

AILA Notes from DOL OFLC Quarterly Stakeholder Meeting
PERM, H-1B and Prevailing Wage Issues
March 13, 2018¹

Attending from DOL Office of Foreign Labor Certification (OFLC):

- William Thompson, Acting Deputy Assistant Secretary of Labor
- Al Herrera, Acting Administrator, OFLC
- Bill Rabung, Director of Operations, OFLC
- Renata Adjibodou, Center Director, National Prevailing Wage Center
- Brandt Carter, Center Director, Atlanta National Processing Center, OFLC
- Brian Pasternak, Director of Programs, OFLC
- Shane Barbour, Center Director, Chicago National Processing Center, OFLC
- Other OFLC staff from Technology and NPWC (some attending telephonically)

Introductory Remarks from OFLC

There have been no new political appointments at OFLC since the last stakeholder meeting, nor has a nominee for Assistant Secretary, Employment and Training Administration (ETA) been announced. OFLC is not aware of a timeline for a nominee for that position, which remains vacant at this time. William Thompson continues to be temporarily detailed as Acting Deputy Assistant Secretary of Labor, and it is unknown how long this detail will last.

OFLC benefitted from its interoperability plan substantially during the recent surge in H-2A and H-2B applications. PERM and Prevailing Wage analysts handled certain aspects of H-2 application processing, which allowed OFLC to maintain processing times for those programs. This did have an effect on PERM and prevailing wage processing, and PERM processing has slowed somewhat as a result. OFLC anticipates that PERM processing will speed up soon now that the bulk of the H-2B processing is complete. OFLC was able to rely heavily on the one-time allocation of \$20 million dollars for those programs, but that funding is not scheduled to be renewed. As a result, OFLC will have fewer resources available for future H-2 processing once this funding runs out.

OFLC's request for statutory authority to charge processing fees was included in the President's budget, but fee authority has not yet been approved by Congress. If OFLC does obtain statutory authority to charge processing fees, it will take time to build the infrastructure to implement fees, so it would not be an immediate change.

OFLC interacts regularly with USCIS on various issues. Some of these interactions are situational so that neither agency is operating in a vacuum with regard to what the other is doing.

¹ These notes from the March 13, 2018 DOL OFLC Quarterly Stakeholder Meeting are a compilation of notes taken by members of AILA's DOL Liaison Committee during the meeting and are not an official record of the meeting, nor have they been endorsed or approved by DOL.

OFLC has no ongoing rulemaking in process at this time other than the revision to the ETA Form 9035, which it discussed in more detail later in the meeting.

GENERAL QUESTIONS

Technical/CMS Inquiries

1. Reporting Problems with a PERM Account or Related Issue

Does OFLC have a preference in terms of who sends questions about a problem with a PERM account or a related issue? Does a question submitted directly by the employer to the Help Desk receive priority over a question submitted by an attorney representing the employer?

DOL Response: There is no preference in terms of who sends questions. Anyone experiencing a technical problem with a PERM account or a related technical issue can contact the PERM Technical Help Desk at plc.help@dol.gov. The Help Desk uses a “first in, first out” ticket system and leaves the ticket open until confirmation is received that the problem has been resolved.

2. OFLC Email Protocol

It appears that DOL has recently instituted a new email protocol and tightened its “DMARC” policy, presumably in response to a Binding Operational Directive (18-01) to enhance email and web security. DMARC (Domain-based Message Authentication, Reporting, and Conformance) requires SPF (Sender Policy Framework) or DKIM (DomainKeysIdentified Mail). DOL's SPF record is valid, but DOL is not signing with DKIM. Employers may use a variety of email back-end providers, such as Google. Google's DMARC policy is to respect the DMARC policy of incoming mail. DOL's DMARC is p=reject and DOL does not sign with DKIM. Google respects DOL's DMARC policy and rejects those messages that are not signed with DKIM. Emails that are rejected do not make it to a spam box and are not accessible to the recipient. It appears that the email servers used for the iCert and PLC systems are not "signing" emails with "DKIM", with the result that some email systems, especially those that rely on indirect email flows, reject emails sent by iCert and PLC. Consequently, affected employers do not receive prevailing wage-related emails, certified LCAs, PERM employment verification messages and, presumably, audit requests.

