

Preface

The 2025-2026 Edition of the *Labor Certification Handbook* provides comprehensive, up-to-date analysis of the standards and procedures for businesses seeking to obtain permanent labor certification for foreign nationals and for practitioners assisting these organizations. The update incorporates important developments affecting labor certification practice in the past year.

PERM Processing During Government Shutdown

As we were going to print, the federal government had entered a partial government shutdown as Congress was unable to pass a fiscal year (FY) 2026 appropriations bill or a temporary stopgap measure to extend federal funding beyond September 30, 2025. Negotiations on the FY 2026 budget continue.

Unlike U.S. Citizenship and Immigration Services (USCIS) and State Department visa operations, which are largely fee-funded, the Department of Labor (DOL) depends on congressional appropriations to fund its operations. As a result, when the government shuts down due to a lapse in authorized appropriations, the DOL must suspend its immigration-related functions, including prevailing wage and PERM processing. In addition, the Foreign Labor Application Gateway (FLAG) system and other online tools are taken offline, preventing submission of labor condition applications (LCAs), prevailing wage determination requests (PWDRs), and PERM applications for the duration of a shutdown. In fact, the agency has confirmed that no PERM labor applications or prevailing wage requests will be processed during a shutdown. The FLAG online application system has been offline during this shutdown and is not accepting PERM applications, audit or request for information (RFI) responses, or prevailing wage requests.

Stakeholders may have unfiled PERM cases where the recruitment or PWD is expiring during the shutdown. In previous shutdowns, after the DOL reopened, it has typically announced a defined grace period, generally tied to the length of the shutdown, during which employers are permitted to file late Form ETA-9089s that had a filing deadline that fell during the shutdown, and the late filings would be made online through the regular portal, which would come back online after the shutdown is over. Although the DOL made no announcements regarding this issue prior to the current shutdown, it is likely that the DOL will provide a similar accommodation once the current shutdown is over. Although a grace period for late filings is not guaranteed, it would be consistent with the DOL's prior practice and general White House statements on the current shutdown.

Employers may consider submitting a hardcopy Form ETA-9089 to meet a filing deadline that falls during the shutdown in order to create a record that filing was made, or at least attempted, before the deadline. This approach involves uncertainties and potential risks which must be carefully weighed and discussed with the counsel before a decision is made as to whether to proceed with this approach. First, there is no guarantee that this would work in practice since the mail sent to the DOL during the shutdown is not expected to be processed during the shutdown, which may make it more difficult to document delivery. Moreover, it is not clear what the DOL will do with any paper filings that may have accumulated during the shutdown. Even if the agency accepts the filings after operations resume, the filings would most likely be time-stamped as received/filed on the post-shutdown date on which they are accepted for processing rather than on the original date of delivery. In addition, if the DOL accepts and processes the paper filings after it resumes operations, DOL clerical staff would

have to manually keystroke the information from the paper Form ETA-9089 into an electronic Form ETA-9089. Past experience indicates that DOL staff may make errors or inadvertently skip fields when transcribing hardcopy filings into the FLAG system, which could cause issues at the adjudication stage.

Finally, if, as is likely, the DOL subsequently announces a post-shutdown grace period during which it will accept late filings for cases with deadlines that fell during the shutdown, employers would want to take advantage of this accommodation. However, if a paper filing was already submitted during the shutdown, this may cause issues with duplicate filings.

PERM Transition to FLAG Complete, Legacy Cases Processed, FLAG Updates

The PERM transition to the FLAG system has been completed. In order to file new PERM applications electronically, the employer (or a representative) must register for a FLAG account. The account allows for online preparation and management of applications. The legacy PERM Online System was fully decommissioned on December 1, 2024. Stakeholders who required documents from their Permanent Online System accounts had been strongly encouraged to access and download those documents well in advance of December 1, 2024.

