to hire enough housekeepers for our 100 day season. Over the years, it has become progressively more challenging to find American workers to clean hotel rooms. We would like to hire only local workers (it would be less expensive and less time consuming). And the reality is that even in a tough economy, it is very difficult to find enough local workers willing to work in manual, seasonal labor positions no matter the wage offered. **Unfortunately despite continuing, extensive recruiting efforts, we have not been able to find enough American workers to fulfill our seasonal need for housekeepers who can pass the drug test and criminal background check required to provide a safe environment for our guests and team members.**

We are hopeful that Congress will pass legislation that allows a reasonable guest worker program so that foreign workers may fulfill the employee needs of American small businesses at a wage that is consistent with wages paid to American workers in our geographical area for comparable work and experience. With the implementation of the interim final rule *Wage Methodology for the Temporary Non-Agricultura Employment H-2B Program, Part 2 ("Interim Final Rule"),* we have grave concerns about staying in business because the increases in wages will probably exceed our thin profit margins in our highly labor intensive business where labor costs are such a significant percentage of our revenues. As we work to overcome losses from the

recession, lost business from hurricanes and significant setbacks from the Deep Horizon Oil Spill, we have just begun in the last year to improve our revenues. Our summer season has been weaker than we had expected requiring us to reduce rates to maintain occupancy in key time periods.

This estimated 21.4% increase (according to the DOL: 78 *Fed. Reg. at 24058*) may be as high as 32.3% [according to nationwide survey by the H-2B Workforce Coalition of H-2B employers who have received prevailing wage determinations under the *Interim Final Rule: H-2B Workforce Coalition, H-2B Final New Wage Rule Impacts by State (283 samples) (May 24, 2013) ("Workforce Coalition Survey")]*. This unrealistic, massive, inflated increase in the wages of 25% of our seasonal staff, plus corresponding increases in employment taxes, is just the beginning of the costs we would incur under the *Interim Final Rule*. If the prevailing rate for our H-2B housekeepers increases, then our wages for other entry level jobs, as well as unskilled workers with more experience, supervisory positions, administrative jobs, and managerial positions, must increase as well. With extraordinary competition for summer family vacation business in our region, throughout the United States and abroad, we do not see how we can pass on our increased costs without losing more revenues through reduced occupancy than we would gain by raising rates.

This *Interim Proposed Rule* will make it next to impossible for hoteliers who are hiring legal workers to compete with others who are hiring illegal aliens. Abandoning the H-2B program is not an option for seasonal hoteliers who are committed to a legal workforce because an adequate number of American laborers are simply not available. For some, the rule may push them to hire illegals; for others who continue to follow the rules, they may by pushed out of business. We have a very short season of less than 100 days, and each day we lose occupancy and revenues is worth 3.5 days in a year round business. So the detrimental effect is extreme to our resort business, and the *Interim Proposed Rule* threatens our 300 year round positions for American workers whose jobs are reliant on the support of our seasonal workers. If we cannot clean our guest rooms, we have no need of any workers.

The DOL acknowledges that they are not able to quantify the effect of the *Interim Final Rule* with precision, and we would suggest that there are many overlooked net losses and incorrect assumptions resulting in significant deadweight loss unanticipated by the DOL. Before a new and untested wage determination methodology with such sweeping effects is implemented, we have urged the DOL to study the effects and not unnecessarily put small companies out of business. Also, we urge the DOL to provide supporting data to their declaration that "skill levels as determined currently do not reflect wage levels in lower skilled jobs." The need for H-2B workers in our business is for entry level housekeepers. This rule will now require that we pay entry level housekeepers and experienced housekeepers the same prevailing wage. We would urge the DOL to examine whether they really want to require hoteliers to pay the same prevailing wage to a housekeeper who cleans 5 rooms a day and a housekeeper who cleans 15 rooms a day. This rule would impose such an unfair scheme that will lead to the demise of the hotel business for small businesses.

Of immediate concern is the incredibly detrimental application of the *Interim Final Rule* on H-2Bs who are currently working with us. We offered these workers the prevailing wage required, and these workers accepted this wage. Now in the middle of the season, we are caught

blind sighted being asked to raise wage rates 20 – 30% for H-2B workers. This will require us to raise wages in the "middle of the game" for staff throughout our hotel properties without the ability to increase our rates. And if we can't afford this, are we then required to pay the way home of all H-2B workers who we must terminate? That would be a small but still unreasonable cost relative to the cost this rule would impose.

In essence, the DOL's interpretation of employers' pledge to pay the prevailing rate for the duration of the season requires employers to sign a blank check to the DOL to agree to whatever wage they might impose during the season. How can there be a meeting of minds when there is no specified wage rate? How can any business plan and budget with such an open-ended requirement? This interpretation of the H-2B documents is ludicrous and violates the most basic principles of contract law. Moreover, it will lead to the destruction of small businesses which rely on the H-2B program to support year round jobs for Americans. We strongly urge you encourage the DOL to rescind the *Interim Proposed Rule* and substitute a more reasonable prevailing wage rule that is more in keeping with the free market valuation of wage rates. **Whatever new wage rule is implemented, we respectfully request that in order to salvage the much needed H-2B program, please urge the DOL to honor the prevailing wage rates that it certified for the season.**

With regard to the methodology for determining prevailing wage rates in the future, OES data is the foundation for the methodology that the DOL is using in determining the calculation of the prevailing wages issued. The OES currently recognizes that entry level unskilled labor receives a lower wage rate than experienced, tenured labor. This is true for both public and private industries. If the OES is based in reality, why should an employer be mandated to pay entry level workers at an experienced level rather than by the Federal and State governments established baseline for unskilled entry level workers (mandated minimum wage)?

In September of 2011, the House of Representatives and Senate recognized this same methodology for calculating prevailing wages was unrealistic and was based in unsound mathematical calculations. They sent a letter to Secretary of Labor Hilda Solis requesting modification and/or abandonment of the methodology of calculating the prevailing wage. In November of 2011 and January of 2012, President Obama signed legislation that delayed the implementation of this same methodology of calculating the prevailing wage.

We would highly recommend implementation of the methodology (or something similar) proposed in the new Senate Immigration Bill, which is based on actual wages paid by each specific employer and/or specific labor market. If that is not immediately feasible, we ask that the DOL consider implementing the **Revised May 9, 2005 Guideline** (DOL's Employment and Training Administration, Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs, Revised May 9, 2005), another reasonable approach to determining wages that achieves the DOL's goals of ensuring that H-2B wages do no adversely affect American workers and that H-2B workers are fairly compensated. Also, we ask that DOL disclose the facts to support the DOL's conclusion that the 2008 Guidelines adversely affect compensation of American workers; our experience proves otherwise. Finally, **employer submitted surveys would be of great value in determining the actual wages paid by employers in the area of intended employment, geographically and at the skill level of the position.**

Many small businesses and their full time American employees are in extreme jeopardy if this rule is to go into effect. The H2b program will become virtually unusable and with a continued labor shortage for entry level seasonal positions; a number of small business will be forced to close their doors and release their full time American workers.

We respectfully urge the DOL to rescind this *Interim Proposed Rule,* which mandates the same wage regardless of productivity and has many negative consequences unanticipated by the DOL, in favor of an economically sound calculation that considers geographic location, skill level and duties performed and is based on real world, free market valuation. Thank you very much for your time and help with this matter and your consideration of our concerns and suggestions.

Sincerely yours,

Julie K. Hilton
Vice President

Enclosures
The Honorable Steve Southerland

H-2B WORKFORCE COALITION

Protecting American Workers Through a Stable and Reliable Seasonal Workforce

www.h2bworkforcecoalition.com

Shawn McBurney, Co-Chair
American Hotel & Lodging Association

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Professional Landcare Network

Executive Committee:

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American Trucking Associations
Asian American Hotel Owners Association
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Society of American Florists
Tree Care Industry Association
U.S. Apple Association
U.S. Chamber of Commerce
Wildlife Sprayer Alliance

Statement of
The H-2B Workforce Coalition
For The
Committee on Small Business Subcommittee on Economic Growth, Tax and Capital Access
United States House of Representatives
Hearing on
"The Seasonal Employment Needs of Small Tourism Businesses and H-2B Visa Policy"
June 12, 2013

The H-2B Workforce Coalition appreciates the opportunity to submit this statement for the record.

The H-2B program was created to provide access to nonimmigrant non-agricultural temporary workers for seasonal and peakload needs when no American worker can be found for available positions.

The H-2B program provides great benefit to employers who cannot find workers to fill jobs during peak seasons. Many of those employers are small, family businesses who are struggling to survive in this fragile economy. The program also benefits H-2B workers who welcome the seasonal work opportunities to provide a higher quality of living for themselves and their families. It should also be emphasized that full-time American workers benefit from the program since H-2B workers allow businesses to operate at greater capacity and retain their full-time staffs.

The 66,000 non-agricultural visas permitted annually under the program represents only .04% of the American workforce which is 154,825,000. When the overwhelmingly popular cap exemption was in place, the total of 129,000 H-2B workers who were admitted represented only .09% of the workforce. Despite this very small number, the workers available under this program are absolutely critical to seasonal businesses.

We must stress our disagreement with those that claim that the majority or even a significant percentage of employers that utilize the H-2B program intentionally seek to displace Americans, routinely underpay their employees and abuse their workers. Our members who use the H-2B program do so as a last resort to find workers after they have exhausted every other avenue in trying to fill their available positions.

Since seasonal businesses rely on their workforce, they spend considerable effort and resources in recruiting and retaining workers. The pay of H-2B workers is a prevailing wage set by the U.S. Department of Labor which is in excess of the federal minimum wage. In addition, H-2B workers are barred from adversely impacting the wages of American workers (it strains reason to imagine that .04% of the workforce could do so in any case) and must be offered the same pay and benefits as American workers employed by the H-2B employer.

It must be emphasized that H-2B employers are those who are doing everything they can to do the right thing and follow the law. They are trying to retain their full-time American workers year-round by securing temporary workers for their seasons. They turn to the H-2B program only after they cannot find Americans to fill those jobs.

With the exception of the arbitrarily low annual cap, the existing H-2B program has been generally embraced by both employers and H-2B workers alike. This fact is evidenced by the fact that many workers return to the same employer year after year.

The H-2B cap of 66,000 is unrealistically low and simply not reflective of workforce needs during a healthy economy. The highly effective cap exemption policy that expired in 2007 should be renewed.

In reality, there should be no specific limit on these visas due to the fact that the number is self-limiting – if there were qualified local workers available to accept the jobs, there would be no need to use the program.

In addition, two pending regulations and a final interim rule issued by the U.S. Department of Labor (DOL) should be permanently blocked by Congress. A January 19, 2011 rule ("2011 wage rule") sought to artificially increase the wages rates for H-2B workers well above rational economic levels. Congress recognized that the rule was a threat to jobs and small businesses and prevented it from being implemented.

DOL then proposed an even more harmful rule on March 18, 2011 that would make the program vastly more costly and complicated. The rule was so egregious that a federal court in Florida issued a temporary injunction against it. In addition, both the Senate Committee on Appropriations and the House Committee on Appropriations approved legislation during the 112th Congress that would have blocked the rule from being implemented, but Congress adjourned without passing that appropriations bill.

Despite Congress (and a court) blocking the 2011 wage rule and a federal court finding DOL has no rulemaking authority over the H-2B program, DOL along with the U.S. Department of Homeland Security, ignored those actions and issued a "new" wage rule on May 24, 2013 that is essentially the same as the 2011 wage rule. The rule was made effective upon publication which followed a 30-day suspension of the program.

Even though DOL announced the end of its 30-day long suspension of H-2B application suspension on May 24, employers are just beginning to receive their revised prevailing wage determinations (PWDs). This uncertainty and delay were disruptive to summer seasonal business, but it is clear that significant harm to small businesses is being caused by the revised PWDs.

As part of this statement, we have attached a 2013 H-2B Survey performed by ImmigrationWorks USA which provides several examples of the harm caused by the "new" H-2B rule.

Below is a sample of how the methodology based on the final interim rule has resulted in revised prevailing wage determinations (PWDs) artificially inflating costs for businesses retroactively:

Landscaping and groundskeeping workers in South Carolina inflated 32.1%
Forestry workers in California inflated 83.6%
Amusement & recreation attendants in New York inflated 36.7%
Baker helpers in Colorado inflated 43%
Landscape laborers in Ohio inflated 42.6%
Structural iron and steel workers in South Dakota inflated 41.69%
Amusement & recreation attendants in Tennessee inflated 47.5%
Tree trimmers and pruners in Texas inflated 33.7%
Forestry workers in Arkansas inflated 111.1%

Of the small number of PWDs we have had time to compile, the average inflation of costs is 32.3%.

The chart which includes the data is attached to this statement.

Compounding the harm being done is the fact that businesses incorporate labor costs in their budgets. Contracts and other commitments to their customers are made based on those costs. The "new" wage rule arbitrarily inflated labor costs after prices had been set (based on previously established PWDs). The final interim rule threatens the continued viability of small businesses nationwide and puts the jobs of their full-time American workers in jeopardy.

The final interim rule should be rescinded and replaced with a rule that includes the 2008 wage methodology as directed by Congress, the methodology as noted in the legislative text of S.744, the "Border Security, Economic Opportunity, and Immigration Modernization Act" as introduced in the United States Senate on April 16, 2013, or the methodology that was outlined

in the "Employment and Training Administration, Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs, Revised May 9, 2005."

Because they would make the H-2B program virtually unusable, the rules are targeting law-abiding seasonal businesses that are doing everything they can to follow the law. If they are allowed to be implemented, many of those businesses will be forced to close and lay off their full-time American workers.

We have included a letter to Congress requesting support for the H-2B program and urging that the rules issued by DOL be blocked. The letter is signed by hundreds of national, regional, and state and local organizations, as well as seasonal employers of all types throughout the country.

Although it is a complex, time-consuming and expensive process, seasonal employers have turned to the program because their season, and therefore their entire business, depends on their ability to fill their temporary seasonal jobs. The H-2B Program is the final, least attractive, most expensive, yet vital option available to seasonal businesses in trying to find workers because without temporary workers, seasonal employers will go out of business and leave their full-time workers unemployed.

Thank you very much for allowing us to comment on this vitally important issue.

