

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



SEP 29 2004

MEMORANDUM TO: State Workforce Agency Administrators

FROM:

Emily Stover DeRocco

A handwritten signature in black ink that reads "Emily Stover DeRocco".

On July 9, 2004, I shared with you an update of our streamlining activities in the foreign labor certification process. We also discussed these activities at the Workforce Innovations Conference in San Antonio, Texas. I hope this information and our discussions on this topic have been useful as you plan for the future.

I am pleased to provide you with the following **FY 2005 Transition Guidance** which builds upon our previous discussions. This information begins the re-engineering of the foreign labor certification programs. Please pay close attention; this is a complicated process and the guidance contains an abundance of information. In addition, we will be providing you with your FY 2005 state planning grant package in the near future.

I look forward to our continuing partnership and to seeing you soon. Thank you.

Enclosure

**State Workforce Agency
Foreign Labor Certification
FY 2005 Transition Guidance**

Current Plan

As you know, a final rule that will change the process for filing and processing labor certification applications for permanent employment-based immigration has been drafted and is awaiting clearance by the Office of Management and Budget (OMB) for publication. This proposed final rule is referred to as the PERM regulation.

If the rule is published with no changes to the proposed state role, State Workforce Agencies (SWAs) will no longer accept permanent labor certification applications. After the new rule's effective date, all other SWA functions related to alien labor certification should continue as usual during FY 2005, i.e., prevailing wage determinations, H-2A and H-2B program functions.

We are proceeding with plans that assume the final PERM regulation will be published before the end of calendar year 2004 and the new program will be operational within 60 days of publication. State Workforce Agencies should continue their current role of accepting applications from employers until the PERM regulation is effective, at which point their role would change in accordance with the final rule.

Contingency Plan

In the event the PERM regulation is not published, we have developed the following contingency plan. As indicated in our discussions of re-engineering the permanent labor certification process, the SWA role will change in FY 2005 regardless of whether the proposed PERM regulation is published. The change in the SWA role involves shifting processing of permanent labor certification cases from the SWAs to a centralized Federal location.

On July 21, 2004, the Employment and Training Administration (ETA) published in the Federal Register an Interim Final Rule (IFR) titled "Labor Certification for the Permanent Employment of Aliens in the United States; Backlog Reduction." This rule allows ETA to transfer permanent labor certification cases pending at either an ETA regional office or State Workforce Agency to one or more centralized processing locations. This rule also allows ETA to "consolidate" state and Federal processing functions in a central location, thereby creating efficiencies in the processing of permanent labor certification cases. SWAs would accept cases from employers, but no longer be responsible for processing permanent labor certification cases under this regulation.

To implement the backlog IFR, ETA has established two (2) backlog elimination

centers (one each in Philadelphia and Dallas) and has moved Federal staff from those regional offices into the centers. Within the next several weeks, ETA will publish a notice in the Federal Register that will identify the exact mailing address and contact information for the backlog centers.

Both contractor and Federal staff training have begun and, in the near future, permanent labor certification cases at the Federal level will begin to be processed by the backlog elimination centers. The centers will work initially to address the regional office backlogs and then begin to handle cases currently backlogged at the SWAs (see attachment 1 on transfer of cases to backlog centers).

These centers are expected to be fully operational and adjudicating permanent labor certification backlogged cases by the beginning of October 2004. Work at the backlog elimination centers will be augmented by case processing occurring in the remaining ETA regional offices and the SWAs. ETA expects these temporary centers to complete their work within two (2) years, at which point they will be closed.

ETA has made a significant commitment to eliminating the permanent program's backlog utilizing a center-based approach as opposed to our traditional method of sequential state and Federal processing. In addition, ETA is establishing national processing centers in Atlanta and Chicago where all permanent labor certification applications (except for those backlogged cases being processed in Dallas and Philadelphia) will be processed. These national centers are expected to be operational by the end of this calendar year.

