

Current Issues:
Department of Labor
October 7, 2020



Introductions and Overview

Adam Cohen, Siskind Susser PC

Theresa Johnson, Northwestern University

Office of Foreign Labor Certification representatives

Renata Adjibodou, Deputy Administrator

Brian Testa, Director of Policy and Regulation

Brandt Carter, Center Director, Atlanta National Processing Center

Paul Gotte, Supervisor, National Prevailing Wage Center

ISSRP – Employment Based Subcommittee



The Employment Based Subcommittee works to identify and prioritize NAFSAs' regulatory practice questions and issues related to employment-based immigration categories. The EB Subcommittee conducts strategic liaison activities with the US Department of Labor (DOL), particularly with the Office of Foreign Labor Certification (OFLC).

Subcommittee members:

Elizabeth Smith (Chair) – University of Tennessee

Adam Cohen – Siskind Susser PC

Rajan Eapen – University of California, Berkeley

Theresa Johnson – Northwestern University

Joanna Snyder – Indiana University

Laura Taylor – Cornell University



Question & Answer



Can you tell us what the Office of Foreign Labor Certification (OFLC) does and its role within the Department of Labor (DOL)? What types of applications does it process, and how many applications does it process in a year?

Can you please provide an update on staffing or processing changes that have been impacted by the pandemic, such as remote work or furloughs?

What other upcoming additions or changes are planned for FLAG?

Our understanding from the November 2019 stakeholder meeting is that ETA Form 9089 will eventually be migrated to FLAG, but only after Form 9089 has been updated. When do you anticipate finalizing the proposed ETA Form 9089 and when do you anticipate the migration to FLAG? Will you provide an update on the timeline?

It would be helpful to have the capability to reuse data we have entered into ETA Forms 9035 and 9141. Are there plans to allow this data to be reused for subsequent Forms 9035 or 9141? If so, what are those plans?

What are the current processing times for:

- Prevailing wage determinations
- PERM applications

Do you anticipate any changes in the coming months?

The comment period for proposed revisions to the ETA Form 9141 *Application for Prevailing Wage Determination* ended on April 15, 2019. When can we expect the new form to be implemented?

Can you explain the process whereby OFLC is applying OES 2019 hybrid structure wage estimates for the 2010 SOC occupations? When do you anticipate the 2018 SOC occupation codes will be accessible in the Foreign Labor Certification Data Center Online Wage Library?

The proposed ETA Form 9089 indicates that the prevailing wage information will be pre-populated into ETA Form 9089. Will there be a way to edit the data after it is pre-populated? Will it be possible to complete a draft of ETA Form 9089 while ETA Form 9141 is still pending?

The change allowing the electronic issuance of ETA Form 9089, Application for Permanent Employment Certification has been very well received by stakeholders. Does OFLC have plans to continue this practice indefinitely?

Due to the many details required on the ETA Form 9089 PERM application, data entry errors can occur. If such an error is discovered on ETA Form 9089, will it be certified/will the certification still stand?

For faculty teaching positions, universities are continuing to report receiving the 9089 audit template with language requiring an explanation for the rejection of each applicant (as for standard labor certification cases; 656.17) instead of the “most qualified” standard (for special handling cases; 656.18). It is our understanding that employers should respond to the audit, noting the most qualified standard used in the selection process and a new audit or RFI might be issued. Is there any additional guidance you can share as how to resolve such a situation?

What challenges does OFLC foresee in the coming year?



Closing Remarks



OFLC and NAFSA Resources

[International Scholar Advising Network](#)

[NAFSA IssueNet](#)

[NAFSA Regulatory Information](#)

[NAFSA OFLC Stakeholder Engagements](#)

[Foreign Labor Application Gateway \(FLAG\)](#)

[OFLC FAQs](#)



NAFSA: Association of International Educators is the world's largest nonprofit association dedicated to international education and exchange, working to advance policies and practices that ensure a more interconnected, peaceful world today and for generations to come.

Learn more at www.nafsa.org