The H-2B Workforce Coalition

Attachments: Letter to Congress
2013 H-2B Survey by ImmigrationWorks USA
Wage data chart

H-2B WORKFORCE COALITION

Protecting American Workers Through a Stable and Reliable Seasonal Workforce

www.h2bworkforcecoalition.com

Shawn McBurney, Co-Chair
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Professional Landcare Network

Executive Committee:

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National Ski Areas Association
National Thoroughbred Racing Association
Outdoor Amusement Business Association
Snow & Ice Management Association
Society of American Florists
Tree Care Industry Association
U.S. Apple Association
U.S. Chamber of Commerce
Utility Sprayer Alliance

February 4, 2013

U.S. House of Representatives
U.S. Senate
Washington, DC

Dear Representatives and Senators:

As representatives of tens of thousands of seasonal employers throughout the country, the H-2B Workforce Coalition urges you to continue to protect and support the H-2B temporary worker program.

The H-2B program is essential to employers who cannot find local temporary workers to fill jobs during their peak seasons. It should also be emphasized that the program is critical in providing the opportunity for those employers to operate at a greater capacity and retain their full-time workers.

Employers who turn to the H-2B program do so as a last resort. It is only after employers have been unable to secure local workers after extensive recruitment can they look to the program to find temporary workers. Participating in the program is extremely time-consuming and expensive. It also requires employers to gain approval from four government agencies, yet seasonal employers still utilize it because they are committed to doing everything they can to do the right thing and follow the law.

Seasonal businesses rely on the H-2B program to fill temporary vacancies in hotels, landscaping, seafood harvesting and processing, carnivals, forestry, horse training, rock quarries, amusement parks, restaurants, golf courses, and other industries. The seasonal nature of these businesses and industries means that they routinely face shortages of local workers during their peak work periods. By filling temporary jobs, H-2B workers not only keep these businesses open, they contribute to the creation of additional, year-round jobs for local workers.

Unfortunately, the U.S. Department of Labor (DOL) has targeted the H-2B program, and by extension those law-abiding employers that are forced to utilize it, for virtual elimination with punitive rules. A January 19, 2011 DOL rule sought to artificially increase the wages rates for H-2B workers well above rational economic levels. Congress recognized that the rule was a threat to jobs and small businesses and prevented it from being implemented. We urge you to renew the legislation blocking the rule.

DOL then proposed an even more harmful rule on March 18, 2011 that would make the program even more costly and complicated. The rule was so egregious that a federal court in Florida issued a temporary injunction against it. In addition, both the Senate Committee on Appropriations and the House Committee on Appropriations approved legislation during the 112th Congress that would have blocked the rule from being implemented, but Congress adjourned without passing that appropriations bill. We urge this Congress to prevent the implementation of this rule.

It is clear that the intent of these rules is to ensure that the H-2B program is made unusable, threatening America's seasonal businesses and their full-time employees.

In these challenging economic times, DOL should be pursuing policies that help employers expand their businesses and increase hiring. Unfortunately, the department's recent H-2B wage rules will do just the opposite by delivering a fatal blow to seasonal businesses resulting in full-time job losses.

Please continue to prevent DOL from implementing these job-killing H-2B regulations.

Sincerely,

H-2B Workforce Coalition

(Signatures On Following Pages)

National Organizations

The Accredited Snow Contractors Association
American Horse Council
American Hotel & Lodging Association
American Moving & Storage Association
American Nursery & Landscape Association
American Rental Association
American Sugar Cane League
American Trucking Associations
Asian American Hotel Owners Association
Associated Builders and Contractors
Associated General Contractors of America
Brick Industry Association
Building Stone Institute
Crawfish Processors Alliance
Essential Worker Immigration Coalition
Federation of Employers and Workers of America
Forest Resources Association
Golf Course Superintendents Association of America
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International Association of Amusement Parks and Attractions
International Association of Fairs and Expositions
International Franchise Association
National Alliance of Forest Owners
National Association of Home Builders
National Association of Realtors
National Club Association
National Council of Agricultural Employers
National Electrical Contractors Association
National Federation of Independent Business
National Fisheries Institute
National Hardwood Lumber Association
National Hispanic Landscape Alliance
National Restaurant Association
National Roofing Contractors Association
National Ski Areas Association
National Thoroughbred Racing Association
Outdoor Amusement Business Association
Professional Landcare Network (PLANET)
Small Business Workforce Alliance (SBWA)
Snow & Ice Management Association
Society of American Florists
Treated Wood Council
Tree Care Industry Association
U.S. Apple Association
U.S. Chamber of Commerce
Utility Sprayer Alliance

State and Regional Organizations

Alabama Forestry Association
Alabama Restaurant & Hospitality Alliance
Allegheny Hardwood Utilization Group
Arizona Lodging & Tourism Association
Arkansas Forestry Association
Arkansas Timber Producers Association
Associated Industries of Florida
Associated Landscape Contractors of Colorado
Branson/Lakes Area Chamber of Commerce and Convention & Visitors Bureau, Missouri
Branson Lakes Area Lodging Association, Missouri
California Ski Industry Association
Cactus & Pine Golf Course Superintendents Association, Arizona
Cape Cod Chamber of Commerce, Massachusetts
Carolinas Golf Course Superintendents Association, North Carolina and South Carolina

Colorado Hotel & Lodging Association
Connecticut Lodging Association
Connecticut Nursery & Landscape Association
Dennis Chamber of Commerce, Massachusetts
Empire State Forest Products Association, New York
Everglades Golf Course Superintendents Association, Florida
Florida Forestry Association
Florida Golf Course Superintendents Association
Florida Restaurant & Lodging Association
Florida West Coast Golf Course Superintendents Association
Golf Course Superintendents Association of Arkansas
Gulf Coast Golf Course Superintendents Association of America of Alabama
Georgia Golf Course Superintendents Association
Golf Course Superintendents Association of Cape Cod, Massachusetts
Great Lakes Timber Professional Association, Wisconsin
Green Industries of Colorado
Heart of America Golf Course Superintendents Association, Kansas
Hudson Valley Golf Course Superintendents Association, New York
Illinois Landscape Contractors Association
Indiana Restaurant & Lodging Association
Kentucky Forest Industries Association
Landscape Contractors Association MD, DC, VA
Lone Star Golf Course Superintendents Association, Texas
Louisiana Forestry Association
Maine Innkeepers Association
Maine Landscape and Nursery Association
Maine Nursery and Landscape Association
Maryland Hotel & Lodging Association
Massachusetts Lodging Association
Massachusetts Nursery & Landscape Association
Metro Denver Hotel Association, Colorado
Michigan Lodging & Tourism Association
Mid America Green Industry Council, Missouri
Mid-Atlantic Association of Golf Course Superintendents, Maryland
Minnesota Forest Industries
Mississippi Forestry Association
Montana Lodging & Hospitality Association
Montauk Chamber of Commerce, New York
Nebraska Golf Course Superintendents Association
New Hampshire Landscape Association
New Hampshire Lodging & Restaurant Association
New Jersey Green Industry Council
New Jersey Landscape Contractors Association
New York State Hospitality & Tourism Association
New York State Turf & Landscape Association
North Carolina Association of Agricultural Fairs
North Carolina Forestry Association
North Carolina Green Industry Council
North Carolina Nursery & Landscape Association
Northern Ohio Golf Course Superintendents Association
Ohio Hotel & Lodging Association
Ohio Landscape Association
Oregon Landscape Contractors Association
Oregon Restaurant & Lodging Association
Oregon Women in Timber
Palm Beach Golf Course Superintendents Association, Florida
Pennsylvania Forest Products Association
Pennsylvania Landscape & Nursery Association
Pennsylvania Restaurant & Lodging Association

Pocono Turfgrass Association, Pennsylvania

Rhode Island Golf Course Superintendents Association

Rocky Mountain Golf Course Superintendents Association, Colorado

South Carolina Forestry Association

South Carolina Restaurant & Lodging Association

Southern Nevada Golf Course Superintendents Association

Tennessee Forestry Association

Tennessee Hospitality Association

Texas Forestry Association

Texas Nursery & Landscape Association

Virginia Christmas Tree Growers Association

Virginia Forest Products Association

Virginia Forestry Association

Virginia Golf Course Superintendents Association

Virginia Green Industry Council

Virginia Nursery & Landscape Association

Wisconsin County Forests Association

Public Officials and Agencies

Alabama Forestry Commission

David Branscum, Arkansas State Congressional Representative District 90

Greg Bryan, Mayor, Town of Tusayan, Arizona

Jim Smithson, Mayor, Marshall, Arkansas

Johnny Hinchey, County Judge, Searcy County, Arkansas

Randy Randall, New Mexico Tourism Commissioner

Businesses

A Fantasy Amusements, Illinois

A-Plus Lawn Care, Virginia

A & A Construction Company, Texas

A & S Landscaping, Inc., Pennsylvania

Absolute Landscaping, New Jersey

Acres Group, Illinois

Adelman Concrete and Excavating, Inc., North Dakota

Adventure Bound Camping Resort, Florida

Adventure Bound Camping Resort, Massachusetts

Adventure Bound Camping Resort, New Hampshire

Adventure Bound Camping Resort, New Jersey

Adventure Bound Camping Resort, Tennessee

AEM Inc., Virginia

Affordable Lawn Sprinklers & Lighting, Virginia

Agra Lawns, Inc., Virginia

All American Maintenance, Colorado

All Star Amusements, Indiana

Allen's Landscaping and Maintenance, Virginia

Alma Plantation, Louisiana

The Alotian Club, LLC, Arkansas

Alpha Business Solutions, Utah

Alpha Consolidated Contracting Services, Florida

Alpha Consolidated Contracting Services, Minnesota

Alpha Services, Idaho

Alpine Amusement Company, Illinois

Alstede Farms, LLC, New Jersey

Alter and Son General Engineering, California

Alvarez Environmental, LLC, Idaho

Amberscapes, Inc., Texas

American Beauty Landscaping, Inc., Ohio

Ames Hotel, Massachusetts

Amigo Forestry Service, Inc., Arkansas

Amusements of America, New Jersey

Aqua-Lawn, Inc., Connecticut

ArborGen, South Carolina

Architectural Paving Systems, LLC, Oklahoma
Armington Nursery, New York
Arnold Amusements, Michigan
ArtFX, Inc., Virginia
Artscape Landscapes LLC, Pennsylvania
Asplundh Tree Expert Co., Pennsylvania
Astro Amusement Company, Indiana
Atlantic Plants, New Jersey
Austin Outdoor, LLC, Florida
Austin Outdoor, LLC, Georgia
Austin Outdoor, LLC, South Carolina
B. DeMichele, Inc., Pennsylvania
B. Rushing Lawn and Landscaping, Inc., Virginia
Badger Evergreen Farms, LLC, Wisconsin
Baked in Telluride, Colorado
BancorpSouth Insurance Services, Inc., Arkansas
Bates Bros. Amusement Company, Ohio
Bart Keller Company, Louisiana
Basin Contractors, LLC, Louisiana
Bayou Lawn Services, Florida
The Beachmere Inn, Maine
Beaver Run Resort, Colorado
Baeza Trucking, Texas
Benson Enterprises of New York, Inc., New York
Best Western Plus Harbour Pointe Lakefront, Michigan
Best Western Premier Grand Canyon Squire Inn, Arizona
Best Western Yellowstone Inn, Montana
Big D's Seafood Inc., Louisiana
Big Fun, Inc., Florida
Big O Amusements, Florida
BIO Landscape & Maintenance, Inc., Texas
Bloom Floralscapes, LLC, Colorado
Blue Skies Landscape LLC, Louisiana
Blue Water Resort & Riviera Beach Resort, Massachusetts
Bluegrass Lawncare of St. Louis, LLC, Missouri
Blume Tree Service, Tennessee
Borst Landscape & Design Inc., New Jersey
Bourne Mowing, Tennessee
Bradbury Landscape Inc., New Jersey
Brass Key Hospitality Group, Massachusetts
Bridge Hospitality LLC, Colorado
Bristol's Garden Center, New York
Brothers Landscape LLC, Oklahoma
Brotherhood of Thieves Restaurant, Massachusetts
Brown's Amusements, Arizona
Butler Amusements, Inc., Oregon
Butler Landscaping, Pennsylvania
Buyansky Bros. Landscaping, Ohio
C & G Turf Management LLC, Tennessee
C.S. Lawn & Landscape, Inc., Maryland
Cajun Sugar Cooperative, Louisiana
Caleb Steven Hartley, Texas
Captain J. Seafood, Texas
Cardinal Lawn & Landscape, Missouri
Carmine Labriola Contracting Corporation, New York
Carson & Barnes Circus, Oklahoma
Casa Loma Hotel, Florida
Centennial Landscaping Inc., Oklahoma
Cerruti Landscaping Inc., Pennsylvania
Central Lawn & Landscape, LLC, Oklahoma
Champlain Stone Ltd., New York
Chapel Valley Landscape Company, Maryland
Charles Donald Pulpwood, Inc., Mississippi
Chateau on the Lake Resort & Spa, Missouri
Chavez Landscaping, New Jersey
Chick Landscaping Inc., Texas
Chippewa Hotel Waterfront, Michigan
Chris James Landscaping, New Jersey
The Christie Lodge, Colorado

City of Fun Carnival, Utah
CJ's Concrete Construction LLC, Texas
Classic Landscaping, Inc., Maryland
Classic Tejas Construction Inc., Texas
Clean Cut Lawn Care & Pressure Washing, Louisiana
Clean Cut Inc., Colorado
Clean Scapes, LP, Texas
Clean Sweep, Louisiana
Clubhouse Inn – West Yellowstone, Montana
Comfort Inn Boston, Massachusetts
Comfort Inn - West Yellowstone, Montana
Corporate Green LLC, Louisiana
The Corsair & Cross Rip Oceanfront Resort, Massachusetts
Country Acres Landscaping LLC, New Jersey
Country Club of the Rockies, Colorado
Country Green Landscape Inc., New Jersey
Cousins Lawn Service LLC, Texas
Cousland Scapes Inc., Virginia
Crabtree Amusements, Texas
Creativexteriors, Colorado
Crowne Pointe Historic Inn & Spa, Massachusetts
Crystal Lake Landscaping Inc., New Jersey
CT Concrete LLC, Ohio
Curby's Lawn & Garden, Kansas
Cutting Edge Forestry, Oregon
Cutting Edge Landscaping Inc., New Jersey
CWC Chemical, Virginia
D&R Gutter Cleaning, LLC, Virginia
Dan Frantz Concrete LLC, Tennessee
Danalu Inc., Pennsylvania
Daves Landscape Management Co., Massachusetts
The Davey Tree Expert Co., Alabama
The Davey Tree Expert Co., California
The Davey Tree Expert Co., Colorado
The Davey Tree Expert Co., Connecticut
The Davey Tree Expert Co., Florida
The Davey Tree Expert Co., Georgia
The Davey Tree Expert Co., Illinois
The Davey Tree Expert Co., Kansas
The Davey Tree Expert Co., Kentucky
The Davey Tree Expert Co., Louisiana
The Davey Tree Expert Co., Massachusetts
The Davey Tree Expert Co., Michigan
The Davey Tree Expert Co., Missouri
The Davey Tree Expert Co., Nevada
The Davey Tree Expert Co., New York
The Davey Tree Expert Co., North Carolina
The Davey Tree Expert Co., Ohio
The Davey Tree Expert Co., Oklahoma
The Davey Tree Expert Co., Pennsylvania
The Davey Tree Expert Co., Rhode Island
The Davey Tree Expert Co., South Carolina
The Davey Tree Expert Co., Tennessee
The Davey Tree Expert Co., Texas
The Davey Tree Expert Co., Utah
The Davey Tree Expert Co., Virginia
The Davey Tree Expert Co., Washington
The Davey Tree Expert Co., Wisconsin
David J. Frank Landscape Contracting, Inc., Wisconsin
Davis-Garvin Agency, Inc., South Carolilna
Dawson Lawn Service Inc., Tennessee
Days Inn Panama City Beach, Florida
Dean & Flynn Fiesta Shows, New Hampshire
Debby's Confections, California
Debarges Crawfish, Louisiana
DeBoer Brothers Landscaping Inc., New Jersey
Deep Forest Services, California
Deggeller Attractions, Florida
Del Vacchio Landscapes, Inc., Pennsylvania
Dell Landscaping Inc., New Jersey

