

U.S. DEPARTMENT OF LABOR
FY 2010 ANNUAL PERFORMANCE REPORT

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This report, as well as the FY 2010 Agency Financial Report and the FY 2010 Summary of Performance and Financial Information, can be found on the Internet at <http://www.dol.gov/sec/media/reports/>.

If you have questions or comments regarding this report, contact:

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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.

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.

MSHA – “Journeyman Mine Inspectors Do Not Receive Required Periodic Retraining,” March 2010 (Office of Inspector General)	
Relevance: Mine Inspector Training – Determine what training is needed, how is MSHA equipped to provide the training, do inspectorate receive appropriate training to adequately execute their enforcement responsibilities.	
Findings and Recommendations: <ul style="list-style-type: none"> • Findings: MSHA lacked controls to track and assure completion of required periodic retraining by journeyman inspectors. Training records for entry-level inspectors lacked timely supporting documentation. MSHA’s system for recording training activity lacked sufficient controls to assure that adequate documentation was maintained to support training completion. • Recommendation: MSHA hold inspectors accountable for assuring that journeyman inspectors complete retraining – inspection activities would be suspended if designated training was not completed. 	Next Steps: <ul style="list-style-type: none"> • Corrective actions will be implemented.
Additional Information: The report (No. 05-10-001-06-001) is available at: http://www.oig.dol.gov/public/reports/oa/2010/05-10-001-06-001.pdf .	
MSHA – “In 32 Years MSHA Has Never Successfully Exercised Its Pattern of Violations Authority Report,” September 2010 (Office of Inspector General)	
Relevance: Pattern of Violation (POV) process review allows MSHA to take enhanced enforcement actions when a mine demonstrates recurring safety violations that could significantly and substantially contribute to the cause and effect of health and safety issues.	
Findings and Recommendations: <ul style="list-style-type: none"> • Findings: MSHA attempted to implement a standardized method based on quantitative data for identifying potential POV mines – the process was unreliable and the criteria were complex and lacked a supportable rationale. • Recommendations: MSHA re-evaluate current POV regulations and policies. 	Next Steps: <ul style="list-style-type: none"> • Revise screening criteria for POV process. • Revise POV regulatory requirements.
Additional Information: The report (No. 05-10-005-06-001) is available at: http://www.oig.dol.gov/public/reports/oa/2010/05-10-005-06-001b.pdf .	
MSHA – “Alert Memorandum: MSHA Set Limits on the Number of Potential Pattern of Violation Mines to be Monitored,” June 2010 (Office of Inspector General)	
Relevance:	
Findings and Recommendations: <ul style="list-style-type: none"> • Re-evaluate the appropriate POV status of the 10 mines that were previously removed from POV oversight and monitoring based on the Coal Mine Safety and Health limits. • Assure that on future POV analysis all decisions to include or remove mines from POV-related enforcement efforts are based solely on the health and safety conditions at each mine. 	Next Steps: <ul style="list-style-type: none"> • During the follow-up inspection, the mines were found to be within an acceptable significant and substantial rate. • Corrective action taken.
Additional Information: The report (No. 05-10-004-06-001) is available at http://www.oig.dol.gov/public/reports/oa/2010/05-10-004-06-001.pdf .	
WHD – “Debarment Authority Should Be Used More Extensively in Foreign Labor Certification Programs,” September 2010 (Office of Inspector General)	
Relevance:	
Findings and Recommendations: <ul style="list-style-type: none"> • Implement procedures and controls to assure that ETA and WHD assess and document the 	Next Steps: <ul style="list-style-type: none"> • WHD has agreed to examine the feasibility of implementing the

appropriateness of debarring each individual convicted of a Foreign Labor Certification (FLC) violation resulting from an Office of Inspector General (OIG) investigation.

- Implement procedures and controls to assure that ETA and WHD report FLC suspensions and debarments to designated Department personnel for inclusion on the government-wide exclusion system.
- Strengthen FLC application processing controls to ensure the detection and resolution of applications with invalid Employer identification Numbers (EIN).

recommendations.

Additional Information: The report (No. 05-10-002-03-321) is available at <http://www.oig.dol.gov/public/reports/oa/2010/05-10-002-03-321.pdf>.