The Office of Foreign Labor Certification (OFLC) has confirmed that all applications that were filed in the legacy PERM Online system have now been fully processed by the OFLC although some of these cases may still be undergoing appeals at the Board of Alien Labor Certification Appeals (BALCA). With regard to the latter cases, the OFLC indicated that those cases have been moved to FLAG so that the employer can confirm the status of the applications in FLAG. The employer will need to submit a Freedom of Information Act request to obtain information on any legacy cases that were not transferred to the FLAG system. The OFLC will respond to the request if the agency has not yet purged the legacy PERM cases, i.e., the application was certified, denied or withdrawn less than five years ago. Once a case is purged, the OFLC no longer has access to the case and cannot provide any requested information about the case.

All cases in the current OFLC PERM backlog are cases that were filed in FLAG. The transition to the FLAG-based PERM application process has not resulted in improvements in processing times although the OFLC is auditing few PERM applications as the agency continues to adapt to FLAG and focus on the backlog (see below).

Several enhancements have been made to the PERM module and case management system in the past year: (1) the PERM application has been updated to enhance consistency with the Form ETA-9141 application by aligning character limits across most fields, (2) data validation rules have been to Appendix A (Foreign Worker Education, Training, and Experience sections), providing warning messages in certain situations, (3) the sort order for education entries in Form ETA-9089 PERM applications has been updated, (4) when sending a case to BALCA, the case status will now change to “Request for Review” while the OFLC prepares the package to send to BALCA but will change to “BALCA Appeals” once the package has been sent, and (5) after an employer has received a notice of appeal decision (NOAD) on a reconsideration request, the option in the Case Action menu has changed from “Request for Review” to “Continue to BALCA.”

PERM Processing Issues: Processing Times, Statistics, and PERM RFIs

As of September 2025, the agency was taking about 472 days to process non-audited “analyst review” PERM cases. The agency was processing reconsideration requests filed in July 2025 (as of September 2025). The OFLC has not posted processing times for “audited”

cases since January 2025 since few cases are now in the audit processing queue (see below). As a practical matter, the processing delays have worsened in recent years. The agency is now taking 15-16 months to process non-audited cases as of September 2025 as compared to 13-14 months in September 2024, 10-11 months in September 2023, 7-8 months in August 2022, and 5-6 months in August 2021.

The DOL's latest statistics show that there are high approval rates for PERM filings. Through the third quarter of FY 2025 (through June 2025), the DOL received 83,733 PERM applications (a 37.5% decrease from the same period in FY 2024). The agency processed 102,263 applications through the third quarter of FY 2025. Of these, 95,185 were approved (approval rate of about 93.1%), 2,213 were denied, and 4,865 were withdrawn. In comparison, the agency processed 114,550 applications in FY 2024. Of these, 102,036 were approved (approval rate of about 89.1%), 5,031 were denied, and 7,483 were withdrawn.

The top five occupations for which PERM applications were certified in FY 2024 were software developers (20.8%), software developers, applications (4.5%), computer systems analysts (4.3%), meat, poultry, and fish cutters and trimmers (2.9%), and information tech, project managers (2.4%). The top five worksite states were, in descending order, California, Texas, New York, Georgia, and Washington.

There were 165,029 applications remaining as of June 30, 2025—99.8% in the analyst review queue and .2% in the appeals queue. No cases were pending in the audit/supervised recruitment queue.

In the past, the DOL has set a goal for program integrity, which is that at least 30% of cases should be part of the integrity check (i.e., subject to audit and/or supervised recruitment). In practice, few cases have been selected for audit/SR processing in recent years. FY 2023 statistics indicate that between 3.1% and 9.3% of pending cases were in the audit/SR queue. FY 2024 statistics indicate that at most 0.7% of pending cases were in the audit/SR queue. FY 2025 statistics (through June 30, 2025) indicate that 0% of pending cases were in the audit/SR queue.