Demas Enterprises, Inc., Texas
Denison Landscaping, Inc., Maryland
Derstine Landscaping LLC, Pennsylvania
Deville's Fencing, Louisiana
Deville's Lawn Services, Louisiana
DH Harrison Inc., Georgia
DiSabatino Landscaping and Tree Service, Inc., Delaware
DJ's Landscape Management, Inc., Michigan
DL Mitchell Landscaping Inc., Texas
DL Reforestation, Oregon
Done Right Lawn Care LLC, Missouri
Doctor's At the Lake Inc., Kansas
Dominguez Racing Stables, New Mexico
Doolan Amusements Company, Florida
Double A Contracting LP, Texas
Drew Exposition, Georgia
E.A. Quinn Landscape Contracting Inc., Connecticut
Earthscapes, Inc., South Dakota
East Coast Landscaping Inc., Virginia
Eastern Land Management, Connecticut
Eastern States Exposition, Massachusetts
Eco Group, LLC, Idaho
Elite Lawn & Landscaping, Texas
Elliot's Amusements, LLC, Michigan
Elmer Candy Corporation, Louisiana
Embassy Lawn & Landscaping, Missouri
Enchantment Resort, Arizona
Enterprise Factory, Louisiana
Environmental Designers Irrigation Inc., New Jersey
Environmental Designscapes LLC, Pennsylvania
Epic Landscape Productions, Kansas
Epling Landscaping and Lawn Service Inc., Virginia
Estate Landscape & Irrigation Inc., California
Estes Grounds Maintenance Inc., Colorado
Evergreen Landscaping Inc., Pennsylvania
Executive Moving Systems Inc., Virginia
F & B Amusements, Tennessee
F & W Forestry, Georgia
Family Attractions, Georgia
Fairplay Games, Inc., Florida
Farinella Nursery/Landscape Contractors LLC, Missouri
Farmside Landscape & Design, New Jersey
Farrow Shows, Indiana
Felipe's Lawncare, Oklahoma
Florida Lawns Inc., Florida
Floyd & Baxter Company, Tennessee
Focal Pointe Outdoor Solutions, Inc., Illinois
Foret Contracting Group, Louisiana
Forest2Market, North Carolina
Forestall Company, Inc., Alabama
Forrester & Associates, Mississippi
Four Star Lawns LLC, Kansas
Frank Sharum Landscape Design Inc., Arkansas
Franklin Hill Farm & Nursery, North Carolina
Frenchy's Lawn & Tree Service, Texas
Frozen Desserts LLC, New Jersey
Fullerton Landscapes, New Jersey
Fullmer's Landscaping Inc., Ohio
Futurewood Corporation, Wisconsin
G A Lawn Care Turf Mgt Stone LLC, Virginia
Gachina Landscape Management, California
Gallivan Corporation, New York
Gangemi Landscaping Corp., New Jersey
Gar Shrimp Corporation, Texas
Garcia Enterprises Inc., Texas
Garden Greenhouse & Nursery Inc., New Jersey
Garden of Gethsemane Nursery & Landscaping LLC, Texas
Gardener's Choice Concepts, Tennessee
Garrick Construction, Inc., Massachusetts

GE Forestry, Oregon
Genesis Lawn and Landscape Management Inc., Arkansas
Gentle Giant Moving Co Inc., Massachusetts
Gold Star Amusements, Louisiana
Gold Star Amusements, Minnesota
Good Earth Garden Center, Arkansas
GPS Enterprises Inc., Texas
Grand Ridge Enterprises, LLC, Michigan
Grass Hopper Lawn Care of Alexandria, Louisiana
Great Tree Tenders, California
Great Western Landscape Inc., Utah
Green Acres Lawn Care Inc., Virginia
Green Horizons Inc., Minnesota
Green Mountain Forestry, LLC, North Carolina
Green Teams, Inc., Texas
Green Thumb Commercial Grounds Maintenance, Colorado
Green Tree Service, California
Green Valley Nursery, Oklahoma
Green Valley Ranch Golf Club, Colorado
Green Valley Turf Co., Colorado
Greenlawn Landscaping Maintenance Company, Michigan
Greenleaf Lawn & Landscape Inc., New Jersey
Greenmaster Landscape Contractor's, Inc., Oklahoma
Greenscape Contractors, Alabama
Greenscape Inc., North Carolina
Greenscape Grounds Management LLC, Louisiana
Greenscape Land Design Inc., Massachusetts
Greenscape Services, North Carolina
Greenturf Landscaping Co., Oklahoma
Greenways Landscape Services LLC, Colorado
Greg's Lawn Service Inc., Iowa
Groton Inn and Suites, Connecticut
Grounds Management Inc., Missouri
Gurney's Inn Resort & Spa, New York
Guthrie Industrial Coating, Inc., Oklahoma
Guthrie Nursery Inc., Virginia
H & M Landscaping, Ohio
H & R Landscaping Inc., Pennsylvania
H Goldman Inc., Massachusetts
Harvest Time Seafood. Louisiana
Hawai'i Forest Industry Association, Hawaii
Heart of America Shows, Texas
Helm & Sons Amusements, California
Hermes Landscaping, Inc., Kansas
Heritage Lawn & Landscape LLC, Missouri
Hewson Landscape, New Jersey
Hewvec, LLC, New Jersey
Hillenmeyer Nurseries Inc., Kentucky
Hittle Landscaping Inc., Indiana
Holiday Inn Resort Panama City Beach, Florida
Holiday Inn Select Panama City, Florida
Horizon Forestry, LLC, Virginia
Horizon Landscape Co. Inc., New Jersey
Horizon Lawn & Landscape Inc., Oklahoma
Horseshoe Bay Resort, Texas
Hotel Grand Victorian, Missouri
Hotel Iroquois, Michigan
Hudson Landscaping Co. Inc., New Jersey
Hughes Landscaping, Inc., Colorado
Hughes Landscape, Inc., Indiana
Hyatt Regency Cambridge, Massachusetts
Impact Grounds Maintenance and Design, Ohio
Impullitti Landscaping, Ohio
Infinity Lawn and Landscape, LLC, Texas
The Inn at Herrington Harbour, Maryland
Integrity Lawn Service, Louisiana
Irish Landscape Designs, New Jersey
Island Events Catering, Massachusetts

Island House Hotel, Michigan
Island Landscapes LLC, South Carolina
Isaac's Moving and Storage Inc., Massachusetts
ISS Grounds Control Inc., Texas
It's Magic Landscaping, Arizona
J & L Lawns and Landscaping LLC, New Jersey
J & S Lawnman, New Jersey
Jacco, LLC, North Carolina
Jacobsen Landscape Design & Construction, New Jersey
James Landscaping Inc., Texas
James River Grounds Management, Virginia
James River Nurseries, Virginia
Javier Martinez Lawn Care, Texas
Jean's Lawn & Landscapes Inc., Tennessee
JFJ Delgado's Landscaping, New Jersey
Jim Dunphy's Landscaping LLC, New Jersey
Jim's Pride Landscaping & Maintenance Inc., Colorado
JLS Landscape, Colorado
Johnson Timber Corporation, Wisconsin
JPC Landscaping, Inc., Missouri
JPL, Colorado
Juan D Maldonado Enterprise Corp., Texas
Juicys LLC, Oregon
Jules & Beck Combined Shows, Georgia
K & D Round's Landscape Services, Virginia
Kastl Amusements, California
Keesen Landscape Management, Inc., Colorado
Kelly Inn – West Yellowstone, Montana
Kelly Miller Circus, Oklahoma
Ken Helmlinger Company, Ohio
Kiawah Island Golf Resort, South Carolina
Kingstowne Lawn Care, Inc., Virginia
Kissel Bros Shows, Ohio
Kissel Entertainment, Ohio
KVR Landscape Design LLC, New Jersey
L & L Company, Texas
Lafourche Sugars, Louisiana
Lahontan Golf Club, California
Lakeland Lawn and Landscaping Co Inc., New Jersey
Lakeview Lawn & Landscape, Inc., New York
Land Art Inc., Maryland
Land Care Solutions LLC, Florida
Land Creations Landscaping, Inc., Ohio
Land Design Inc., Arkansas
LanDesign Inc., New Jersey
Landscape Art Inc., Texas
The Landscape Center, Inc., Pennsylvania
Landscape Management Company, Georgia
The Landscape Partners Ltd, Oklahoma
Landscape Technology Group, Colorado
Landscapes By Maple Leaf LLC, New Jersey
Landtech Contractors, Colorado
Lang's Lawn Care, Pennsylvania
LaPointe Landscapes LLC, Virginia
Larchmont Nurseries Inc., New York
The Lawn Crew LLC, Maryland
Lawn Management Company, Inc., Texas
Lawn Patrol Service Inc., Texas
Lawn Seasons Inc., Missouri
Lawn Sense, Pennsylvania
Lawntech Enterprises Inc., Colorado
LBL Gunite of Tulsa LP, Oklahoma
L.D. Long, Inc., Arkansas
Ledden Palimeno Landscaping & Maintenance Co Inc., New Jersey
The Lexington at Jackson Hole, Wyoming
Lighthouse Inn, Massachusetts
Lilac Tree Suites & Spa, Michigan
Lindquist Landscape Design, Connecticut
Little Richard's Enterprises, Pennsylvania
LMI Landscapes Inc – CO, Colorado

LMI Landscapes Inc – TX, Texas
Lone Rock Timber Company, Oregon
Longview Fibre Paper and Packaging, Inc., Washington
Louisiana Sugar Cane Cooperative, Louisiana
Louisiana-Pacific Corporation, Tennessee
Lovin Contracting Company, Inc., North Carolina
Lowell Russell Concrete Inc., Minnesota
Luehrs' Ideal Rides, Illinois
Lula Sugar Factory, Louisiana
Mad Hatter Concessions, Texas
Mainscape Inc – IN, Indiana
Mainscape Inc – KY, Kentucky
Mainscape Inc – NC, North Carolina
Mainscape Inc – SC, South Carolina
Majestic Midways, Pennsylvania
Maldonado Landscape & Irrigation, Texas
Maldonado Landscaping, Texas
Mandoki Hospitality, Inc., Alabama
Marathon Moving Company Inc., Massachusetts
Mariani Landscape, Illinois
Marshall Nursery & Landscape Company, Missouri
Marshfield Forest Service, Inc. South Carolina
Martin Property Maintenance LLC, Texas
Martinez Landscaping, Delaware
MASLabor, Virginia
Massengale Grounds Management, Louisiana
Mava Landscape Inc., New Jersey
McFall & Berry Landscape Management Inc., Virginia
McManus Farms & Landscaping, Inc., North Carolina
MeadWestvaco Corporation, Virginia
Metivier Inn, Michigan
Metro Lawn Sprinklers, Maryland
Mid America Shows, Indiana
Midway Of Fun, Inc., California
Midway Rides of Utica, New York
Midway West Amusements, Arizona
Midwest Ride & Concessions, Minnesota
Mike Kelly Forestry Services, Inc., North Carolina
Milberger's Landscaping Inc., Texas
Mike Roach, Inc., South Carolina
Miller Amusements, New Hampshire
Milt's Seafood Plant Inc., Texas
Mira Monte Inn, Maine
MJ Designs, Ohio
Montana Trees, Inc., Montana
Moon Nurseries, Inc., Maryland
Moon Site Management Inc., Maryland
Moore Outdoor Rejuvenation, Inc., Pennsylvania
Morin's Landscaping Inc., New Hampshire
Mowing & More, Maryland
Mrs Mina Inc., Texas
Mrs. Mitchell's Gifts, Massachusetts
Multi Landscape Services LLC, Texas
Munsch Outdoor Maintenance Co Inc., Missouri
Murphy Bros. Exposition, Oklahoma
Nail Forestry Service, Mississippi
Nantucket Island Resorts, Massachusetts
Nantucket Lobster Trap, Massachusetts
Naples Beach Hotel & Golf Club, Florida
Naturescape Inc., Ohio
ND Landscape Inc., Massachusetts
Neils-Lunceford, Colorado
Nelson Tree Service, Inc., Ohio
Nemacolin Woodlands Resort, Pennsylvania
Netterfield's Popcorn & Lemonade, Florida
The Newport Harbor Hotel and Marina, Rhode Island
Norfolk Landscaping, Virginia
Norling's Lake Minnetonka Landscapes Inc., Minnesota

