

DOL Stakeholders Meeting 9/22/2009
Westin-O'hare - Chicago, IL
Notes compiled by Jeanne Kelley

DOL representatives in attendance:

William Carlson – Administrator

Brian Pasternak – Chief of Program Operations

Elissa McGovern – Chief of Policy

Isabel Jean Pierre – Temporary Programs Manager

Charlene Giles – Manager Chicago Processing Center

Stakeholder groups in attendance:

Approximately 7 from AILA including Bob Deasy

Approximately 8 from ACIP including Rachel Cox

One representative from ABA – Susan Cohen

One representative from NAFSA – Jeanne Kelley

Agenda questions from AILA for Stakeholders meeting 9/22/09

PERM

1. Please provide an update on the number of PERM cases in process at this time:

- Number of cases pending?
 - Of that number, the number in:
 - audit?
 - final review?
- Number of cases in the Request for Reconsideration queue?
- Number of cases in the Request for Review queue?

Answer: A formal FAQ will be released in early October.

pending cases 65,800 – (December 2008)

cases in audit 24,600- 37% (October 2007)

cases in final review 37,500 - 57%

cases in appeal 3,000 (August 2007)

current on government errors

2. At what time frame past each of the published processing times should an employer/attorney contact DOL if their case has not yet been adjudicated or moved? What DOL email address should be utilized for this purpose?

Answer: Currently processing at 9+ month - December 2008. If your case has been pending for more than 1 year from current date then you may wish to inquire.

Example: if case was filed prior to 9/22/2008, then you may wish to inquire.

3. When does DOL expect to launch the new PERM portal? Does DOL anticipate running the existing PERM online filing system in parallel to the new iCERT PERM

form, similar to the parallel LCA systems DOL had in place from April 15 through June 30? Having both the old and the new filing system available would greatly lessen the stress of using a new system, and we would hope that DOL will implement a similar transition when the new PERM filing system goes live on iCERT.

Answer: No schedule yet. More details will be released in October. They do expect to follow same pattern as LCA module release with both systems up for a limited period of time and then mandatory use of new PERM portal.

4. How can stakeholders help DOL in the roll-out of the PERM portal and the launch of the new online forms, such as the prevailing wage determinations, which DOL is scheduled to begin issuing in January? We would like to facilitate identifying issues, and communicating instructions to members, as we did with the launch of the iCERT LCA form. For example, we can communicate expected processing times to members, and ask them to notify us when they encounter a problem. In identifying these problems, what types of information would DOL find most helpful? (For example, do you need the case number? For problems with accessing the system, would you need information regarding the browser and computer used?)

Answer: DOL will continue to look to stakeholders group for system testing, feedback and assistance in communicating to employer community.

5. What is the status of the new help desk office in D.C.? Will emails sent to the existing DOL email addresses automatically forward to the help desk, or will DOL be implementing a new means to contact the new help desk?

Answer: The center will be dedicated to federalized prevailing wage (PW) processing and wage assignment. DOL is renovating space in the Colorado Building at 1333 G street (near AILA headquarters). Still waiting for contractors to complete renovations before they will know when space can be occupied. New Center Director will be Bill Rayburn. They still expect to begin using the new PW portal in ICERT in January 2010. They hope to schedule another stakeholder system testing for early November. They estimate that PW assignments may take as long as 30 days. DOL encouraged employers to continue requesting wages at local SWAs through 12/31/2009 and also encouraged employers to request wages for anticipated positions well in advance since current wage assignments are generally valid to 6/30/2010. State SWAs will clear out all PW requests submitted by 12/31/2010. Employers will have to then wait and use new PW portal to request wage assignments. They indicated that they will not honor any agreements or surveys that SWAs have previously endorsed and encouraged employers to prepare for the new PW portal. There will be separate emails created for PW processing. H-2A processing will remain in Chicago and PERM processing will remain in Atlanta.

