

U.S. DEPARTMENT OF LABOR

DEPUTY SECRETARY OF LABOR

WASHINGTON, D.C.

20210

JAN 11 2012

The Honorable Louise Slaughter  
U.S. House of Representatives  
Washington, D.C. 20515

Dear <sup>Louise</sup> ~~Congresswoman~~ Slaughter:

Thank you for your communication on behalf of producers and growers from New York regarding the timely processing of H-2A temporary agricultural applications. I understand that our staffs met and had constructive discussions in September and October continuing the dialogue we began in our meeting with growers this past summer.

Since we last communicated, the Office of Foreign Labor Certification (OFLC) posted the State Workforce Agency-conducted survey results on key issues, such as the acceptability of experience requirement and other prevailing practices, so growers and other individuals interested in the H-2A program could review this information at any time. As discussed during our meeting, the Department of Labor planned outreach efforts to engage the regulated community and stakeholders in the H-2A process. Three webinars were conducted on Thursday, December 8, 2011, Wednesday, December 14, 2011, and Thursday, January 5, 2012. These webinars were intended to help facilitate the use of the H-2A program and structured to encourage program users to submit questions during and in advance of each webinar. OFLC has also revised its Web site for the H-2A program, making resources such as frequently asked questions, application forms, and filing tips easier to access. The new page may be found at <http://www.foreignlaborcert.doleta.gov/h-2a.cfm>.

I noted in my previous letter that pending budgetary constraints OFLC would award a contract to initiate the design and development of a new Web-based filing system for the H-2A program, improving access to our services and allowing growers to check an application's status electronically. You may be interested to know that this contract has now been awarded. The system is currently under development. We expect it will be ready for growers to use by late summer.

Employers with legitimate needs are successfully using the H-2A program. In Fiscal Year (FY) 2011, 93 percent of applications requesting more than 74,000 workers were certified. These certified applications include applications received from New York involving apple production for 2,186 workers. In the last quarter of FY 2011, our preliminary data indicates that over 82 percent of applications were certified in accordance with statutory processing times. In addition, our records demonstrate a significant reduction in the number of employer-filed appeals. In the last quarter of FY 2011, only seven appeals were filed.

As previously discussed, the Department's Wage and Hour Division (WHD) has been engaged in investigations at multiple worksites employing Jamaican workers associated with the Jamaican Central Labor Organization (JCLO). WHD expects to conclude these investigations in a timely

manner and the Department is currently developing guidance for employers and workers about the permissibility of deductions and voluntary assignments of wages under the H-2A program. This guidance should allow employers and workers alike to better understand the requirements and protections for workers employed under the H-2A programs. Similarly, based on its investigative findings, the Department's Employee Benefit Security Administration will be providing its views on the status of JCLO's health benefit program under ERISA along with options for ways that the program can achieve and maintain compliance with applicable Federal law.

I hope that, through these improvements and our continued dialogue, the H-2A program continues to work efficiently and effectively for those growers that face a legitimate need for temporary foreign workers.

Sincerely,

A handwritten signature in black ink, appearing to read 'Seth D. Harris', with a long horizontal flourish extending to the right.

Seth D. Harris  
Deputy Secretary