At the June 2025 American Immigration Lawyers Association (AILA) annual conference, the OFLC confirmed that it is not auditing PERM applications as the agency continues to adapt to FLAG and focus on the backlog. Instead, the OFLC is issuing PERM RFIs. RFIs generally ask questions about a specific issue. Since January 2025, the most common RFI issues have been business existence of companies and business necessity for experience requirements. The agency also indicated that RFIs are only sent on issues which the DOL analyst believes are curable. As a result, an RFI will not be issued for substantive errors on the PERM application, such as a failure to list three additional steps for professional (Appendix A) occupations or for entries on the application that are deemed errors by OFLC analysts (e.g., failure to list a Sunday ad when the analyst believes that there are Sunday editions of newspapers covering the area of employment). Employers are reminded that they have 30 days to respond to PERM RFIs in contrast to prevailing wage RFIs which require a response in seven days. An employer can request additional time to respond to PERM RFIs by making a request to the PERM Help Desk. The Help Desk should respond to the request within two business days.

With the transition to FLAG fully complete, it is possible that the OFLC will revert to auditing more cases and selecting more cases for supervised recruitment. The agency has not given any indication that it will increase these integrity measures, but the Trump Administration's focus on enforcement may lead to a reassessment of priorities at any time.

As noted, RFIs on business existence are common in the FLAG system because there is no longer any requirement for employers to go through a registration process prior to being able

to submit PERM applications. In responding to these RFIs, employers should submit corporate documents, including federal employer identification number (FEIN) documentation, and evidence of business entity. Once an initial RFI on the business existence of a particular employer has been responded to, the DOL indicated that the employer should not receive any further business existence RFIs in future PERM filings. To avoid such RFIs, the OFLC has confirmed that the employer can complete the LCA Business Existence process. The data from the Form ETA-9035 LCA Business Existence process is also used to verify business existence in the PERM process.

PERM Denials in Combination-of-Occupations Cases

The DOL summarily denies a PERM application if the National Prevailing Wage Center (NPWC) indicated on the PWD that the offered position involves a combination of occupations but the employer answers “No” to the combination-of-occupations question (Question G.7) on the Form ETA-9089.

This view reflects the previously reported position stated by the DOL in a December 2024 stakeholder conference that an employer is required to check “Yes” to Question G.7 if the PWD indicates that the offered job involves a combination of occupations—even if the employer does not believe that to be the case—and that, if the employer does not believe that the offered position is a combination of occupations, the employer should file an Form ETA-9141 request for redetermination with the NPWC to challenge the combination-of-occupations finding before filing the Form ETA-9089.

This position represents a departure from the DOL’s statements in prior years indicating that a combination-of-occupations finding by the NPWC in a PWD would not be considered binding on the OFLC at the Form ETA-9089 adjudication stage.

As a reminder, under 20 C.F.R. § 656.17(h)(3), if the offered PERM position is deemed to be a combination of occupations, to avoid a possible PERM denial, the employer must be able to document that (1) the employer has normally employed persons for that combination of occupations, (2) workers customarily perform the combination of occupations in the area of intended employment, and/or (3) the combination job opportunity is based on a business necessity.

Other DOL Guidance on PERM Issues

The DOL has provided guidance on a number of other PERM issues in stakeholder conferences held in December 2024 and in April, June, and September 2025.

Fewer Skills Listed on ETA-9089 than on ETA-9141. The OFLC indicated that a change in the required skills listed on the ETA-9089 from those listed on ETA-9141 may delay the processing of the ETA-9089 and incur extra scrutiny by the DOL analyst. For example, the agency will scrutinize a situation where an employer includes five special skills on the 9141 but then determines that only three of the skills are required for the position (as indicated on the ETA-9089). In such cases, if the DOL analyst believes that the change impacts the PWD, the analyst may issue a RFI or deny the application.

Notwithstanding that the PWD may actually reflect a higher prevailing wage (in contrast to an ETA-9141 listing only three special skills), any differences in the special skills will at least require an explanation and may lead to delays in processing and denials. In short, any changes in skills requirements from the Form ETA-9141 to the Form ETA-9089 should be “minimal,” and whether removing one or more skills at the Form ETA-9089 stage would be allowed would depend on the specific circumstances and whether the change was material. The DOL said that box E.5 of the Form ETA-9089 should be used to explain any change in

required skills.