- a. Can OFLC update its email protocols to include a DKIM signature, as suggested in the Compliance Guide for BOD 18-01, or relax its DMARC policy so that all emails sent through the OFLC servers can be received by the intended recipients?
- b. As a result of DOL's current email settings, employers may not receive important email communications on pending cases, which may negatively affect the adjudication of the various types of requests. How will the OFLC accommodate affected employers, especially in cases where RFIs, audits or any other emailed request for information are not received by the employer?

DOL Response: OFLC is governed by DOL’s e-mail policies and is unable to make changes to those policies. OFLC is aware of this issue and has taken steps to address it.

OFLC is not aware of any substantive e-mails, such as audit notifications, being affected by this issue. Employers or attorneys seeking additional assistance with this issue should contact the Technical Help Desk at plc.help@dol.gov.

3. PERM Program/Case Inquiries

- a. If an employer does not receive a response from the Help Desk and sends a follow-up email with “Attention Supervisor” or "Forward to Certifying Officer" listed in the Subject Line but still does not receive a response, what is the next step that an employer should follow to escalate an issue in order to receive a response?
- b. How soon after sending an “Attention Supervisor” or “Forward to Certifying Officer” e-mail should the employer expect a response?

DOL Response: The employer should send a further follow-up e-mail if the issue is not resolved. Note that some questions or issues require various internal communication, investigation, or decision-making, and the fact that a detailed substantive response is not immediately issued does not mean the question or problem is being ignored. A more generic or less substantive response is sometimes an indication that OFLC is still working on the issue.

There is no standard response time for resolving substantive issues through the PERM Help Desk because some problems require a more detailed investigation. As a result, response times will vary. Placing this language in the subject line flags for OFLC that the problem has not been satisfactorily resolved, and OFLC will then investigate the issue further. However, placing this language in the subject line does not expedite response times. It simply flags for the Help Desk that the issue has not yet been resolved.

4. Help Desk Phone Inquiries

- a. Are there circumstances when calling the Help Desk at the number provided on the OFLC website will result in a faster resolution of a problem than sending an e-mail?
- b. What is the protocol at OFLC for handling phone inquiries placed with the Help Desk?

DOL Response: Calling does not provide a faster response or resolution. All Help Desk requests are treated the same, whether the inquiry is made by phone or by e-mail. When an inquiry is made, a ticket is created and the Help Desk will work to address the problem. Responses to inquiries are generally sent by e-mail, regardless of how the inquiry was submitted.

5. Updating Employer Contact Information

Many employers are reporting prolonged problems in securing the assistance of the Help Desk in changing employer contact information. This is a ubiquitous issue among employers, for obvious reasons, as employees come and go. Examples are being provided separately. The committee previously reported this issue during the December 2016 Stakeholder Meeting and the issue appears to be continuing. Besides using, “Attention Supervisor,” in subsequent emails, is there any other avenue available to update an employer’s contact information?

DOL Response: To update the employer contact in the employer’s PERM account, the employer should log into the main employer account and update the contact information. For ETA Form 9089s drafted after this update is completed, the new contact information should automatically populate the form. Alternatively, if the employer had created a subaccount for that employee, the employer could delete that subaccount and create a new subaccount for the new employee. Note that the Help Desk is not able to make these account updates for the employer, and the employer is required to log into its account to make these changes directly. The Help Desk can assist with providing access to the account or resetting the account password but cannot make employer contact changes.