State Workforce Agency Role and Funding

1. The role SWAs will play with respect to the permanent labor certification program will change dramatically during FY 2005. Specifically, ETA intends to fund SWAs as follows for permanent labor certification activities, subject to appropriation issues as noted in paragraph 3 below:
 - a. Each SWA will receive the equivalent of one-half of their FY 2004 funding for the permanent program. The 50% allocation amount will be drawn from the FY 2004 base allocation for the permanent program as reported on the budget breakout attachment submitted by SWAs in their FY 2004 plans (see attachment 2 for amounts).
 - b. From the allocation explained in (a) above, SWAs must fund the following:
 - (i) **At a minimum, SWAs must fund one (1) full-time position devoted to coordinating the transition from a state-Federal system to primarily a Federally-administered program.** This position must be responsible for coordinating, with ETA's backlog center contractor, the shipping of "pending" permanent labor certification cases either currently residing with the SWA or which will be filed with the state in the absence of the pending PERM

regulation.

(ii) Any funds above those required to fund the full-time position must be used to cover the expenses associated with accepting and processing permanent cases during FY 2005 as noted below (that is, processing of cases opened through January 1, 2005, and processing of old cases that have not been transferred to a backlog elimination center).

(iii) From this allocation, SWAs will also be responsible for providing employers with prevailing wage determinations for the re-engineered permanent labor certification program (PERM).

- c. If ETA publishes the final re-engineered PERM regulation, SWAs will be instructed to stop accepting applications for permanent labor certification from employers 61 days after the publication of the regulation and ETA will issue specific guidance as to where SWAs must forward remaining permanent labor certification applications.
- d. If ETA does not publish the re-engineered PERM regulation, SWAs must continue to accept and process permanent labor certification cases until **January 1, 2005**, at which point SWAs should not "open" any new permanent labor certification cases they receive. Set forth below are the details on how processing will occur if the final re-engineered PERM regulation is not published.

After January 1, 2005, SWAs must continue to "date stamp" and log in permanent labor certifications applications they receive from employers as this filing date is critical for subsequent processing.

Cases which are still "open" on January 1st should be worked until they are ready for forwarding to an ETA national processing center (Atlanta or Chicago). SWAs shall continue to "accept," but not "open" cases filed by employers after January 1, 2005 and forward these to either Atlanta or Chicago on a schedule ETA will provide to the SWAs. SWAs cases completed up until January 1, 2005, should be sent to your ETA regional office of record.

ETA will publish, in the Federal Register, a notice which will notify employers, attorneys, agents, etc. that after **January 1, 2005**, permanent labor certification applications filed with a SWA will be forwarded to either the Atlanta or Chicago national processing centers for adjudication.

Attachment 3 specifies which SWAs correspond with the ETA national processing centers located in Atlanta and Chicago. Under separate cover, ETA will issue instructions on the exact forwarding process and include addresses and contact information.

2. In addition to the permanent labor certification program funding, ETA will fund the SWAs for all of FY 2005 to administer the state role in the Temporary Labor Certification Programs (i.e., H-2A and H-2B) and to provide prevailing wage determinations, including for the H-1B program. In other words, it is "business as usual" as far as the temporary programs are concerned.
3. Should the Department of Labor begin FY 2005 without an appropriation signed by the President, it is highly probable that ETA will operate under a Continuing Resolution at FY 2004 funding levels. Therefore, SWAs will receive partial allocation amounts until a FY 2005 budget is approved for the Department.

Items for Consideration

SWAs are encouraged to consider the following as part of their overall planning process for FY 2005 and beyond:

The Employment and Training Administration will fund SWAs through FY 2005 as noted above. States are responsible for operating within their planned allocation and "supplemental" funds may not be available as they have been in previous years. Accordingly, states should adjust their staffing levels, as necessary, and expenditures in accordance with this guidance.

Thank you for your cooperation as we implement our re-engineering plans to eliminate the permanent backlog cases. We will continue to provide additional updates as we re-engineer the permanent labor certification program. Please feel free to contact Bill Carlson, Chief, Division of Foreign Labor Certification, at (202) 693-3989 if you have any questions.

