

Analysis and Future Plans

Employment and Training Administration

Statutes, regulations, and administrative requirements establish mandatory timeframes within which OFLC must process certain applications or take given actions. Each foreign labor certification program is administered under a different set of requirements according to its unique role in the labor market.

For the permanent labor certification program, 37 percent of permanent labor certification program applications were resolved within six months of the initial filing date. When compared to FY 2009, processing times improved substantially due, in large part, to the implementation of a management plan that resulted in the reduction of the backlog of pending permanent cases by approximately 50 percent from 66,885 in September 2009 to less than 35,000 cases in October 2010. As part of its FY 2011 Operating Plan, OFLC will continue backlog reduction activities designed to bring processing times in line with established FY 2011 goal of 81 percent.

A key and long standing challenge within the foreign labor certification programs has been balancing program integrity activities and the impact of those efforts on overall case processing times and the generation of case backlogs. Eligible U.S. employers will continue to have access to foreign workers when qualified domestic workers are not available. However, additional screens and analytical rigor in the foreign labor certification programs helps ensure American jobs are truly open to U.S. workers, that they get those opportunities first as the Congress originally intended, and that job opportunities are made available to foreign workers only when employers can establish need based on a sound labor market test (H-1B excepted). Increased integrity activities such as conducting audit investigations and supervised recruitments, which began in 2009, increase the average length of time to resolve a permanent application as these are labor-intensive regulatory processes. However, these two integrity measures also generate the highest number of denials and non-certifications, outcomes which enhance program integrity and contribute to jobs being available to U.S. workers.

The results of these integrity activities are now being reported and demonstrate that a little more than one half of the resolved permanent applications during FY 2010 selected for integrity review were found in compliance. Because the regulations require employers to attest to compliance with program requirements at the time of filing a permanent application, this indicator measures the likelihood that OFLC will certify an employer application following a more thorough investigation of the employer's compliance with program requirements or when U.S. workers may be available for certain requested positions. Greater scrutiny also ensures, as the statute requires, that the hiring of foreign workers occurs subject to all terms and conditions, including wages, which safeguard the employment and economic security of American workers and their families.

Strategic Goal 1

OFLC will apply stricter scrutiny to applications. In the future, OFLC will revise the PERM application form – which expires in June 2011 – to both strengthen its integrity (by clarifying program requirements) and seek more detailed justifications in key parts of the form. Managers at OFLC headquarters and the national processing center levels will, where feasible, attempt to implement operational strategies to maintain production levels while enhancing audit investigations and other program integrity efforts. In FY 2011, the Department intends to propose legislation to establish an employer-paid user fee to partially fund the PERM, H-2A and H-2B programs to: make the programs more responsive to labor market demand; ensure financial resources to process applications timely; and recognize the benefit of the certification is to the employer and not the public.

Finally, OFLC will initiate a baseline review of its SOPs to confirm they are still accurate and appropriate for the current business process, and will develop a methodology to randomly select a sample of resolved permanent program applications for quality review. Implementation of this quarterly review process will be labor intensive and will require an adequate base level of funding in FY 2011 to achieve the desired performance outcome.

ETA - Maintain oversight to ensure that employers are compliant with wage and overtime laws with respect to certified foreign laborers

*Target reached (Y), Improved (I), or Not Reached (N)		FY/PY 2006	FY/PY 2007	FY/PY 2008	FY/PY 2009	FY/PY 2010	FY/PY 2011	FY/PY 2012	What Worked	What Didn't Work	Program Performance Improvement Plan
Percent of employer applications for permanent labor certification resolved within six months of filing	Target	60.00%	65.00%	75.00%	92.00%	80.00%	81.00%	--	Increased resource allocation to rapidly reduce PERM backlog by 50% in one year significantly improved timeliness and average cycle time.	Enhanced integrity activities limited progress in achieving timeliness goal; audits and supervised recruitments take longer than 6 months to complete.	Continue PERM backlog reduction efforts by another 30% in FY 2011 to improve timeliness results.
	Result	86.00%	74.00%	92.00%	18.00%	37.00%	--	--			
	Status	Y	Y	Y	N	I	--	--			
Percent of resolved permanent applications selected for integrity review and found in compliance	Target	--	--	--	--	60.00%	61.00%	--	Pilots of integrity activities led to implementation of enhanced supervised recruitment and increased audit processes.	Increases in the number of PERM cases subject to integrity activities negatively impact timeliness measure.	Re-engineer PERM form to provide greater clarity in program requirements; enhance integrity activities for PERM applications requiring less than Bachelors' degree.
	Result	--	--	--	--	55.00%	--	--			
	Status	--	--	--	--	N	--	--			
Percent of determinations issued by OFLC in compliance with standard operating procedures	Target	--	--	--	--	--	Base	TBD			
	Result	--	--	--	--	--	--	--			
	Status	--	--	--	--	--	--	--			

Sources: OFLC PERM Electronic Filing and Case Processing System.

Notes:

Program Evaluations and Audits

Independent evaluations and audits completed in FY 2010 are summarized below.