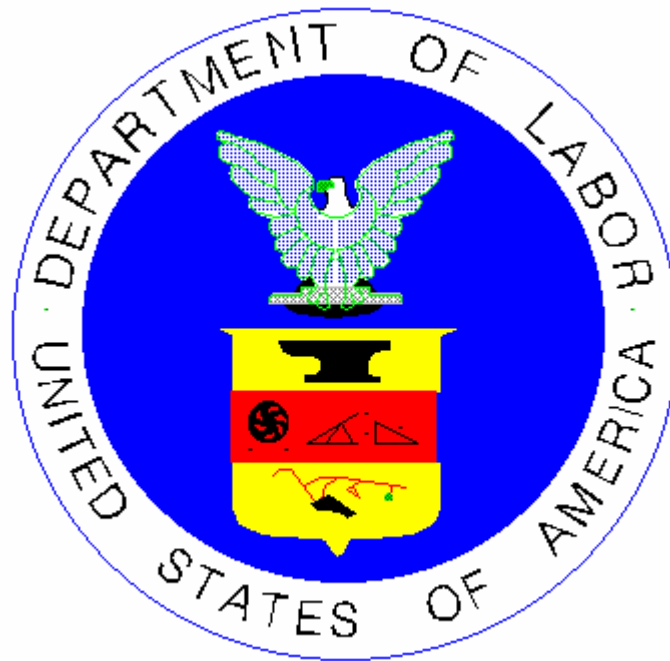

US DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION



PERMANENT LABOR CERTIFICATION PROCESS
MANAGEMENT REVIEW

January 2002

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Executive Summary

Project Overview

Faced with a caseload of over 300,000 permanent labor certification applications, the Employment and Training Administration (ETA) within the U.S. Department of Labor (DOL) has asked PricewaterhouseCoopers (PwC) to conduct a high-level management review and recommend short-term program improvements aimed at reducing the backlog.

During Phase I of the project, PwC interviewed DOL ETA and State Workforce Agency (SWA) staff and created a process map detailing the current process. Phase II of the project focused on generating solutions for backlog reduction and analyzing the feasibility of using a contractor to assist with case processing.

Current Process

Using information gathered during interviews with staff at Regional DOL offices and SWAs, PwC created a process map of the current process and analyzed the backlog of cases. Several key program characteristics define the current process:

- Federal oversight – The current process is a two-step process that starts with review by the SWAs and ends with certification at the Regional level. The SWAs hold responsibility for local labor market knowledge.
- Individuality – Decisions are specific to the particular job opening and availability decisions are made on a case-by-case basis.
- Political factors – 245(i) has been extended twice, causing a large influx of cases in 1998 and 2001. Another 245(i) extension may occur in April 2002.
- Statutory/Regulatory limits – Under current regulations, incomplete cases can be filed and there is no enforcement authority or ability to review for compliance.

The current on-hand caseload is approximately 301,400 cases at the SWA level. A further 24,200 cases are queued at the Regional offices, for a total caseload of 325,600. During FY 2000, 106,969 cases were processed and it is estimated that there will be 127,000 cases filed during FY2001. While a few SWAs and DOLs may be slowly working down their caseloads, the nation-wide backlog was increasing by 18.4% at the SWA level and 3.7% at the DOL level previous to the 245(i) extension. Nation-wide no capacity exists within the current program neither to process the 245(i) cases nor to address any additional cases that may result from future extensions of the 245(i) provision.

There are high costs associated with processing the backlog created by the cases filed as a result of the 245(i) extension. In order to complete the processing of all cases within the backlog, it will cost DOL an estimated \$88.3 million and an additional 1,063 staff to complete the processing of all cases within a one-year timeframe.

Key findings from Phase 1 of the project include:

- 245(i) applications are largely incomplete and will require additional processing time.
- The requirements of the program have shaped a process that is focused on individual applications.
- The process varies widely by state and region, making it difficult to introduce process improvements.
- There is no capacity in the current system to handle the processing of the large influx of cases created by the extension of 245(i).
- There is a significant resource requirement created by extension of 245(i) if the backlog is going to be reduced prior to the start of the Program Electronic Review Management (PERM) System.

After assessing the current process in Phase I of the project, PwC determined that the program characteristics described above – coupled with the limited timeframe available before PERM is put in place - limit the options available for making major changes to the certification process. Unless the fundamental design of the program is changed, there are no 'Quick Hit' process improvements identified for reducing processing time, and the program is relatively efficient given these constraints.

Evaluation of Potential Solutions

During Phase II of the project, PwC conducted problem solving sessions aimed at collecting feedback on potential solutions for reducing the backlog. Using feedback from the sessions, PwC generated a list of potential solutions for backlog reduction that can be grouped in the following categories:

- Workload transfer solutions
- Systems/process improvements
- Modifications to existing regulations
- Resource adjustments

Analysis on these solutions identified significant limitations associated with a number of these solutions. Workload transfer solutions, which would increase processing by moving cases to states with higher productivity and/or smaller backlogs, are limited because there is currently no extra capacity for processing in the system. Systems/process improvements - consisting of automation, specialty team processing, and the integration of state and regional processing - would require implementation time and are therefore not good solutions for clearing the backlog prior to the introduction of the PERM system. Solutions involving modifications to existing regulations, such as defining a meritorious application and discontinuing the detailed 'Notice of

Findings' procedure, will also take too long to implement given the lead time necessary to implement regulatory changes. The most promising solutions for short-term backlog reduction appear to be resource adjustments, which include hiring additional staff at the California SWA and hiring a contractor to assist with processing. The challenges these solutions face are that they require extensive training and may involve hiring large number of employees under a temporary arrangement.

Assessment of Contractor Option

As part of the project, PwC assessed the feasibility of using a contractor to assist with processing cases in the backlog. Based on a high-level review of the process, PwC found that using a contractor is a viable short-term solution for two main reasons:

- The contractor option can be a short-term, temporary solution.
- The contractor option can incorporate process changes that constrain the current system, such as combining the state and regional tasks into one review process.

There are some benefits to using a centralized contractor that cannot be realized under the current processing arrangement. By using a contractor, DOL can introduce a standardized procedure for processing backlog cases. This procedure can involve specialized teams, similar to the California method of processing, which is a method that is highly productive¹.

Using a contractor also introduces the option of consolidating two review steps into one. If the contractor can review cases and prepare them for a 'limited review' on-site by representatives from the DOL Regional office, then this option could be a cost effective way to reduce the backlog.

Preliminary analysis suggests that processing productivity could be improved by 20-42% under a combined contractor and process improvement scenario, assuming the contractor can achieve the same level of productivity achieved by California, and depending upon the tasks assigned to the contractor.

There are steps DOL can take to mitigate some of the risks involved with contracting out. One of the limitations to using a contractor is the issue of training. The length of time required for training can be limited by using a specialized team arrangement, so that staff need only to be trained in one step of the process. By using an existing SWA computerized processing system, DOL will realize cost savings and faster implementation. Also, focusing on the top ten SWAs to implement the contractor option will mitigate integration and case tracking issues.

If the contractor option is feasible, the DOL can phase in contractor processing by first conducting a simulation/pilot test. A simulation test can validate contractor processing responsibility and potential productivity. A successful test can then be followed up with a year's worth of actual contractor processing to reduce the caseload before the PERM system is in place.

¹ A large percentage of California cases are Reduction in Recruitment (RiR) cases, which may partially explain the high productivity rate of California when compared to other SWAs. A more detailed time study would be necessary to determine the extent to which California's productivity is due to the high proportion of RiR cases and the extent to which it is due to different processing techniques.

Current Environment

Recent events have occurred that may impact the future implementation of PERM and that impact productivity in the current system. The final section of the report discusses alternative strategies that the DOL can pursue depending on emerging immigration policies and the current economic environment.

INTRODUCTION

1.1 *Permanent Labor Certification program*

The Permanent Labor Certification program is an employment-based immigration program administered by the Employment and Training Administration (ETA) within the U.S. Department of Labor (DOL). The program allows U.S. employers to hire foreign workers for employment in the U.S. if there is a shortage of U.S. workers with the requisite skills and if the wage offered to the foreign worker does not have an adverse impact on U.S. workers. Immigrants who obtain permanent labor certification may then apply with the Immigration and Naturalization Service (INS) to become U.S. permanent residents.

1.2 *Project description²*

ETA is currently leading an effort to restructure the Permanent Labor Certification program through changes in administrative regulations and the introduction of the Program Electronic Review Management System (PERM) System. This system is projected to be in place within the next one and a half years. However, faced with a current caseload of over 300,000 applications, the ETA has asked PricewaterhouseCoopers (PwC) to conduct a high-level management review of the program to evaluate whether any solutions can be implemented to clear the caseload before the PERM system is implemented. Given the eventual implementation of PERM, PwC will focus on solutions that are short-term in nature and that generally will not require changes to the program statutory language or administrative regulations.

While financial considerations are always important factors to consider, the primary focus of this report is to identify and evaluate solutions that will process the caseload by the time PERM is in place rather than identify ways in which cases can be processed at lower cost. For the project, PwC conducted work in two distinct phases:

- Phase I PwC conducted a high level review of the current Permanent Labor Certification process. The review included: a literature review; review of relevant ETA materials; and interviews with Permanent Labor Certification staff at the National, Regional, and State levels.
- Phase II PwC conducted more detailed analysis on opportunity areas identified in Phase I. Problem solving sessions were utilized to explore both short-term and long-term

² A full description of the scope of the project, PwC responsibilities, deliverables and timelines can be found in the project Statement of Work.

recommendations. A listing of recommendations and descriptions of their feasibility is included in the final report.

1.3 Purpose of this report

This report presents PwC's key findings regarding the current Permanent Labor Certification process and indicates areas of the process that can be further analyzed for solutions and recommendations in Phase II.

This report is divided into 4 main sections:

- 1.0 *Introduction:* Introduces the Permanent Labor Certification program, provides a project description, and highlights the purpose of the report.
- 2.0 *Current Labor Certification Process:* Details the methodology employed to examine the Permanent Labor Certification process, describes the Permanent Labor Certification process, identifies key findings and bottlenecks, and provides a list of next steps for Phase II of this engagement.
- 3.0 *Evaluation of Potential Solutions:* Describes the feedback collected during the problem solving sessions, describes the potential solutions generated during the sessions, and discusses the impacts and feasibility of potential solutions.
- 4.0 *Assessment of Contractor Option:* Discusses factors involved in the contractor option, scenarios for contractor processing, and presents a productivity and financial analysis of the contractor option. An implementation plan and process flow for the contractor option is also included in this section.

2.0 CURRENT PERMANENT LABOR CERTIFICATION PROCESS

2.1 Methodology

This section describes the approach PwC employed to conduct Phase I of the project and create the Phase I report.

2.1.1 Data gathering and interview process

At the outset of Phase I, PwC requested from DOL ETA staff copies of existing literature and documents that cover the Permanent Labor Certification process. PwC also conducted an Internet search for recent news coverage of Permanent Labor Certification and obtained the current version of the Permanent Labor Certification regulations from the DOL ETA website.

Based on the existing literature review and Internet search, PwC developed a list of questions that explored specific areas of Permanent Labor Certification in greater detail. These questions formed the basis for a series of interviews with DOL ETA and State Workforce Agency (SWA) staff and were also used to request specific documents from these staff.

The following table lists the interviews conducted during Phase 1 of the project:

Figure 1 Interviews

Title	Interviewee	Interview Date
Chief, Division of Foreign Labor Certification	Dale Ziegler	08/02/2001 08/15/2001
Attorney	Harry Sheinfeld	08/06/2001
Team Leader Agricultural Certification	Charlene Giles	08/06/2001
Team Leader Non-agricultural Certification	Patrick Stange	08/23/2001
New York Region – Regional Certifying Officer	Delores DeHaan	08/09/2001
Philadelphia Region – Regional Certifying Officer	Richard Panati	08/14/2001
New York SWA – Supervisor	Joanne Palmiere	08/09/2001
District of Columbia SWA – Supervisor	Dorothy Robinson	08/15/2001
District of Columbia SWA – Immigration Specialist	Beverly Williams	08/15/2001
Maryland SWA – Supervisor	Yolanda Milam	08/16/2001
Maryland SWA – Analyst	Charlene Street	08/16/2001

2.1.2 Analysis

PwC used the information collected in its data gathering efforts to review the Permanent Labor Certification process and conduct a current caseload and backlog analysis.