6. Several members have reported that when the NPC staff has called the employer to verify sponsorship on a PERM case, there has been some confusion about what “job title” the NPC will verify when they call. For example, an employer may have filed an

application to sponsor a “Programmer Analyst” (ETA 9089 H. 3 Job title); however, the NPC staff may ask the employer to verify that the employee is working in the occupation of “Computer Systems Analyst”, which is the OES code assigned to the occupation (ETA 9089 F.3 Occupation Title). In at least one case, when an employer truthfully replied that the employee is working in the position of “Programmer Analyst,” the NPC told the employer that was **not** the correct occupation title. Can the NPC ask the employer to verify the job title (H.3), rather than the OES Occupational code (F.3)? This would simplify the process, avoid confusion of the employer, and fulfill the requirement that DOL confirm the sponsorship of the PERM case.

Answer: DOL has reminded sponsorship clerks to try to remember to reference the H3 job title and will continue to do so at trainings etc.

7. We have learned of at least two instances where a request was made to DOL to withdraw a PERM case and there was a typo by employer or attorney in the case number leading to *the wrong case being withdrawn*. The employer name and alien name in the request were correct. May the arrangements to reinstate a mistakenly withdrawn case be handled by email exchange rather than a motion to reopen or request for review?

Answer: If it is a DOL error, they will try to fix it however, they cautioned employers if they make the error, they will have to work with other employer affected by erroneous withdrawal to request motion to reopen to correct case.

8. We appreciate that DOL put a system in place that allows customers to flag an erroneous denial with a colored cover sheet and the statement “government error.” We understand that it is DOL’s decision as to whether a case is considered “government error” in the Request for Recon/Request for Review queue. We respectfully request that an analogous process be utilized for cases in audit, i.e., whereby **audits solely on erroneous issue(s)** be expeditiously reviewed and the case returned to its place in the processing queue as if the audit had not been issued. Examples are a Special Handling case where the *sole request* in the audit is the SWA posting, which is not required for such a case and an audit with the *sole request* of three additional recruitment steps for a non-professional position. We believe that a customer should not be subject to prolonged delay for such an erroneously-issued audit and that DOL would want to correct such errors swiftly and efficiently as well. (Example re Special Handling case was A0822678088.) The AILA DOL Committee is willing to first vet such cases and forward legitimate cases to DOL.

Answer: Request for audit request supporting documentation for multiple reasons so there may be a government error for one of the reasons for audit but not for all reasons. Employers are encouraged to respond to all requests for documentation.

9. A number of members have recently received certified ETA 9089s several months after the date the 9089 was certified, or worse, have reported never receiving the certified 9089 after approval. When inquiries were made to the NPC regarding the missing 9089 approvals, the NPC has advised practitioners to follow procedures to request a duplicate

certification. As the certified 9089 expires 180 days from the date of certification, mailing delays put the validity of the 9089 at risk. Since emails notifying of certification are not consistently being sent, the mailed 9089 may be the only way an employer can know that a PERM case has been approved. In instances where a certification is mailed late, we believe, at a minimum, the certification should be reissued dated the date of mailing, to ensure that the recipient had the full 180 days to use the approved certification. In instances of late mailings, where an employer receives a certified ETA 9089 after the certification has expired, will DOL reissue the certification? Examples of late mailed or never received 9089 certifications: A-08176-64363: certified 3/30/09, postmark date 8/28/09; A-08241-82854: certified 4/4/09, postmark date 8/21/09; A-08297-98868: certified 4/26/2009, never received by attorney/employer.

Answer: Employers should receive response within 14 days from adjudication and should follow-up through liaison if they do not as soon as possible after that time to try to target reason notice was not received. DOL will follow different procedures to resolve depending on whether the DOL determines that the notice was issued but lost in the mail versus not clearly issued. Employers are encouraged to send case to USCIS with I-140 and request for duplicate notice. Attorneys should continue to check system frequently since only employers receive notice.

iCERT/LCA

9. How does a foreign-based attorney without a Social Security number or FEIN register in the system? We understand 9035s are currently rejected without an FEIN.

Answer: DOL indicated that there are definitely out of country attorneys already using system so there is nothing in system that requires attorney or agent to be located in the US. AILA will follow-up with attorney who submitted this question to dig a bit deeper.

