

VIA E-MAIL: DOL-PRA_PUBLIC@dol.gov

March 4, 2019

Office of Information and Regulatory Affairs (OIRA)
Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, Room 10235
725 17th Street NW
Washington, DC 20503

Department of Labor-OASAM
Office of the Chief Information Officer
Attn: Departmental Information Compliance Management Program, Room N1301
200 Constitution Avenue, NW
Washington, DC 20210

Re: H-2B Foreign Labor Certification Program, Agency Information Collection Activities

To the Department of Labor:

The United Food and Commercial Workers International Union (UFCW) appreciates the opportunity to comment on this information collection request (ICR) seeking approval for revisions to the H-2B Foreign Labor Certification Program application forms and general instructions. UFCW is the nation's largest private sector union. Our 1.3 million members work in grocery and retail stores, pharmacies, manufacturing and healthcare facilities, and in the food processing, chemical processing, and meatpacking industries in every U.S. state, Canada, and Puerto Rico. From the rural heartland to urban centers, UFCW members work hard to feed, serve, and strengthen the neighborhoods and communities they call home.

UFCW represents approximately 238,000 U.S. workers in the food manufacturing industry. Approximately 120,000 of our members work in the red meat industry, approximately 71,000 work in the poultry industry, more than 3,000 work in the catfish industry, and 44,000 work in other food manufacturing and processing industries. "Meat, poultry and fish cutters and trimmers" are among the top occupations that use H-2B guestworkers to fill temporary labor shortages accounting for 4 percent of H2B visas in FY 2014.¹

Generally, the UFCW remains concerned that employers are not doing enough to recruit American workers and that H-2B workers are subject to abuse and exploitation.² The UFCW is

¹ Costa, Daniel (2016, June 6). *The H-2B temporary foreign worker program: Examining the effects on Americans' job opportunities and wages*. Economic Policy Institute. Available at: <http://www.epi.org/publication/the-h-2b-temporary-foreign-worker-program-examining-the-effects-on-americans-job-opportunities-and-wages/>.

² Government Accountability Office, (2015, March). *H2-A and H2-B VISA PROGRAMS, Increased Protections Needed for Foreign Workers. Report to Congressional Committees*. Washington, D.C.: U.S. Government Printing Office. Available at: <http://www.gao.gov/assets/690/684985.pdf>.

particularly concerned that the H-2B visa program artificially depresses wages and drives down labor standards.³ The UFCW advocates that the H-2B program remain limited to true “temporary and seasonal” employment and should not be expanded to year-round jobs.

The UFCW appreciates the Department’s efforts to collect complete and accurate information from employers applying for H-2B visas. The UFCW supports several of the proposed modifications to form ETA-9142B, including the collection of anticipated hours of work each day of the workweek in a manner similar to what agricultural employees disclose, the addition of a new subsection “d” highlighting additional important material terms and conditions of a job offer, and encouraging employers to fully describe job duties using addenda. The UFCW also supports the proposed revision to Appendix B requiring employers to initial each condition of employment, which hopefully will “strengthen program integrity by requiring employers to positively affirm that they have read and understood each assurance and obligation.”⁴ The UFCW also appreciates that in Appendix C the Department will continue to collect the identity and geographic location of persons and entities hired by or working for the foreign labor recruiter, and any of the agents or employees of those persons and entities who will recruit or solicit prospective H-2B workers.

However, in line with the UFCW’s general concerns about the H-2B visa program, the UFCW objects to the proposed modifications as follows.

Form ETA-9142B: The UFCW Objects to Removing the Temporary Need Information Boxes that Require Employers to Indicate Visa Classification Categories

The UFCW objects to the Department’s proposal to eliminate the collection of certain temporary need information in Form ETA-9142B. Specifically, the Department proposes to remove boxes that required employers to indicate the visa classification categories, e.g., new employment, continuation of previously approved employment without change with the same employer, change in previously approved employment, new concurrent employment, change in employer, and amended petition.⁵ These categories of information are useful indicators of whether a position truly is seasonal or temporary. Without them, it may be more difficult for the Department to make determinations about the nature and duration of employment in line with statutory obligations.

For example, an employer may include a narrative characterizing a particular position as temporary. But if that position is a continuation of previously approved employment or new concurrent employment, the employer may still be able to characterize a position as temporary when in fact it is not. The UFCW urges the Department to continue collecting visa classification information.

Form ETA-9142B: The UFCW Objects to the Removal of Employer Information Fields in Section C

The UFCW objects to the proposed modification of Section C to exclude the collection of the employer’s (a) number of non-family full-time equivalent employees, (b) annual gross income, and

³ Costa, Daniel (2016, January 19). *The H-2B temporary foreign worker program: For labor shortages or cheap, temporary labor?* Economic Policy Institute. Available at: <https://www.epi.org/files/pdf/97394.pdf>

⁴ Appendix A to Supporting Statement, p 29.

⁵ Appendix A to Supporting Statement, pp 6-7.

(c) year of establishment. The UFCW agrees with prior commenters that this information is useful in enforcing Fair Labor Standards Act (FLSA) compliance.

Basic employer information is both necessary for the Department's enforcement efforts and has a high degree of practical utility for those seeking to promote employer accountability. Unions and other advocates seeking justice for exploited workers and accountability for employers who game the system have long sought access to this type of data. The UFCW emphasizes the need to ensure timely public access to the information disclosed in Section C, supports collection of this data, and urges public disclosure in real time.

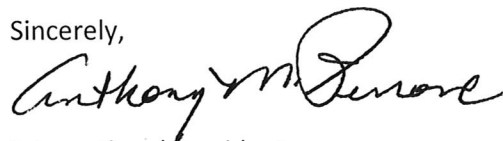
The Department states that "during an audit examination or other investigation by WHD, the Department can and does request additional information verifying whether the nature of the employer's need is temporary and whether the employer has bona fide need for the number of H-2B workers requested."⁶ However, the employer's initial disclosure of critical information, such as their annual gross income, informs whether the WHD can undertake an audit examination or investigation in the first place. It also likely is not a heavy reporting burden for employers.⁷ On balance, the utility of this information for WHD enforcement favors retaining this information collection. The UFCW urges the Department to continue to collect the number of employers' non-family FTE employees, annual gross income, and year of establishment.

Union Notification: The UFCW Urges the Department to Record Union Notification

The Department's regulations require employers to make written inquiries with local unions about available open positions. However, the Department does not keep records of these inquiries. The UFCW is concerned that employers will not accurately determine whether an occupation or industry is customarily unionized, and fail to notify local unions of available open positions. The UFCW urges the Department to modify its H-2B application forms to add a section where employers submit records of inquiries with local unions about available open positions.

Generally, the UFCW is concerned that the removal of visa classifications and basic employer information are substantive changes that could discourage employers from meeting their legal obligations under the Immigration and Nationality Act and its implementing regulations. Allowing employers to report less information will make it easier for them to drive down wages artificially and exploit foreign temporary workers. The UFCW urges the Department to reconsider and rescind these above-cited proposed modifications to H-2B application forms.

Sincerely,



International President

⁶ Appendix A to supporting statement, p 8.

⁷ Though the Department's Supporting Statement did not break down this particular burden in its analyses, it is unlikely that reporting gross income, year established and number of non-family FTE employees is a heavy burden for employers. The employer's year established remains unchanged year-to-year. And employer gross revenue and number of employees are readily accessible pieces of information.