The process review focused on the following four areas of Permanent Labor Certification:

- Characteristics of Permanent Labor Certification
- Permanent Labor Certification case types and caseload
- Permanent Labor Certification process flow
- Permanent Labor Certification process efficiencies

Based on the findings from the process review, PwC selected two topics to analyze. These topics follow below:

- Projection of staff and budget resources required to clear unprocessed cases
- Impact of improving productivity

2.2 ***Process review***

2.2.1 Characteristics of Permanent Labor Certification

The current permanent labor certification process has the following key characteristics listed in the figure below:

Figure 2 Key Permanent Labor Certification characteristics

Characteristic	Result	Implication
<p><i>Federal oversight</i></p> <ul style="list-style-type: none"> ▪ Employment expertise is contained within the various SWAs ▪ U.S. immigration is largely a Federal responsibility 	<ul style="list-style-type: none"> ▪ Program design has SWAs conduct initial file review and recruitment, with DOL regional offices responsible for a second review and application authorization 	<ul style="list-style-type: none"> ▪ Each case³ is reviewed twice ▪ SWAs have limited role in application decisions ▪ Backlogs can occur at both the SWA and DOL levels
<p><i>Individuality</i></p> <ul style="list-style-type: none"> ▪ Decisions must be specific to the particular job opening 	<ul style="list-style-type: none"> ▪ Availability and US worker impact decided on a case by case basis ▪ Program does not use general market conditions when rejecting applications⁴ 	<ul style="list-style-type: none"> ▪ Decisions need to be made accounting for the uniqueness surrounding each case ▪ Time saving techniques that treat groups of cases are limited
<p><i>Political influences</i></p> <ul style="list-style-type: none"> ▪ Immigration is in the political spotlight ▪ Immigration is a very personal issue 	<ul style="list-style-type: none"> ▪ Program has been swamped twice with applications from the 245(i) clause of the Immigration and Nationality Act ▪ Decisions for each case are supported and documented 	<ul style="list-style-type: none"> ▪ Special appropriations have been needed in previous years to tackle the 245(i) application surges ▪ Decisions can be appealed and reversed ▪ Applicants' rights to due process need to be considered ▪ Program needs to involve various advocacy groups
<p><i>Statutory/regulatory limits</i></p> <ul style="list-style-type: none"> ▪ No enforcement authority 	<ul style="list-style-type: none"> ▪ Incomplete cases can be filed ▪ Actual applicant and beneficiary validation does not occur in Permanent Labor Certification 	<ul style="list-style-type: none"> ▪ No ability to review for compliance after authorization ▪ Cases are not validated until after the process and then only at the INS ▪ Time and effort is spent on fraudulent cases that are not "pre-qualified"

These characteristics are key traits of the Permanent Labor Certification program. Changing them would require either changes in the implementing regulations and/or changes in the

³ For the purposes of this report, each Permanent Labor Certification application is considered a case.

⁴ Originally certifying staff used labor market information when making determinations. However, several Board of Alien Labor Certification Appeals (BALCA) decisions have prevented the use of general market

authorizing statutory language. Since changes to these characteristics could involve the Office of Management and Budget, public review, and even Congressional action, they could involve significant amounts of time and effort. As such, these key characteristics will be considered as the project moves into solution development in Phase II.

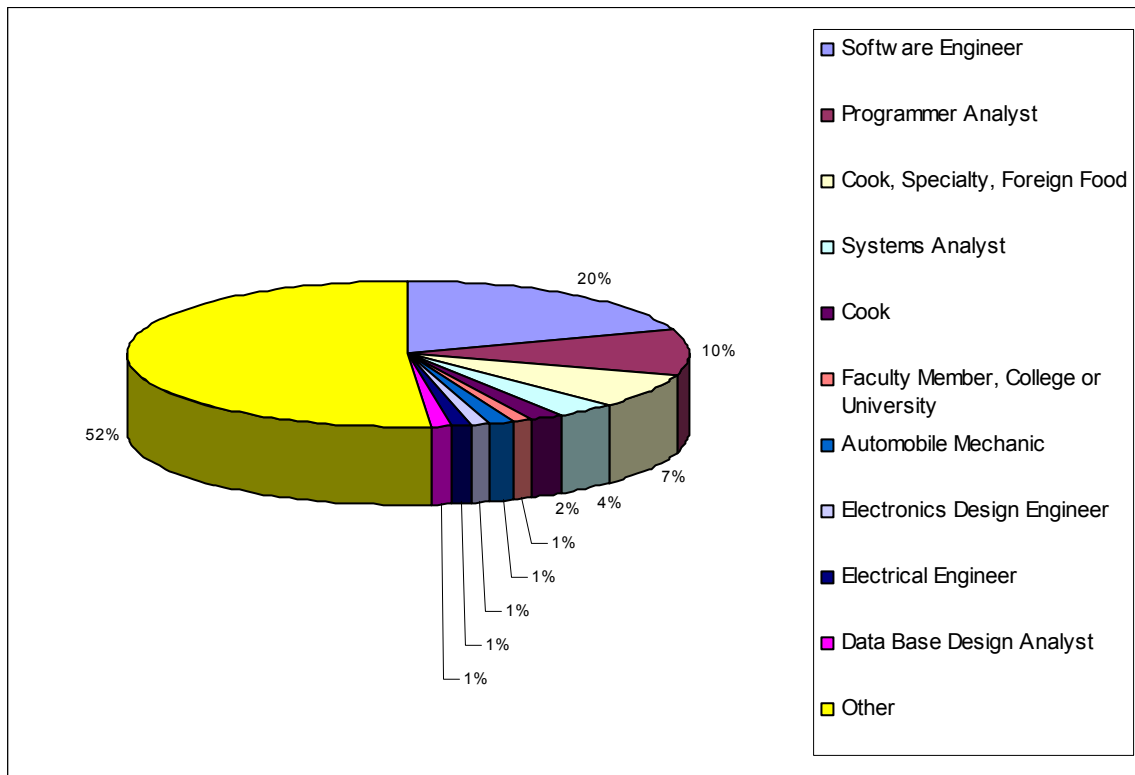
2.2.2 Permanent Labor Certification case types and caseload

Using existing documents, PwC identified the different types of cases typically handled by Permanent Labor Certification, the typical number of cases processed by the program and the existing backlog at the regional DOL and State SWA levels.

Case occupations

A review of occupations certified in FY 1999 shows that the program certified 60,239 applications covering 2,114 types of occupations. The top 10 occupations accounted for fully 48% of the total number of applications.

Figure 3 Top 10 application occupations certified, Fiscal Year 1999⁵



conditions when denying applications – there has to be a proven lack of availability for that particular position.

The above statistics show that the types of employment positions in Permanent Labor Certification applications are about as diverse as employment in the U.S. economy as a whole. Of the 2,114 types of occupations certified, 2,039 involved occupations that received less than 100 applications over the entire year. At the same time, there is a significant concentration of applications into a select few types of occupations. Those 75 occupations that received more than 100 applications in FY 1999 accounted for 73% of the total applications certified.

This pattern presents a double-edged sword for any efforts for process improvement. Solutions that take advantage of grouping applications by occupation could significantly improve the processing of these applications. However, there will always be a significant portion of applications where these types of solutions will have minimal impact.

Case handling

Cases can be handled in several ways. Each type of case follows a separate track through the Permanent Labor Certification process.

- Supervised recruitment, or regular (Reg) cases involve SWA review of employer attempts to recruit U.S. workers for the position described in the application.
- Reduction in Recruitment (RiR) cases are those cases where the employer does not need to conduct supervised recruitment if the employer demonstrates a pattern of recruitment in the 6 months previous to the application, and the Certifying Officer has either seen availability of workers for that occupation or has seen those occupations typically certified.
- Limited review (LR) cases are those cases identified by SWAs that can be expedited through the regional DOL office review. They may consist of either supervised or RiR cases, but are identified as LR because they are considered as relatively “clean” cases that can be quickly processed.
- 245(i) cases are cases that can follow any of the three tracks described above. However, these largely represent one-time caseloads due to congressional intervention, and they are different than other cases in that they typically involve lower skilled positions. For these reasons they are treated as a separate category.

The following table presents approximate volume and corresponding implications for each case type:

⁵ Permanent Labor Certifications Issued, Fiscal Year 99 ETA Division of Foreign Labor Certifications, Washington D.C. 2001.

Figure 4 Handling of different case types

Case Type	Approximate Volume ⁶	Implications
Supervised Recruitment	20% – 50% of total caseload	<ul style="list-style-type: none"> ▪ Requires significant time investment ▪ Traditional way of proving no U.S. worker availability
RiR	50% – 85% of total caseload ⁷	<ul style="list-style-type: none"> ▪ Significant time savings at the SWA level where recruitment occurs, none at the regional DOL level ▪ Widely adopted but further adoption may be difficult
LR	Limited use; varies by state	<ul style="list-style-type: none"> ▪ Not widely adopted by the states ▪ Regional Certifying Officers have the flexibility to expedite processing of those cases identified as Limited Review
245(i)	235,700 cases	<ul style="list-style-type: none"> ▪ Special one time nature may make cases markedly different ▪ One time nature has resulted in poorly completed cases that require more time

Case processing statistics⁸

The following section examines processing at both the state and regional level. In addition, state and regional processing differences are discussed.

An extrapolation of figures from the first half of FY 2001 suggests that SWAs will receive a total of more than 127,000 permanent labor certification applications in FY 2001. In addition, SWAs received 247,406 cases from the 245(i) provision of the Immigration and Nationality Act, authorized by Congress and effective between December 2000 and April 2001⁹. Since cases related to 245(i) are largely sporadic occurrences that are directed by Congress, these are excluded in the SWA typical processing statistics below.

The following table contains a breakdown of the SWA caseload by regional office:

⁶ Taken from interviews and the following source: Permanent Program Semi-Annual Report FY 2001 (1st Period) ETA Division of Foreign Labor Certifications, Washington D.C. 2001.

⁷ The proportion of RiR applications may decrease due to current rises in unemployment and an increase in the supply of U.S. workers.

⁸ For the purposes of this report, SWA statistics have been summarized by Regional DOL office.

Figure 5 Estimated SWA incoming and outgoing cases FY 2001¹⁰

Region	Incoming			Outgoing			
	Total cases	New	Remanded	Total cases	Cancelled	Sent to DOLs	Change in outstanding cases
Boston	9,770	98.2%	1.8%	10,160	8.1%	95.9%	-4.0%
New York	25,310	98.2%	1.8%	22,316	32.3%	55.8%	11.8%
Philadelphia	20,572	98.6%	1.4%	13,048	5.4%	58.0%	36.6%
Atlanta	9,498	97.4%	2.6%	10,586	10.7%	100.7%	-11.5%
Chicago	12,830	98.6%	1.4%	9,422	9.8%	63.6%	26.6%
Dallas	10,442	99.2%	0.8%	9,310	23.9%	65.3%	10.8%
Kansas City	1,780	98.9%	1.1%	1,296	6.5%	66.3%	27.2%
Denver	1,694	99.6%	0.4%	1,226	6.6%	65.8%	27.6%
San Francisco	34,882	97.3%	2.7%	25,560	8.5%	64.7%	26.7%
Seattle	3,030	99.3%	0.7%	3,050	17.4%	83.3%	-0.7%
SWA Totals	129,808	98.1%	1.9%	105,974	14.3%	67.3%	18.4%

Of the incoming non-245(i) applications, 18% will be cancelled, 66% sent to DOLs, and 2% sent to DOLs but later returned due to deficiencies. At current staffing levels, processing procedures and productivity, 17% will be added to the current outstanding caseload.

It is important to note that an examination of national figures hides significant regional differences. For example, those states under the jurisdiction of San Francisco, New York, and Philadelphia regional DOLs will receive 62% of all applications. Furthermore, 33% of applications are cancelled in SWAs covered by New York, and SWAs covered by Philadelphia are completing the fewest of their incoming caseload, at 64%. Understanding the drivers behind these variances may lead to possible solutions for improving processing efficiencies.

A similar extrapolation of figures at the regional DOL level suggests that DOLs will receive 99,323 cases from states in FY 2001¹¹. Based on the New York DOL, Notice of Findings (NOF)

⁹ SWAs had received 235,662 cases by 3/30/2001 and 247,406 cases by 4/30/2001. However, since all available caseload data is from 3/30/2001, the report will use the 235,662 figure for the remainder of this report.

¹⁰ Annualized figures. Source: Permanent Program Semi-Annual Report FY 2001 (1st Period) ETA Division of Foreign Labor Certification, Washington D.C., 2001.

letters signifying intent to deny applications or remands back to the SWAs or applicants due to incomplete cases will be completed for 20% of cases. 13% will be eventually certified after rebuttal, resubmission, or reconsideration. 3% of cases will not be processed at all and will be added to the caseload. There are some differences by DOL office, but they are small: for example, certification ranges from a low of 90% of incoming cases for New York to a high of 98.8% for Seattle.¹²

The following table summarizes the regional caseload:

Figure 6 Estimated incoming and outgoing cases – Regional DOL level¹³

Region	New applications	Applications processed	Processed %	Change in outstanding applications
Boston	8,520	6,665	78.2%	21.8%
New York	12,609	13,265	105.2%	-5.2%
Philadelphia	22,213	22,508	101.3%	-1.3%
Atlanta	12,286	10,957	89.2%	10.8%
Chicago	8,799	9,897	112.5%	-12.5%
Dallas	8,088	2,815	34.8%	65.2%
Kansas City	1,348	2,199	163.1%	-63.1%
Denver	1,250	1,292	103.4%	-3.4%
San Francisco	21,908	23,902	109.1%	-9.1%
Seattle	2,302	2,101	91.3%	8.7%
DOL Totals	99,323	95,601	96.3%	3.7%

As Figure 6 shows, regional DOL offices are receiving more applications than they are processing.

