

*Letter comes in response to a report confirming Oregon forestry contractors improperly hired 254 foreign workers with stimulus funds*

WASHINGTON, DC – Rep. Peter DeFazio (D-Springfield) sent a letter to the Department of Labor, demanding they reform the H-2B visa program to ensure that taxpayer dollars intended to hire American workers are not used to hire foreign workers. A recent Office of Inspector General (IG) report found federal stimulus funds were awarded to contractors who underbid competition by using foreign laborers. DeFazio asked for the OIG review after the Bend Bulletin reported that several companies that were awarded Forest Service contracts, then filed H-2B applications to use foreign workers for the contracts rather than Oregon workers.

“Over the past year it has come to light that several contractors exploited loopholes in the H-2B visa process to intentionally hire foreign workers, rather than available Americans, for American Recovery and Reinvestment Act-funded jobs on Forest Service lands in Oregon.” DeFazio wrote. “This is unacceptable. Taxpayer money was spent to hire foreign workers while unemployed Oregonians were denied these jobs. The Department of Labor owes it to the American taxpayer and the over 13 million unemployed Americans to make sure this can never occur again.”

Fill text of the letter can be found below:

Hilda L. Solis

Secretary

United States Department of Labor

200 Constitution Ave., NW

Washington, DC 20210

Secretary Solis,

Over the past year it has come to light that several contractors exploited loopholes in the H-2B visa process to intentionally hire foreign workers, rather than available Americans, for American Recovery and Reinvestment Act-funded jobs on Forest Service lands in Oregon. This is unacceptable. Taxpayer money was spent to hire foreign workers while unemployed Oregonians were denied these jobs. The Department of Labor owes it to the American taxpayer and the over 13 million unemployed Americans to make sure this can never occur again.

In September of 2010 I called for an Inspector General investigation to determine how it was possible that H-2B visas were awarded for these contracts when American workers were readily available. The Inspector General concluded that current H-2B recruitment and oversight requirements were not adequate and recommended several improvements. In light of the Inspector General's findings, I request that the Department of Labor (DOL) take the following actions to ensure that American workers are given proper opportunity to fill any position before any H-2B visa is granted:

- Require that positions be meaningfully advertised in all states in which work will be done
- Require that State Workforce Agencies in all states in which work will be done are notified of open positions
- Require that positions be advertised reasonably near to the date of employment
- Correct inadequate DOL oversight of H-2B applicants and State Workforce Agencies
- Require that employers use identical and relevant employment requirements when recruiting U.S citizens and H-2B workers performing the same job
- Require that H-2B employees be paid the true prevailing wage for the work that they are employed to do

Implementing the Department of Labor's Notice of Proposed Rule Making (NPRM), "*Temporary Non-Agricultural Employment of H-2B Aliens in the United States*,"

and the Department of Labor's Final Rule, "*Wage Methodology for the Temporary Non-Agricultural Employment H-2B*," would be a significant step toward achieving these needed reforms identified by the Inspector General.

Under current rules governing H-2B visas unscrupulous employers can, with relative ease, hire underpaid H-2B workers even when qualified American workers are readily available. In the case of the Oregon Forest Service contractors, the positions were not advertised in Oregon and were advertised up to four months in advance of the jobs' commencement. While legal under current rules, these actions virtually guaranteed that qualified Oregonians would not be aware of the positions. Two U.S. citizens who applied for these positions reported that they were not hired because they did not speak a foreign language- a requirement that has no bearing on one's ability to do forestry restoration work.

The Department of Labor has a legal mandate to ensure that H-2B visas are only available to employers in the case that "unemployed persons capable of performing such service or labor cannot be found in this country." 8 U.S.C. § 1101(a)(15)(h)(ii)(b). With national unemployment over 9 percent, and unemployment up to 15 percent in central Oregon, it is imperative that the DOL at a minimum adopt the proposed rules necessary to carry out this mandate. The current NPRM goes a long way toward addressing all of the recruitment loopholes that were exploited by contractors in Oregon.

The ability to pay substandard wages to H-2B workers also incentivizes employers not to hire unemployed Americans. In 2008 the DOL under President Bush adopted a rule that allows for H-2B workers to be paid significantly less than the true prevailing wage in the industry that they are working in. This intentional wage depression by the Bush administration has made it impossible for American workers to compete with grossly underpaid foreign H-2B workers. As long as this is the case, employers will continue to choose an underpaid H-2B worker over a qualified American.

The implementation of DOL's final rule on wage methodology would finally overturn this Bush administration rule, and return H-2B wages to the true prevailing wage in any given industry. DOL, however, needs to correct a loophole in the NPRM which exempts forestry employers from paying the highest prevailing wage when work is conducted in multiple states. This means that multi-state H-2B forestry crews can be paid the lowest prevailing wage among the states in which they are working. If this carve-out becomes part of a final rule, forestry contractors using H-2B workers will continue to undercut forestry companies who employ American workers.

The H-2B program should be there for employers who truly do have a short term need that truly cannot be filled by a US citizen. It cannot continue to serve as a means for some employers to displace American workers with underpaid foreign labor. Undercutting our workforce in this manner has denied untold numbers of unemployed Americans the opportunity to get back to work, and will continue to do so until the H-2B program is fixed.

I am pleased that the DOL has drafted rules that would help ensure that American jobs are no longer put at risk by the H-2B program. I hope to see the prompt implementation of these much needed reforms; and hope to see that fair prevailing wages for forestry workers are required. The 13 million unemployed Americans deserve no less.

Sincerely,

Peter DeFazio

Member of Congress

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