Work Location Fields Not Properly Prepopulating in ETA-9089. In the annual update to Occupational Employment and Wage Statistics (OEWS) prevailing wages in July 2025, some metropolitan statistical areas (MSAs) were redefined, and, as a result, the county, city, and/or MSA/OES Area Code on the ETA-9089 may not properly prepopulate from the ETA-9141 if the PERM case involves a work location in a redefined MSA. The FLAG Technical Help Desk is aware of the problem and is working on a resolution, but there is no timeline for the resolution. Pending resolution of the issue, stakeholders whose ETA-9089s are impacted by this technical glitch should request a fix from the FLAG Technical Help Desk. After the Help Desk has fixed the issue, the stakeholder should make sure to clear the prevailing wage number on the ETA-9089 and then re-link the ETA-9089 to the ETA-9141.

Qualifying Experience with Same Employer. To demonstrate that a previous position with the same employer is not “substantially comparable” to the PERM job, the DOL confirmed that the percentages of time spent performing each duty may be specified in Section F.a.1 of the ETA 9141, and the percentages of time spent performing the duties in the qualifying previous position may likewise be specified in the job description for the foreign national’s previous job in Appendix A of the ETA-9089. Percentages of time spent on duties do not need to be included in the notice of filing (NOF) or PERM ads.

The DOL won’t consider any information except what’s on the ETA-9089. As a result, If a PERM case is denied on “substantially comparable” grounds and the employer files a request for reconsideration (RFR), the certifying officer will only consider the information on the ETA-9141 and ETA-9089 and will not consider any supplemental information submitted by the employer in the RFR concerning the duties, or percentages of time spent on the duties, in the previous job or the PERM position.

Given that the OFLC is not considering additional information submitted in RFRs on this issue, when relying on experience gained with the employer, it is critical to provide a detailed job description of the previous qualifying job in Appendix A of the ETA-9089. In addition, stakeholders should give strong consideration to including percentages of time spent on duties both in the ETA-9141 and in Appendix A of the ETA-9089 (and if percentages of time spent on duties in the PERM position were not included in the ETA-9141, if the foreign national is currently working in the PERM position, stakeholders may wish to consider including the PERM job in the foreign national work history section in Appendix A of the ETA-9089 so that the duties of the PERM job can be repeated with the percentages of time spent on each duty added to the job description).

Repeating Information from PWD on Form ETA-9089. If information is requested on Form ETA-9089, it must be provided even if it was already provided on Form ETA-9141. For example, if Form ETA-9141 indicates that the job involves telecommuting or certain travel requirements, that information should be repeated in the ETA-9089 in response to Question F.c.1.

Pay-Transparency Laws and Benefits Information. If state or local pay-transparency laws require the employer to include benefits information in PERM ads, the same benefits information must be included in the notice of filing and on the Form ETA-9089. Note that benefits information would go in box E.5. However, benefits information does not need to be provided in the Form ETA-9141 PWD request. If the pay transparency law allows general benefits information in the ads (e.g., “standard company benefits”) or allows the ad to just refer the reader to the company’s website for benefits information, that same language from the ads can be used in the notice of filing and on the Form ETA-9089.

Changes to Pending PERM Application. There is no provision for modifying a PERM application. However, the OFLC will make an exception to update contact information for an

employer, agent and/or attorney on a pending ETA Form-9089. Such a request should be sent by email to PERM Help Desk at plc.atlanta@dol.gov.

OEWS Update, Technical Release Notes, and Updated Appendix A

On July 1, 2025, the OFLC uploaded the newest prevailing wage data from the OEWS as generated by the Bureau of Labor Statistics for the July 2025-June 2026 wage year. The effective date is July 1, 2025. Starting July 2025, the NPWC will issue PWDs using the July 2025-June 2026 data. If a PWD was obtained prior to the effective date of the updated wage data and the PERM application was filed within the PWD validity period, the employer can rely on the PWD even if the prevailing wage for the occupation does not reflect the latest OEWS wage data (as updated on July 1, 2025). On the other hand, all pending requests for PWDs will be issued based on the new data regardless of whether the request was filed before July 1, 2025.