Nortrax, Wisconsin
Norterra Services, LLC, Idaho
Northwoods Forestry, Inc., Wisconsin
Nunez Pinestraw, Georgia
Ocean Reef Club, Florida
Olcese Construction Co., Nevada
Olguin Brothers, Texas
Omni Bedford Springs Resort, Pennsylvania
Orr Contracting, Inc., North Carolina
Ormic Concessions, Inc., Texas
Ottaway Amusements, Oklahoma
Outdoor Concepts Landscape Contractors, Ohio
P & H Roofing & Remodeling, Texas
P & R Forestry, North Carolina
Pacific Coast Contracting, Inc., Oregon
Pacific Landscape Management, Oregon
Palacios Seafood Co Inc., Texas
Pamlico Pool Company Inc., Georgia
Pampered Lawns Austin, Inc., Texas
Paradise Amusements, Idaho
Paradise Found Resorts & Hotels, Florida
Paradise Palms Inn, Florida
Party Perfect, Virginia
The Pattie Group Inc, Ohio
Paul's Concessions, Texas
Peach Tree Inc., Tennessee
Perennial Nursery Inc., California
Perfect Lawns & LandWorks, Texas
Pete Chavez, Texas
Phillips Tree Expert, Co., Kentucky
Pine Lane Nursery, Colorado
Pine Needle Express, LLC, South Carolina
Piscataqua Landscaping Company Inc., Maine
Pitzer's Lawn Management Inc., Oklahoma
Plantscapes, Inc., Washington
Playworld Unlimited, Michigan
Plum Creek Timber Co. Inc., Georgia
Potomac Garden Center, Maryland
Powers Great American Midways, North Carolina
Precision Landscape Management, Texas
Premier Lawn Care, Texas
Premium Packing, LLC, Louisiana
Prendergast Landscape Contractors, New Jersey
Pro Landscapers, LLC, North Dakota
Producers Rice Mill, Arkansas
Professional Grounds, Inc., Virginia
Progressive Interest Inc., Texas
Progressive Solutions LLC. Arkansas
Pugh Concessions, Florida
Putnam Brokers, Georgia
Quality Construction and Production, Louisiana
Quality Midwest Holdings Inc, Virginia
Rainbow Valley Rides, Inc., Wisconsin
Rainmaker Sprinkler Co., Inc., Oklahoma
Ralph Hale -Tree Issue Consultant, Louisiana
Ralph Hodge Construction Co, North Carolina
Ralph Iasiello Lawncare LLC, Oklahoma
Ramada Inn Boston, Massachusetts
Ray Cammack Shows, Arizona
Rayonier, Inc., Florida
Realty Landscaping Corporation, Pennsylvania
Red Jacket Beach, Massachusetts
Red Jacket Mountain View, New Hampshire
Reithoffers Shows – Blue Unit, Florida
Reithoffers Shows – Orange Unit, Florida
Resource Management Service, LLC, Alabama
Retzko's Landscaping & Lawn Care, New Jersey
Reyes Concrete Co., LLC, Virginia
Reyes Roofing, Texas
Ridgewood Landscaping Inc, Texas
Rite-A-Way Lawn Care, LLC, Maryland

River Valley Forestry, Arkansas
RLF Salado Quarries, LLC, Texas
RM Lawn & Landscaping LLC, Oklahoma
Roark's Landscaping Corporation, Oklahoma
Rob Paton Landscaping Inc, New Jersey
Robert Bradley Landscaping Inc., New Jersey
Robert Flores, Texas
Robertson Lawn Sprinkler Co. Inc., Colorado
Roca Verde, Inc., Virginia
Rock Garden Nursery and Landscaping, South Dakota
Rockwell Amusements, Rhode Island
Rockwell Associates LLC, Pennsylvania
Rocky Mountain Custom Landscapes, Colorado
Rocky Mountain Hardscapes LLP, Colorado
Rodolfo Sifuentes, Texas
Rodriguez Lawn Service, Texas
Roy O. Martin Lumber Company LLC, Louisiana
RSG Landscaping and Lawn Care Inc., Virginia
S & D Landscapes LLC, Vermont
S & S Amusements, Pennsylvania
S & S Landscaping Company, Inc., North Dakota
S & T Magic Enterprises, Florida
Sabell's Enterprises LLP, Colorado
Safe Movers Inc, Massachusetts
Saloom Properties LLC, Alabama
Sanctuary Inc, Colorado
The Sanctuary Hotel at Kiawah Island, South Carolina
San Juan Lawn Care, Texas
Sappi Fine Paper North America, Maine
Scapes, Louisiana
Schill Grounds Management, Ohio
Schultz & Co Landscapes Partnership Ltd, Texas
Schutz's Landscape & Design LLC, New Jersey
Sea Island, Georgia
SelectBuild Nevada, Inc., Idaho
Seven Oaks Landscapes-Hardscapes Inc, Virginia
Shamrock Shows, California
Shaner SPE Associates LP, Rhode Island
Shear Scapes, Virginia
Shearon Environmental Design Co Inc of NJ, New Jersey
Shooter and Lindsey Inc, Texas
Schultz Industries, Colorado
Siciliano Landscape Company, New Jersey
Siggy's Perennial Gardens Inc, New Jersey
Signature Landscape, Kansas
Silvicultural Contractors, Arkansas
Silvicultural Management Associates, Arkansas
Singing Hills Landscape, Inc., Colorado
Simonfay Landscape Services Inc, New Jersey
SJ Entertainment, Texas
Skerbeck Bros. Shows, California
Sky Attractions, LLC, Michigan
South Georgia Pinestraw, Georgia
Southern Botanical, Inc., Texas
Southeast Venture Landscape Management LLC, Tennessee
Southeast Woodlands Services, South Carolina
Southern Botanical Inc, Texas
Southern Oak Services LLC, Texas
Southern State Turf, Tennessee
Southview Design Inc, Minnesota
Southwest Landscape Management, Inc., Ohio
Spike Inc, Massachusetts
Spring Creek Ranch, Wyoming
Spring House Inn Block Island, Rhode Island
Splitrock Landscaping & Nursery Inc, South Dakota
St. Joe Timberland Company of Del., LLC, Florida
Sposato Landscape Co., Inc., Delaware

St. Louis Select Landscaping and Lawn Care, Missouri
St. Mary Sugar Cooperative, Inc, Louisiana
St. Vincent Andrew Inc, Texas
Stairhopper Movers LLC, Massachusetts
Star Landscape & Engineering LLC, Utah
Stephano Enterprises, Inc., New Jersey
Stein Eriksen Lodge, Utah
Stockel's Lawn & Landscaping Inc, New Jersey
Stone Forestry Services, Inc., Georgia
Stowe Mountain Lodge, Vermont
Stoweflake Mountain Resort and Spa, Vermont
Strates Shows, Florida
Summitt Forests, Inc., Oregon
Summit Services, Colorado
Sun Valley Landscaping, Nebraska
Sunbelt Landscape Services Inc, South Carolina
Suncrest Gardens, Ohio
Sunrise Landscape & Design, Virginia
Superior Forestry Service, Inc., Arkansas
Superior Landscape & Maintenance Company, Louisiana
Superior Pine Products Company, Georgia
Swank's Steel City Shows, Inc., Pennsylvania
Swingle Lawn, Tree & Landscape Care, Colorado
Swyear Amusements, Illinois
Sylver Trees, Idaho
Tally Amusements, Inc., Texas
The Tavern Restaurant, Massachusetts
Telluride Land Works, Colorado
Texas Services, LLC, Texas
TGL Management Inc, New Jersey
Thomas Carnival, Inc., Texas
Three Rivers Farm Supply, Louisiana
Tides Inn, Virginia
Tierra Laguna, LLC, Oklahoma
Timberland Forestry Service, Tennessee
Tinsley Amusements, Missouri
T.L.C. Landscaping, Inc., Ohio
TNT Lawn & Landscape Management, Inc., Oklahoma
Todd's Enviroscapes, Ohio
Total Landscape Corp, Washington
Town & Country Landscaping, Kansas
Trees, Inc., Texas
Triple H Services, North Carolina
Tulsa Lot Sweeping, Inc., Oklahoma
Turfscape, Inc., Ohio
Utility Tree Service, Inc., California
Vizmeg Landscape, Inc., Ohio
Wade Shows, Michigan
Wanger's Carnival, LLC, Texas
Warrensburg Laundry & Dry Cleaning, New York
Wentworth Nursery, Maryland
The Westin Kierland Resort & Spa, Arizona
Wood Entertainment Co., Texas
U. S. Lawns of Baton Rouge, Louisiana
U. S. Lawns of New Orleans, Louisiana
U. S. Lawns of Northshore, Louisiana
Ultimate Services Professional Grounds, Connecticut
UFL, Inc, Mississippi
United Golf LLC, Oklahoma
Urban Farmer, Colorado
Vargas Property Services Inc, Colorado
Verso Paper Corporation, Maine
Vidal Landscaping Inc, Illinois
Village Green Lawn Care, New Jersey
Villanueva Masonry, Texas
Vin Woods, LLC, Georgia
Vintage Landscape, New York
Virginia Irrigation & Landscapes Inc, Virginia
Vizcaino LP, Texas

Vizmeg Landscape Inc, Ohio

W. J. Sorrell Lumber & Pulpwood Company, Inc., Alabama

Wayne Regional Agricultural Fair, North Carolina

Wayside Garden Center Inc, New York

WD Landscape Construction Inc, Ohio

Weed Man, North Carolina

Weiss Landscaping Services, LLC, New Jersey

West Coast Landscape and Lawns Inc, Florida

West Slope Construction Inc, New Jersey

West Tree Service, Arkansas

Western States Reclamation, Colorado

Westfield Sugar Factory, Louisiana

Weyerhaeuser, Washington

Whitener Hydro-Seeding & Landscaping, Tennessee

Whittaker Landscape Services Inc, Colorado

Will Pope Construction Inc, Texas

Williams Brothers Tree & Lawn Service, Virginia

Williams Forestry & Associates, Georgia

WKB Landscape & Maintenance Inc, Utah

Wood Landscapes Inc, New Jersey

Wyrick & Sons Pine Straw, Florida

Yard Barbers, Ohio

The Yard Group, LLC, Connecticut

Yard Services Inc, Texas

YardVarks LLC, Oklahoma

Yellowstone Landscape Group, Inc., Florida

Young's Landscape Management, New Jersey

YLS, Inc., Virginia

Zavala Forestry Service, LLC, Texas

Ziehler Lawn and Tree Care, Ohio

ImmigrationWorks USA

2013 H-2B SURVEY

QUESTION 1

Q. *Were you unable to hire H-2B workers this season because of processing delays?*

A. *Of 80 respondents, 19 replied YES. A sampling of YES answers:*

LATE WORKERS

- We didn't get our H-2B workers until the end of March, instead of the middle of February.
- We are receiving our workers a full month later then when we needed them to start.
- It appears we will get our six workers, but they have been delayed by almost three months. We have been fortunate that it's been a cool spring and we've been able to scrape by.

STILL WAITING FOR WORKERS

- Business was disrupted big time. I am still in limbo about my H-2B visas.
- I have not received any H-2B workers as of yet. They usually have been here for two weeks already.
- The process has been very difficult and there have been many delays. Plus the cost for acquiring the visas is becoming a financial burden on our business.
- We are still in the process of hiring our H-2B workers, about a month delayed.
- We had completed all administrative requirements, identified individual workers, arranged for housing, etc. Then the suspension occurred.
- We still do not have our H-2B workers and are having trouble finding local workers to fill the positions we need.

DIDN'T GET WORKERS

- Some of the workers that come to work for us every year went with other employers who had their processing approved before ours was. The workers became concerned when our processing was delayed, so they took job offers from employers who were already approved. This obviously gave my competitors an unfair advantage in hiring.
- We were unable to hire H-2B workers this season because of the processing delays. We began the process late but followed all the DOL requirements to get the workers within a reasonable time. It is now months later and no workers yet.

- I was unable to hire my usual workers. I was forced to re-advertise, which means spending more money and delaying the starting time on my contracts. At this point, I still don't know if I am going to get any workers.

WITHOUT H-2B WORKERS, STRUGGLING TO FIND U.S. WORKERS

- We tried to hire for two positions, hoping to find U.S. workers with the same skills as our H-2B workers. Of 14 applicants for one of these positions, only four had relevant experience and only two showed up for interviews. One of those didn't accept the position because he wanted more money, and the other was illegal. Of the 21 applicants for the other position, six were qualified and we offered jobs to four of them. Not one accepted.

- We either do not get answers to our employment ads or the workers who do apply find the work too strenuous and/or beneath them, and they do not stay for more than a few weeks. It is difficult to know what your workforce will look like in a month or two.

- We have hired numerous individuals over the last few months, but all have left due to the intense labor required of them. Not only are there long hours, but also extreme weather conditions. Landscaping is not easy work, but our H-2B workers are willing and able to tolerate the hours and weather conditions.

- During the interview and hiring stage, we may hire three or four local workers, but come spring they either don't show up or leave after a few days. In the meantime, we lose slots for H-2B workers who are willing to work. The H-2B program is essential to the survival of this business.

QUESTION 2

Q. *Was your business disrupted as a result?*

A. *Of 80 respondents, 27 replied YES. A sampling of YES answers:*

EXTREME DISRUPTION

- We are months behind in receiving our workers. It has been a disaster. We have been piecing together schedules with part-timers, overtime for regular staff and using managers. Our business has suffered greatly. Staff members cannot complete their regular work because they are filling shifts that should have been filled by H-2B workers.

- We have been extremely shorthanded this spring. This has resulted in our crew having to work long hours and getting worn down just to accomplish the bare necessities.

- Business operations have been disrupted and continue to be disrupted as we operate without H-2B workers. We were supposed to have workers here on April 22nd and we will be lucky to have them by June 22nd. Regular staff members are exhausted covering all the extra shifts.

- We are extremely disrupted in all phases of our business. Our H-2B workers were a month late, and we haven't been able to hire locally. As a result, we were unable to staff our maintenance crews for the month of May and ran 1000 hours in overtime every week trying to make up for this. The same was true on our install crews. We are going to miss a June 1 deadline even though we have been working weekends.

- We are having to use a local temp agency and experienced a 200 percent turnover rate. Quality has declined.

- We are headed for imminent disaster. Our biggest week of the summer is coming up and we may not have adequate staff.

MODERATE DISRUPTION

- I do half of my business in the summer tourist season, when our community relies on H-2B workers. I have not been able to keep my business open as long as usual, and sales are suffering. My other employees are stressed and overworked.

- We had to have our permanent employees work much longer hours to try and compensate. We weren't able to find any other temporary people that were willing to work for a month or two.

- We are behind schedule on projects due to processing delays in getting our H-2B workers. It may not be realistic to think we can meet our revenue expectations and make up the work in the remaining months.

TURNING DOWN BUSINESS

- Since our business is directly tied to labor availability, we will have to decline business opportunities. This will require reducing the number of support staffers who are American workers.

- We have been unable to bid some jobs because we are not sure if we will have the manpower to complete them in a timely fashion.

- April, May and June are the busiest time of the year for a landscape company. This is when we need the most workers. We work incredibly long hours, and with no help, it has been impossible to service our customers. Our customers have entrusted their business to us and expect prompt, quality service.