The state and regional office processing statistics support three important implications. First, case statistics vary widely at the SWA level – suggesting that any solutions at the SWA level

¹¹ Case statistics do not precisely match SWA figures because data is from a different time period and is not directly comparable.

¹² Occupations Sorted by Region by DOT Code ETA Division of Foreign Labor Certifications, Washington D.C. 1998. Certification ranges are for top occupations only.

¹³ Annualized figures from Bi-weekly Reports, Feb 16 – July 31st, 2001. Source: Alien Labor Certification Backlog ETA Division of Foreign Labor Certifications, Washington D.C., 2001. If Congress authorizes additional 245(i) extensions, these statistics will change.

may have to be tailored to address unique SWA conditions. Second, a full 90% of cases eventually get certified – which suggests that there is an opportunity for improving processing of the population of cases that are certified without having a significant detrimental effect to the safeguards protecting U.S. workers. Third, even without 245(i) cases included, caseloads are increasing at both the SWA and DOL levels. This implies that any improvements that increase processing efficiency at the SWA level will create more backlog cases at the DOL offices.

Outstanding caseload

The current caseload stands at approximately 325,600 cases, with 93% at the SWA level (78% of which is 245(i) related) and 7% at the DOL level. Of the total caseload, the two largest regions - New York and San Francisco SWAs and DOLs - comprise 49%, while the three smallest – Denver, Seattle, and Kansas City – comprise just 3%.

For 245(i) cases, of the three SWAs interviewed: Maryland is currently processing cases received in March 2001; District of Columbia has completed filing but is still working on data entry; New York expects to complete filing, sorting, and data entry by the end of October.

Caseloads are estimated to grow this year¹⁴ by 28,464 (or 55%) at the SWA level and 1,706 (or 8%) at the DOL level, or 42% overall. However, this nationwide statistic masks about 15 SWAs and six DOL offices that are currently making progress at reducing their backlogs, although in most cases it will take several years at current reduction rates for these SWAs and DOLs to eliminate their backlogs completely.

The following state and regional offices are currently reducing their backlogs:

- SWAs currently reducing their caseloads: Connecticut, New Jersey, Puerto Rico, West Virginia, Alabama, Florida, Georgia, Minnesota, Louisiana, Montana, North Dakota, Wyoming, Guam, Idaho, Oregon.
- DOLs currently reducing their caseloads: New York, Philadelphia, Chicago, Kansas City, Denver, San Francisco.

A review of the current processing dates at the DOL level reveals similar regional disparities. No DOLs are current in their processing of either Regular (non-RiR) or RiR cases, although several are close to current. At the same time, San Francisco is 33 months behind in Regular

¹⁴ Based on annualized figures.

cases and Boston is nine months behind in RiR cases. Five DOL offices meet the backlog definition¹⁵ for Regular cases and one DOL office for RiR cases.

At the SWA level, processing dates also vary significantly. Only four SWAs are processing Regular cases less than one month old – Maine, Oklahoma, South Dakota, and Wyoming. 31 SWAs are backlogged in their Permanent cases. For RiR cases, six SWAs are processing cases less than one month old, while 20 SWAs are backlogged.

When taken together, most SWAs and Regions are processing Regular cases that are between six months to one and one-half years old, and RiR cases between four months and a year old. Again, there are significant variations: Cases filed in W. Virginia, are only two months old before they are processed at both the SWA and the Regional levels; RiR cases filed in Puerto Rico and the Virgin Islands are only a month old. At the other end, Regular cases filed in New York are five years and four months old before they are fully processed, and RiR cases filed in Rhode Island are 15 months old.

The following table illustrates the outstanding caseload at SWA and Regional offices by region:

¹⁵ Backlog is defined as processing cases more than six months old.

Figure 7 Outstanding caseload

Region	SWA			DOL			Total Caseload
	Non 245(i) ¹⁶	245(i) ¹⁷	Process Delay ¹⁸	On hand ¹⁹	Backlog ²⁰	Process Delay ²¹	
Boston	5,576	18,285	Reg: 1-32 mo RiR: 1-6 mo	3,287	2,322	Reg: 9 mo RiR: 9 mo	27,148
New York	19,799	59,523	Reg: 7-45 mo RiR: 6-9 mo	2,949	1,071	Reg: 19 mo RiR: 1 mo	82,271
Philadelphia	9,152	26,230	Reg: 1-11 mo RiR: 1-11 mo	924	116	Reg: 1 mo RiR: 1 mo	36,306
Atlanta	5,215	27,209	Reg: 2-29 mo RiR: 3-7 mo	1,969	1,751	Reg: 1 mo RiR: 2 mo	34,393
Chicago	7,633	16,503	Reg: 1-21 mo RiR: 2-10 mo	2,870	2,316	Reg: 5 mo RiR: 4 mo	27,006
Dallas	7,571	17,198	Reg: 1-21 mo RiR: 1-8 mo	5,328	2,947	Reg: 10 mo RiR: 2 mo	30,097
Kansas City	1,358	1,831	Reg: 2-7 mo RiR: 2-6 mo	213	162	Reg: 3 mo RiR: 2 mo	3,402
Denver	607	3,503	Reg: 1-9 mo RiR: 1-4 mo	161	13	Reg: N/A RiR: 2 mo	4,271
San Francisco	8,005	62,950	Reg: 6-13 mo RiR: 0-9 mo	6,042	3,325	Reg: 33 mo RiR: 2 mo	76,997
Seattle	822	2,430	Reg: 5-8 mo RiR: 4-5 mo	422	16	Reg: 6 mo RiR: 2 mo	3,674
Totals	65,738	235,662	N/A	24,165	14,039	N/A	325,565

¹⁶ SWA figures are from Permanent Program Semi-Annual Report FY 2001 (1st Period) ETA Division of Foreign Labor Certification, Washington D.C., 2001.

¹⁷ By the close of the 245(i) provision 4/30/2001, the SWAs updated their 245(i) estimates to 247,406. This report uses the 235,662 figure to maintain consistency with the other caseload figures.

¹⁸ The time (in months) applications currently wait before being processed at the SWA level, given as a range for all the SWAs each Region is responsible for. As of September 2001.

¹⁹ Alien Labor Certification Backlog ETA Division of Foreign Labor Certifications, Washington D.C., 2001. This figure represents all cases at the DOL level and includes the 14,039 backlog applications.

²⁰ Cases longer than 6 months old at the DOL level. As of May 31, 2001.

The significance of the above caseload statistics is threefold:

- First, the overall wait time that most applicants have to endure before processing begins at each respective level of review is significant. For applicants in New York filing non-RiR applications, this wait could be 45 months at the SWA level, followed by an additional 19 months at the DOL level – five years and four months of waiting, not including processing time. In addition, the wait is inconsistent – effectively making it harder for some applicants to meet their labor needs depending on where the application is filed.
- Second, several DOLs are current in their processing of applications, yet at the same time have significant backlogs of cases more than 6 months old. The backlog ranges from 4% of on hand cases in Seattle to 89% in Atlanta, with 58% of on hand cases backlogged nationwide. This suggests that several DOLs are addressing applications that can be easily reviewed first. While this may be a prudent tactic to expedite case processing, it also means that improvement efforts to reduce the caseload face an extra challenge because many of the outstanding cases will be the most difficult to complete.
- Finally – and perhaps most importantly – nationally the outstanding caseload will grow at both the SWA and DOL levels, even without including 245(i) cases. While a few SWAs and DOLs may be slowly working down their caseloads, nationwide no capacity exists within the current program to process the previous 245(i) cases nor to address any additional 245(i) cases that may result from potential future renewals of the 245(i) provision.

2.2.3 Permanent Labor Certification process flow

PwC used existing program regulations posted on the ETA website and information obtained in interviews to construct a high-level process map that identifies the steps involved to completely process different types of Permanent Labor Certification cases.

PwC also examined the effort involved at each step of the process. The second process flow chart represents the generalized Permanent Labor Certification process. Since Regional Certifying Officers and SWA staff have latitude to implement procedures unique to their circumstances, this flowchart should not be interpreted as the exact process that occurs in a specific office. The information used to construct this flowchart came from the implementing regulations and from interviews with the Philadelphia and New York Regions and the New York, Maryland, and the District of Columbia SWAs.

²¹ The time (in months) applications currently wait before being processed at the DOL, using arrival date from the SWAs (actual priority date may be significantly earlier). As of September 2001.

Figure 8 Permanent Labor Certification Process Flow

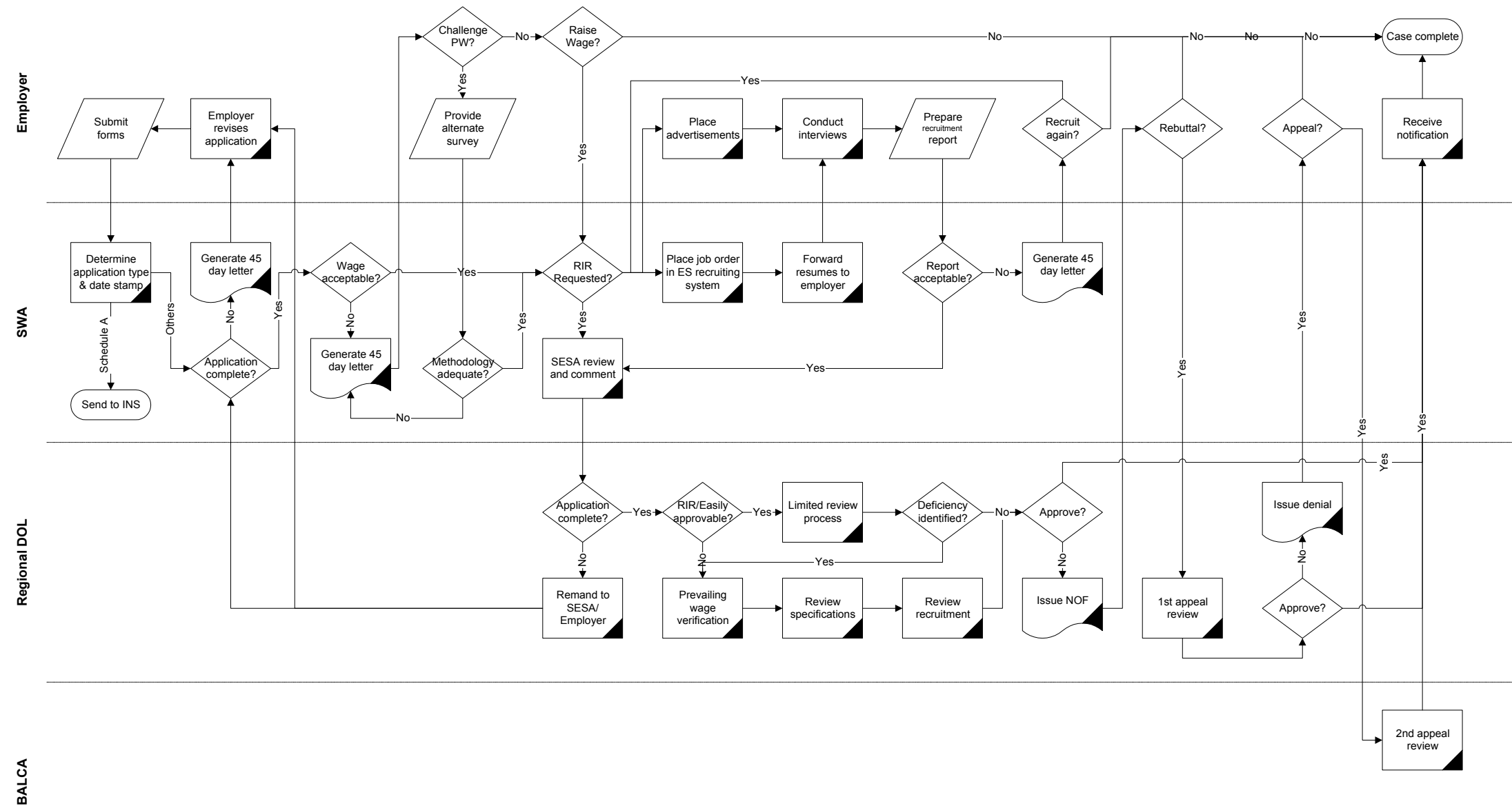
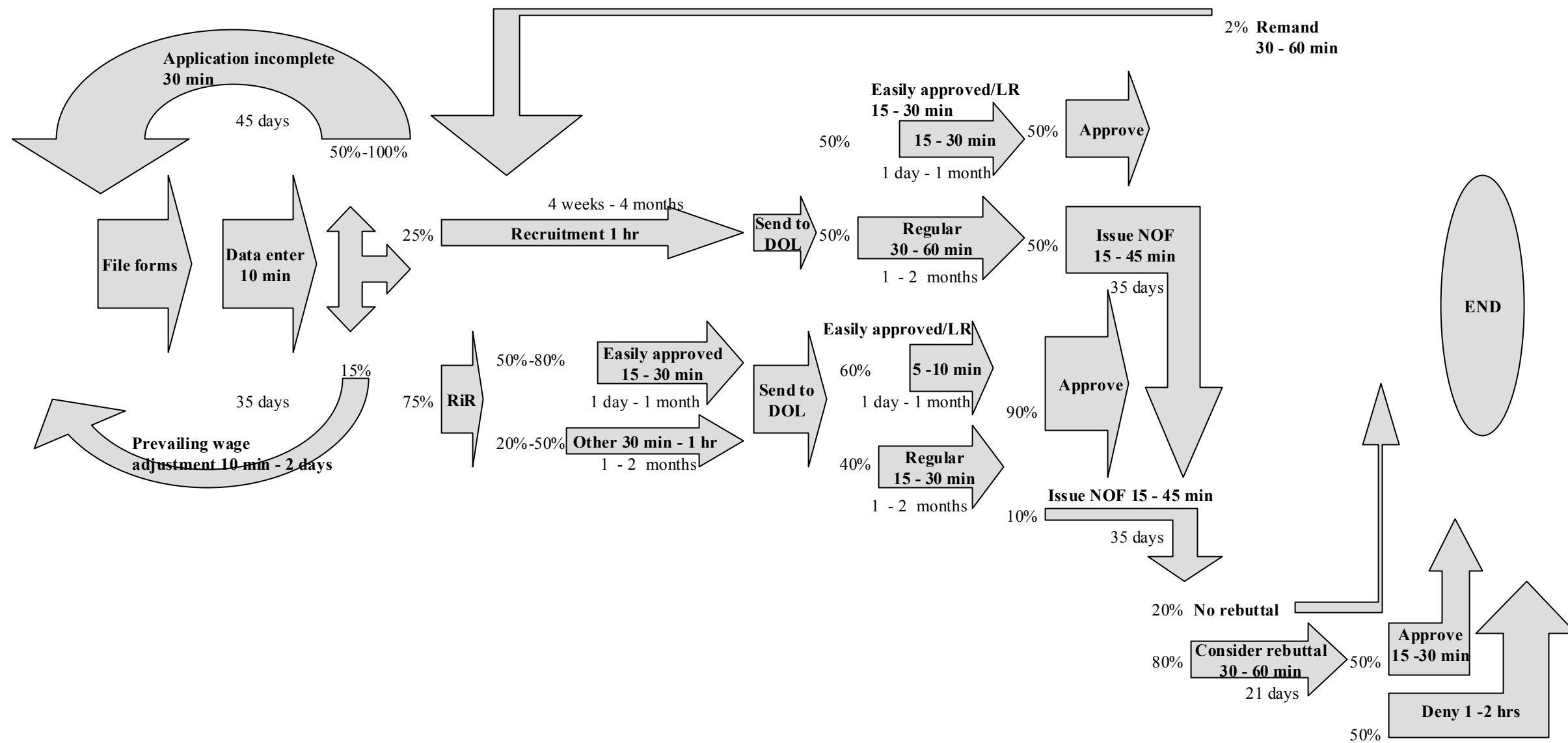