The updated OEWS prevailing wage data reflects significant increases for many occupations in many locations around the U.S. The prevailing wage data from the OEWS survey is available through the OFLC Wage Search tool on the FLAG website (<https://flag.dol.gov/wage-data/wage-search>). As with the 2022-2024 updates, the July 2025 OEWS update utilizes the 2018 SOC codes.

The OFLC has also provided technical release notes for the July 2025 OEWS update which explain how the OFLC will apply the 2018 SOC structure to OEWS wages for the July 2025-June 2026 wage year. Note some key points:

- The OFLC updated the MSAs to reflect the delineations based on the 2020 census. New MSAs were created, some existing MSAs underwent name and/or compositional changes, and other existing MSAs were dropped from publication. Some non-MSA areas were added, dropped, or modified due to the new MSA delineations. For the New England states, the New England City and Town Areas (NECTAs) were discontinued, and OEWS published the MSAs and non-MSA areas for these states.
- Certain 2018 SOC detailed occupations do not have American Competitiveness and Workforce Improvement Act (ACWIA) higher education wage estimates due to OEWS data limitations. For these occupations, the OFLC will continue to apply ACWIA higher education wage estimates for the most closely aligned occupation based on 2018 SOC occupational definitions and wage patterns.
- Not all geographic areas have ACWIA higher education wage estimates due to OEWS data limitations. In these cases, the OFLC will assign the ACWIA wage estimate from an adjacent geographic location that has an ACWIA wage available for that occupation.
- Initially, the OEWS program was unable to provide OEWS wage estimates for the State of Colorado. However, the OFLC has since updated the prevailing wage data for Colorado effective July 31, 2025.

The latest Appendix A (List of Professional Occupations) was released in June 2025 and should be used for PERM cases where the prevailing wage determination was issued on or after July 1, 2025. The agency has indicated there are no changes from the list published in June 2024. If the occupation involved in the application is included in the list, the employer must conduct three additional recruitment steps. The additional steps are not required for all other occupations included in the O*NET database.

Guidance on PWD Issues

The OFLC has provided guidance on a number of PWD issues in recent stakeholder meetings.

Alternate Wages that Rely on Survey Areas Not Coterminous with the MSA in OEWS. The NPWC is now routinely issuing RFIs if the geographic area used by the alternate survey is

not the same as the applicable MSA area used by OEWS, and this increase in RFIs has contributed to the increase in processing times for non-OEWS cases. Stakeholders may help decrease the processing times in two ways: (1) if there is an updated survey that uses a geographic area that aligns with the MSA, the stakeholder may proactively send the survey to the NPWC Help Desk with the case number and (2) if the attorney receives an RFI and no longer wish to use the alternate survey, the attorney may reply to RFI stating that the employer would like to use the OEWS wage.

Travel and Relocation. The OFLC confirmed its longstanding practice of adding a point to the wage level for travel requirements unless the travel is just incidental or the requirement is normal for that occupation. A relocation requirement may also merit an additional point, meaning that a case that requires both travel and relocation may merit two additional points. The OFLC clarified that, for prevailing wage levels, travel and relocation are treated separately.

The OFLC clarified that the NPWC looks at both O*NET and Occupational Outlook Handbook (OOH) to determine what travel and relocation requirements are considered normal for the occupation. Form ETA-9141 preparers should provide the frequency, geographic scope, and purpose of travel in the prevailing wage request. The Farmer memo's "various unanticipated work locations" language should not be put in the travel question field of the ETA-9141 as that is not considered a travel requirement and is likely to result in RFIs for details on the nature of the travel required. It is recommended that the travel requirement on the ETA-9141 be repeated verbatim in the ETA-9089. The travel requirement from the ETA-9141 may be repeated in box F.c.1. of the ETA-9089. If a travel requirement is listed on the ETA-9141 but does not appear on the ETA-9089, the DOL may deny the PERM without RFI or audit.

Using PWD for Multiple Purposes. A PWD for one OFLC program can generally be used in support of filings with other OFLC programs (e.g., an H-1B PWD can be used for a PERM application) with the exception of H-2B cases because that category uses a single mean wage while PERM and LCAs use the four-level wage system.