- We had to turn down work and work the people we did hire 80 hours a week.

QUESTION 3

Q. *Did you lose revenue as a result? Do you expect to?*

A. *Of 80 respondents, 27 replied YES. A sampling of YES answers:*

- We have lost over $160,000 in annual revenue since the beginning of April when our workers were slated to arrive. Although we worked to replace it with new revenue, we are still behind and most likely will remain behind for the year. At our company, revenue is tied directly to a bonus that our staff will probably not be enjoying this year.

- We are covering missing H-2B shifts with overtime for existing workers. This has cost us $20,000 to date, and the cost continues to accrue. Managers are covering H-2B shifts and part-time students have been hired, but they cannot cover all the shift requirements. The costs are now in excess of $5000 per week.

- If we cannot meet the high demand during the Bluegrass Festival week, we will lose thousands of dollars in sales, and at least as important, we will have many disgruntled customers who cannot get the bakery products they expect.
- We did not bring in the revenue in February and March as expected, and we are still not where we should be.
- We lost revenue in excess of $100,000.
- We lost $50,000 to $60,000 due to the short landscape season.

QUESTION 4

Q. *How will the new wage regulations affect your business and your bottom line?*

A. *Of 80 respondents, 60 replied to this question. A sampling of their answers:*

NEW WAGES MAKE OLD CONTRACTS UNPROFITABLE

- My pricing for this season is based on the DOL wage set last year. Any wage increase will have a very negative impact on my bottom line. My prices are locked in for the year and my customers will not accept an increase.
- Our jobs have already been bid and annual contracts have been signed based on last year's wage rate. We cannot raise these prices – there is too much competition.
- Work for the upcoming season is bid anywhere from two months to two years in advance. Most of our work for the 2013 season was bid and contracted at last year's wage rate of $9.36. We are unable to go back to the customer and get a price increase.
- Customer contracts have already been bid, negotiated and signed for this year. An increase in wages will have a devastating effect on our business.
- All of our install contracts were negotiated last year and do not provide clauses for us to come back and ask for increases due to the cost of labor. Walking away from this work is not an option as it would seriously tarnish our reputation. The proposed wage increase will cause a 23 percent increase in our raw labor cost.
- This is devastating. We have millions of dollars in contracts that were bid using the previously approved labor wages. This increase is financially devastating.
- To change the wages in the middle of a season on companies that have planned and budgeted and followed the law to bring in a legal workforce is criminal.

RIPPLE EFFECTS

- To pay these wages I will have to raise prices substantially, especially as in fairness I will need to raise wages of year-round workers as well. I would like to pay higher wages, but I must also charge competitive prices.
- We will have a lot of disgruntled higher paid employees whose pay will not reflect their achievements now that bottom-of-the-line employees will be making almost the same amount.

- We can't stay in business paying temporary H-2B workers more than what our permanent workers make. It would cause an uproar and would in turn affect the pay rate of permanent workers. A business cannot stay afloat when all funds are going toward payroll.

WILL CAUSE US TO FIRE AMERICANS

- If the new wages are left in place, we will not be able to afford to hire H-2B employees and since we cannot find Americans, we will have to reduce the number of clients we service. We will need to fire some American workers in other departments.

- This wage change will kill our profits, taking away our company's stability and ability to keep American workers employed. Without H-2B workers, we will have to cut clients, and that means cutting field staff, sales force and administrative staff as the work will not be here to support them.

- With this increase, our local guys are now asking for the same. We will have to terminate contracts and send H-2B employees who have worked with us for 15 years back home. Then we will have to start reducing overhead to match adjusted revenues. In the end, everyone loses.

- My new prevailing wage is $10.77 an hour – more than 95 percent what my full-time year-round employees make. I need a good summer to keep my grocery store open year-round and keep people employed year-round. I will have to cut some of my full-time year-round employees back in the winter because of the way the new wage rate is inflating my payroll.

OUT OF BUSINESS

- The new regulations could very likely put me out of business.

- Reforestation labor service providers operate on an extremely narrow profit margin of 6 percent to 8 percent in a good year. After 20 years of reforestation contracting, it appears that my business will be forced to close.

- It will cause me to cut back half of my workers and customers and in doing that I would have to close my landscape business.

- This company cannot pass the higher wage rates along. Now we have to determine how we do business, if we do business at all. I have considered closing the company.

- The new rates will mean higher wages, added workers comp and general liability. But forestry companies will not pay more for planting. When you have the same revenue and higher labor prices, you cannot make money. A lot of contractors will have to stop planting.

BETWEEN A ROCK AND A HARD PLACE

- The H-2B program is essential to the survival of this business. The new rules are too costly. The company cannot absorb such a massive wage increase.

- It's not possible to pay the wages required by the DOL and stay competitive, plus it is almost impossible to get able and willing workers for the agricultural sector in the USA.

- The new wage rule will make this program too expensive for the company and jeopardize our economic survival. It is very difficult to find local workers willing to accept seasonal positions.
- This wage regulation will make it impossible for us to use the H-2B program and continue to grow. Every year we struggle to find quality, drug-free employees to do physical entry-level jobs. We are looking year-round to hire for these positions and still cannot come close to filling our workforce needs.
- Long term, it will certainly make us reconsider using H-2B employees. But there is no great alternative for filling seasonal jobs. It is hard to find domestic employees who are motivated and reliable to work a seasonal position. We can't afford to hire any more full-time employees because we don't have enough work from November to February.
- We can't afford to use H-2B with the current wage requirements.
- We may have to discontinue the program and go back to hiring undocumented workers.

ABOUT THE SURVEY

ImmigrationWorks USA fielded a survey of H-2B employers during two weeks in late May and early June 2013. The survey consisted of four questions about a U.S. Department of Labor interim H-2B wage rule and its March 2013 decision to temporarily suspend processing of H-2B visa applications. Several trade associations representing H-2B employers forwarded the survey to their members, and a number of private enterprises that help companies navigate the application process sent it to clients. Responses were collected online and by fax and email.

ImmigrationWorks USA is a national federation of employers working to advance better immigration law. The network links major corporations, national trade associations and 25 state-based coalitions of small to medium-sized business owners concerned that the broken immigration system is holding back the nation's economic growth. Their shared aim: legislation that brings America's annual legal intake of foreign workers more realistically into line with the country's labor needs.

State	Old Wage	New Wage	Job Title	$ Change/hr	% Increase	Where in process? Workers in US/DHS/DOL
AK	$9.61	$12.38	Fish Slimmer	$2.77	28.82%	DOL
AK	$9.61	$12.38	Fish Slimmer	$2.77	28.8%	DOL
AL	$20.30	$21.20	Forest and Conservation Workers	$0.90	4.4%	DHS Approved
AR	$8.30	$10.71	Landscape Laborer	$2.41	29.0%	DHS Approved
AR	$11.76	$14.36	Groundskeeping	$2.60	22.1%	DOL
AR	$7.96	$11.02	Forestry	$3.06	38.4%	DOL
AR	$7.95	$11.14	Groundskeeping	$3.19	40.1%	DHS
AR	$10.50	$16.80	Forestry	$6.30	60.0%	DOL
AR	$7.96	$16.80	Forestry	$8.84	111.1%	DOL
CA	$8.79	$11.24	Housekeeper Aide 1	$2.45	27.9%	DHS Approved
CA	$7.94	$14.58	Forestry	$6.64	83.6%	DOL
CA (ALAMEDA)	$8.61	$10.62	Amusement & Recreation Attendant	$2.01	23.3%	DHS Approved
CA (CONTRA COSTA)	$8.61	$10.62	Amusement & Recreation Attendant	$2.01	23.3%	DHS Approved
CA (SAN MATEO)	$9.12	$11.62	Amusement & Recreation Attendant	$2.50	27.4%	DHS Approved
CO	$9.36	$12.90	Landscape Laborer	$3.54	37.8%	DHS Approved
CO	$9.36	$12.90	Landscape Laborer	$3.54	37.8%	DHS Approved
CO	$9.36	$12.90	Landscape Laborer	$3.54	37.8%	DOL
CO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
CO	$9.79	$13.84	Landscape	$4.05	41.4%	DOL
CO	$9.59	$13.71	Baker Helper	$4.12	43.0%	DOL
CO (BOULDER)	$8.34	$11.13	Amusement & Recreation Attendant	$2.79	33.5%	DHS Approved
CO (LARIMER)	$8.09	$10.23	Amusement & Recreation Attendant	$2.14	26.5%	DHS Approved
DE	$9.16	$12.63	Landscape Laborer	$3.47	37.9%	DHS Approved
FL	$8.11	$10.62	Landscape Laborer	$2.51	30.9%	DHS Approved
FL	$8.27	$10.91	Landscape Laborer	$2.64	31.9%	DHS Approved
FL	$9.24	$11.97	Landscape Laborer	$2.73	29.5%	DHS Approved
FL	$8.12	$10.87	Landscape Laborer	$2.75	33.9%	DHS Approved
FL (BROWARD)	$8.09	$11.01	Amusement & Recreation Attendant	$2.92	36.1%	DHS Approved
FL (FLAGLER)	$7.98	$11.60	Amusement & Recreation Attendant	$3.62	45.4%	DHS Approved
FL (MARTIN)	$8.08	$10.17	Amusement & Recreation Attendant	$2.09	25.9%	DHS Approved
FL (ST. LUCIE)	$8.08	$10.17	Amusement & Recreation Attendant	$2.09	25.9%	DHS Approved

GA	$11.96	$11.96	Forestry	$0.00	0.0%	DOL
GA	$9.53	$10.93	Groundskeeping	$1.40	14.7%	DOL
GA	$10.12	$11.69	Forest and Conservation Workers	$1.57	15.5%	DHS Approved
GA	$9.25	$12.62	Landscape Laborer	$3.37	36.4%	DHS Approved
GA	$10.88	$15.00	Landscaping and Groundskeeping Workers	$4.12	37.9%	DHS Approved
GA	$7.95	$12.16	Landscaping and Groundskeeping Workers	$4.21	53.0%	DHS Approved
ID	$13.31	$13.46	Forestry	$0.15	1.1%	DOL
ID	$9.60	$11.92	Production Workers	$2.32	24.2%	USCIS
ID	$9.37	$13.46	Forestry	$4.09	43.6%	DOL
ID	$9.37	$13.46	Forestry	$4.09	43.6%	DHS
ID	$11.05	$16.31	Stone Splitter	$5.26	47.6%	DHS Approved
ID	$9.37	$15.43	Forestry	$6.06	64.7%	DOL
IN	$9.01	$11.99	Landscape Laborer	$2.98	33.1%	DHS Approved
IN	$9.01	$11.99	Landscape Laborer	$2.98	33.1%	DHS Approved
IN	$8.04	$11.10	Landscape Laborer	$3.06	38.1%	DHS Approved
KA	$8.84	$12.09	Landscape Laborer	$3.25	36.8%	DHS Approved
KS	$13.72	$12.09	Landscape	-$1.63	-11.9%	DHS
KY	$8.18	$10.27	Landscape Laborer	$2.09	25.6%	DHS Approved
KY	$8.43	$12.02	Landscape Laborer	$3.59	42.6%	DHS Approved
KY	$8.32	$12.23	Landscape Laborer	$3.91	47.0%	DHS Approved
KY (BELL)	$9.15	$11.30	Amusement & Recreation Attendant	$2.15	23.5%	DHS Approved
KY (BREATHITT)	$9.15	$11.30	Amusement & Recreation Attendant	$2.15	23.5%	DHS Approved
KY (JOHNSON)	$9.15	$11.30	Amusement & Recreation Attendant	$2.15	23.5%	DHS Approved
KY (KNOTT)	$9.15	$11.30	Amusement & Recreation Attendant	$2.15	23.5%	DHS Approved
KY (LAWRENCE)	$9.15	$11.30	Amusement & Recreation Attendant	$2.15	23.5%	DHS Approved
KY (MORGAN)	$9.15	$11.30	Amusement & Recreation Attendant	$2.15	23.5%	DHS Approved
KY (PERRY)	$9.15	$11.30	Amusement & Recreation Attendant	$2.15	23.5%	DHS Approved
KY (PIKE)	$9.15	$11.30	Amusement & Recreation Attendant	$2.15	23.5%	DHS Approved
LA	$8.19	$10.18	Landscape Laborer	$1.99	24.3%	DHS Approved
LA	$8.19	$10.18	Landscape Laborer	$1.99	24.3%	DHS Approved
LA	$8.19	$10.35	Landscape & Groundskeeper	$2.16	26.4%	DHS
LA	$8.11	$10.62	Landscape Laborer	$2.51	30.9%	DHS Approved
LA	$8.11	$10.62	Landscape Laborer	$2.51	30.9%	DHS Approved
LA	$8.09	$10.65	Landscape Laborer	$2.56	31.6%	DHS Approved
LA	$8.28	$10.94	Landscape Laborer	$2.66	32.1%	DHS Approved