For cases that are pending, it is not possible to modify the ETA Form 9089 that has already been submitted. To ensure that the new employer contact receives communication on those cases, the employer can use the upload feature of the PERM Case Management System to upload a letter providing the contact update. This is the fastest way to ensure that OFLC has updated contact information for a specific pending case. The employer can also e-mail a letter to the PERM Help Desk providing a list of all pending cases requiring an employer contact update, and OFLC will then work to make these updates in the system.

6. Registration Process

We have received reports that employers trying to execute a new registration because of certain organizational changes are experiencing substantial delays in the registration process. Employers in these circumstances are receiving confirmation of registration filing but no further response for a significant period. Employers report a lack of response when seeking assistance through the Help Desk e-mail or telephone. Examples of these types of situations include employers whose names have changed but who maintain the same U.S. Federal Employer Identification Number (FEIN) number, as well as a change in FEIN number due to an acquisition or other reasons due to organizational restructuring. The wait time has been reported to be as long as three months.

- a. What sources does OFLC reference in determining the existence of a business entity?
- b. Is there any way to expedite this process?

DOL Response: OFLC has recently made a number of system updates to improve certain technical issues, including the employer registration process. Under the recent updates, the

system will notify users who are attempting to create a new registration that the employer already has an active registration or one that is in process. A pop-up warning will provide this notification and will provide the opportunity to do a password reset if the account already exists. If the account registration is pending, the pop-up will warn users that if they continue with the new registration, the system will delete the prior pending registration. The system updates also provide users with the ability to retrieve forgotten user names and passwords more easily.

When an employer changes its name but retains the same FEIN, the existing account cannot be updated. Instead, employers should create a new PERM account with the new name. Doing so will not deactivate the existing account, and employers will still be able to access the existing account during and after the new account registration process. It is possible that a RFI will be issued in connection with the new account registration, and the employer should respond to the RFI with documentation regarding the name change.

The system automatically deactivates accounts that are not accessed for more than 90 days. The account is not deleted, but it is deactivated. An employer can contact the Technical Help Desk for assistance reactivating an account that has been deactivated.

7. Resolving a Registration Denial

- a. If an employer attempts to register multiple times but the registration is denied, and no reason is provided, other than trying again is there something an employer can do to resolve the registration denial?
- b. Does OFLC track if an employer registers multiple times and is denied multiple times?

DOL Response: OFLC does not track multiple registration denial issues, but the employer can raise the issue with the Business Existence Help Desk. OFLC has recently implemented a system update such that when a registration is denied, the employer will receive notification of the specific reason for the denial.

8. Confirming Employer Sponsorship

OFLC has previously indicated that employers can receive 2 emails requesting sponsorship confirmation (one after submission and then another 7 days after submission, if the first email is not responded to) and then they have 30 days to respond. OFLC contractors will now not call to confirm sponsorship.

- a. If after seven days the employer has not received either email, what can an employer do to ensure that its PERM application is not denied solely because it did not receive the sponsorship questionnaires?
- b. Is a direct e-mail to plc.atlanta@dol.gov sent by the employer confirming sponsorship and referencing the case number helpful to avoid a denial?
- c. Could the upload feature be used to upload a letter from the employer confirming sponsorship?

DOL Response: If the sponsorship questionnaire is not received, the employer can affirmatively send an e-mail to plc.atlanta@dol.gov stating that the questionnaire was not received and confirming sponsorship. This can also be uploaded directly to the Case Management System using the upload button for the pending case. Uploads are preferred because they will go directly to the analyst assigned to the case, thus reducing the chances of a denial on this basis. Please note, however, that the sponsorship verification should be provided directly by the employer within 30 days of filing the application. If verification is not received within 30 days of filing, the application will be denied.

GENERAL PERM QUESTIONS

9. PERM Processing Times

While PERM processing continues to remain at less than 6 months, processing times do appear to have slowed somewhat in the past few months.

- a. Is this due to the influx of H-2B applications?
- b. Is it anticipated that PERM processing times will decrease again after the H-2B backlog has been eliminated?