Figure 9 Cycle time and level of effort breakdown



The high level process involves five stages: filing and review of cases for completeness; prevailing wage determination; recruitment; review; and approval/appeals. These phases can be discerned by the groups of process steps illustrated in Figure 8. Figure 8 also shows three different sub-procedures for different types of cases: Regular, RiR, or LR/easily approvable. 245(i) cases can be either one of these three case types. Finally, Figure 8 illustrates the role of the different players involved: employer (often represented by an agent), SWA, DOL, and BALCA (Board of Alien Labor Certification Appeals).

Figure 9 takes the high level process in Figure 8 and summarizes the five-stage process into three primary phases: filing/data entry, processing, and approval. It also provides a summary of the cycle times and probabilities for cases following different processing paths. An arrow represents each step and percentage figures preceding each arrow indicate probabilities of a case following that arrow. Figures within the arrows represent actual time spent processing, while figures beside the arrow indicate the elapsed time cases typically spend at each step of the process, regardless of whether any action is taking place. In addition, Figure 9 illustrates the following bottlenecks in the process: incomplete applications, remands, recruitment, NOFs, and denials.

From Figures 8 and 9, PwC identified the drivers behind how cases progress through the Permanent Labor Certification process and the associated processing times. The separate drivers and processing issues are listed in Figures 10 and 11, respectively below.

Figure 10 Drivers of process cycle times

Driver	Impact
Regulatory provisions	<ul style="list-style-type: none"> ▪ Applicants receive 45 days to provide additional documentation for incomplete applications ▪ Applicants receive 75 days to recruit for U.S. workers ▪ Applicants receive 35 days to provide a rebuttal to a NOF ▪ DOL receives 21 days to consider a NOF rebuttal filed by an applicant
Case type	<ul style="list-style-type: none"> ▪ Regular cases require an additional hour of actual processing time, 4 weeks to 4 months of elapsed time due to recruiting ▪ RiR cases require between 30 and 60 minutes of actual time and between 1 and 2 months of elapsed time ▪ LR/Easily approvable cases require 15 – 30 minutes of actual time and between 1 day and 1 month of elapsed time

Driver	Impact
Case completeness – SWA level	<ul style="list-style-type: none"> ▪ Complete applications require 10 minutes for data entry and 2 weeks elapsed time ▪ Incomplete applications require an additional 30 minutes
Case decision – DOL level	<ul style="list-style-type: none"> ▪ RiR cases take 5 – 10 minutes if they are limited review; 15 – 30 minutes otherwise ▪ Traditional cases take 15 – 30 minutes if they are easily approvable; 30 – 60 minutes otherwise ▪ Approved cases take no additional time ▪ NOFs take an additional 15 - 45 minutes actual time and 35 days elapsed time ▪ Some cases need to be remanded to the SWAs to go through the process again; this takes 30 – 60 minutes
Case appeal	<ul style="list-style-type: none"> ▪ Rebuttal takes 30 – 60 minutes for consideration, and an additional 15 – 30 minutes if the case is approved, 1 – 2 hours if it is denied ▪ If case goes to BALCA on 2nd appeal, could queue at BALCA for 1.5 years

Figure 11 Additional processing issues

Issue	Description
Clerical tasks and case filing	Cases involve applications that are paper intensive – signatures and evidence have to be provided on hard copy. As such, there is a significant investment of staff resources in order to prepare case files and to enter data into the computer system.
Recruitment – Job orders	Applicants submitting regular cases need to conduct SWA supervised recruitment efforts. This involves significant SWA effort to post the job order, forward qualified resumes and review recruitment reports.
Recruitment – Impact of economic conditions	Although a largely external force on the program, economic conditions can impact the program. The recent economic growth slowdown is one example – SWAs now have to review cases more carefully as more positions generate interest from U.S. and create more resume referrals.
Impact of 245(i)	This is another external force, driven by Congressional decisions to allow additional people to qualify for a certain Immigration status based on an application on file with a certain immigration program – Permanent Labor Certification included. However, deadlines established under 245(i) extensions result in “hurried” applications that are usually very difficult to process due to incomplete or incorrect information.

Using information gathered through the interview process and the process flow maps presented on the previous pages, PwC developed preliminary estimates of cycle time. The cycle time estimates are contained in the following table:

Figure 12 Estimated cycle time for best and worst case scenario²²

Scenario	Probability %	Actual time DD:HH:MM	Elapsed time WW
Best case – clean, RiR, easily approvable case	3.37%	00:00:50	7
Average case – incomplete, RiR easily approvable case	10.11%	00:01:20	14
Worst case – incomplete, supervised recruitment, not easily approvable, remanded, appealed	<0.01%	01:09:13	76

The most likely case scenarios will involve the lowest cycle times (besides the issue of the majority of cases not being complete). This is because approximately 75% of the cases are now RiR cases, 50%-80% of which are easily approvable, and close to 90% of all cases are approved and therefore avoid the NOF, rebuttal and reconsideration process.

The difference in cycle times between the best cases and worst cases is significant: worst cases take 40 times longer and will take almost 11 times longer in elapsed time to clear the entire process end to end. However, the worst case scenario has less than a 0.01%²³ probability of occurring.

In addition, the one obvious area for improvement – ensuring complete applications – cannot be mandated under the current statute and regulations. Combined, these two findings imply that there appear to be limited opportunities for improvements that aim to shift cases from high time/effort steps to low time/effort steps.

2.2.4 Permanent Labor Certification efficiency

For steps that involved a significant amount of staff time and effort, PwC identified existing techniques used at both the regional DOL and State SWA levels to improve the efficiency of the process. These techniques include:

²² Using averaged figures from Figure 10. Cycle times focus on value added processing steps and do not include initial filing, mailroom activities, and preparation of appeal files. Cycle time estimates are also from interviews and not a formal time study. A formal study should be completed to determine the actual case flows and associated processing times.

²³ From the cycle time analysis the actual probability estimate is 0.0003%. The <0.01% should be used as a proxy given that the underlying data was derived from rough estimates.

- Batching cases by employer. Both the District of Columbia SWA and the Maryland SWA used to batch cases by employer. This would allow critical employer based information to be reviewed just once for groups of applications.
- Work sharing. DOL encourages SWAs to send case information to the DOL electronically to prevent the need to manually data enter twice. SWAs vary in their compliance with this request, but this and other work sharing initiatives should be further encouraged to minimize the need for duplicative work.
- Encouraging more RiR cases. RiR cases save the SWAs significant amount of effort since there is a reduced need for supervised recruitment. To the degree that employers can be encouraged to recruit before applying, the burden can be shifted off of the SWAs.
- Using targeted lists to identify easily approvable cases. Philadelphia DOL uses targeted lists to add cases where U.S. workers are in known short supply to those that are easily approvable, since the application is likely to be approved eventually given the lack of availability. This allows staff to expedite these cases and focus on others that are more complicated, but is less likely to be effective during periods of economic slowdown.
- Best practice sharing. Philadelphia DOL provides tips to employers who are regular users of the program to encourage complete and accurate applications. Further best practice sharing between DOLs, SWAs, and major applicants should be encouraged to minimize the need for remands and NOFs and the additional review workloads they create.
- Promoting a productive work environment. Philadelphia DOL assigns one analyst the job of taking all calls on a given day. This allows other analysts to focus on completing cases without being constantly disturbed. In Maryland SWA, a new computer system is being installed. Ensuring that computer systems are responsive and symbiotic with the Permanent Labor Certification processes can also speed up the processing of cases.
- Priority processing cases. New York SWA suggested priority processing the cleanest cases and then informing applicants of the procedure. This “best in, first out” idea would encourage the filing of complete applications, thereby reducing the need for 45 day letters while not requiring a change in the regulations. In a similar vein, Maryland SWA suggested issuing 45 day letters for incomplete applications and then putting those cases to the back of the backlog to allow complete applications to be processed first.

2.3 Caseload analysis

As part of Phase I, PwC created a simple model to conduct an analysis of the staff resources and supplemental funding required to address the caseload currently facing the SWAs and regional DOL offices. This analysis provides an idea of the magnitude of staff and funding required to address the caseload issue and will help provide a cost/effort baseline for

comparison to specific improvement recommendations developed during Phase II of the project. Results represent incremental staff and funding required in addition to the current staff and funding at both the SWA and Regional levels.

It is important to note that the analysis is high level, relies on various data points, and is dependent on a number of assumptions. The accuracy of the projections produced by the analysis depends on the degree to which data points can be updated regularly to reflect actual conditions and assumptions can be validated by experience.

2.3.1 Projection of staff and budget resources required to clear unprocessed cases

PwC analyzed the existing caseload of standard, RiR, and 245(i) cases to predict the staff and funding required at the Regional DOL and State SWA levels to clear the caseload within a year.

Assumptions

- SWA average staff productivity (426 cases/staff year) can be used across all SWAs, as no staffing information exists on a SWA to SWA basis.
- SWA caseload passed to regional DOL offices: SWA pass through of completed cases: 82%; Cases dropped at regional DOL level: 5%. From Labor Certification FY 2002 Supplemental/FY 2003 Budget Discussion document provided by ETA staff.
- Staffing cost: \$83,000 for both DOL offices and SWA offices from interview with Dale Ziegler 8/15/2001.
- DOLs can transfer excess staff from one Regional DOL office to another.
- DOL offices process cases at the historical productivity of each DOL office (varies between 414 and 1,848 cases per staff year).

Projection results²⁴

The following tables present projected caseload estimates, staffing estimates, and cost estimates for completing all cases at the SWA level. The results indicate that the SWAs will have 329,864 cases to process. This caseload will require 775 staff in order to complete all processing at the SWA level within one year. The estimated cost for completion of these cases within a one-year timeframe is approximately \$64.3 million.

²⁴ SWA projections are reported by DOL region rather than by individual SWA

Figure 13 SWA - One-year caseload projection²⁵

Region	On hand cases	245(i) cases	Reduction	Total caseload ²⁶
Boston	5,576	18,285	(4,216)	28,077
New York	19,799	59,523	(2,996)	82,318
Philadelphia	9,152	26,230	(7,474)	42,856
Atlanta	5,215	27,209	1,088	31,336
Chicago	7,633	16,503	(3,408)	27,544
Dallas	7,571	17,198	(1,132)	25,901
Kansas City	1,358	1,831	(552)	3,741
Denver	607	3,503	(458)	4,568
San Francisco	8,005	62,950	(9,336)	80,291
Seattle	822	2,430	20	3,232
SWA Totals	65,738	235,662	(28,464)	329,864

Figure 14 SWA - One-year staff requirements

Region	Staff required to address...			
	Cases on hand	Increasing caseload	245(i) cases	Total ²⁷
Boston	13.0	10.2	42.8	65.7
New York	46.3	9.4	139.3	193.0
Philadelphia	21.4	17.5	61.4	100.3
Atlanta	12.2	3.9	63.7	75.4
Chicago	17.9	8.3	38.6	64.5
Dallas	17.7	2.8	40.2	60.6
Kansas City	3.2	1.3	4.3	8.8
Denver	1.4	1.1	8.2	10.7
San Francisco	18.7	21.8	147.3	187.9
Seattle	1.9	0.1	5.7	7.6
SWA Totals	153.8	76.4	551.5	774.5

²⁵ As of 3/30/2001.