LA	$8.28	$10.94	Landscape Laborer	$2.66	32.1%	DHS Approved
LA	$8.28	$10.94	Landscape Laborer	$2.66	32.1%	DHS Approved
LA	$8.28	$10.94	Landscape Laborer	$2.66	32.1%	DHS Approved
LA	$12.05	$14.75	Tree Trimmer	$2.70	22.4%	DHS Approved
LA	$8.00	$11.40	Landscape Laborer	$3.40	42.5%	DHS Approved
LA	$8.00	$11.40	Landscape Laborer	$3.40	42.5%	DHS Approved
LA	$8.00	$11.40	Landscape Laborer	$3.40	42.5%	DHS Approved
LA	$8.00	$11.40	Landscape Laborer	$3.40	42.5%	DHS Approved
LA	$8.00	$11.40	Landscape Laborer	$3.40	42.5%	DHS Approved
LA	$8.83	$12.55	Helper Maintenance Tech	$3.72	42.1%	DHS Approved
LA	$9.09	$12.81	Helper-Production Worker	$3.72	40.9%	DHS Approved
LA	$8.38	$12.12	Landscape Laborer	$3.74	44.6%	DHS Approved
LA	$8.38	$12.12	Landscape Laborer	$3.74	44.6%	DHS Approved
LA	$8.71	$12.91	Helper-Production Worker	$4.20	48.2%	DHS Approved
MA	$10.11	$11.59	cook	$1.48	14.6%	workers at embassy
MA	$11.97	$13.95	Cook	$1.98	16.5%	Almost in US
MA	$8.82	$11.00	short order cook/counter attendant	$2.18	24.7%	workers in US
MA	$8.63	$11.59	short order cook	$2.96	34.3%	DHS
MA	$8.63	$11.59	short order cook	$2.96	34.3%	workers in US
MA	$9.99	$13.01	Server	$3.02	30.2%	Workers almost in US
MA	$9.91	$13.00	Housecleaner	$3.09	31.2%	Workers in US
MA	$9.79	$12.98	Landscape Laborer	$3.19	32.6%	DHS Approved
MA	$11.94	$15.32	rental clerk	$3.38	28.3%	Workers in US
MA	$9.42	$12.82	stock clear	$3.39	36.0%	Workers at embassy
MA	$12.76	$18.02	drivers	$5.26	41.2%	Workers at embassy
MA (BERKSHIRE)	$9.21	$11.65	Amusement & Recreation Attendant	$2.44	26.5%	DHS Approved
MA (BRISTOL)	$8.49	$10.55	Amusement & Recreation Attendant	$2.06	24.3%	DHS Approved
MA (BRISTOL)	$8.71	$11.28	Amusement & Recreation Attendant	$2.57	29.5%	DHS Approved
MA (MIDDLESEX)	$8.45	$10.45	Amusement & Recreation Attendant	$2.00	23.7%	DHS Approved
MA (MIDDLESEX)	$8.71	$11.28	Amusement & Recreation Attendant	$2.57	29.5%	DHS Approved
MA (NORFOLK)	$8.71	$11.28	Amusement & Recreation Attendant	$2.57	29.5%	DHS Approved
MA (SUFFOLK)	$8.71	$11.28	Amusement & Recreation Attendant	$2.57	29.5%	DHS Approved
MD	$8.06	$9.78	Recreation Attendant	$1.72	21.3%	DHS
MD	$9.49	$12.23	Landscape Laborer	$2.74	28.9%	DHS Approved
MD	$9.49	$12.23	Landscape Laborer	$2.74	28.9%	DHS Approved

MD	$9.01	$12.20	Landscape Laborer	$3.19	35.4%	DHS Approved
MD	$9.01	$12.20	Landscape Laborer	$3.19	35.4%	DHS Approved
MD	$9.01	$12.20	Landscape Laborer	$3.19	35.4%	DHS Approved
MD	$9.01	$12.20	Landscape Laborer	$3.19	35.4%	DHS Approved
MD	$9.01	$12.20	Landscape Laborer	$3.19	35.4%	DHS Approved
MD	$9.01	$12.20	Landscape Laborers	$3.19	35.4%	DHS Approved
MD	$9.16	$12.63	Landscape Laborer	$3.47	37.9%	DHS Approved
MD	$9.16	$12.63	Landscape Laborer	$3.47	37.9%	DHS Approved
MD	$9.16	$12.63	Landscape Laborer	$3.47	37.9%	DHS Approved
ME	$12.41	$13.07	Forestry	$0.66	5.3%	DHS
ME	$8.53	$13.07	Forestry	$4.54	53.2%	DOL
MI	$9.16	$12.69	Landscape Laborer	$3.53	38.5%	DHS Approved
MI	$9.59	$13.55	Landscape Laborer	$3.96	41.3%	DHS Approved
MI	$9.59	$13.55	Landscape Laborer	$3.96	41.3%	DHS Approved
MI	$9.59	$13.55	Landscape Laborer	$3.96	41.3%	DHS Approved
MI	$11.40	$16.35	Forestry	$4.95	43.4%	DOL
MN	$15.43	$18.11	Farm Equipment Mechanics and Technicians	$2.68	17.37%	Workers in US
MN	$8.73	$11.59	Groundskeeping	$2.86	32.8%	DOL
MN	$11.65	$15.82	Forestry	$4.17	35.8%	DOL
MN	$9.63	$14.20	Landscape Laborer	$4.57	47.5%	DHS Approved
MO	$8.10	$10.44	Landscape Laborer	$2.34	28.9%	DHS Approved
MO	$8.84	$12.09	Landscape Laborer	$3.25	36.8%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved

MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.41	Landscape Laborer	$3.63	41.3%	DHS Approved
MO	$8.78	$12.55	Landscape	$3.77	42.9%	DHS
MO	$10.48	$16.85	Tree Trimmer	$6.37	60.8%	DHS Approved
MS	$14.51	$17.11	Forest and Conservation Workers	$2.60	17.9%	DHS Approved
MS	$14.71	$17.47	Forest and Conservation Workers	$2.76	18.8%	DHS Approved
MS	$14.71	$17.47	Forest and Conservation Workers	$2.76	18.8%	DHS Approved
MS	$14.35	$17.21	Forest and Conservation Workers	$2.86	19.9%	DHS Approved
MS	$12.96	$17.21	Forestry	$4.25	32.8%	USDOL CNPC
MS	$10.50	$15.52	Forestry	$5.02	47.8%	USDOL FLC
MS	$11.85	$17.11	Forestry	$5.26	44.4%	DHS
ND	$9.00	$9.00	Crew Member	$0.00	0.0%	Workers almost in US
ND	$8.11	$9.00	Caterer	$0.89	11.0%	Workers in US
ND	$8.11	$9.00	Caterer	$0.89	11.0%	Workers in US
ND	$8.08	$9.29	Housekeeper	$1.21	15.0%	Workers in US
ND	$8.08	$9.29	Housekeeper	$1.21	15.0%	Workers in US
ND	$8.81	$11.60	Cooks	$2.79	31.7%	Workers in US
ND	$8.81	$11.60	Cooks	$2.79	31.7%	Workers in US
ND	$8.83	$12.20	Landscape	$3.37	38.2%	USCIS
NE	$11.80	$14.42	Forestry	$2.62	22.2%	USCIS
NE	$10.64	$15.94	Grain Handler/Truck Driver	$5.30	49.81%	DOL
NE	$10.64	$15.94	Grain Handler/Truck Driver	$5.30	49.81%	DOL
NH (SULLIVAN)	$8.26	$10.32	Amusement & Recreation Attendant	$2.06	24.9%	DHS Approved
NJ	$9.40	$12.78	Landscape Laborer	$3.38	36.0%	DHS Approved
NJ	$9.40	$12.78	Landscape Laborer	$3.38	36.0%	DHS Approved
NJ	$9.40	$12.78	Landscape Laborer	$3.38	36.0%	DHS Approved
NJ	$9.40	$12.78	Landscape Laborer	$3.38	36.0%	DHS Approved
NJ	$8.65	$12.30	Landscape Laborer	$3.65	42.2%	DHS Approved
NJ	$8.56	$12.45	Landscape Laborer	$3.89	45.4%	DHS Approved

NJ	$8.56	$12.45	Landscape Laborer	$3.89	45.4%	DHS Approved
NJ	$8.56	$12.45	Landscape Laborer	$3.89	45.4%	DHS Approved
NJ	$8.08	$12.77	Food Preparation	$4.69	58.0%	DHS
NJ (BERGEN)	$8.08	$10.32	Amusement & Recreation Attendant	$2.24	27.7%	DHS Approved
NY	$10.08	$11.80	Landscape Laborers	$1.72	17.1%	DHS Approved
NY	$9.69	$12.38	Landscape Laborer	$2.69	27.8%	DHS Approved
NY	$8.95	$13.69	Landscape Laborer	$4.74	53.0%	DHS Approved
NY	$10.36	$15.56	Landscape Laborer	$5.20	50.2%	DHS Approved
NY (DUTCHESS)	$8.17	$11.17	Amusement & Recreation Attendant	$3.00	36.7%	DHS Approved
NY (NASSAU)	$8.03	$10.20	Amusement & Recreation Attendant	$2.17	27.0%	DHS Approved
NY (PUTNAM)	$8.08	$10.32	Amusement & Recreation Attendant	$2.24	27.7%	DHS Approved
NY (SUFFOLK)	$8.03	$10.20	Amusement & Recreation Attendant	$2.17	27.0%	DHS Approved
NY (WESTCHESTER)	$8.08	$10.32	Amusement & Recreation Attendant	$2.24	27.7%	DHS Approved
OH	$8.45	$11.36	Landscape Laborer	$2.91	34.4%	DHS Approved
OH	$8.45	$11.81	Landscape Laborer	$3.36	39.8%	DHS Approved
OH	$8.35	$11.77	Landscape Laborer	$3.42	41.0%	DHS Approved
OH	$8.43	$12.02	Landscape Laborer	$3.59	42.6%	DHS Approved
OH	$8.43	$12.02	Landscape Laborer	$3.59	42.6%	DHS Approved
OH (CUYAHOGA)	$8.34	$10.64	Amusement & Recreation Attendant	$2.30	27.6%	DHS Approved
OH (GEAUGA)	$8.34	$10.64	Amusement & Recreation Attendant	$2.30	27.6%	DHS Approved
OH (GREENE)	$8.35	$10.40	Amusement & Recreation Attendant	$2.05	24.6%	DHS Approved
OH (HIGHLAND)	$8.36	$10.55	Amusement & Recreation Attendant	$2.19	26.2%	DHS Approved
OH (HOCKING)	$8.36	$10.55	Amusement & Recreation Attendant	$2.19	26.2%	DHS Approved
OH (JACKSON)	$8.36	$10.55	Amusement & Recreation Attendant	$2.19	26.2%	DHS Approved
OH (LAKE)	$8.34	$10.64	Amusement & Recreation Attendant	$2.30	27.6%	DHS Approved
OH (LORAIN)	$8.34	$10.64	Amusement & Recreation Attendant	$2.30	27.6%	DHS Approved
OH (MEDINA)	$8.34	$10.64	Amusement & Recreation Attendant	$2.30	27.6%	DHS Approved
OH (MONTGOMERY)	$8.35	$10.40	Amusement & Recreation Attendant	$2.05	24.6%	DHS Approved
OH (SCIOTO)	$8.36	$10.55	Amusement & Recreation Attendant	$2.19	26.2%	DHS Approved
OK	$8.04	$10.50	Landscape Laborer	$2.46	30.6%	DHS Approved
OK	$8.05	$10.94	Landscape Laborer	$2.89	35.9%	DHS Approved
OR	$14.69	$16.18	Forestry	$1.49	10.1%	DOL
OR	$14.69	$16.18	Forestry	$1.49	10.1%	FLC
OR	$11.55	$15.38	Forestry	$3.83	33.2%	USDOL CNPC
PA	$8.15	$9.00	Wait staff	$0.85	10.4%	Department of Labor

PA	$8.15	$9.00	Wait staff	$0.85	10.4%	Department of Labor
PA	$8.16	$9.71	Recreation Attendant	$1.55	19.0%	DHS
PA	$8.70	$10.79	Cooks	$2.09	24.0%	DOL
PA	$8.70	$10.79	Cooks	$2.09	24.0%	DOL
PA	$8.10	$11.35	Landscape Laborer	$3.25	40.1%	DHS Approved
PA	$8.10	$11.35	Landscape Laborer	$3.25	40.1%	DHS Approved
PA	$9.36	$12.88	Landscape Laborer	$3.52	37.6%	DHS Approved
PA	$9.56	$13.21	Landscape Laborer	$3.65	38.2%	DHS Approved
PA	$9.56	$13.21	Landscape Laborer	$3.65	38.2%	DOL
PA	$9.93	$13.79	Landscape Laborer	$3.86	38.9%	DHS Approved
PA	$8.50	$12.46	Landscape Laborer	$3.96	46.6%	DHS Approved
PA	$8.50	$12.46	Landscape Laborer	$3.96	46.6%	DHS Approved
PA	$8.50	$12.46	Landscape Laborer	$3.96	46.6%	DHS Approved
PA	$8.50	$12.46	Landscape Laborer	$3.96	46.6%	DHS Approved
PA	$8.50	$12.46	Landscape Laborer	$3.96	46.6%	DHS Approved
PA	$8.50	$12.46	Landscape Laborer	$3.96	46.6%	DHS Approved
PA	$9.40	$13.43	Groundskeeper	$4.03	42.9%	DHS Approved
PA	$9.22	$13.42	Landscape Laborer	$4.20	45.6%	DHS Approved
PA	$9.22	$13.43	Landscape Laborer	$4.21	45.7%	DHS Approved
SC	$9.48	$11.50	Forestry	$2.02	21.3%	DOL
SC	$10.37	$12.44	Landscaping and Groundskeeping Workers	$2.07	20.0%	DHS Approved
SC	$10.68	$13.12	Landscaping and Groundskeeping Workers	$2.44	22.8%	DHS Approved
SC	$10.68	$13.38	Landscaping and Groundskeeping Workers	$2.70	25.3%	DHS Approved
SC	$10.61	$14.02	Landscaping and Groundskeeping Workers	$3.41	32.1%	DHS Approved
SC	$10.61	$14.02	Landscaping and Groundskeeping Workers	$3.41	32.1%	DHS Approved
SD	$8.19	$8.41	Kitchen Helper	$0.22	2.7%	Workers in US
SD	$8.19	$8.41	Kitchen Helper	$0.22	2.7%	Workers in US
SD	$8.41	$8.72	Housecleaner	$0.31	3.7%	Workers almost in US
SD	$8.51	$8.95	Housecleaner	$0.44	5.2%	DHS
SD	$10.04	$12.18	Concrete Laborer	$2.14	21.31%	DOL
SD	$8.11	$10.77	Store Clerk	$2.66	32.8%	DOL
SD	$8.11	$10.77	Store Clerk	$2.66	32.8%	DOL
SD	$12.09	$17.13	Structural Iron and Steel Workers	$5.04	41.69%	DOL
SD	$12.09	$17.13	Structural Iron and Steel Workers	$5.04	41.7%	DOL
TN	$10.58	$11.27	Forest and Conservation Workers	$0.69	6.5%	DHS Approved

