



MAY 20 2002

MEMORANDUM FOR ALL REGIONAL CERTIFYING OFFICERS

FROM:

DALE M. ZIEGLER

Chief

Division of Foreign Labor Certification

SUBJECT:

Clarification of Reduction in Recruitment (RIR) Policy in an Environment of Increased Layoffs

Purpose: To provide policy clarification concerning the memorandum issued March 18, 2002, entitled "Evaluating Reduction in Recruitment (RIR) Requests in an Environment of Increased Layoffs."

The March 18th memo set forth the procedures to be followed in processing labor certification applications filed under the RIR process when available information indicates that there may have been layoffs in the occupation by the employer, or layoffs in the industry or occupation in the area of intended employment. The memo detailed four specific procedures to be followed for evaluating RIR applications: establishment of a pattern of recruitment; layoffs in the employer-applicant firm; general layoffs in the industry or occupation in the area of intended employment; and layoffs by the employer-applicant firm with general layoffs in the industry or occupation in the area of intended employment. The interplay of how these procedures operate has generated some confusion among stakeholders so we felt the need to issue this policy clarification.

1) Review of the RIR

Except as described below, RIR applications should be evaluated based on labor market conditions, as they existed at the time the application was filed. If, after assessing the labor market conditions, the Certifying Officer (CO) is confident that qualified U.S. workers may have been available at the time of filing, the RIR should be denied. It should be recognized that labor market conditions do not change abruptly. They have not moved dramatically over the past year. Since the vast majority of RIRs in the state queues are less than 12 months old, COs should generally be able to rely on current information about U.S. worker availability.

2) Layoffs by the petitioning employer

An employer who has laid off workers has unique obligations. Where the CO is aware of layoffs by the petitioning employer, whether in the period six months prior to filing the application or in the six months prior to processing, the procedures described in the



A Proud Member of America's Workforce Network

March 18th memo should be followed. There has also been some confusion regarding the use of the term "letter" under item 2 concerning layoffs by the employer applicant.

Specifically, the memo states that if the CO has reason to believe that the employer applicant laid off workers within the last six months, a letter should be sent requesting the employer to provide additional information concerning the layoffs. There have been questions as to whether the letter should take the form of a remand to the employer or a *Notice of Findings* (NOF) indicating the Secretary of Labor's intent to deny the application pursuant to '656.25(c).

Since remands do not have a specific due date, such as 35 calendar days from the date of issuance as in the case of a NOF, remanded applications often cause an employer applicant to be in limbo for lengthy periods of time, particularly if a NOF is then determined to be the next step. This frustrates employers who desire timely and efficient processing of labor certification applications. We have determined that requests to employer applicants concerning possible layoffs should uniformly be issued as NOF's. However, given that in responding to CO requests for information on layoffs, it may take employers, particularly large firms, considerable time and effort to assemble the required documentation, CO's should be generous in granting the one-time extension of up to 35 additional business days to respond to the NOF.

3) Layoffs in the industry after the filing of the application

The third point in the March 18th memo was intended to address what should be the unusual situation where the labor market has deteriorated significantly between the date the case was filed and the date it is processed. The use of the term "layoff" was intended to be broadly construed to encompass the CO's general assessment of U.S. worker availability in the occupation.

Lastly, there also seems to be some confusion regarding timeliness under item 3 of any general layoffs in the industry or occupation. Item 2 specifically provides that a CO should request further information on layoffs by the employer applicant only if they are believed to have occurred within the prior 6 months, while item 3 is silent on timeliness. In the interest of consistency, we ask that CO's apply the same standard by taking such layoff information into consideration only if they are believed to have occurred within the prior 6 months.

We ask that you provide this policy clarification to appropriate staff, and instruct that it be followed in processing labor certification applications filed under, or converted to, the RIR process. Also, please advise your state partners.

Should you have any questions contact Pat Stange or me.