²⁶ Total caseload = On hand cases + 245(i) cases + incoming cases during one year – estimated processed cases during one year

²⁷ Figures do not add up exactly due to rounding.

Figure 15 SWA - One year funding requirements

Region	Funding required to address...			
	Cases on hand	Increasing caseload	245(i) cases	Total ²⁸
Boston	\$1,083,111	\$848,851	\$3,551,772	\$5,453,820
New York	\$3,845,859	\$780,088	\$11,562,052	\$16,021,920
Philadelphia	\$1,777,731	\$1,452,176	\$5,095,049	\$8,324,568
Atlanta	\$1,012,988	\$322,447	\$5,285,215	\$6,261,685
Chicago	\$1,482,673	\$689,570	\$3,205,627	\$5,350,287
Dallas	\$1,470,630	\$228,432	\$3,340,627	\$5,031,143
Kansas City	\$263,785	\$107,223	\$355,663	\$726,671
Denver	\$117,907	\$89,353	\$680,441	\$887,312
San Francisco	\$1,554,932	\$1,813,472	\$12,227,730	\$15,596,134
Seattle	\$159,669	\$10,489	\$472,016	\$630,714
SWA Totals	\$12,769,285	\$6,342,103	\$45,776,191	\$ 64,284,254

The following tables present projected caseload estimates, staffing estimates, and cost estimates for completing all cases at the DOL regional level. The results indicate that the regional DOL offices will have 284,851 cases to process. This caseload will require 289 staff in order to complete all processing at the DOL level within one year. The estimated cost for completion of these cases within a one-year timeframe is approximately \$24.0 million.

²⁸ Figures do not add up exactly due to rounding.

Figure 16 DOL - One-year caseload projection

Region	On hand cases	Reduction	SWA caseload	Passed to DOLs	1 year caseload ²⁹
Boston	3,287	(1,855)	28,077	21,872	27,014
New York	2,949	657	82,318	64,126	66,418
Philadelphia	924	295	42,856	33,385	34,014
Atlanta	1,969	(1,329)	31,336	24,411	27,708
Chicago	2,870	1,097	27,544	21,457	23,229
Dallas	5,328	(5,273)	25,901	20,177	30,778
Kansas City	213	851	3,741	2,914	2,276
Denver	161	41	4,568	3,558	3,678
San Francisco	6,042	1,994	80,291	62,547	66,595
Seattle	422	(201)	3,232	2,518	3,140
DOL Totals	24,165	(3,722)	329,864	256,964	284,851

Figure 17 DOL - One-year staff requirements

Region	Staff required to address...			
	Cases on hand	Increasing caseload	SWA Cases Passed to DOL	Total
Boston	2.6	1.5	17.2	21.3
New York	3.1	0.0	86.5	89.6
Philadelphia	0.3	0.0	18.1	18.4
Atlanta	1.5	1.0	18.6	21.1
Chicago	1.1	0.0	13.7	14.8
Dallas	10.0	9.9	38.0	57.9
Kansas City	(0.6)	0.0	2.8	2.2
Denver	0.3	0.0	8.6	8.9
San Francisco	3.0	0.0	46.9	49.9
Seattle	0.6	0.3	3.8	4.8
DOL Totals	22.0	12.7	254.2	288.9

²⁹ On hand cases – reduction + SWA caseload passed to DOLs

Figure 18 DOL - One year funding requirements

Region	Funding required to address...			Total
	Cases on hand	Increasing caseload	SWA Cases Passed to DOL	
Boston	\$214,516	\$121,031	\$1,427,406	\$1,762,953
New York	\$256,781	\$0	\$7,183,382	\$7,440,163
Philadelphia	\$28,274	\$0	\$1,499,582	\$1,527,856
Atlanta	\$124,712	\$84,159	\$1,546,127	\$1,754,999
Chicago	\$93,671	\$0	\$1,133,899	\$1,227,571
Dallas	\$832,930	\$824,403	\$3,154,267	\$4,811,600
Kansas City	(\$51,050)	\$0	\$233,216	\$182,167
Denver	\$23,971	\$0	\$713,548	\$737,519
San Francisco	\$251,657	\$0	\$3,888,590	\$4,140,247
Seattle	\$53,024	\$25,221	\$316,350	\$394,595
DOL Totals	\$1,828,487	\$1,054,814	\$21,096,368	\$23,979,670

2.3.2 Impact of improving productivity

PwC generated a hypothetical scenario where Regional DOLs processed cases at the rate of the most efficient office³⁰ and State SWAs processed cases at the rate of California SWA³¹ to determine the impact of improving productivity on the program.

Assumptions

The assumptions used were the same as in section 2.3.1, with the addition of the following assumptions for the productivity improvement scenario:

³⁰ As defined in Foreign Labor Certification FY 2002 Supplemental/FY 2003 Budget Discussion ETA Division of Foreign Labor Certifications, Washington D.C. 2001.

³¹ California was identified as a leading SWA based on productivity. Part of the reason California is productive is due to the high proportion that RiR applications make of the total California caseload. Further analysis will be necessary to determine the extent to which California's productivity is due to better processing or due to case mix.

- Philadelphia office productivity of 1,848 cases per staff year because it is currently the most productive DOL office. The assumption is that techniques used in Philadelphia can be transferred to other regional offices and have the same impact.
- California SWA used at the SWA level. During Phase II interviews, PwC obtained productivity estimates of 581 cases per staff year. The assumption is that techniques used in California can be transferred to other SWAs and have the same impact.

Projection results

Figure 19 Requirements under a productivity improvement scenario

Region	Base scenario		Improvement scenario	
	Staff	Funding	Staff	Funding
Boston	87	\$ 7,216,773	61	\$ 5,091,247
New York	283	\$ 23,462,082	167	\$ 13,883,715
Philadelphia	119	\$ 9,852,425	92	\$ 7,653,883
Atlanta	97	\$ 8,016,684	68	\$ 5,650,740
Chicago	79	\$ 6,577,858	59	\$ 4,902,221
Dallas	119	\$ 9,842,743	58	\$ 4,771,332
Kansas City	11	\$ 908,838	7	\$ 559,791
Denver	20	\$ 1,624,831	7	\$ 617,198
San Francisco	238	\$ 19,736,382	169	\$ 14,056,074
Seattle	12	\$ 1,025,309	5	\$ 435,581
Totals	1,063	\$ 88,263,924	694	\$ 57,621,781

As depicted in Figure 19, under the productivity improvement scenario, a total number of 694 staff will be necessary to completely clear the caseload within a year at both the SWA and regional DOL levels. Funding requirements will decrease from approximately \$88,260,000 to \$57,622,000, for a reduction of 34.7% from the base case scenario.

The productivity improvement scenario illustrates the level of effort and funding required if the SWAs and DOL offices were significantly more efficient. The improvement in efficiency assumed was substantial so the results presented above should be taken as the upper bounds of what efficiencies can be accomplished under the current processing design. While the reduction in resources required is significant, it is important to note that eliminating the caseload will require substantial resources regardless of the level of improvement in efficiency and effectiveness that can be achieved.

2.4 Key findings

2.4.1 Program characteristics

Permanent Labor Certification has several key characteristics that serve to frame and – to a certain degree – constrain options for quickly addressing the outstanding caseloads at both the SWA and regional DOL levels. These characteristics include the following:

- Federal oversight. Immigration is viewed as a Federal responsibility, and therefore approval or denial of immigration applications is required by statute to occur at the Federal level.
- Individualized process. Immigration is a highly unique and personal process, and certification decisions are subject to appeal before BALCA. To prevent unfavorable rulings, each application is individually and thoroughly reviewed. In addition, supporting evidence is specific to each case and not derived from general labor market conditions³².
- Local labor market knowledge. Involvement of SWAs in the certification process allowed the program to leverage their employment and local labor market expertise. This has resulted in two levels of review and consistency issues given the involvement of 54 different SWAs. The development of the Internet and other information distribution channels may help mitigate the need to maintain a distributed processing structure in order to preserve local knowledge.

These characteristics will form the foundation for the findings listed below and will also be prime evaluation considerations when determining the feasibility of program improvements in Phase II.

2.4.2 Findings

After reviewing the Permanent Labor Certification Program and understanding the magnitude of the caseload that the DOL and SWAs must process, PwC compiled a list of the following key findings that will help frame the recommendations developed in Phase II of the project:

- *245(i) applications are unique.* Applications received as part of the 245(i) extension are often incomplete and require extra steps for processing offices. While SWA's have historically issued 45-day letters on 50%-100% of cases, they are projecting that a significantly higher percentage of the 245(i) cases will require a 45-day letter requesting a completed application. One office estimated that the percentage of cases requiring a 45-day letter would climb well above 100% due to the fact that

³² This program characteristic is due to several BALCA decisions that prevented the use of general labor market information when issuing application denials.

some cases are already requiring multiple 45-day letters. The fact that 245(i) applications are often incomplete will create a drain on productivity and lower productivity estimates should be used when assessing the length of time required for processing the backlog created by the 245(i) extension.

- *Individualized process.* The goal of the Permanent Labor Certification program is to certify foreign workers for jobs that are considered shortage occupations and to ensure that the foreign worker is offered a wage that will not adversely affect the US worker. These requirements have shaped a program that is focused on the individual and not the job market, which has created a process centered on individual applications or cases. An analyst processes a case from start to finish and tasks are not currently batched due to the individualized nature of the certification process. In addition, while some state and regional offices batch application processing by employer in limited instances, application processing is segmented by RiR and traditional and then is almost always done in date order processing. The individualized nature of the program makes it difficult to capitalize on economies of scale and creates a program that is not designed for the large influx of applications associated with the 245(i) extension.
- *Process varies widely by state and region.* Based on the interviews conducted, the permanent labor certification process varies widely across the state and regional offices. The process is varied mainly due to unique labor markets, staff mix (number of clerical staff and number of analysts), and different computer systems. The differing processes also result in very different processing rates between and within SWAs and Regions, with some offices markedly more productive than others. These differences inhibit best practice sharing, decrease the opportunity for streamlining the process, and make it difficult to ensure that standards are being consistently applied across the country.
- *No capacity available for 245(i) processing.* Even without the influx of the 245(i) applications, the caseload being processed at the regional and state level is growing. With a few exceptions, states and regions are receiving more applications than they are able to process, which is causing the backlog to grow. The 245(i) caseload has created a workload that is too large for the current system to handle. Based on the productivity of the state offices that were included in the initial interview sessions, it would take between five and seven years for the 245(i) caseload to be completed. This estimate does not account for any processing time associated with new applications.
- *Elimination of the outstanding caseload requires significant level of effort.* Projections including large increases in productivity show that there will still be a significant resource requirement to handle the increased caseload created by the extension of 245(i). In the best case scenario, where all DOLs match the most productive DOL from the interview process, and SWAs maintain their current level of productivity even though the 245(i) cases are largely incomplete, an estimated \$58 million would be needed to handle the cases within a one year timeframe.
- *No 'Quick Hit' process improvements.* The planned implementation of the PERM system within the next year and a half means that options should be quick to implement, effective within the 18-month period, and not require extensive regulatory

changes. However, the program as it exists today limits the options available within the 18-month period before the PERM system becomes effective. Given these limitations, there are no obvious 'quick hit' process improvement opportunities that will make significant reductions in processing times. As such the permanent labor certification process – as it exists today – is relatively efficient in most instances.

The outstanding caseload, the resource requirements necessary to clear the caseload, and the absence of significant quick hit process improvements imply that no one solution will significantly address current issues with Permanent Labor certification. Solution packages that blend a combination of processing changes, efficiency improvements, and additional resources will be required in order to have a significant impact on the program.

2.5 Next steps

Phase II of the Permanent Labor Certification Process management review project focused on developing recommendations for solutions to alleviate the backlog of permanent labor certification applications. After completing the current environment assessment of the process, PwC developed the following preliminary list of areas to explore in developing solutions. These options will be examined in greater detail in Section 3.0 for their effectiveness and their feasibility given program characteristics and constraints.