TN	$10.17	$11.11	Forest and Conservation Workers	$0.94	9.2%	DHS Approved
TN	$10.17	$11.11	Forest and Conservation Workers	$0.94	9.2%	DHS Approved
TN	$10.17	$11.11	Forest and Conservation Workers	$0.94	9.2%	DHS Approved
TN	$10.65	$11.64	Forest and Conservation Workers	$0.99	9.3%	DHS Approved
TN	$10.65	$11.78	Forest and Conservation Workers	$1.13	10.6%	DHS Approved
TN	$10.81	$11.98	Forest and Conservation Workers	$1.17	10.8%	DHS Approved
TN	$10.81	$11.98	Forest and Conservation Workers	$1.17	10.8%	DHS Approved
TN	$10.98	$12.19	Forest and Conservation Workers	$1.21	11.0%	DHS Approved
TN	$10.94	$12.15	Forest and Conservation Workers	$1.21	11.1%	DHS Approved
TN	$10.69	$11.93	Forest and Conservation Workers	$1.24	11.6%	DHS Approved
TN	$10.69	$11.93	Forest and Conservation Workers	$1.24	11.6%	DHS Approved
TN	$10.45	$14.12	Helper Carpenter	$3.67	35.1%	DHS Approved
TN (GIBSON)	$7.98	$11.77	Amusement & Recreation Attendant	$3.79	47.5%	DHS Approved
TN (HAMBLEN)	$8.11	$10.45	Amusement & Recreation Attendant	$2.34	28.9%	DHS Approved
TN (HENRY)	$7.98	$11.77	Amusement & Recreation Attendant	$3.79	47.5%	DHS Approved
TN (HOUSTON)	$7.98	$11.77	Amusement & Recreation Attendant	$3.79	47.5%	DHS Approved
TX	$9.07	$8.74	Housecleaner	-$0.33	-3.6%	Workers almost in US
TX	$8.48	$8.37	Server	-$0.11	-1.3%	Workers in US
TX	$8.71	$9.28	Cook	$0.57	6.5%	Workers almost in US
TX	$8.45	$11.03	Landscape Laborer	$2.58	30.5%	DHS Approved
TX	$8.45	$11.03	Landscape Laborer	$2.58	30.5%	DHS Approved
TX	$8.12	$10.86	Landscape Laborer	$2.74	33.7%	DHS Approved
TX	$8.12	$10.86	Landscape Laborer	$2.74	33.7%	DHS Approved
TX	$8.12	$10.86	Landscape Laborer	$2.74	33.7%	DHS Approved
TX	$8.12	$10.86	Landscape Laborer	$2.74	33.7%	DHS Approved
TX	$8.12	$10.86	Landscape Laborer	$2.74	33.7%	DHS Approved
TX	$8.12	$10.86	Tree Trimmers and Pruners	$2.74	33.7%	DHS Approved
TX	$9.72	$12.48	Construction Worker	$2.76	28.4%	DHS Approved
TX	$8.09	$11.15	Tree Trimmers and Pruners	$3.06	37.8%	DHS Approved
TX	$8.20	$11.36	Landscape Laborer	$3.16	38.5%	DHS Approved
TX	$10.39	$14.53	Deck Hand/Headers	$4.14	39.8%	DHS Approved
TX	$14.58	$19.75	Refractory Worker	$5.17	35.5%	DHS Approved
TX (POTTER)	$8.22	$10.39	Amusement & Recreation Attendant	$2.17	26.4%	DHS Approved
UT	$9.23	$13.63	Landscape Laborer	$4.40	47.7%	DHS Approved
UT	$8.53	$13.07	Forestry	$4.54	53.2%	DHS

UT	$8.53	$13.07	Forestry	$4.54	53.2%	DOL
VA	$8.99	$12.72	Landscape Laborer	$3.73	41.5%	DHS Approved
VA	$8.99	$12.72	Landscape Laborer	$3.73	41.5%	DHS Approved
VA	$9.34	$16.19	Forestry	$6.85	73.3%	DOL
WV	$8.24	$9.88	Landscape Laborer	$1.64	19.9%	DHS Approved
WV	$8.06	$9.78	Recreation Attendant	$1.72	21.3%	DOL
WV (MINGO)	$7.97	$10.82	Amusement & Recreation Attendant	$2.85	35.8%	DHS Approved

DATA SUMMARY	Old Wage	New Wage	$ Change/hr	% Increase
HIGHEST INITIAL WAGE	**$20.30**	**$21.20**	**$0.90**	**4.43%**
LOWEST INITIAL WAGE	**$7.94**	**$14.58**	**$6.64**	**83.63%**
AVERAGE WAGE INCREASE	**$9.29**	**$12.23**	**$2.94**	**32.3%**
GREATEST PERCENT INCREASE	**$7.96**	**$16.80**	**$8.84**	**111.1%**
LOWEST PERCENT INCREASE	$9.07	$8.74	-$0.33	-3.6%

Joint Written Testimony of

Tom Delaney
Director of Government Affairs

Professional Landcare Network (PLANET)

&

Craig Regelbrugge
Vice President for Government Relations and Research

American Nursery and Landscape Association (ANLA)

Before the

Subcommittee on Economic Growth, Tax and Capital Access

Small Business Committee

U.S. House of Representatives

June 12, 2013

Chairman Rice, Ranking Member Chu and members of the Subcommittee on Economic Growth, Tax and Capital Access, thank you for the opportunity to provide comments on the H-2B program, which is crucial to the landscape industry. Nursery and landscape professionals play a vital role in establishing and maintaining healthy and livable communities. Properly designed and maintained landscapes around homes, offices, hotels, restaurants, golf courses, airports and other commercial and residential properties enhance property values and deliver benefits such as reduced heating and cooling costs, reduced storm water runoff, and better air quality . Industry professionals are also engaged in interiorscaping, providing lush plants and pleasant surroundings inside of buildings.

The Professional Landcare Network (PLANET) is the national trade association representing more than 100,000 landscape industry professionals, who create and maintain healthy, green living spaces for communities across America. PLANET members are committed to the highest standards in industry education, best practices and business professionalism. Many of PLANET's professionals have attained the status of becoming Landscape Industry Certified, achieving the greatest level of industry expertise and knowledge.

Founded in 1876, the American Nursery & Landscape Association (ANLA) is the national trade association of the vertically-integrated nursery and landscape, or "green" industry. ANLA represents over 14,000 affiliates that grow nursery and greenhouse plants, sell lawn and garden products, design, install, and care for landscapes, and sell supplies to the industry. Typical members include growers, garden center retailers, horticultural distributors, landscape professionals, and suppliers to the industry. A number of firms are engaged in more than one of these operations.

The H-2B program provides a vital and legal source of seasonal labor for the nursery and landscape industries and other industries that cannot fill their labor needs with American citizens. Employers who turn to the H-2B program do so as a last resort. The landscape industry is one of the major users of this program because the industry requires numerous workers during the busy spring and summer seasons. Employers are unable to attract significant numbers of American workers for these labor-intensive, short-term, seasonal jobs. Because of the seasonal nature of the industry, traditional sources of manual labor are not available, and the heavy machinery used in the business prohibits companies from hiring high school students. Before they even apply for H-2B workers, companies go through an intensive recruitment period in an attempt to hire Americans and must prove that they cannot find Americans to take the jobs. They gladly hire American workers when they can, but routinely cannot find and hire enough domestic workers.

The landscape industry is a large contributor to the U.S. economy. The industry is composed mostly of small businesses, the engine that drives the U.S. economy. According to the *Economic Impacts of the Green Industry in the United States* publication by the University of Florida and Texas A&M University, the economic impacts for the U.S. Green Industry in 2007 were estimated at $175.26 billion (Bn) in output, 1,949,635 jobs, $107.16 Bn in value added, and $53.16 Bn in labor income (these

values are expressed in 2007 dollars). The largest individual sector in terms of employment and value-added impacts was landscaping services (1,075,343 jobs, $50.3 Bn). When the landscape industry cannot get the H-2B workers it needs, the economic losses have a multiplier effect to suppliers and other jobs throughout the economy.

According to 2007 estimates, approximately 2,800 landscape companies participate in the H-2B program and spend about $77.28 million annually just on landscape equipment. In addition, they spend approximately $115.36 million annually on fleet vehicles, $2.8 million on payroll services, $6 million annually on computers, $4.3 million annually on tires, and $13.6 million on cell phones and wireless radios. Without the H-2B workers, not only will these landscape companies suffer, supplier companies will feel the economic downturn as well.

According to the U.S. Department of Labor Bureau of Labor Statistics, grounds maintenance workers held about 1.3 million jobs in 2010. Employment of grounds maintenance workers is expected to grow about 20 percent between 2010 and 2020. Grounds maintenance workers will have among the largest numbers of new jobs (around 254,600) arise over this 10-year period. There will be an increased need to fill these jobs. The H-2B program is the only legal way that employers can fill these seasonal jobs.

Unfortunately, a new interim final rule issued jointly by the Departments of Labor (DOL) and Homeland Security (DHS) is threatening the economic survival of many landscape companies that use the program. While we understand that the new regulation was issued in response to a court order issued by a Pennsylvania Federal District Court judge, we are dismayed that the bulk of the interim final rule mirrors a Jan. 19, 2011 H-2B wage methodology rule (RIN 1205-AB61) crafted by DOL. Under the law, the DOL is prohibited through Sept. 30, 2013, from implementing its burdensome 2011 wage rule. Like the 2011 rule, the new wage rule establishes wage rates for H-2B workers at the mean of Occupational Employment Statistics (OES) wage survey data for occupations.

Because of the substantial economic burden on seasonal businesses, the DOL's 2011 wage rule was initially blocked by a temporary restraining order issued by the United States District Court for The Northern District of Florida, Pensacola Division. Congress blocked the rule in Public Law 112-74 and again in a subsequent law. A conference report accompanying the legislation included the following language:

> Section 546 prohibits any funds from being used to implement, administer, or enforce the 'Wage Methodology for the Temporary Nonagricultural Employment H–2B Program'' prior to January 1, 2012, to allow time for Congress to address this rulemaking. In making prevailing wage determinations for the H–2B nonimmigrant visa program for employment prior to January 1, 2012, the conferees direct the Secretary of Labor to continue to apply the rule titled ''Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes'' published by the Department of Labor on December 19, 2008 (73 Fed. Reg. 78020 et seq.).

The interim rule is substantially similar to the 2011 rule and, like the 2011 rule, will have dire economic consequences for the nursery and landscape industry. DOL and DHS estimate the "interim final rule's change in the method of determining wages will result in, at most, a $2.12 increase in the weighted average hourly wage for H-2B workers and similarly employed U.S. workers hired in response to the recruitment required as part of the H-2B application." While a $2.12 per hour increase would be harmful to employers who had no way to plan for this unexpected and sudden wage increase, the actual cost to employers appears to be even greater.

A nationwide survey of landscape companies that have received prevailing wage determinations for their workers shows that employers are facing an average wage increase of $3.27 per hour. According to the sample of 136 new prevailing wage determinations, landscape employers are facing an average increase of 36.9 percent in H-2B wage rates. The attached chart shows the statistical data collected on new wage rates by state.

As you can see from the attached chart, landscape companies are facing tremendous increases in labor costs, not only for their H-2B workers, but also for their more experienced American workers whose pay should reflect the greater skill or experience level and be proportional to the hourly wage earned by lesser-skilled workers.

Employers had no way of knowing such massive labor costs would arise so suddenly and could not have possibly been able to budget for such an abrupt change. In addition, most landscape businesses operate on long-term contracts and will not be able to pass along the unexpected and higher labor costs to their customers. Just last week, many landscape companies began receiving letters from DOL advising them of the higher wages that they need to pay their workers upon receipt of the letter. The economic losses are further compounded for companies that were impacted by the suspension of H-2B processing from March 22 to April 24 and did not have their workers for the start of the busy spring season.

Because of the disastrous consequences of the interim final rule, ANLA and PLANET request that the DHS and DOL immediately rescind the rule and replace it with a more equitable formula for calculating H-2B prevailing wages. The most appropriate wage methodology is the one included in the December 19, 2008 DOL H-2B rule titled "Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers), and Other Technical Changes."

In addition to this regulation, the DOL's "Employment and Training Administration, Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs, Revised May 9, 2005" is also a reasonable approach to determining wages that achieves the Departments' goals of ensuring that H-2B wages do not adversely affect American workers and that H-2B workers are fairly compensated.

A third approach to setting wages in a fair manner for both employers and the seasonal employees would be to rely on the wage methodology in the legislative text of S.744, the "Border Security, Economic Opportunity, and Immigration Modernization Act," which is currently being debated in the United States Senate.

Any of these three approaches to H-2B wages will ensure that workers are well compensated and that seasonal companies will be able to continue to stay in business. We hope Congress will joining us in urging the Departments to immediately rescind the interim final rule and immediately begin processing H-2B applications using one of the above approaches. Landscape companies simply cannot survive the new wage rates they are facing under the interim final rule.

DOL promulgated another harmful rule on March 18, 2011 that would make the program even more costly and complicated. The rule was so egregious that a federal court in Florida issued a temporary injunction against it.

It is clear that the intent of these rules is to ensure that the H-2B program is made unusable, threatening America's seasonal businesses and their full-time employees. In these challenging economic times, the U.S. economy can ill afford the severe economic impacts associated with the loss of American jobs and commerce that are supported by the nursery and landscape industries and other seasonal industries that use the H-2B program.

DOL has suggested that these rules are necessary because of employers who abuse the program. However, there is no evidence to support the allegation of widespread program abuse. Many landscape contractors have been using the program for more than five years. They are good employers who use a lawful program and treat their workers well, as is evidenced by the fact that the same H-2B employees return year after year. As companies grow, these workers often refer relatives and friends to the employer. For fiscal year 2007 through fiscal year 2012 there were 377,256 visas issued by the State Department under the H-2B program; yet the allegations made about systemic program abuse relate to only a few specific employers. There will always be a few bad individuals who abuse federal programs. They should be fully prosecuted under the law. ANLA and PLANET support the strong enforcement of program abuses.

Most landscape industry businesses assist their H-2B workers with finding places to live, transportation to work, and other living necessities for up to 10 months. Many rent or own apartments for their employees, provide free English language classes, and a means of transportation to stores, churches, and more. Our industry uses these workers year after year, so they want them to be successful in their jobs and have positive experiences. After their first year of the job, returning workers often refer friends and relatives to the employer because of their positive experiences and the great opportunity that the H-2B program provides.

Further, the H-2B program is expensive. Employers only turn to the program after exhausting efforts to find and retain American workers. An H-2B employer has to pay a

$325.00 application fee, a $150.00 anti-fraud fee, and a $1,225 premium processing fee (all do so they are not put at the end of the line of applications) to U.S. Citizenship and Immigration Service. The cost for newspaper advertising for local workers can range from around $600.00 to $3000 depending on the local media market. The visa fee paid by many employers is $190 per worker. Many employers also pay transportation and housing costs for their workers. Because of the paperwork involved and the need to find workers, the large majority of employers hire a company to help them with processing. This fee can range from $3,000 to $5,000. Further, these employers are paying both the American and H-2B workers prevailing wages, which are often well above the minimum wage. While incurring these expenses, H-2B employers are sometimes competing against companies that do not pay these fees and wages because they do not share their commitment to retaining a legal workforce.

