

FAQS ON SUPERVISED RECRUITMENT

1. Under what authority can the Department of Labor's Office of Foreign Labor Certification select an employer's application for supervised recruitment?

- 20 CFR 656.21 provides, "Where the Certifying Officer determines it appropriate, post-filing supervised recruitment may be required of the employer for the pending application or future applications pursuant to 20 CFR 656.20(b)," and 20 CFR 656.24(f) provides, in part, "If the Certifying Officer determines the employer substantially failed to produce required documentation, or the documentation was inadequate, or determines a material misrepresentation was made with respect to the application, or if the Certifying Officer determines it appropriate for other reasons, the employer may be required to conduct supervised recruitment pursuant to §656.21 in future filings of labor certification applications for up to two years from the date of the Final Determination.

2. How will the employer know it has been selected for Supervised Recruitment?

- The employer will be notified by the Office of Foreign Labor Certification/Atlanta National Processing Center (OFLC/ANPC).

3. What does the Supervised Recruitment process entail?

- The supervised recruitment process generally consists of the following steps:
 1. The employer will receive a Notification of Supervised Recruitment letter. Using the advertisement's general content requirements outlined in the Notification of Supervised Recruitment letter, the employer must supply a draft advertisement of the job opportunity to the Certifying Officer for review within 30 calendar days

from the date of the notification letter. The employer may submit a request for one extension (for good cause) of the 30-day timeframe, to be granted at the Certifying Officer's discretion. In drafting the advertisement, the employer cannot substantively deviate from the job opportunity's requirements as listed in Section H of the submitted ETA Form 9089.

2. Upon receipt and review of the draft advertisement, the Certifying Officer may issue an Assessment/Correction Letter to the employer, identifying any changes/additions that must be made before recruitment can begin.
3. Once the draft advertisement is approved, the Certifying Officer will send the employer a Recruitment Instructions letter identifying in what sources or publications, as well as when, the employer's advertisement(s) must be placed. The employer must not initiate recruitment for U.S. workers until it receives this letter.
4. The employer's advertising will direct applicants to send resumes and or applications to an OFLC or ANPC post office box address as outlined in the Recruitment Instructions letter. The Certifying Officer will send all resumes and applications received in response to the employer's advertisement(s) along with a cover letter listing the resumes/applications to the employer's attorney or agent of record, if any, with a copy of the cover letter to the employer. If the employer is not represented by an attorney or agent, the resumes and or applications will be sent directly to the employer. The employer will be required to consider all U.S. applicants for this job opportunity and any rejections must be made only for lawful reasons.
5. A Recruitment Report Letter outlining the requirements set forth under 20 CFR 656.21(e) will be sent to the employer requiring it to submit a written recruitment report to the OFLC/ANPC within 30 calendar days of the request. The employer may request one extension (for good cause) of the 30-

day timeframe, to be granted at the OFLC/ANPC's discretion.

6. The Certifying Officer will utilize all recruitment information and supporting documentation to determine whether to grant or deny the employer's application.

4. What is the average time it takes for an application to be processed in Supervised Recruitment?

- A "clean" application undergoing supervised recruitment – i.e., one that does not require additional information or clarification from the employer, should take approximately 180 days to process and receive a final determination. The process may take longer, depending upon whether the employer requests extensions of time or the analyst requires additional time to review documentation and make a determination.

5. What will happen if the employer fails to timely respond or request an extension of time at any point in the Supervised Recruitment process?

- In accordance with the regulation, failure to adhere to any timeframe throughout the supervised recruitment process will result in a denial of the employer's application. A pattern or practice of failing to comply in the supervised recruitment process is a ground for debarment of an employer, attorney, agent, or any combination thereof from the permanent labor certification program for a reasonable period of up to three years.