- *Types of jobs that are certified:* PwC will further analyze the types of jobs that are certified in order to understand how the top jobs certified via the Permanent Labor Certification vary by state, region, and time frame.
- *State and Regional processing variances:* PwC will analyze differences between regional and state processing costs and productivities in order to assess whether there are opportunities for best practice sharing that were not uncovered during the interview process.
- *Increased level of effort for processing applications:* PwC will explore opportunities for decreasing the backlog using additional resources for assisting with the labor certification process. This analysis will examine how additional resources could be allocated throughout various stages of the certification process.
- *Opportunities for pooling applications or re-allocating current level of effort:* PwC will examine the feasibility of collecting 'similar' applications from across states and processing them centrally or shifting the processing of applications from over-burdened offices to offices with lower backlogs.
- *Opportunities for using attributes from the new system to clear existing backlog:* PwC will review the feasibility of incorporating attributes of the proposed automated process, such as incorporating an audit review.

3 EVALUATION OF POTENTIAL SOLUTIONS

3.1 Methodology

This section describes the approach PwC followed to conduct Phase II of the project and create the final project report.

PwC developed a list of potential solutions for eliminating the backlog based on the key findings determined during Phase I.

PwC hosted a number of problem solving session conference calls with SWA and Regional Office representatives. During these calls PwC discussed the following potential solutions for processing the existing backlog of cases:

- Contracting out steps in the certification process
- Processing applications by type of occupation, employer etc.
- Using specialized teams for processing
- Incorporating an audit review

Additionally, new ideas and recommendations were gathered during the calls.

PwC used feedback from the problem solving sessions and information collected during Phase I to analyze potential solutions for processing the backlog. This analysis included an assessment of the feasibility of each solution and the associated benefits and limitations.

As part of the analysis and conference calls, the California SWA was identified as a relatively efficient SWA. PwC incorporated this finding by using the CA SWA as an example of what improvements could be made without any significant changes to the program.

The following table lists the problem solving session participants:

Figure 20 **Problem solving sessions**

Date	Office	Meeting Participants
09/12/2001	DOL – San Francisco	Martine Rios
	DOL – Dallas	John Bartlett
09/13/2001	SWA – New Jersey	Michelle Skole, Maureen Ulakovic
	SWA – Maryland	Yolanda Milam
	SWA – District of Columbia	Dorothy Robinson
09/13/2001	SWA – Georgia	Glen Collins, Bob Harris, John Chepel
	SWA – California	Bill Vernon
	SWA – Texas	Dick Sauder, Barbara Lucinger, Norma Martinez
09/18/2001	DOL – New York	Delores DeHaan
	SWA – New York	Joann Palmiere
09/19/2001	SWA - California	Bill Vernon
10/03/2001	America’s Job Bank	David Morman
10/09/2001	US Department of State	Sandra Shipshock
	National Visa Center	Sara Tufo

3.2 Overview of potential solutions

Using feedback and comments collected during the problem solving sessions, PwC developed a list of potential solutions for processing the backlog generated by the 245(i) extension and through normal processing. The solutions that were explored can be categorized as follows:

- Workload transfer solutions
- Systems/process improvements
- Modifications to existing regulations
- Resource adjustments

3.2.1 Workload transfer solutions

Workload transfer solutions involve transferring some or all of the caseload at both the SWA and regional DOL levels. Two options for transferring the workload are discussed in the following table:

Figure 21 Workload transfer options

Description	Benefits	Limitations
Work sharing – Heavier load states and regions send applications to lighter load regions; or designate one leading SWA in each region as a regional processing center	<ul style="list-style-type: none"> ▪ Some states and regions are working down their backlogs and can process additional applications 	<ul style="list-style-type: none"> ▪ Caseload is growing nationwide, so there is not additional capacity on a national level ▪ Integration issues between the SWAs that share work ▪ SWAs with small caseloads may feel penalized for having a small caseload ▪ Changes in regulations may be required
Process backlog applications in a highly productive state, such as California	<ul style="list-style-type: none"> ▪ Minimizes implementation time and cost by utilizing an existing system ▪ Uses processing system with high productivity 	<ul style="list-style-type: none"> ▪ One state will be responsible for all local labor market knowledge ▪ California needs two and a half years to clear its own caseload – there is no capacity available

Shifting the caseload promises to ease the burden on all states as well as improve processing by moving cases to higher productivity offices. However, this type of approach will only work if the ETA is willing to accept some loss of local labor market knowledge. In addition, this option assumes that higher productivity offices have enough capacity to handle the increased caseloads and that the challenges mentioned in the table above are overcome.

Given that the overall caseload nation-wide is increasing, the prospects of work sharing to clear the caseload quickly appear to be small. As of March 31st 2001, only six SWAs were working down their caseloads fast enough to have excess capacity within the next year. Based on current productivity, these six SWAs would only have enough excess capacity to take 1,080 cases from other SWAs. This represents less than 0.3% of the 428,800³³ on-hand and incoming cases the SWAs are expected to receive over the next year. Furthermore, most of the high productivity, high throughput SWAs also have significant caseloads of their own and would not be able to make any short term contributions. The California SWA, for example, is one of the most productive yet will not clear its own caseload for another 2.5 years.

³³ Projection estimate from California SWA Director

3.2.2 Systems/process improvements

Systems improvements can automate several of the more mundane tasks associated with the certification process and also enhance the capability of staff to process cases more quickly. Process improvements can enhance case handling by changing the way in which cases flow through the certification process. These options are presented in the table below:

Figure 22 System/process improvement options

Description	Benefits	Limitations
Invest in incremental improvements to SWA systems, such as additional processing power, scannable forms	<ul style="list-style-type: none"> ▪ Uses what already exists ▪ Focuses on the current bottlenecks to processing, such as slow system response and incomplete forms 	<ul style="list-style-type: none"> ▪ Impact will be limited given that improvements will be confined to the existing system architecture ▪ Ongoing problems with existing system will continue (e.g. lack of technical support) ▪ Requires some system development and training
Make major changes to SWA systems, such as on-line applications, automated case tracking, and better processing procedures	<ul style="list-style-type: none"> ▪ More scalability, automation, and functionality will reduce the need for human review 	<ul style="list-style-type: none"> ▪ Large scale changes will require significant development efforts ▪ Changes will require training ▪ Limited to helping out only until PERM in place ▪ Integration will be required between new version and legacy versions
Convert all SWAs to a leading processing system, such as the California SWA system	<ul style="list-style-type: none"> ▪ State systems are antiquated ▪ California system is highly automated ▪ Other SWAs may be able to achieve productivity levels similar to California 	<ul style="list-style-type: none"> ▪ System will be replaced by PERM system ▪ Cases already in process at the SWAs will have to be integrated and converted ▪ Not a short term solution given implementation issues ▪ Significant training required
Process improvements, focusing on grouping applications and handling via three teams: completeness team, processing teams and issues team	<ul style="list-style-type: none"> ▪ Focusing on completeness first will prevent hold up of cases during processing ▪ Grouping cases will allow faster processing of cases with similar attributes ▪ Creating an issues team allows processing teams to continue processing cases 	<ul style="list-style-type: none"> ▪ Benefits gained only in SWAs with a large number of cases on hand ▪ Resorting may be required ▪ Tracking may become more complex
Integrate processing to eliminate two-step processing by combining	<ul style="list-style-type: none"> ▪ Eliminates file preparation, case number assignment, mailroom, and other 	<ul style="list-style-type: none"> ▪ Requires co-location of staff ▪ May not be easy to implement at the SWA level due to SWA

Description	Benefits	Limitations
regional and SWA review	administrative duties that are duplicated at the Regional Offices <ul style="list-style-type: none"> ▪ Reduces turnaround time and costs associated with eliminated steps ▪ Enhances processing effectiveness as Regional staff will be co-located with local staff ▪ Reduces delays associated with remands 	resistance <ul style="list-style-type: none"> ▪ Involves integrating Regional Office review responsibilities into SWA level processes and systems ▪ Incorporating Regional review into the 54 existing SWA processes would be time consuming

During the problem solving sessions many SWAs indicated that antiquated and slow systems prevent them from processing cases quickly. Systems improvements would help by making processing quicker and automating repetitive and mundane tasks. However, there are several issues associated with system improvements. The development needs of 54 different SWA systems, the relatively large scale changes that will be required to have a major impact on the caseload, and the time and resources it will take to design, construct, integrate and test the system will all present challenges. All but minor systems or process improvements may not make sense given the short-term nature of the need: they will only be in place until the PERM system is implemented.

The option of rolling out the California existing system to all SWAs is more attractive because there would be little additional development required. There would still be challenges because DOL will still need to procure the IT equipment for each of the SWAs, and because SWAs currently all process cases differently and would need significant additional training to get them up and running on the California system.

Improvements to the current process, such as introducing specialized processing teams, are challenging to implement due to the wide variation in processing at the SWAs. For example, some SWAs may have state level requirements for their own employment services that will limit the ability to implement process improvements uniformly across all 54 SWAs. Other SWAs may process applications so differently that there would be inherent friction to overcoming the familiar way of doing things before the new process can be put in place. Additionally, some

process improvements may not be justified in certain states due to unique conditions: for example, where the caseload is too small to group applications by type.

Changing the process to integrate the DOL and SWA reviews into a one-step process eliminates the current two-step process and can help processing efficiency by eliminating several administrative steps at the Regional level and streamlining other steps. However, it would require SWAs to accept additional responsibilities and have significant transition costs as Regional staff are assigned to each of the SWAs. Furthermore, it will do little to help the caseload at the SWA level, which is where most of the caseload exists.

Given these concerns, process changes make more sense if they are either limited to high volume SWAs, case processing is centralized, or if a contractor is brought in to process the outstanding caseload.

3.2.3 Modifications to regulations

There are a number of suggestions identified that would require a change to the implementing regulations. These cover changes that would enhance efficient processing, increase the proportion of proper and complete applications, and increase the effectiveness of the program.

Figure 23 Regulation options

Description	Benefits	Limitations
Process out of date order to allow grouping and sorting of applications, which may facilitate processing. Examples include: Expediting easily approvable cases at both levels; working clean cases first; working cases in groups by occupation	<ul style="list-style-type: none"> ▪ Moves cases out more quickly if repetitive tasks can be grouped together by type of case ▪ Encourages new applicants to file cases depending on how they are treated ▪ A DOL policy that may not require a regulation change 	<ul style="list-style-type: none"> ▪ Processing out of date order may be hard to explain to applicants ▪ Effort will be required to resort all the applications ▪ Increases fraud for expedited cases that have less review ▪ There will be minimal time savings overall because all that changes is the order in which cases are processed ▪ Tradeoff will exist – one sort may help one type but hurt another type of application
Relax guidelines to allow contact via phone, email, fax and other means to complete applications and address issues raised	<ul style="list-style-type: none"> ▪ Speeds up the process of obtaining information ▪ Reduces need to take the time to generate 45 day letters 	<ul style="list-style-type: none"> ▪ Immigration stakeholders may have issues with a non-formal, non-documented process ▪ Response rates may not be any better

Description	Benefits	Limitations
during processing.		<ul style="list-style-type: none"> ▪ Overall impact may be small
Relax guidelines to get marginal applications out under “harmless error”, based on how old, how serious the infraction, and the possibility the case won’t get certified	<ul style="list-style-type: none"> ▪ Good for old cases with slight infractions ▪ No longer have to go through all the motions for certain cases 	<ul style="list-style-type: none"> ▪ May impede the effectiveness of the program ▪ Immigration stakeholders may perceive favoritism and/or relaxation of restrictions ▪ The number of cases may not be a big portion of all those outstanding
Discontinue writing Notices of Findings. Options include: Flat rejection of application Rejection with attached check list of reasons for rejection	<ul style="list-style-type: none"> ▪ Reduces significant burden at regional level ▪ Guidance to applicants can be maintained through the use of checklists ▪ Reduces fraud by preventing applicants from just providing what DOL wants to see 	<ul style="list-style-type: none"> ▪ Reduces paper trail and supporting documentation for those cases going to BALCA ▪ May increase review times when cases come back without what is needed ▪ Opposition from immigration stakeholders used to detailed procedures
Increase attempts to identify fraud and prevent certification of fraudulent cases. Options include: Proof of employer validity, job, and payment ability up front; Require agent certification; Conduct labor market tests for RiR to determine availability; Document business necessity for excessive requirements; Require applicants who have trained the alien to do the same for untrained U.S. workers; Audit filers who sent resumes to see if recruitment was fair	<ul style="list-style-type: none"> ▪ Decreases fraud and improves program effectiveness ▪ Satisfies proponents of protecting the U.S. labor market ▪ Some of these steps are already carried out after the Labor Certification process at the INS – move them forward to reduce processing of fraudulent cases 	<ul style="list-style-type: none"> ▪ Process changes required ▪ Training on new procedures required ▪ Systems enhancements required to handle new responsibilities ▪ Will not improve efficiency: extra tasks add to the workload ▪ Immigration proponents, employers may oppose this additional burden
Update Schedules A & B to expand the list of severe shortage occupations that obtain automatic certification	<ul style="list-style-type: none"> ▪ Bypass labor certification for applications in certain occupations 	<ul style="list-style-type: none"> ▪ Political issues with what will go onto Schedules A and B ▪ Immigration stakeholder concerns with protections of U.S. workers ▪ Will need to be constantly updated

Description	Benefits	Limitations
		<ul style="list-style-type: none"> ▪ During poor economic conditions, processing will slow because fewer occupations will be on Schedules A and B
<p>Require applicants to submit a complete case in order to obtain a priority date</p>	<ul style="list-style-type: none"> ▪ Reduces need for 45 day letters ▪ Reduces work associated with validating case completeness 	<ul style="list-style-type: none"> ▪ Still need a process to determine whether applications are complete ▪ Resistance from immigration stakeholders ▪ Won't help the existing caseload
<p>PERM conversion: allow outstanding applicants to file as PERM system is implemented; retain priority date</p>	<ul style="list-style-type: none"> ▪ Any remaining outstanding cases can be converted to PERM when the PERM system comes online ▪ Converted applications processed as PERM applications, which require less resources 	<ul style="list-style-type: none"> ▪ Limited to those who convert ▪ Regional DOLs still need to certify applications ▪ Limited to when PERM is implemented, which still may be a year and a half away ▪ Need to allow the system to recognize applications filed under old system and new ▪ Conversion of a large number of cases in the first year will reduce audit penetration
<p>Audit a select portion of cases and expedite the remaining cases</p>	<ul style="list-style-type: none"> ▪ Reduces the review efforts currently required for each case 	<ul style="list-style-type: none"> ▪ More fraudulent cases will get certified ▪ Political issues surrounding a reduction in U.S. worker protections

Many of these options do provide potential to both increase the effectiveness and efficiency of the certification process. However, many of these – especially those that enhance effectiveness by reducing fraud – would require additional time and resources. Others – such as priority processing – would be a wash. Most of these options also involve political tradeoffs that would be difficult for the DOL to accept, especially if the protection of U.S. workers is compromised.

