MODEL COMMENTS DEPARTMENT OF LABOR [may be submitted by cutting and pasting into the comment box, or as an attachment to comments into comment box. Go to http://www.regulations.gov/#/documentDetail;D=ETA-2011-0001-0001 and click on orange “submit a comment” box. Please personalize your statement by replacing the yellow text with your own text and putting on your letterhead, if applicable. The number of comments submitted is important!]

Michael Jones, Acting Administrator
Office of Policy Development and Research
Employment and Training Administration, U.S. Department of Labor,
200 Constitution Avenue NW., Room N-5641, Washington, DC 20210.

Re: Comments on RIN 1205-AB58, Temporary Non-Agricultural Employment of H-2B Aliens in the United States (Employment and Training Administration, 20 CFR Part 655 and Wage and Hour Division, 29 CFR Part 503)

Dear Mr. Jones:

I am writing on behalf of [your affiliation] to commend the Department of Labor (DOL) on its new proposals to strengthen the H-2B program for temporary employment of immigrants in the United States. The new proposals will go a long way towards eliminating the history of abuses ranging from wage and hour violations and race, gender and national origin discrimination to visa fraud and labor trafficking that have long plagued this under-regulated program.

[Make a statement about your interest in these regulations and this program... “As an immigrant rights activist/worker/union member/workers center member, I have grave concerns/experience...” Add in specific stories of your experiences or your members.]

The proposed rules for the H-2B non-agricultural temporary worker program are a significant improvement for workers both within and outside the United States. Temporary “guestworker” programs have long worked to the detriment both of the U.S. workers who are bypassed in favor of foreign workers, and for the foreign workers who fall prey to unscrupulous employers and their labor contractors. Dozens of criminal and civil prosecutions have been launched against employers and recruiters for filing fraudulent applications for non-existent jobs, for race and gender discrimination, for human trafficking and wage and hour violations. As DOL notes in its preamble to the regulations, several of these violations have occurred in just the past two years under the 2008 regulations that these rules would replace. The rules will help reverse these trends and maintain the program consistent with its aims – to ensure that temporary workers are hired for jobs where U.S. workers aren’t available, and to ensure these workers are treated fairly.

We welcome the proposed rules for the changes they make in five different areas:

**Stepped up oversight.** The proposals restore and increase reasonable government oversight of the application process by requiring both registration for users of the system and a certified H-2B application. As DOL notes, its own audits have found that more than half of the employers currently using the program are in violation of program regulations.
A true test of the labor market. At this time of high unemployment in the United States, the rules require employers to make real attempts to recruit workers here before turning to temporary workers outside the United States. DOL is to be commended for requiring employers to contact former employees, community organizations and unions to recruit workers. Most importantly, the requirement that employers keep a record of their recruitment activities will make it more difficult for unscrupulous employers to bypass US workers in favor of more vulnerable foreign workers.

Stemming recruitment abuse. Exploitation of foreign guestworkers has frequently begun in their home countries, where they pay recruiters huge sums of money – sometimes literally mortgaging the family farm – for the privilege of working in the US. The new rules remove some of the features of the system that make it ripe for forced labor. We especially applaud key provisions that outlaw charges for visa and border crossing fees that take workers' pay below the mandated minimum wage.

Stronger protections for US and H-2B workers alike. We welcome DOL’s requirement that both US and H-2B workers be offered work for ¾ of the monthly workdays they are promised in the job order, and its assurance of equal protection under the regulations to both US and H-2B workers.

Stepped up enforcement of workers’ rights. The rules make it clear that employers who violate workers’ rights may face debarment, revocation of their certifications, civil money penalties, and traditional remedies such as payment of back wages and impermissible fees and deductions, as well as reinstatement for workers improperly rejected for employment. These are all important tools to encourage compliance.

It is, however, in the area of enforcement that we find the regulations somewhat lacking. The long history of the program has shown that neither U.S. nor foreign workers can be protected from violations ranging from discrimination to forced labor unless they can protect themselves from retaliation, and unless employers are held fully accountable for all recruitment violations. In order to fully protect workers, we urge that DOL:

- Make clear that employers must publicly disclose all recruiters and sub-recruiters in order to ensure compliance with the ban on worker fees, making these agreements available publicly on the web;
- Make clear that employers are strictly liable for recruitment violations, for failure to report a violation by recruiter and for failure to disclose the identity of a recruiter;
- Require employers to assure that they have not - and will not - seek reimbursement for expenses for which they are responsible;
- Require employers to keep track of amounts paid to whom, by whom, and when for all fees and include this information in recruitment reports to DOL and to retain such documents for DOL inspection;
- Provide for notice to workers and a right to intervene in DOL administrative actions;
- Make clear that retaliation protections are extended to worker consultations with workers’ centers, labor unions, and community organization;
- Make clear that workers are the intended beneficiaries of the H-2B job orders, and that they can therefore enforce these as contracts in private litigation; and
- Bar individuals who are not licensed attorneys from acting as agents for employers submitting H-2B applications to DOL so as to restrict abuses by such agents.

Thank you for the opportunity to comment on the proposed H-2B regulations.

Sincerely,
[your name]