In conclusion, the H-2B program is a lifetime for small seasonal businesses that cannot find local workers during their peak seasons. We are grateful to the committee for holding this hearing and for its recognition of the importance of the H-2B program to seasonal businesses. As a follow up to this hearing, we hope the committee will encourage the Departments of Labor and Homeland Security to rescind its interim final H-2B wage methodology rule and replace it with a more reasonable approach to setting wages that will allow small nursery and landscape companies to continue to operate and service their customers and community.

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June 7, 2013

The Honorable Tom Rice, Subcommittee Chairman
The Honorable Judy Chu, Subcommittee Ranking Member
The Subcommittee for Economic Growth, Tax and Capital Access of the Committee on Small Business
Washington, DC

RE: *The Seasonal Employment Needs of Small Tourism Businesses and H-2B Visa Policy*

Dear Chairman Rice and Ranking Member Chu,

On April 24th, we, like many other Colorado employers and other users of the H-2B program across the country, received unthinkable news. Based on a recent court ruling, the Department of Labor (DOL) was instructed to change the wage methodology used in calculating the prevailing wage. The prevailing wage varies by city and location and is the minimum wage employers are required to pay their H-2B workers and is set well in advance of employers bringing these seasonal employees from their home country to work in the U.S. This allows the employer time to negotiate contracts with customers and to determine the company's wage structure based on the prevailing wage determined by the DOL. **The DOL, however, saw this court ruling as an opportunity to put in place a revised prevailing wage calculation methodology that is substantially the same one that is currently blocked for implementation by Congress.**

Not only does the new methodology result in unreasonable increases in the minimum wage that employers must pay, it also all but ensures the extinction of the H-2B program and, along with it, many of the companies that rely on it to provide a reliable, legal, seasonal, and trained workforce for their businesses. We have used this program effectively for over 15 years, not because it is easy or cheap, but because it works well. Pundits will argue that affected businesses can easily hire American replacement workers if this new wage is too high and they are unable to keep their H-2B workforce. I can tell you that these imaginary American workers are not available now, nor were they available at the height of the recession when unemployment was greatest. Our 85 H-2B positions are seasonal, unskilled labor positions. It is hard, physical work in all kinds of outdoor weather. This is not a job that even a small minority of American workers want, despite advertising for open positions and offering wages in excess of $10/hourly to start.

Keesen Landscape Management received its prevailing wage determination from DOL last September for the 2013 season. It was set at $9.36/hour. That means that this, in essence, is the floor wage for the company. The wage is currently 29% greater than the current federal minimum wage of $7.25. The impact of DOL's new calculation methodology on our company means that the new prevailing wage will likely be $12.90 per hour based on information on the OES website. This is a 38% wage increase over our current prevailing wage, and 74% greater than the federal minimum wage. There is no phase-in period, nor is there any exemption for employers that already have H-2B employees here for the current season at their original prevailing wage. It is also currently unclear as to whether we would be legally required to pay back-wages to affected employees at the new rate.

We have absolutely no opportunity to renegotiate our 2013 service contracts with our customers, so this 38% expense increase will come right off of our bottom line. And it is not just the employees earning the original prevailing wage of $9.36 that are affected. Realistically, it demands that we make adjustments to the majority of our employees' wages in order to maintain the current balance of our wage scale. However, **our conservative estimate of the real economic impact to our business is over $546,000 annually in additional wages and taxes.** That is only the annual impact of those employees, both

seasonal and full-time, currently at the $9.36 minimum. **The true impact when all reasonable wage changes are considered is well over $1 million annually.**

Mr. Rice and Ms. Chu, **this is a ruling with catastrophic consequences!** Employers impacted by this decision will either go out of business, turn to hiring individuals not authorized to work in the U.S., or layoff a significant portion of their current U.S. workforce as operations are dramatically scaled back. This rule, with its immediate application, does not leave any other alternatives. **The domino effect is that all of our vendors will be impacted as well - we will not be ordering American-made trucks, trailers, equipment and supplies.** I urge you to consider the unthinkable consequences that this change will have on employers that rely on these workers to help propel Colorado's economy forward, and the American workers who rely on H-2B workers for their own full-time jobs. Without labor in the field, there is no need to employ American workers in support and supervisory capacities. In Keesen Landscape Management's case, this equates to approximately **120 American workers' jobs that are in jeopardy** as a direct result of this reckless and calculated action by DOL.

Sincerely,

Daniel J. Beekhuizen
President
Keesen Landscape Management, Inc.

Steven A. Genders
Vice President Maintenance Operations
Keesen Landscape Management, Inc.

Steven D. Steele
Director of Operations
Secretary for Board of Directors
Keesen Landscape Management, Inc.

RE: (RIN) 1205-AB69

"The Seasonal Employment Needs of Small Tourism Businesses and H-2B Visa Policy."

June 7, 2013

Dear Chairman Rice and Ranking Member Chu:

As an employer in the great state of South Carolina, I need your help in protecting the H-2B program which is critical to our business, our local and state government.

The H-2B program not only allows our resort to maintain our business in the absence of local workers willing to accept the seasonal positions, it also provides a great benefit for the H-2B workers themselves by allowing them to better provide for their families, and for my 800+ full-time workers and 500+ part time workers whose positions require support from seasonal workers. While we would like to hire only local workers, the reality is that even after extensive recruitment efforts and even in a tough economy, it is very difficult to find enough local workers willing to work in manual, seasonal labor positions. The H-2B Visa Program is essential for the survival of our business.

Unfortunately, the U.S. Department of Labor (DOL) has targeted the H-2B program for virtual elimination. The department has issued a series of rules which appear to be intended to make the program virtually unusable.

As a small business that has committed to keep full-time workers employed throughout the recession, we simply cannot absorb the massive cost increases and complexities that DOL has imposed on the H-2B program.

The H-2B program is essential to the economic vitality of our resort. These rules threaten to our operations and even more worrisome is that they threaten the already existing jobs of our full-time and part time employees.

Please take into consideration how vital the H-2B Visa Program is to us and work to make this a win-win situation for all involved. We welcome you to personally visit our resort to see how successful this program has been for us over the past 13 years!

Thank you very much for your time and attention to this matter.

Sincerely,

Jennifer Bozard
Director of Human Resources
Kiawah Island Golf Resort
Kiawah Island, SC 29455

June 07, 2013

The Honorable Tom Rice
Chairman

The Honorable Judy Chu
Ranking Member

Committee on Small Business Subcommittee on Economic Growth, Tax and Capital Access
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rice and Ranking Member Chu:

My name is Michael Watkins, owner of The Naples Beach Hotel & Golf Club located in Naples, Florida. I am writing to support Sara Diment, owner of the Beachmere Inn in Ogunquit, Maine. She will be speaking at a hearing titled "The Seasonal Employment Needs of Small Tourism Businesses and H-2b Visa Policy."

Sara will be speaking for a number of businesses like mine in reference to our need for the H-2b program to be available to us. The H-2b program is a vital part of our ability to provide customer service at a level that keeps the small businesses in competition with our competitors. In the past, workers needed were not available from local employment pools. Employees from neighboring countries filled the much needed gap, allowing us to provide what customers demand and pay for, which is service.

The new wage rule is of vital interest as well. The new prevailing wage rates need to be at the same level that each employer pays, irrespective of whether an employee is an H-2b employee or a regular full time employee. The regulations governing the H-2b programs must be equitable to all, which includes the H-2b employee, the employer, and the regular employees.

Employers will continue to provide a wonderful experience for each H-2b recipient that joins the company. The program was great for the H-2b employee and the employers, providing a win-win opportunity for all of us to be successful. Please accept this letter as my endorsement to amend the H-2b policy. Please provide a policy that meets the needs of small tourism businesses and is cost effective, equitable and reasonable with regulations that will be attainable for all those involved.

If you would like to speak with me personally, please feel free to contact me at 239-435-4355. Your consideration and help will be appreciated.

Sincerely,

Michael Watkins
President
Naples Beach Hotel & Golf Club, Inc.

NEMACOLIN
WOODLANDS RESORT

11 June 2013

The Honorable Tom Rice
Chairman

The Honorable Judy Chu
Ranking Member

Committee on Small Business Subcommittee on Economic Growth, Tax and Capital Access
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rice and Ranking Member Chu:

My name is Tina Hester and I am the International Relations Director for Nemacolin Woodlands Resort in Pennsylvania. We currently petition for and hire 150 H2B workers for 9/10 months.

We file for 150 visas for Nemacolin Resort. These are for the following positions: Housekeeping, Stewarding/dishwashers, Cooks and Dining Room Attendants. The dates requested for the Housekeeping and Stewarding visas are from 1 March – 31st December. Cooks and Dining room attendants are from 1 April – 31st December.

We try and recruit workers but being in the mountains of Pennsylvania, it is very challenging to find workers. We are a 5 star resort – we should be able to find American workers but we are unsuccessful. I follow the H2B rules and try and recruit American workers – but I find I sit at my desk waiting for candidates to arrive for interviews they have scheduled. They do not call to cancel the interview, they just do not arrive. The few American workers that we hire usually quit after 3 or 4 months. This is very frustrating as we are year round resort and would like to hire YRFT American workers for these positions.

Instead we bring in international workers on the H2B visa for 9 or 10 months. These workers have been with Nemacolin for 3 years, they are wonderful people. Some are here to work and save money to educate their children in their home countries and they return home for 3 months at the end of their contracts. Other workers come to Nemacolin to gain experience at a 5 star resort for their resume. I have being recruiting using the H2B program for years – I have known some of our workers since 2005.

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Nemacolin has a 99% return rate on the international workers, we are very lucky and pride ourselves on being a good employer. Having worked as a H2B worker on the H2B program, I try to ensure we are compliant and fair and treat the workers well. We pay the prevailing wage and provide housing on site. We just renovated the fully furnished townhouses that they stay in with new appliances, flooring and carpets. We also provide transportation to and from work (our property is 2000+ acres). We appreciate that they leave their families to come and work at Nemacolin. We also provide transportation to the closest town to buy groceries and supplies.

Regarding the 30 day suspension this was very challenging and we had workers sitting in their apartments unable to work. Some of our returning H2B workers had extended their visas to Winter Resorts. They were forced to sit at home unable to work till the 30 day suspension was lifted. This was a very experience for them, they threatened to leave as they were so scared and feared they out of status. In the meantime we had our American workers threatened to quit as they were working overtime as we had no Housekeepers and dishwashers. Managers were pulled from their positions and cleaned rooms on weekends. I was one of the people cleaning rooms on the weekends on my days off. It is very hard to explain to an YRFT worker why the International worker they have known and worked with for the last 3 years cannot work and must sit at home. Our externs and apprentices and cooks had to wash the dishes in the restaurants as we had no dishwashers.

Once the suspension was lifted – it created a "bottle neck effect internationally" and we had weeks in Jamaica to secure visa appointments. I had to plead our case to the Consulate and request earlier dates.

We are a good employer and abide by the rules and regulations; it is our American and International workers who suffer from the suspension. Our guests are expecting 5 star services and instead have housekeepers like myself who are only helping out for 2 days; this causes delays and the inconsistency in the rooms. We are judged by Forbes on our rooms and could lose our 5 star statuses because of this.

Our workers have asked me if this happen again next year, I have told them I am hoping for the best scenario. However the 2 last year's our workers have been delayed.

Regarding the new wage rule – our wages seem fair. We made the adjustments as we receive the new wages.

Please do not stop this program – I truly believe in it. I love these workers – we are a family owned resort and they are part of the Nemacolin family. They love coming here, we want to continue this program and still hire Americans.

I came to the USA on the H2B visa, my story is below.

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My H2B story:
I am originally from South Africa and came to the USA on a H2B visa 11 years ago.

I came over with 32 South Africans and worked at a The Club at Admirals Cove in Florida for the winter season. I returned to Florida and worked a second season at The Club at Admirals Cove in West Palm Beach Florida.

After Florida, a group of us extended our H2B visas to an employer in Vermont. 12 of us moved to Vermont and worked the summer season at Basin Harbor Club.

After Basin Harbor Club I extended my visa to Woodstock Inn for the winter season. At the same I met my husband while working at the Woodstock Inn. We were married while at the Woodstock Inn.

I went on to work at various resorts in Vermont. Due to my experience with my visa at the Woodstock Inn, I took an interest in immigration and the H2B visa. While at the Equinox Resort I transferred to the HR department and began working with International workers and the visas.

I then went on to work for different resorts and over the years have gained a vast experience in the H2B program, I now specialize in immigration and visas for Nemacolin Woodlands Resort.

Having worked on an H2B visa for multiple employers, I have experienced what our H2B workers go through – travelling from another country and adapting to a new culture, food, people, etc. I also understand the benefit of this program and the caliber of the workers. My goal is to ensure that Nemacolin is the top employer for American and International workers. My pride ourselves on being a family owned resort.

If you have any questions please contact me on 724 329 6415 or tina.hester@nemacolin.com

Yours sincerely

Tina Hester
International Relations Director
Nemacolin Woodlands Resort
1001 Lafayette Drive
Farmington, PA 15437
Tel: 724 329 6415
Fax: 724 329 6643
Email: tina.hester@nemacolin.com

June 11, 2013

The Honorable Tom Rice
Chairman

The Honorable Judy Chu
Ranking Member

Committee on Small Business Subcommittee on Economic Growth, Tax & Capital Access
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rice and Ranking Member Chu:

We are writing to you to let you know how the H2B suspension this spring has affected our business. H-2B workers are vital to our seasonal hotel and restaurant on the rural downeast coast of Maine. We are losing thousands of dollars per week, as our restaurant cannot open without our workers. By the end of this month we will have lost 30,000 dollars due to the fact we are not able to get our workers here on a timely basis. Not only are we losing restaurant revenue but also hotel revenue as hotel guests are canceling, shortening stays and not booking because our restaurant is not open.

The H-2B program is a time consuming and expensive effort. I would much prefer to hire locally. I would save money on the visa service fees, airline tickets and very expensive rental housing which I must subsidize and carry throughout the year. We would not, I repeat would not hire temporary employees if there were enough local people to do the jobs. College kids go back to school in early August and we are stuck without the manpower to complete our season.

We have been employing H2B's since 2001. We do so because like most small, rural villages on the coast of Maine there are not enough people who apply for this work. My situation has been well documented by the state and federal government every year that we have filed in compliance for H2B's since 2001. Each year we prove we cannot find the help.

This impasse is destroying all the gains we have made through hard work and dedication. Our small business helps the economy of the entire area, other small businesses, local farmers, bringing tax revenue to the state. This is an emergency! It is absolutely crucial that our H-2B workers arrive immediately. I urge you for the sake of our business, our livelihood, our employees and our community.

Respectfully Submitted,

Julie Van de Graaf
Jack Burke

Owners
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