DOL Response: PERM processing has slowed somewhat in recent months as analysts at the Atlanta Processing Center have provided support for H-2A and H-2B processing. This shifting of resources is part of OFLC's interoperability plan, and now that H-2B processing is winding down, those resources can shift back to processing PERM applications. OFLC will also likely utilize some of the analysts from the Chicago National Processing Center to assist with PERM processing. Until OFLC obtains the authority to charge processing fees, this kind of ebb and flow in processing times is likely to continue each year based upon available resources. It should be noted, however, that the one-time appropriation of \$20 million to fund H-2 processing made a significant impact, and without those funds in future years the surge in H-2 filings could have a much more substantial affect on PERM processing times. To provide context, \$20 million is more than one third of OFLC's annual budget, and thus has a very pronounced effect.

Audit processing was also affected by the shift to H-2 processing, but analysts who process audited cases were not used as heavily to assist with H-2 processing. As a general matter, OFLC is trying to maintain sufficient staff to process audits that matches the number of audits issued in order to avoid developing significant audit backlogs.

10. Completing Form ETA 9089 – WAGE LEVEL (NPWC-ANPC)

- a. (NPWC) In July 2015 when NPWD issued a FAQ authorizing the use of a default wage rate for highly compensated professionals, the FAQ confirmed that the correct

wage level was “N/A.”² However, we have numerous examples that we will provide of recent PWDs issued with an exact level rather than “N/A.”

- Can NPWD reconfirm that the correct wage “level” for this default wage is “N/A”?
- Can NPWC explain how it raises the default wage for highly compensated individuals, and when it implements this change? In our December 2017 stakeholder meeting, NPWC indicated that it updated the default wage in July when all wage rates are updated. However, members report receiving the \$90/hour default after July 1, 2017.

DOL Response: Even though the wage increase was effective on July 1, 2017, there was a system issue that prevented the new wage requirements from being implemented until around September 2017. Prevailing wage determinations issued after July 1st but before the updated wage rate was implemented are valid and can be relied upon like any other wage determination. The updates to the wage are made by the Bureau of Labor Statistics (BLS), and OFLC has no visibility into the methodology behind the timing or amount of these increases.

- b. (ANPC) The ETA Form 9089 requires a wage level for NPWC-issued wages. However, when OFLC issues the \$100/hour default for highly compensated professionals, it has confirmed the correct wage level is "N/A." However, ETA Form 9089 requires a wage level for all OFLC wages. In light of this, can OFLC confirm the best way for attorneys to complete the ETA Form 9089? Should the attorney mark Level I and, in Question H.14, clearly describe that the system prohibited it from marking "N/A" as it is an OFLC-issued wage?

DOL Response: When entering this wage rate on the ETA Form 9089, “N/A” should be selected as the wage level, “Other” should be selected in Section F.6 and “OES” should be entered in F.6.A. It is possible that there will be a pop-up warning concerning the way the wage is entered, but OFLC is not denying cases on this issue. OFLC is also looking into a system fix.

11. ETA Form 9089

Currently, your website provides an ETA Form 9089 that expires 11/30/2017. Individuals who are not going through the PERM process but who need the form for filing a Schedule A immigrant petition, or those paper filing a PERM application, cannot access a more up-to-date version. Do you anticipate updating the available version soon?

DOL Response: OFLC is awaiting approval of the updated validity date for both ETA Form 9089 and ETA Form 750 from OMB. There are no changes to either form other than the validity date. It is not yet known when OMB approval will be received. OFLC is accepting the existing ETA Form 9089 for paper filings but cannot speak to what other agencies may be doing.

² See U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, Frequently Asked Questions, H-1B, H-1B1, and E-3 Programs (July 31, 2015), *available at* https://www.foreignlaborcert.doleta.gov/pdf/H1B_H1B1_E3_Round3FAQs.pdf.

12. Impact of Foreign Ownership on Registration Process

Some employers who have a FEIN are wholly-owned by a foreign entity with headquarters abroad.