**State Workforce Agency
Foreign Labor Certification
FY 2005 Transition Guidance**

Procedure on Transfer of Backlog Cases from Regional Offices and State Workforce Agencies to the Backlog Reduction Centers

The Employment and Training Administration (ETA) anticipates that by March 31, 2005, all State Workforce Agency (SWA) backlogged permanent labor certification applications will be either transferred to one of the two new backlog centers (Philadelphia and Dallas) or assigned to foreign labor certification staff in an ETA foreign labor certification office (New York, Boston, or San Francisco) for completion of processing. This transfer of cases, to the maximum extent possible, insures all cases received in the backlog centers are processed in order of original filing dates, with the oldest being worked on first. Applications will be handled in ETA's established pattern for processing, i.e., Traditional Recruitment and Reduction in Recruitment (RIR).

ETA believes the national processing of backlogged permanent labor certification cases using the first-in, first-out (FIFO) principle, regardless of the location where a case was originally filed, is an equitable and fair approach to all applicants. ETA will implement this policy by initiating the following steps.

- ETA will transfer a large number of unprocessed cases from its San Francisco foreign labor certification (FLC) office to the two backlog centers. This transfer will assist in reducing the oldest Federal backlog of cases while also leveling the workload across existing regions. Cases that a FLC office has begun to process will not be transferred in order to provide minimum disruption to case completion and inconvenience to employers.
- ETA will initiate the transfer of unprocessed cases from SWAs to the two backlog centers. By early October 2004, ETA will issue specific instructions to State Workforce Agency Administrators on how to inventory, box, and ship the unprocessed cases to their assigned backlog center in either Philadelphia or Dallas. We will include in the instructions a specific transfer schedule for each state to follow. Shipping cost payments will be handled by the ETA contractor responsible for the operation of the backlog centers, Team Exceed.

- The first shipment of cases from the SWAs will be scheduled for receipt at the backlog centers by the end of October 2004. This shipment will consist of those unprocessed cases at the state level which have the earliest filing date, regardless of geographic location. Not all SWAs will be involved in this first round of transfers since ETA will initially concentrate on those SWAs with the oldest case backlogs.
- The second and final round of case shipments will begin in January 2005 and should be received by the backlog centers no later than the end of March 2005. This transfer will include all permanent labor applications received by all states prior to December 31, 2004 and which have not been "opened" by a SWA.

Thank you for your cooperation and assistance as ETA begins the process of transferring backlogged cases to the elimination centers. We will continue to provide guidance on this critical transition as we move forward with our plans.

**State Workforce Agency
Foreign Labor Certification
FY 2005 Transition Guidance**

Draft FY 2005 Planning Figures

Region	State	Two Quarters of Permanent Program Transition Funds	PW Allocation	H-2B Allocation	H-2A Allocation	Additional Funding for H-2A PW Surveys	FY 2005 Planning Figure*
1	Connecticut	99,960	52,920	41,160	97,808	0	291,848
1	Maine	25,929	90,259	140,965	62,928	7,500	327,581
1	Massachusetts	211,877	222,437	157,982	257,422	17,500	867,218
1	New Hampshire	28,996	17,000	17,000	20,000	15,000	97,996
1	New Jersey	434,646	94,208	45,752	91,035	12,500	678,141
1	New York	250,514	586,535	317,917	366,238	22,500	1,543,704
1	Puerto Rico						75,000
1	Rhode Island					5,000	80,000
1	Vermont	11,013	9,240	18,023	66,081	10,000	114,357
1	Virgin Islands						75,000
Region 2							
2	Delaware	78,768	13,216	9,490	9,560	0	111,034
2	Maryland	230,355	136,904	86,904	102,677	15,000	571,840
2	Pennsylvania	210,000	130,000	252,133	24,000	15,000	631,133
2	Virginia	370,703	154,566	206,088	201,909	20,000	953,266
2	West Virginia					7,500	82,500
2	Washington D.C.	67,347	14,805	49,880	0	0	132,032
Region 3							
3	Alabama					12,500	87,500
3	Florida	188,206	156,426	133,637	170,725	10,000	658,994
3	Georgia	35,000	24,885	99,539	453,656	0	613,080
3	Kentucky	55,941	50,855	50,855	193,250	17,500	368,401
3	Mississippi					30,000	105,000
3	North Carolina	110,429	30,500	69,500	10,000	7,500	227,929
3	South Carolina	8,402	38,298	41,603	7,450	5,000	100,753
3	Tennessee	125,912	10,000	16,750	20,000	15,000	187,662