The most limiting factor in considering regulatory changes is the time it takes to develop, refine, review and approve a regulatory change. When public comment and OMB review is included, regulatory changes could easily take upwards of a year to become effective. It is likely that by this time the implementing regulations for the PERM process will be in place, making all regulatory changes of limited use except PERM conversion.

3.2.4 Resource adjustments

Resource adjustments include hiring additional staff, transferring staff between offices, or hiring a contractor to assist in the certification process. These options follow in the table below:

Figure 24 Resource adjustment options

Description	Benefits	Limitations
Add additional permanent staff at the SWA and regional levels	<ul style="list-style-type: none"> ▪ SWAs and regions maintain control and accountability for new hire performance ▪ Local labor market knowledge is preserved 	<ul style="list-style-type: none"> ▪ Involves hiring a large number of staff under a temporary arrangement ▪ Training is still required of new staff ▪ Would require significant additional equipment and office space for a short time period
Transfer staff from low caseload offices to high caseload offices; add temporary staff from other labor related departments and also use retirees	<ul style="list-style-type: none"> ▪ Same as above, and: ▪ Quicker recruitment period ▪ Less training required ▪ Employees recognize temporary nature of need 	<ul style="list-style-type: none"> ▪ Same as above ▪ Some training still required ▪ Unless process or efficiency changes are included, a significant level of additional resources will be required ▪ Need to create incentives for SWAs to accept applications from other offices
Hire additional staff at a leading SWA, such as California	<ul style="list-style-type: none"> ▪ Same as above, and: ▪ Some savings as new resources employ best practices at leading SWA 	<ul style="list-style-type: none"> ▪ Same as above
Hire a contractor to assist in the processing of cases	<ul style="list-style-type: none"> ▪ Well suited for one-time, short term needs ▪ Can easily accommodate process improvements that may facilitate processing 	<ul style="list-style-type: none"> ▪ Significant training requirements to bring the contractor up to speed ▪ Integration issues with the SWA offices and regional DOL offices ▪ Will require new guidance to SWAs on processing ▪ May require regulatory changes

Additional staff and departmental transfers can help reduce the caseload while maintaining local SWA control. However, there will need to be significant resource adjustment efforts to quickly reduce the caseload. At the SWA level alone, an additional 775 staff will be required to process the caseload over the coming year, requiring approximately \$64.3 million dollars in additional funding.³⁴ This staff level is more than three times the current SWA staff level and

³⁴ Based on 428,800 cases on hand and incoming over the next year, at 426 cases processed per SWA staff per year; \$83,000 per SWA staff.

would require training, equipment, and office space. In addition, they would only be needed for a short period of time until the PERM process is in place, creating issues associated with counseling staff once the job is complete. Finally, this solution does not address the varying ways in which 54 different SWAs interpret and apply program regulations to processing.

Processing using a leading SWA or using a contractor would have many similar benefits. Consistency could be enhanced if the caseload was processed centrally as opposed to distributed among 54 SWAs and 10 Regions. The consolidation of cases would also allow for economies of scale in processing. Consolidation of cases would make it easier to implement improvements that would be more difficult to do at each of the 54 SWAs and/or 10 DOL offices.

Using a contractor to process cases could also have two additional benefits. First, contractors are well suited to one-time and short-term assignments, of which this one is no exception. Second, using a contractor will easily allow for improvements beyond the process currently used by California. For example, the contractor could also incorporate Regional responsibilities and transform the current two step process into one.

Given the potential benefits and issues associated with either transferring cases to a leading SWA or hiring a contractor, these options will be explored more thoroughly in section 3.3.

3.2.5 SWA and Regional Office feedback

Feedback from the SWAs and Regional Offices are included in the “Overview of potential solutions” section above. The general opinion of the State and Regional Offices participating in the Problem Solving Sessions was that the current process is working, but there are not enough resources to process the large increase in applications due to the extension of 245(i).

Besides additional resources, most of the other options were problematic. There were concerns about the length of time involved to train a contractor and security issues with utilizing a contractor. Feedback on the ideas for implementing batch processing with specialized teams for occupation types, employers, or type of application was consistent: these ideas were tried in some areas and were not successful and/or the number of applications does not warrant this processing arrangement. Some SWAs expressed reluctance to processing methods that involve processing applications out of date order. The audit review concept utilized in the PERM system was not viewed as a short-term solution because it would involve a regulation change.

3.2.6 Recommended solutions

The most promising solutions from sections 3.2.1 through 3.2.5 above are summarized in Figure 25 below. Although all options have their share of limitations, of the options discussed minor systems enhancements and processing improvements appear to be the most feasible, along with either additional resources or hiring a contractor to process applications. As mentioned in section 2.4, a combination or bundle of the solutions listed below – rather than just one solution – will have a greater likelihood of comprehensively and cost-effectively addressing the entire caseload within a reasonable timeframe.

Figure 25 Recommended solutions

Solution type	Recommended solution(s)	Summary assessment
Workload transfers	None	<ul style="list-style-type: none"> ▪ No capacity available
Systems/ process improvements	Minor systems improvements	<ul style="list-style-type: none"> ▪ Limited impact ▪ Short time frame precludes large scale improvements
	Process improvements – grouping applications, splitting processing into steps	<ul style="list-style-type: none"> ▪ Productivity improvements possible, especially if applications are pooled ▪ Case tracking issues
	Process integration – combine SWA and Regional processing into a one-step process	<ul style="list-style-type: none"> ▪ Productivity improvements possible by eliminating redundant steps ▪ Regional staff presence improves processing quality
Regulation modifications	None	<ul style="list-style-type: none"> ▪ Regulatory changes will not be in place before PERM is implemented ▪ PERM conversion can be a last resort, but it will not help to quickly reduce the caseload
Resource adjustments	Hire additional staff at leading SWA	<ul style="list-style-type: none"> ▪ Addresses the need for more resources to process cases ▪ Cost, training, space and equipment issues ▪ Incorporate best practices, but further improvements may be limited ▪ Some loss of local labor market knowledge
	Hire a contractor	<ul style="list-style-type: none"> ▪ Addresses the need for more resources to process cases ▪ Well suited for short-term one-time jobs ▪ Can incorporate Federal review into processing ▪ Cost and training issues ▪ Incorporate best practices and institute further improvements ▪ Some loss of local labor market knowledge

This section has dealt with what solutions should be implemented. Section 3.3 deals with two issues surrounding how these solutions should be implemented.

- First, if the caseload should be addressed through the current system of distributed processing or if cases should be centralized and processed in one location;
- Second, whether a leading SWA (such as California) should be given additional resources to process the caseload or whether a contractor should handle these cases³⁵.

3.3 Implementation issues

3.3.1 Centralized versus distributed processing

Each of the solutions in Figure 25 will be more effective if case processing is centralized and performed in one location rather than the current distributed processing model, which involves 54 SWAs and 10 regional DOL offices. Centralized processing has several benefits:

- Reduce system enhancement costs and compatibility concerns – enhancements will only be performed once and less integration will be needed.
- Increase processing efficiency – pooling of cases allow for greater economies of scale, and best practice processing techniques can be applied easily in one place.
- Increase processing consistency – centralized processing will allow one standard procedure for approving or denying cases and reduce the difficulty associated with enforcing standard processing over multiple locations.
- Add resources efficiently – whether via a leading SWA or a contractor. Processing cases in one location can alleviate the overlapping overhead, management, facility, and equipment costs associated with processing small amounts of cases in many locations.
- Decrease the amount of training required – since all new staff will be trained at once, rather than in 54 different ways at the SWA level and an additional ten different ways at the Regional level.

One tradeoff DOL should consider is that distributed processing allows SWAs to utilize their local employment expertise when processing applications. Moving towards a centralized processing model may run the risk of losing that local labor market knowledge. However, some of this risk may be mitigated with the advent of the Internet and other means to distribute information. The presence of many sources of employment information over the Internet may reduce the need for local processing in order to preserve local labor knowledge. If this is an

³⁵ This option depends on whether a SWA is interested in accepting applications from other offices.

adequate substitute, then centralized processing will enable the implementation of the most effective resource adjustments and process improvements.

3.3.2 Contractor versus leading SWA

Since neither system enhancements nor process improvements are likely to eliminate the entire caseload quickly (even with centralization of cases), the preferred solution will require additional resources for processing at the SWA level. The options discussed in Figure 25 included adding additional resources to a leading SWA, such as California, or using additional resources to hire a contractor. A description of the California SWA process continues below, followed by a benefits/limitations comparison between a leading SWA and a contractor.

California SWA process

During the problem solving sessions and meetings with DOL headquarters staff, PwC learned that the California SWA was generally recognized as being a “model” SWA in that it processed a relatively large number of cases for the number of staff assigned³⁶. In addition, PwC learned that the California SWA follows a different procedure for processing cases. PwC examined California SWA in greater detail as an example of what might occur if cases were centralized for one SWA to process and as an example of what types of solutions could be implemented at the SWA level under the current program constraints.

After the problem solving sessions, PwC interviewed the California SWA Director about the process that the SWA follows for reviewing applications. California receives the highest number of applications, over 30,000 applications per year, and has a high productivity rate, as high as 581/year per person prior to the 2001 245(i) extension. The California SWA follows a unique process compared to the other SWAs interviewed for this project. The SWA utilizes a team approach to application processing and the teams are arranged in the following structure:

³⁶ California averaged 581 cases per staff year in FY 2000, as opposed to the average of 426 cases per staff year across all 54 SWAs.

- Intake team – Creates file and data enters information contained on application; separates cases into RiR and Traditional recruiting applications.
- RiR team – Processes RiR cases from start to finish.
- Assessment Team (non-RiR cases) – Ensures documents are complete and wage is adequate; reviews job requirements; develops 45 day letter if required; determines when case is ready for recruitment.
- Recruiting Team – Takes case through recruitment process and final documentation process; reviews and justifies recruitment results; identifies case as ‘Limited Review’ if appropriate.

In addition to the above teams, the California SWA relies on the Labor Market Information Department (LMID) for prevailing wage issues, such as surveys and rebuttals. The SWA utilizes a bulk mail center located in the building for assistance with folding, inserting, and mailing letters. The CA SWA has 65 workstations furnished with PCs and relies heavily on automation for processing cases. Analysts often rely on information entered into the system rather than hardcopy documentation in the case file.

Comparison of contractor versus a leading SWA

Figure 26 below outlines the benefits and limitations associated with adding resources to a leading SWA versus hiring a contractor.

Figure 26 Leading SWA versus a contractor

Option	Benefits ³⁷	Limitations
Leading SWA	<ul style="list-style-type: none"> ▪ A model SWA – already performs well and approach is proven ▪ No need to reform the other 53 SWAs ▪ No need to enhance processing system functionality ▪ Standardizes case processing 	<ul style="list-style-type: none"> ▪ Leading SWA system must be scaled to handle increased caseload ▪ One time space, equipment, and staffing needs ▪ Any process improvements would require changing procedures, changing systems, and training ▪ Cases would still need to go back to Regional offices unless SWA assumed Federal responsibilities ▪ Some state specific regulations may create issues ▪ Need to create adequate incentives for a SWA to take applications from other offices

³⁷ Some of the benefits and limitations depend on the number of tasks that the SWA/Contractor assume.