- a. Does foreign ownership affect the registration process?
- b. Does the employer need a U.S. headquarters office if the employee will be working remotely?

DOL Response: Foreign ownership does not affect the registration process. The PERM regulations require that an employer filing a PERM application have a location to which U.S. workers can report. Therefore, even if an employee will be working remotely, it is still necessary for the employer to have a physical address to which U.S. workers can report. In addition, business existence verification requires a physical address for an employer that can be demonstrated in the business existence verification process.

13. Retention of Documents

Pursuant to 20 CFR 656.10(f), an employer must retain “copies of applications for permanent employment certification filed with the Department of Labor and all supporting documentation must be retained by the employer for 5 years from the date of filing the Application for Permanent Employment Certification.” Most employers retain these files electronically. Given OFLC’s latest system upgrades that allow for electronic document response for audits, can OFLC confirm that employers may retain the “audit file,” i.e., copies of the Form 9089, evidence of recruitment, and resumes/applications of U.S. applicants, electronically?

DOL Response: With the continued move toward electronic communication, it is highly unlikely that OFLC will need original documents of any kind. Note, however, it is important that newspaper advertisements and related documents be legible. There are circumstances where the copy provided in response to an audit is illegible, and that can result in a denial of the application. Employers who choose to store documentation electronically should therefore be careful to ensure that all documents are legible and easily accessible.

OFLC continues to encourage attorneys and employers to utilize the upload feature on the PERM Case Management System. Using the upload feature ensures that documents are provided directly to the analyst working on the case, and that the attorney or employer has immediate confirmation of documents being submitted. More documents continue to be e-mailed than uploaded, and while e-mail is acceptable, it is not the preferred or most efficient means of communication given the increased efficiencies involved with the upload feature. OFLC is hopeful that attorneys and employers will continue to expand use of the upload system, as this will continue to help OFLC manage limited resources.

14. Reviewing an Applicant's Qualifications

In *Matter of Sunnyvale School District*, 2014- PER-00620 (June 22, 2017), BALCA confirmed that if an applicant's resume does not indicate that they possess a major requirement for the position (e.g. degree, major field of study, licensure, etc.), the employer can reject the applicant based upon the resume.

- a. Can OFLC confirm that it is following *Matter of Sunnyvale School District* in adjudicating PERM applications?
- b. Does OFLC apply the same standard regarding applicant qualification review in the supervised recruitment process?

DOL Response: OFLC reviews and considers all BALCA panel decisions, but is not bound by any particular panel decision. PERM application adjudication is completed on a case-by-case basis. While OFLC recognized the reasoning set forth in *Matter of Sunnyvale School District*, it is also aware of other panel decisions reaching a different result.

Supervised recruitment is controlled by a different part of the regulations than a regular PERM adjudication. OFLC follows the supervised recruitment regulations in conducting adjudication of a case selected for supervised recruitment.

H-1B Questions

15. New ETA Form 9035

In the December 2017 Stakeholder meeting, OFLC stated that we can expect to see the new ETA Form 9035 unveiled in May or June 2018.

- a. Is this still the expected timeline for OFLC to implement the new form?
- b. When can we expect to hear further from OFLC regarding the details of the implementation process?

DOL Response: The regulatory process to revise the ETA Form 9035 remains ongoing. OFLC did not receive a lot of comments to the proposed revision of the ETA Form 9035. OFLC will be submitting a publication to the Federal Register for a final 30 day public comment period in the near future. OFLC anticipates providing a period of time where the old version of the form will continue to be accepted such that attorneys and employers will be able to clear whatever unsubmitted ETA Forms 9035 remain in their queue. Nothing about the process would invalidate existing certified LCAs nor would it require resubmission of LCAs that have already been certified.

16. Labor Condition Application Filings

As you know, H-1B cap season is well underway and we would anticipate that OFLC has already seen a significant uptick in the number of Labor Condition Application (LCA)

filings. Can you provide information on how the volume of LCAs received to date in 2018 compares to the same time last year? Does OFLC anticipate that there will be capacity problems this year to address LCA processing, or that LCA processing demands will result in a slowdown in processing of other applications, such as PERM applications or prevailing wage requests?

