

# Foreign Labor Certification

More in This Section >

- [Close](#)
- [Programs](#)
- [Wage and Occupation Information](#)
- [Seasonal Jobs](#)
- [Policies and Regulations](#)
- [Forms](#)
- [Performance Data](#)
- [Foreign Labor Recruiter List](#)
- [Debarments List](#)
- [Frequently Asked Questions \(FAQs\)](#)
- [Announcements](#)
- [Foreign Labor Application Gateway \(FLAG\) Online Filing](#)
- [Permanent Employment Certification \(PERM\) Online Filing](#)
- [OFLC Help Desks](#)
- [Contacts](#)
- [Sitemap](#)

## Announcements

### December 10, 2020. OFLC Provides H-2B Webinar Materials and Information to Stakeholders for the 2021 Peak Filing Season

On December 9, 2020, the Office of Foreign Labor Certification (OFLC) conducted a webinar to update stakeholders on the process for filing H-2B applications requesting a work start date of April 1, 2021, or later.

This webinar also provided best practices and helpful tips for preparing and submitting H-2B *Applications for Temporary Employment Certification* (Form ETA-9142B and appendices) using the Foreign Labor Application Gateway System. The presentation can be found [here](#). **Final Dec. 10, 2020. (Posted 12/10/20)**

materials are now available at the hyperlink below.

- [View the H-2B FY 2020 Best Practices Presentation](#)

**IMPORTANT REMINDER:** Employers are reminded that they should file only one application for the same job opportunity. With limited exception, under [20 CFR 655.15\(f\)](#), only one *Application for Temporary Employment Certification* (Form ETA-9142B and appendices) may be filed for worksite(s) within one area of intended employment for each job opportunity with an employer for each period of employment.

OFLC will review and process only the application that is filed first, according to its timestamp. If OFLC identifies multiple applications that appear to have been filed for the same job opportunity, OFLC will consider the **first application filed in timestamp order** - irrespective of randomization group assignments - as the **official application** submitted by (or on behalf of) the employer. OFLC will issue a Notice of Deficiency on the first application reviewed (i.e., the application that is randomized closest to the top of the processing order) to require the employer to establish a bona fide need for all potentially duplicative applications. Employers that fail to establish a bona fide need for each of the applications will receive a non-acceptance denial for each application identified as a duplicate and received after the application that was filed first.

Any necessary corrections or amendments should be made to the first application filed. For further information on requesting a correction or amendment of an H-2B application before a final determination is issued, please refer to [H-2B Frequently Asked Questions Round 11](#), **regardless of any H-2B visa cap administered by USCIS**.

## December 3, 2020. OFLC Announces Updates to Implementation of the Wage Protections Interim Final Rule; Compliance with District Court Orders

On December 1, 2020, the U.S. District Court for the Northern District of California issued an order in *Chamber of Commerce, et al. v. DHS, et al.*, No. 20-cv-7331, finding that the U.S. Department of Labor (the Department) failed to show it had good cause to forgo advance notice and comment under the Administrative Procedure Act for the Interim Final Rule (IFR), *Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States*, 85 FR 63872 (Oct. 8, 2020). The court's order sets aside the IFR, which took effect on October 8, 2020 and implemented reforms to the prevailing wage methodology for the Permanent Employment Certification, H-1B, H-1B1, and E-3 visa programs. Similarly, on December 3, 2020, the U.S. District Court for the District of New Jersey issued a preliminary injunction in *ITServe Alliance, Inc., et al. v. Scalia, et al.*, No. 20-cv-14604, applying to the plaintiffs in that case.

The Department is taking necessary steps to comply with the courts' orders, including making required technical changes to the Foreign Labor Application Gateway (FLAG) system, in a manner that minimizes service disruptions for customers and OFLC staff. Specifically, the Department must make changes to the FLAG system modules to replace the 10/8/2020-6/30/2021 wage source year data that was implemented under the IFR with the OES prevailing wage data that was in effect on October 7, 2020. To reduce the risk of unintended system problems or errors while this occurs, employers and their authorized attorneys or agents may experience a brief delay in their ability to use the FLAG system to submit new *Labor Condition Applications for Nonimmigrant Workers* (LCAs), Form ETA-9035/9035E, and receive determinations on *Applications for Prevailing Wage Determination*, Form ETA-9141, where the Occupational Employment Statistics (OES) survey data is the prevailing wage source.

### Implementation Timeframe for Technical Changes to FLC Online Data Center

- The OES prevailing wage data for each SOC and area of intended employment that was in effect on October 7, 2020 (i.e., data for 7/1/2020-10/7/2020) has remained publicly accessible at <https://www.flcdatacenter.com/>.
- To limit any confusion for stakeholders, beginning at approximately 12:00PM (Noon) Eastern Time on December 4, 2020, this data source will be updated at <https://www.flcdatacenter.com/> to reflect the correct prevailing wage data for each SOC and area of intended employment through June 30, 2021.

### Implementation Timeframe for Filing LCAs

- All Form ETA-9035/9035Es submitted using the FLAG system through 5:59AM Eastern Time on December 4, 2020, where the OES survey data is the prevailing wage source, will continue to be processed and issued a final determination without delay.
- Beginning around 6:00AM Eastern Time on December 4, 2020, the FLAG system will be temporarily unavailable to deploy necessary code changes to temporarily **disable** the OES prevailing wage calculator, which uses the 10/8/2020-6/30/2021 wage source year data to prepare Form ETA-9035/9035Es.
- Around 8:30AM Eastern Time on December 4, 2020, the FLAG system will be