6. When should an employer undergoing Supervised Recruitment provide notice that it has changed its attorney/agent?

- The employer must provide notification of a change of representation as soon as the decision to hire the attorney

or agent is finalized. The notification may be included with other correspondence or communication with the OFLC/ANPC. If the employer's communication with OFLC/ANPC is via e-mail, a copy of the notification, in PDF format, must be attached to the email and, thereafter, the signed original must be mailed to the OFLC/ANPC. **Please note:** Communication will not be held with an attorney or agent who is not listed on the ETA Form 9089 and for whom no notification establishing employer representation is provided to the OFLC/ANPC.

7. What documentation and/or notice is needed when an employer undergoing Supervised Recruitment changes its attorney/agent?

- The employer and/or the newly retained attorney or agent must provide documentation signed by the employer establishing that it intends to be represented by the attorney or agent named, providing all applicable information as requested in Section E, Agent or Attorney Information, of the ETA Form 9089, and containing the statement, "I hereby designate the agent or attorney identified in this letter to represent me for the purpose of labor certification. I take full responsibility for the accuracy of any representations made by the agent or attorney identified above."

8. Can the employer list a wage range in its advertisement(s)?

- Yes. If the employer wishes to state a wage range in the advertisement, the bottom of the range must not be lower than the prevailing wage or the wage being offered to the foreign worker named on the ETA Form 9089, whichever is higher.

9. Must the employer advertise at the prevailing wage it listed at the time of filing the ETA Form 9089 OR, if different, the current prevailing wage?

- Where the employer includes a wage in its advertisement, the wage must be equal to or greater than the current prevailing wage for the job opportunity. Where necessary, the OFLC/ANPC will provide the employer with the new prevailing wage applicable to the job opportunity. If the employer chooses to use a source other than the Occupational Employment Statistics (OES) survey, the employer must provide an acceptable survey, as outlined in 20 CFR 656.40(g), to the Certifying Officer.

10. What is the extent to which the employer must provide any additional information requested in the notification of Supervised Recruitment Letter?

- All documentation required by the OFLC/ANPC as part of the supervised recruitment process must be provided in full. Where one form of documentation lends itself more readily for submission to the OFLC/ANPC, e.g., electronic versus hardcopy, arrangements can possibly be made to accommodate the one form over the other.

11. To whom will the Office of Foreign Labor Certification send any resumes received in response to the advertisement(s)?

- Resumes and or applications received by the OFLC/ANPC in response to the employer's advertisement(s) will be sent to the employer's attorney or agent of record, if any, with a copy to the employer. If the employer is not represented by an attorney or agent, the resumes and or applications received by the OFLC/ANPC in response to the employer's advertisement(s) will be sent directly to the employer.

12. What are the consequences of an employer requesting to withdraw an application undergoing Supervised Recruitment?

- While OFLC/ANPC may grant an employer's request to withdraw an application undergoing supervised recruitment

and the employer then files a new application meeting all regulatory requirements, the future application for the same foreign worker as in the withdrawn application will be subject to supervised recruitment pursuant to 20 CFR 656.21. Additionally, where the OFLC/ANPC determines it appropriate, all other applications filed by the employer for any foreign worker or job opportunity may also be subject to supervised recruitment.

An employer that wishes to file a future application for the same foreign worker as in an application withdrawn while undergoing supervised recruitment must do so by completing the ETA Form 9089, **except Section I, Recruitment Information**, which will be completed after submission at the instruction of the OFLC/ANPC. The employer must file the above referenced application by **mail** to the Atlanta National Processing Center at the following address:

U.S. Department of Labor
Employment and Training Administration
Foreign Labor Certification
National Processing Center
Harris Tower
233 Peachtree Street, Suite 410
Atlanta, Georgia 30333

Repeated requests to withdraw different applications undergoing supervised recruitment will be carefully reviewed and may evidence a pattern or practice of the employer's failure to comply with the supervised recruitment process, and may subject the employer to debarment from the permanent labor certification program for a reasonable period of no more than three years pursuant to 20 CFR 656.31(f)(1)(v).