Draft FY 2005 Planning Figures

Region	State	Two Quarters of Permanent Program Transition Funds	PW Allocation	H-2B Allocation	H-2A Allocation	Additional Funding for H-2A PW Surveys	FY 2005 Planning Figure*
4	Arkansas					17,500	92,500
4	Colorado	100,045	45,000	55,000	52,958	7,500	260,503
4	Louisiana	12,710	11,640	53,850	69,700	35,000	182,900
4	Montana					10,000	85,000
4	New Mexico					17,500	92,500
4	North Dakota	16,300	13,220	10,800	52,040	10,000	102,360
4	Oklahoma					12,500	87,500
4	South Dakota					15,000	90,000
4	Texas	458,807	271,317	150,489	153,697	25,000	1,059,310
4	Utah	31,436	27,023	15,640	34,507	2,500	111,106
4	Wyoming					7,500	82,500
Region 5							
5	Illinois	329,593	50,000	59,100	19,700	17,500	475,893
5	Indiana					5,000	80,000
5	Iowa					15,000	90,000
5	Kansas	49,623	20,000	25,000	25,000	15,000	134,623
5	Michigan	143,630	27,358	113,992	27,358	20,000	332,338
5	Minnesota	42,827	28,000	17,000	13,000	12,500	113,327
5	Missouri	19,263	25,000	48,103	40,000	7,500	139,866
5	Nebraska	22,859	34,226	13,327	40,000	7,500	117,912
5	Ohio	58,386	67,906	33,719	49,575	20,000	229,586
5	Wisconsin	49,594	52,382	18,063	11,000	12,500	143,539
Region 6							
6	Alaska					5,000	80,000
6	Arizona	92,848	70,828	51,012	85,000	0	299,688
6	California	863,487	1,087,998	170,396	500,000	2,500	2,624,381
6	Guam						75,000
6	Hawaii						75,000
6	Idaho	17,721	38,441	35,442	136,623	10,000	238,227
6	Nevada	15,227	20,987	28,362	13,335	12,500	90,411
6	Oregon	12,244	43,641	10,483	20,914	10,000	97,282
6	Washington	64,978	45,034	32,753	82,018	10,000	234,783
Total							16,899,998

Notes:

Transition funds are equal to two quarters of current permanent program funding based on FY 2004 budget breakout sheets

Prevailing Wage, H-2B and H-2A allocations are based on FY 2004 budget breakout sheets

The additional funding for H-2A prevailing wage surveys is earmarked for SWAs to meet the requirement of conducting prevailing wage surveys for occupations certified under the H-2A program

* = minimum funding level for FY 2005 will increase from \$60,000 to \$75,000

**State Workforce Agency
Foreign Labor Certification
FY 2005 Transition Guidance**

*National Foreign Labor Certification Processing Centers
and
Corresponding State Workforce Agencies*

Atlanta Processing Center

Alabama	Connecticut	Delaware	Florida
Georgia	Kentucky	Maine	Maryland
Massachusetts	Mississippi	New Hampshire	New Jersey
New York	North Carolina	Pennsylvania	Puerto Rico
Rhode Island	South Carolina	Tennessee	Vermont
Virgin Islands	Virginia	Washington DC	West Virginia

Chicago Processing Center

Alaska	Arizona	Arkansas	California
Colorado	Guam	Hawaii	Idaho
Illinois	Indiana	Iowa	Kansas
Louisiana	Michigan	Minnesota	Missouri
Montana	Nebraska	Nevada	New Mexico
North Dakota	Ohio	Oklahoma	Oregon
South Dakota	Texas	Utah	Washington
Wisconsin	Wyoming		