DOL Response: OFLC is not expecting any slowdown in LCA processing and expects to continue to meet its regulatory requirement to adjudicate LCAs within 7 calendar days. The volume of LCAs is slightly above last year at this time and is utilizing its interoperability model to ensure that LCA processing times are maintained.

AILA Note: At time of publishing these notes, the DOL Liaison committee has not received reports of any delays in LCA processing during the H-1B Cap Season.

17. LCA Business Verification Process

Last year during H-1B cap season, there was sometimes a 2-3 business day delay between when the LCA business verification process was completed and when the email was sent to the employer confirming that the process has been completed.

- a. Has OFLC modified the LCA business verification process so that there is not a delay between when DOL completes the process and when DOL sends an email to employers confirming that the process has been completed?

DOL Response: OFLC believes that this issue has been resolved and had not received reports through the Help Desk of situations where business verification has been completed but the e-mail has not been sent.

- b. During H-1B cap season when there is a substantial increase in LCA submissions, does the Chicago Processing Center assign more analysts to the LCA business verification team to handle the spike in verifications?

DOL Response: Yes, as part of OFLC's interoperability model, analysts from Atlanta who are trained on LCA processing assisted the Chicago Processing Center with LCA adjudications.

- c. Is there a normal processing time for verifications after an employer provides evidence of its FEIN?

DOL Response: Verification should be completed within one week after the employer submits sufficient evidence of its FEIN. If more than one week has passed, an inquiry should be submitted to the Help Desk. It is important to note that OFLC is simply verifying the FEIN and the company's location for LCA purposes. A Business Existence Verification for purposes of PERM is more in-depth. The fact that a business's existence has been established for LCA purposes does not mean that it is established for PERM purposes.

Prevailing Wage Questions

18. Prevailing Wage Determination

When OFLC issues a prevailing wage determination for a combination of occupations, one SOC code is indicated in section F.3 on Form 9141. The secondary SOC code is indicated in the Notes section. When determining a prevailing wage for a position with an employer covered by ACWIA, it is not unusual for OFLC to select an All Industries SOC code and an ACWIA SOC code. In those instances, the assigned wage will, correctly, be based on the ACWIA SOC code. However, the SOC code listed in F.3 is often the All Industries SOC code. Consequently, the wage stated in section F.4 does not correspond to the SOC code in section F.3; instead, the wage is based on the SOC code stated in the Notes section.

- a. What is the rationale for this practice?
- b. Will OFLC consider changing this practice so that the assigned wage in section F.3 and the SOC code in section F.4 match?

DOL Response: When the National Prevailing Wage Center (NPWC) determines that ACWIA is applicable to an employer, it is required to assign a wage based upon the ACWIA database. It therefore looks for the closest match within the ACWIA database. Employers should be aware that there are fewer occupations in the ACWIA database than in the all-industries database. As a result, the NPWC will choose the best match from within the ACWIA database, and will sometimes note that the match is being made based upon what is available in the ACWIA database. The NPWC does not have plans to modify this practice at this time.

19. Occupational Categories

In issuing a prevailing wage determination, prevailing wage analysts must endeavor to choose the best match from 840 occupational categories for thousands of different jobs. Is it correct that several occupational categories could correctly capture a specific job, and that the prevailing wage analyst simply tries to choose the best match within the occupational categories available? Are there specific protocols that are followed by prevailing wage analysts to choose the best occupational category? How much of the process is a subjective decision by the analyst?

DOL Response: The NPWC reviews the job duties and requirements indicated in the prevailing wage determination request and assigns what it believes to be the best match within the options available from the OES database. Employers who believe a wage determination has been issued in the wrong occupational category have the option of seeking redetermination and/or Center Director review or a BALCA appeal.

20. New SOC codes

New SOC codes became effective January 1, 2018.