10. We have learned that email notification of LCA certification or denial is not automated and an officer could neglect to send the email. Users rely on this notification and it is overly burdensome to require a user to check the status of a case on a daily basis, particularly when there is no other way to learn of the status – i.e., certification or denial doesn't come in the mail as with a PERM or a USCIS case. Moreover, the *reason* for a denial doesn't show on line. We encourage DOL to institute a process **requiring** officers to send the email to the attorney and employer.

Answer: This is a manual data entry process. While DOL has emphasized the need for certifying officers to forward the email notification, they recognize that some probably miss that step. They will consider automating this process in future system upgrades. In the meantime, stakeholders are encouraged to report if employers are not receiving emails future forward. There was also discussion about AILA concerns that email is only sent to the employer and not attorney or agent. DOL encouraged AILA members to check system frequently to check case status. There

was also some discussion about softening the denial response language by changing or removing reference to “obvious inaccuracy” so less experienced employers will not panic when they receive this notification. DOL indicated that language was not within their control.

11. We understand that users can now send in FEIN information prior to an LCA denial, in anticipation of submission of an LCA in the future. Please provide any guidelines regarding such submissions.

Answer: See question #12

12. Please describe the database used for FEIN verification. We understand it is a different database than that currently used in the PERM system and that there has now been a transfer of FEIN information from the PERM to the iCERT. For new registrants in the PERM system, how long should we expect it will take for the FEIN to be reflected accurately in the iCERT system?

Answer: There was great deal of discussion regarding this process. The FEIN approval and reconciliation is a manual process and database requiring manual data entry as there is no exhaustive government list of FEINs. Once a FEIN is initially approved for an LCA, it should continue to be acceptable. PERM FEIN standards require additional levels of approval so DOL is encouraging employers to submit emails regarding new companies with new FEINs or when they anticipate a problem for reconciliation in advance.

There was also a great deal of discussion about system issues with account set up for employers with FEINs that begin with “0” Employers should refer to guidance issued to employers experiencing this issue forwarded by DOL two days after this discussion.

13. On a related note, will the iCERT information be transferred to the PERM system? I.e., if an employer’s FEIN is cleared in the iCERT system and the employer later registers in the current PERM system, will an employer still have to go through a business existence check in the PERM system?

Answer: Yes, see question #12

14. Similarly, what will happen **after** PERM moves to iCERT? If the FEIN was already cleared for an LCA, will an employer still need to go through business existence check when registering for PERM?

Answer: Yes, see question #12

15. As you know, we received reports of LCA denial for lack of FEIN verification where the employer submitted the LCA after the employer had received notice of FEIN

verification. Examples of this problem have been previously forwarded to you and additional examples are attached. Has this been rectified?

Answer: See question #12

GENERAL

16. We would like to raise again the possibility of an individual case inquiry system where problem cases raised by members are first vetted by the stakeholders group then submitted to a DOL representative for individual follow up. This system has worked successfully with other U.S. government agencies for many years. Other agencies find the process very beneficial in that it allows the agency to identify technical, training, process, and other problems before they are launched on a large scale. In addition, when process issues are identified at the front end, the agency can relay guidelines to stakeholders for handling or avoiding additional problems and the stakeholders can in turn provide practice advisories to members. We would be grateful for the opportunity to discuss how such a system could be launched, even on a trial basis.

Answer: DOL will evaluate the merits of this request.

Additional examples of LCA denial for lack of FEIN verification where the employer submitted the LCA after the employer had received notice of FEIN verification:

1. 08/08/2009: LCA denied for lack of FEIN verification
08/08/2009: FEIN verification docs requested from DOL
08/11/2009: FEIN docs submitted to DOL
08/27/2009: DOL confirms FEIN as valid
08/27/2009: New LCA submitted
09/02/2009: New LCA denied

2. 8/19/09: LCA # denied due to FEIN. Submitted the requested IRS documents to the DOL business verification team same day.
8/20/09: LCA # submitted with a slightly different employer name, exactly matching the information in the IRS documents.
8/28/09: LCA # denied due to FEIN.
8/31/09: received an email from the DOL stating that the FEIN was verified.
9/3/09: LCA # submitted.
9/10/09: LCA # denied on because of a supposedly incorrect FEIN.