Listing Remote Work. Remote work/telecommuting should be indicated on the ETA-9141 under Special Skills in Section F.b.5.a.iv and/or under the job duties in Section F.a.1. Remote work/telecommuting should not be included under the travel section in Section F.d.3. As noted, the Farmer memo language should be utilized on the Form ETA-9141 because the NPWC sets the wage in Farmer memo cases based on the headquarters' address so that only the headquarters' address is needed on the Form ETA-9141.

Changes to Pending Prevailing Wage Request. While there is no provision for modifying a Form ETA-9141 after filing, the OFLC will make an exception to update contact information for an employer, agent, and/or attorney on a pending Form ETA-9141. Such a request should be sent by email to the NPWC Help Desk at fic.pwd@dol.gov.

PWD RFIs. The DOL will not grant more than seven days to respond to a PWD RFI. Most PWD RFIs request additional information on job duties, clarification on travel requirements, or additional information and/or documentation relating to alternate wage source requests.

Validity of PWD After Employer's Name and FEIN Change. If an employer's name and FEIN change due to a corporate reorganization after the ETA-9141 is filed, the employer can still use the PWD for an ETA-9089 with a different name/FEIN. The employer should explain the change in box E.5 of the ETA-9089.

Employer Relocation After ETA-9141 Is Filed. If an employer moves within the same MSA after the ETA-9141 is filed, the employer can still use the PWD for an ETA-9089 with a dif-

ferent location. As long as it is within the same MSA, a statement on the ETA-9089 is not necessary. As a practical matter, however, it is recommended that stakeholders still include a statement in a free-text field of the ETA-9089 to explain the change in worksite location and note that the new location is within the same MSA as the original location and that the change is therefore not material.

Updates on National Processing Center and Help Desks

The OFLC has consolidated its operations in Washington, D.C. There are no longer separate processing centers in Atlanta and Chicago. As a practical matter, the OFLC's workforce has been almost entirely remote since the pandemic, allowing the agency to close the Atlanta and Chicago offices and decrease the size of its Washington, D.C. office. All DOL-administered foreign labor certification programs, including PERM, are now processed through the OFLC's National Processing Center (NPC) in Washington, D.C. In addition, all labor certifications filed by mail, including PERM applications, must be filed with the Washington, D.C., office. Employers must also include this address in the required notice of filing. Failure to list the correct OFLC address in the NOF will lead to denial of the application. As noted, most applications are handled by OFLC analysts who work remotely. These analysts are cross-trained in PERM, LCA, H-2A/B, and prevailing wage case processing. Cross-training of analysts was introduced in 2016 to help the agency manage its caseload. During filing surges for particular case types, more analysts may be assigned to address these cases.

The OFLC has also changed the email addresses for the help desks. The OFLC has indicated that the help desks are not affiliated with each other and need to be contacted independently. Note these changes:

- PERM Help Desk email: oflc.plc@dol.gov. Status inquiries regarding long-pending applications should be directed to the PERM Help Desk. The DOL has also indicated that a case-specific question regarding a pending PERM application or a general policy question may also be emailed to the PERM Help Desk.
- NPWC Help Desk email: oflc.pwd@dol.gov. Primary help desk email address for general prevailing wage questions and for case-specific inquiries on PWD requests.

The OFLC has eliminated phone and fax numbers for the help desks. The separate help desk for supervised recruitment cases has been eliminated.

BALCA Update

There were several BALCA decisions of note addressing a number of key issues in PERM practice, including, among others, documentation for employee referral programs, location of recruitment and PWD for telecommuter positions, timing issues for PERM applications when ongoing recruitment steps are involved, rejection of U.S workers based on lack of experience in key job duties, reliance on a clientele's preference for a foreign-language requirement, business necessity for a position that involves a combination of occupations, quantification of skill requirements, challenging a combination-of-occupation finding at the PWD stage, substantial failure to supply supplemental documentation, timing of mailed applications, description of a publication for required ads, and immaterial errors on PERM applications.

These and other developments are covered in detail in this *Handbook*.

The Authors

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