

Congress of the United States
Washington, DC 20515

October 11, 2013

Honorable Thomas Perez
U.S. Department of Labor
Office of the Secretary
200 Constitution Ave, NW
Washington D.C. 20210

Dear Secretary Perez,

The Department of Labor (DoL) plays a critical role in putting food on the tables of all Americans. Specifically, the Agency is responsible for administering the first step of the H-2A program which provides the foreign workforce our nation's farms depend on to harvest their crops.

However, DoL has decided to furlough the H-2A function of the Agency housed within the Office of Foreign Labor Certification (OFLC), which is funded by industry users through an assessed fee to cover the costs of certification. This function should be reopened expeditiously using the sufficient funds provided by the user fees, so that the secondary and tertiary agencies, the Department of Homeland Security and the State Department, can complete the process of providing our critical foreign workforce.

As you know, in Fiscal Year 2012, DoL received roughly 5,500 H-2A applications requesting over 90,000 foreign workers. DoL certified approximately 5,300 applications for 85,000 workers. The processing fees for these applications are not funded by taxpayers, but by a user-fee assessed by the DoL to cover the costs of processing the application. The H-2A program generates up to \$1,000 per application, and hence roughly \$5 million in FY2012 was generated from these fees.¹ This program should be able to use the estimated \$5 million in H-2A user fees to operate OFLC even in the event of government shutdown.

Once the applications are certified by DoL in stage one, they must then be submitted and processed by the Department of Homeland Security Center for Immigration Studies (CIS), which is currently functioning despite the government shutdown, and which is also funded by user-fees. Finally, the applications must be processed by the State Department, which is currently performing its function despite the government shutdown. The shutdown of all H-2A functions at the DoL office, for which industry covers the processing costs, prevents the other functioning agencies from processing the applications their users have paid private industry dollars to complete.

We therefore request that DoL work to reopen the H-2A processing pipeline in a timely manner to ensure that the applications move through the DoL to CIS, and then on to the foreign embassies in time

¹ "You will receive a Final Determination letter, a certified ETA Form..., and an invoice requiring payment for fees associated with processing your application (\$100) and the number of workers certified (\$10 per worker), the total of which will not exceed \$1,000. Failure to pay this required fee may result in the imposing of sanctions." (Employer Guide to Participation in the H-2A Temporary Agricultural Program; DoL 2012, page 12)


for foreign workers to reach the employer who filed the application and paid the processing fees with an expectation that the process would work effectively to supply a foreign workforce.

Moreover, the OMB criteria for exempting functions from the government shutdown must be applied to this specific case where private property is being damaged and the food supply is being damaged to the detriment of all Americans. We request that you reevaluate the "property damage" criteria for exempting H-2A adjudicators and Certifying Officers as handed down by the OMB, and immediately address this situation to allow H-2A applications to be processed without further delay. The desert region of Imperial Valley in California and Yuma, Arizona account for the lion's share of all the winter vegetable crops domestically grown in the United States. Billions in economic activity is at stake and given the lead times required to bring in H2A workers, property damage is likely without DoL reversing its decision. As such, we believe these workers- and consequently OFLC- is "essential".

Given the fact that industry participants contribute to the cost of DoL processing of H-2A applications at approximately \$5 million per year, the office should receive special scrutiny and evaluation toward reopening this function of the Agency.

Finally, when the government receives further appropriations in the future to continue all functions, we request that you expedite and prioritize the processing of all existing applications within a timely manner to ensure crops will be harvested in a reasonable timeframe. We look forward to learning of the progress made on getting the H-2A program running and working for American farmers.

Sincerely,



JEFF DENHAM
United States Representative



SAM FARR
United States Representative