As a final note, this member relayed the following communication regarding their efforts to get the FEIN problem resolved: I called the DOL just a moment ago and was referred to the LCA helpdesk. The lady who spoke to me was very nice and said that my call was not the first one today about this problem. She told me that after the business verification team verified that my client exists it failed to update that information for my client in the database. The operator said that she

would have the problem fixed and would call me back by noon today to confirm that the problem has been fixed. Then we get to file our fourth LCA.

Agenda questions from ACIP for Stakeholders meeting 9/22/09

1. What are the plans for opening the new Prevailing Wage Center in DC and moving PWDs away from the SWAs? How long will it take for DOL to process prevailing wage requests when processing moves?

Answer: Yes, see AILA question #5

2. Is OFLC planning another round of enhancements to iCert? If so, is OFLC planning to add automated e-mails (confirming LCA certification, etc.) to the next round of enhancements?

Answer: Yes, while DOL indicated they think the recent sysmte upgrade has fixed many of the issues, they expressly asked stakeholders to continue to collect and forward system problems and requests for system enhancements. They asked stakeholders to prioritize these requests in order of importance.

3. One member reported the following, "We submitted an LCA for a position that we used the CUPA Mid Level salary survey for the PW. DOL has requested we send the complete survey and methodology used to arrive at the PW, before they can continue processing this LCA. We have used this same source before since the inception of the iCERT LCA and the LCAs were certified. Until now, the other source that was questioned was the OSU; they asked for the surveys and methodology and when we sent them OSU data they denied the two LCAs. What prompts DOL to audit these LCAs? We want the LCAs to be acceptable for DOL at the initial filing to avoid delays." We have heard similar comments from other members and are wondering why sometimes a survey is acceptable and other times, the same survey is not acceptable. Can DOL explain the process to us

Answer: See recently distributed DOL FAQ sheet regarding detailed guidance referencing how to enter surveys into LCA portal. They repeated request for list of most common surveys used by stakeholder members so they could research possible surveys in advance. DOL encouraged stakeholder to report if it is just a "spelling" issue to help with training. They indicated that they will not honor any agreements or surveys that SWAs have previously endorsed and encouraged employers to prepare for new PW portal.

4. The processing of PERM filings seems to have slowed down. Is something causing the delays? What is the current plan for adding PERM to the iCert

system? How does OFLC envision the move of PERM into iCert will impact PERM processing?

Answer: See AILA question #2 and #3

5. Would OFLC consider training officers to 'specialize' so that DOL officers could process similar case types thereby improving efficiency of processing and reducing the risk of errors due to case type? For example, perhaps a group could be trained to be dedicated to university teaching positions as opposed to standard processing cases. We think the mix up with requesting job bank letters when they are not required for Special Handling; denying cases that have failed to provide a prevailing wage determination in response to an audit when none is requested in the special handling section of the audit letter, etc, is a result of confusion between the 2 processes which are significantly different. The mistakes made by analysts in asking for documents that are not required, etc, while seemingly minor, can have serious repercussion on the beneficiaries of the PERM application. Additionally, Special Handling PERM applications are pretty straight forward and can often be processed pretty quickly. The best qualified candidate standard is pretty straight forward. The beneficiaries are usually PhD university professors, an occupation which generally has a shortage of qualified US workers even in a weak economy.

Answer: DOL emphasized that they have made a significant effort to correct these mistakes. They do not expect that employers will continue to experience this problem. If employers report this problem again in the future, stakeholder group should report cases directly to Bill Carlson for immediate action.

Agenda questions from ABA for Stakeholders meeting 9/22/09

1. Is there any way to expedite an LCA that was incorrectly denied due to DOL's not recognizing a valid FEIN? I am getting reports of delays of 2 weeks - one week to have the FEIN recognized, and another whole week to get a newly submitted LCA approved. Could a new LCA be submitted with a simultaneously submitted IRS document verifying the FEIN?

Answer: DOL indicated that they are prioritizing FEIN resolutions.