



SENT VIA EMAIL

October 18, 2011

Office of Information and Regulatory Affairs,
Attn: OMB Desk Officer for the Department of Labor, Employment and Training
Administration
Office of Management and Budget, Room 10235
Washington, D.C., 20503

Email: OIRA_submission@omb.eop.gov.

Re: Guam Military Base Realignment Contractors Recruitment Standards

Dear Sir or Madam:

I am in receipt of a copy of a proposed rule by the Department of Labor in response to Section 2834(a) of the National Defense Authorization Act for Fiscal Year 2010. It was forwarded to the Guam Legislature, of which I am a member, by Congresswoman Madeleine Bordallo on September 23, 2011. It was enclosed with a letter requesting for comments through October 19, 2011. This letter is to present my comments.

There are currently in place specific rules governing the recruitment of temporary alien workers which include provisions intended to compel employers to recruit American workers. Chapter 7 of the Guam Administrative Rules and Regulations outlines the current system of certifying the lack of available U.S.-resident labor for employment opportunities on Guam, as requirements in order to permit the recruitment of Temporary Alien Workers for jobs on Guam. These rules were promulgated under the H-2B program in accordance with the Governor of Guam's delegated authority to certify that there is a lack of available workers.

The degree to which your proposed Recruitment Plan for Guam military base realignment projects compels employers to recruit U.S. workers varies when compared to the Guam rules. Generally, I am concerned that having two systems in place, and varying requirements imposed on the contractors, may present opportunities to circumvent the law, particularly for contractors who already maintain foreign workers on Guam and may seek to transfer those workers to projects related to the realignment.

Clearly, in authorizing non-U.S. workers to work on Guam military base realignment projects, Congress intended for American workers to be given an adequate opportunity to be aware of and fill the job opportunities resulting from those projects. To avoid confusion, the recruitment plan **should** serve *in addition to, not in replacement of* the existing requirements being enforced on Guam by the Guam Department of Labor. If that is not the case, the proposed plan should exceed or provide the same level of requirements in the Guam rules.

After reviewing the proposed rule, I would like to offer the following additional comments:

- 1) Section (1)(a) requires the contractor to submit a job posting on the Guam Department of Labor Website. This section should also require the contractor to place an ad on a Guam newspaper of general circulation, as is already required under the Guam-administered temporary labor certification process.
- 2) Section (1)(d) requires the contractor to contact a local union on Guam. This should not be contingent “where the occupation or industry is customarily unionized.” Nor should the requirement be only for unions on Guam. If U.S. DOL saw fit to require the posting of the job opportunities for workers in Alaska, California, the Northern Marianas, Hawaii, Oregon, Washington and American Samoa, in the proposed rules, the notification should be extended to unions in these jurisdictions.
- 3) Section (2) requires information specific to the job opportunities, but only for the required postings mentioned in Section (1)(a) through (c). The policy seems to give the impression that the specific information should not be given to unions. Unions advocate for the interest of workers. Every opportunity to enhance, not derail, efforts to recruit U.S. workers should be taken. Furthermore, Section (2) should be extended to contacting community colleges where workers often seek professional development and may have access to additional career placement services.
- 4) Section (4)(c)(v) should be revised so that the ETA briefings be extended to lawmakers in Guam, the Northern Marianas, Hawaii, American Samoa, Alaska, California, Oregon and Washington so as to promote more transparency and understanding of the process. Individual lawmakers may be effective in their respective districts in spreading information about the U.S. worker outreach effort.

I have been vocal in addressing the need to have local and U.S. workers fill job opportunities which will avail as a result of the Guam military alignment. I have written to members of Congress and various officials at the U.S. Department of Labor and the Department of Defense on this matter.

I have also succeeded in is passing legislation on Guam intended to promote the interest of American workers by requiring the Guam Department of Labor be more transparent in its administration of the H-2B certification process and to step up its efforts to notify local and American workers in general of the job opportunities that would otherwise be given to foreigners.

Thank you again for this opportunity to provide comments on this matter. I would appreciate a response indicating a receipt of these comments.

Sincerely,



Benjamin J.F Cruz