- a. What must occur regarding these codes to make them available for use in issuing prevailing wage determinations?
- b. When does OFLC anticipate the new codes will become available for use in the prevailing wage process?
- c. If the new SOC codes will not become available for an extended period of time, will prevailing wage analysts nevertheless consider information contained in the new codes when processing prevailing wage determination requests? For instance, one of the new SOC codes is Project Management Specialist (13-1082). This is within the category 13- 1080, Logisticians and Project Management Specialists. If the Project Management Specialist code will not be available for prevailing wage purposes for an extended period of time, will prevailing wage analysts be more likely to use the existing closely related wage classification of Logistician (13-1081) for positions that would otherwise be properly categories as a Project Management Specialist?
- d. Similarly, will prevailing wage analysts look to the job duties or requirements described in the new occupations and give them consideration when determining whether to assign a point when classifying the role as a closely related existing occupation?

DOL Response: Before the new SOC codes³ can be used, BLS must collect wage data and analyze it for those codes. BLS recently announced the OES implementation schedule⁴ indicating that the earliest this data will be available is July 2020. This is consistent with current OES Wage Data practice, as wage data reflected in the OES database was typically gathered two years ago.

In processing prevailing wage determination requests, wage analysts will continue to work within the existing available data and will choose the best occupational match from the existing database. Analysts do not look beyond the existing options available in assigning a prevailing wage. They determine job zone and normal educational requirements based upon what is in the existing data.

OFLC is actively in discussions with O*NET regarding the process of implementing the SOC 2018 revision and will continue to have those discussions.

³ See U.S. Department of Labor, Bureau of Labor Statistics, Standard Occupational Classification, <https://www.bls.gov/soc/2018/home.htm>

⁴ See U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, Implementing the 2018 SOC in the OES program, https://www.bls.gov/oes/soc_2018.htm/

21. Two Educational Requirements

How should employers complete ETA Form 9141 in order to avoid receiving an RFI when they have two educational requirements that seem to conflict but are not conflicting requirements when viewed in the context of the industry. For example, Intellectual Property Law Firms will often require a bachelor's degree in a technical field such as Engineering, Computer Engineering, Physics, or Mathematics in addition to a Juris doctorate degree for lawyers in their patent practice. Should we list the second degree in Section E.b.2, or does NPWC prefer to have the second degree listed in Section E.b.5 as a special requirement? How does this kind of degree requirement affect the prevailing wage determination, if we provide an explanation as to why a second degree is required?

DOL Response: The second educational requirement should be entered in Section E.b.2 of the ETA Form 9141. It can be beneficial to include an explanation in Section E.b.5 as to why a second degree is required for the role. This may help to reduce the need for an RFI on that topic when processing the prevailing wage determination request.

Additional Questions Asked By Stakeholders at the Meeting

1. Will OFLC consider expediting cases for humanitarian reasons, such as a child aging out? If so, what is the procedure to request an expedite?

DOL Response: OFLC has no process for expediting cases and continues to process cases in the order received. OFLC does not have plans in the immediate future to implement an expedite procedure and believes that rulemaking might be needed to do so. While OFLC will continue to review this issue, it does not anticipate making any changes to the process at this time.

2. AILA has previously reported that a small number of PERM applications have been denied on the basis that the prevailing wage determination could not be found in iCert. We understand that this was determined to be a technical glitch and those denials are being reversed on reconsideration. In light of these denials, will OFLC consider an option other than a denial, such as issuance of an RFI, for this kind of issue in the future?

DOL Response: These denials were a technical glitch and are being corrected. OFLC remains committed to processing cases accurately and efficiently, and while it will give further consideration to issuing an RFI the overall goal it is concerned that adding this step could damage overall processing efficiency. OFLC has endeavored to ensure a fast turnaround of cases within the Request for Reconsideration queue and relies on that process to provide attorneys and employers with the opportunity to address denials that are believed to have been issued in error.