Option	Benefits ³⁷	Limitations
Contractor	<ul style="list-style-type: none"> ▪ Contractors well suited for one time projects with unique space, equipment, and staffing needs ▪ Not constrained by state specific requirements ▪ Starting with a blank slate – process improvements will be easier to design and implement ▪ No need to reform the 54 SWAs ▪ No need to reform the 10 Regional DOL offices, if contractor assumes all Regional responsibilities except actual C.O. certification ▪ Standardizes case processing ▪ Two step review can become one, thereby reducing the need for duplicate steps 	<ul style="list-style-type: none"> ▪ Need to acquire a processing system (can be transferred from a leading SWA) ▪ Little previous experience ▪ Approach is not proven – assessed at a high level only ▪ Regulation changes may be required ▪ Resources and time costs for start up and procurement ▪ Changes will be required in the Federal role

Given the benefits and limitations described above, the DOL’s best option for caseload reduction appears to be centralized processing with a contractor. A contractor is better suited to handle one-time short-term needs and can be quickly brought on board again if there is another 245(i) extension before the PERM system is implemented. Starting with a blank slate would allow the contractor to implement the best practice processing procedures, which would require changes to procedures and systems if implemented at the SWA level. Co-locating contractor and Federal staff may result in savings as the current two-step process can be consolidated into one. Centralized processing will likely increase processing efficiency through economies of scale, eliminating duplicated steps, increasing processing consistency, and reducing the transition and development costs associated with systems and process improvements.

The next section explores in more detail the factors involved in assessing the contractor option. In addition, it will assess three different contractor scenarios for reducing the caseload, with each scenario incorporating differing degrees of centralization, process improvements, and systems enhancements.

4 ASSESSMENT OF CONTRACTOR OPTION

The analysis on the contractor option builds on the discussion in Section 3.3.2 above and looks into detail on the feasibility, benefits, and limitations of contracting. PwC completed the following tasks in conjunction with the analysis of this option:

- Collected feedback from the SWAs, the Regional Offices, and staff at HQ on the option of contracting out tasks involved in processing applications.
- Outlined benefits, risks, and other considerations associated with using a contractor.
- Created process flow maps for three contractor scenarios.
- Completed productivity analysis for three contractor scenarios, including level of contractor support required under the scenarios.
- Prepared a high level implementation workplan for contracting out application processing.

4.1 Feedback

The concept of using a contractor to help process applications in the permanent labor certification program was discussed during the problem solving conference calls conducted during Phase II of the project. The concept was discussed in terms of what parts of the process might make sense to contract out and what parts of the process would not make sense. Additionally, concerns and issues with using a contractor were discussed, both at the SWA/Regional DOL office level and at the Headquarters level.

4.1.1 SWA and Regional DOL office feedback

In general, the SWAs and Regional Offices who participated in the conference calls felt that contracting out was not a viable option for reducing the backlog. Several issues and concerns were raised in relation to the potential use of a contractor in the permanent labor certification program. The main issues that surfaced were related to:

- Security issues – Involving another party in the processing of applications creates concerns about application security and processing integrity.
- Training issues – the learning curve is very steep and it will take too much time to effectively train and mobilize a contractor; it is not possible to adequately train a contractor.
- Concerns about fraud detection – Experience with the program is necessary in order to detect fraud.
- Integration of systems – A contractor will need to produce data feeds for Regional Offices; a contractor will need to access many supporting systems.
- Contractor not able to adequately protect American worker - States have access to entire employment system that is not accessible by a contractor.
- Tracking cases will become very difficult – States get many calls on case status and need to provide immediate responses.
- Contracting out with temporary workers was unsuccessful - As soon as the temps were trained, they had to leave due to time limits on contracts.
- Current system works - Resources are being added to handle increased caseload, so there is no need for a contractor.

In general, State and Regional offices were supportive of using a contractor for the following areas of work:

- Data entry
- Clerical support
- Technology support – Create scannable forms
- System redesign – Help improve current systems
- RiR – Easiest step in the process for new staff to master

The overall sentiment of the SWAs and Regional Offices interviewed for the project was that the current process is working, but there are not enough resources available to adequately address the backlog.

4.1.2 DOL Headquarters feedback

DOL Headquarters feedback on the contracting alternative contrasted with SWA and Regional DOL office feedback in that Headquarters was more disposed towards a contracting alternative

as being feasible. Overall, feedback appeared to be generally receptive to using a contractor as a means to quickly and efficiently reduce the outstanding case levels at the SWAs. However, support for contracting depended on the types of cases and level of review. A summary of feedback is included below:

- Centralized processing can help quickly reduce the caseload – integration could still be maintained with the regional offices, and centralized processing could realize economies of scale by grouping large numbers of cases together. Another benefit of centralized processing is that standardization will be easier to control.
- Completeness review and prevailing wage determination – there is a minimal training curve associated with using a contractor to determine whether or not an application is complete. While slightly more complicated, contractors could also be trained to determine prevailing wages since most of the information is now online.
- Reduction in recruitment cases – contractors could be used for reduction in recruitment cases, as these are less complicated than traditional cases. The fact that SWAs already give their new staff the RiR cases indicates that there shouldn't be extraordinary training issues.
- Regional DOL office review – even though there are statutory requirements for this program to operate under Federal review, a contractor could assume many of the preliminary administrative processing and review steps done at the Regional level, with only the Certifying Officer duties being conducted by Federal staff co-located with the contractor.
- Traditional cases – support for traditional cases was more qualified, based on the amount of training required, the need for local labor market knowledge, and issues surrounding how the contractor would interface with the employer. The local labor market knowledge issue could still be addressed during the final review conducted by Federal staff.

4.2 Benefits and limitations

The concerns associated with contracting to perform some or all of the processing of permanent labor certification applications have already been discussed above. The following table broadens this discussion and outlines the benefits, limitations, and other major factors to be considered when making a decision regarding the use of a contractor:

Figure 27 Contractor analysis

Factors involved in assessing contractor alternative	
Benefits	<ul style="list-style-type: none"> ▪ Short-term solution for eliminating the current backlog (can be implemented and terminated relatively quickly) ▪ Potential improved processing time due to use of specialized teams processing applications in batches ▪ Standardized processing ▪ Regional DOL offices continue to review applications, in an expedited fashion ▪ Potential for Regional Federal staff to operate at contractor location, eliminating need for a second round of administrative filing and initial review ▪ Offers solution for large number of incomplete applications ▪ Capitalizes on ability to centralize and integrate best practices from all SWAs ▪ Certifying Officers receive cases in standard format, which results in productivity gains at approval stage
Limitations	<ul style="list-style-type: none"> ▪ Multiple SWA systems and contractor system must be integrated ▪ System must be designed to provide seamless case tracking ▪ Co-location of SWA and Regional duties will present logistics challenges ▪ Option addresses SWA backlog; Regional DOL backlog may still exist at approval review ▪ Actual certification approval must be done by Federal staff ▪ Requires approval of additional funding by the Office of Management and Budget
Political Considerations	<ul style="list-style-type: none"> ▪ Security concerns ▪ Concern about loss of local labor market knowledge ▪ Concern about fairness in processing order of applications ▪ Not widely accepted by States and Regions ▪ Impacts due to changes in the economy
Implementation Time and Cost	<ul style="list-style-type: none"> ▪ Potential to conduct simulation test and implement within 6 months ▪ Potential for savings due to productivity gains from centralized, standardized processing with specialized teams ▪ Start up costs (knowledge transfer, skills development, and acquisition of staff)
Implementation Considerations	<ul style="list-style-type: none"> ▪ Establish quality control reviews to ensure proper processing ▪ Focus on SWAs with largest caseload to minimize system integration and case tracking issues ▪ Identify most efficient SWA system and utilize existing SWA system with contractor for faster, less expensive system implementation ▪ Implement a specialized team approach in order to decrease amount of training time ▪ Implement an approach that involves a 'Special Cases Team' to process time-consuming cases ▪ Careful consideration of regulations required to determine which responsibilities can be given to a contractor

4.2.1 Benefits

Employing a contractor to help process applications at the SWA level is a feasible option because it provides a short-term solution for reducing the backlog. The contractor can be brought in to assist with certain aspects of processing under a temporary arrangement. After the backlog is reduced and/or the new PERM system is implemented, the contractor can be removed from the process. In addition, the use of a contractor could potentially result in savings for the Department of Labor. The SWA process, performed in 54 US states and territories, does not provide the opportunity to capitalize on economies of scale, but rather creates a system that is most efficient when one person processes the case from start to finish. The use of a contractor could lead to productivity improvements and cost savings for two reasons: it is possible to centralize and standardize the process with a contractor and it is possible to use specialized teams, similar to the California processing model, with the contractor option.

In addition to offering a short-term solution and creating the opportunity to improve processing times, there are other benefits associated with the contractor option. Using a centralized contractor creates the opportunity to design a standardized process that is based on best practices from all SWAs. One issue raised during the problem solving sessions was that the training curve associated with review of applications is steep. Using teams that specialize in one area of the certification review process can mitigate contractor training risks. Rather than having to train team members on the entire process, the contractor will have to train individuals on small steps in the process, which reduces the amount of time needed for training. The 245(i) applications are largely incomplete, requiring 45-day letters and another step for SWAs in the processing of applications. Under the contractor option, there is the opportunity to design a review process starting with a team that deals only with incomplete applications. By initially funneling all applications through a 'completeness team', those applications that are incomplete can be quickly returned to the employer with a checklist detailing what is deficient. Those applications that are complete are therefore the only applications that move on to the actual processing teams.

The contractor can also assume many of the activities at the Regional level. This would serve to replace the current two-step review process with a one-step review that is standardized and consistent. Regional staff would be employed at the contractor location, eliminating the need for all the administrative duties associated with moving the cases from the SWA to the regional offices. Regional staff would receive cases in one standard format and would be able to expedite their review because each case would have clear notation about the possible outcome

of the case: easily approvable or potentially deniable with documentation on the basis for the decision.

4.2.2 Limitations

While there are numerous benefits to contracting out, there are risks and limitations associated with this option for reducing the backlog of cases. The list below describes these risks and limitations as well as ways to mitigate them.

- Establish specialized teams for processing to decrease training time and maximize productivity.
- Consider utilizing an existing SWA computerized processing system so that system development time and expense is eliminated or reduced.
- Utilize the contractor for processing applications from the top 10 highest backlog states, excluding California, (approximately 60% of backlog applications) to minimize integration and tracking issues.
- Continue Regional Federal DOL staff approval of all applications to preserve Federal review, but at the contractor site and at a more expedited rate.
- Maintain government role at case receipt and approval. Having government involvement at the start and finish of application processing is a safeguard for preserving the integrity of processing applications.
- Thoroughly review regulations to determine which responsibilities can be handed to a contractor with minimal or no regulatory changes.

In summary, based on a high-level review of the current process, it appears that the use of a contractor is a feasible option for decreasing the backlog of applications³⁸.

4.3 *Options for contractor processing*

4.3.1 Contractor options

When considering what role the contractor will play, the DOL should consider the three variables listed in Figure 28 below and explained in the following list:

³⁸ Assuming that the regulations allow for contractors. The regulatory provisions should be further reviewed with legal counsel.

Figure 28 Contractor decision matrix

Contractor responsibility	Number of SWAs	Population of cases
Base case = 0	Base case = 0	Base case = 0
Low: Completeness, prevailing wage, and RiR review	Top 6 SWAs except CA (NY, NJ, TX, MA, MD, VA) = 139,700 cases	New SWA cases only = 127,400 projected new cases over the next year
Moderate: Completeness, prevailing wage review, RiR review, traditional recruiting	Top 10 SWAs except CA (All the above plus IL, GA, NC, CT) = 180,800 cases	All on-hand SWA cases = 301,400 cases
High: Completeness, prevailing wage review, RiR review, traditional recruiting, all Regional review steps except actual approval	All 54 SWAs including CA = 301,400 cases	All on-hand and new SWA cases = 428,800 cases ³⁹

- The **contractor responsibilities** or the specific tasks that the contractor will perform - A low level of contractor support could involve the transfer of responsibilities that involve the least amount of training, such as checking for completeness, prevailing wages, and processing RiR applications. A moderate level of contractor support could include the transfer of all SWA activities, while a high level could also transfer all Regional responsibilities short of actual application approval.
- The **number of SWAs** that should be included in the contractor arrangement - Selecting the top 6 SWAs to include in the contractor option would minimize integration issues and focus contractor efforts on those SWAs that have the largest outstanding caseloads. Using a contractor to process cases from the top 10 SWAs would incorporate over 60% of the caseload into the contractor option, while minimizing integration issues. These first two options exclude California given that it is already a productivity leader; the DOL should consider the third option – which includes these cases – if the contractor can achieve

productivity higher than California and can easily incorporate cases from low volume SWAs. All options exclude the caseload at the Regions since these applications have already been processed by the SWAs and are ready for Regional review.

- The **population of cases** for which processing should be contracted out - Taking only incoming cases will allow the contractor to focus on cases that are now largely RiR cases, which are easier to process and require less training. Taking all on-hand cases will allow the SWAs to continue processing incoming cases while the contractor focuses on eliminating the backlog. Taking both on-hand and incoming cases would fully replace the SWAs with the contractor and would prevent the need to run two parallel processing systems.

4.3.2 Contractor scenarios

The following pages depict three potential workflows for incorporating a contractor under the low, moderate, and high level of contractor effort outlined in the chart above. The process maps depict the activities that the contractor would assume responsibility for and where the handoffs between contractor and SWA and contractor and Regional DOL office would occur.

³⁹ This estimate is comprised of all on-hand cases and cases projected to come in during the next year.

Figure 29 New process contracting alternative - Minimum

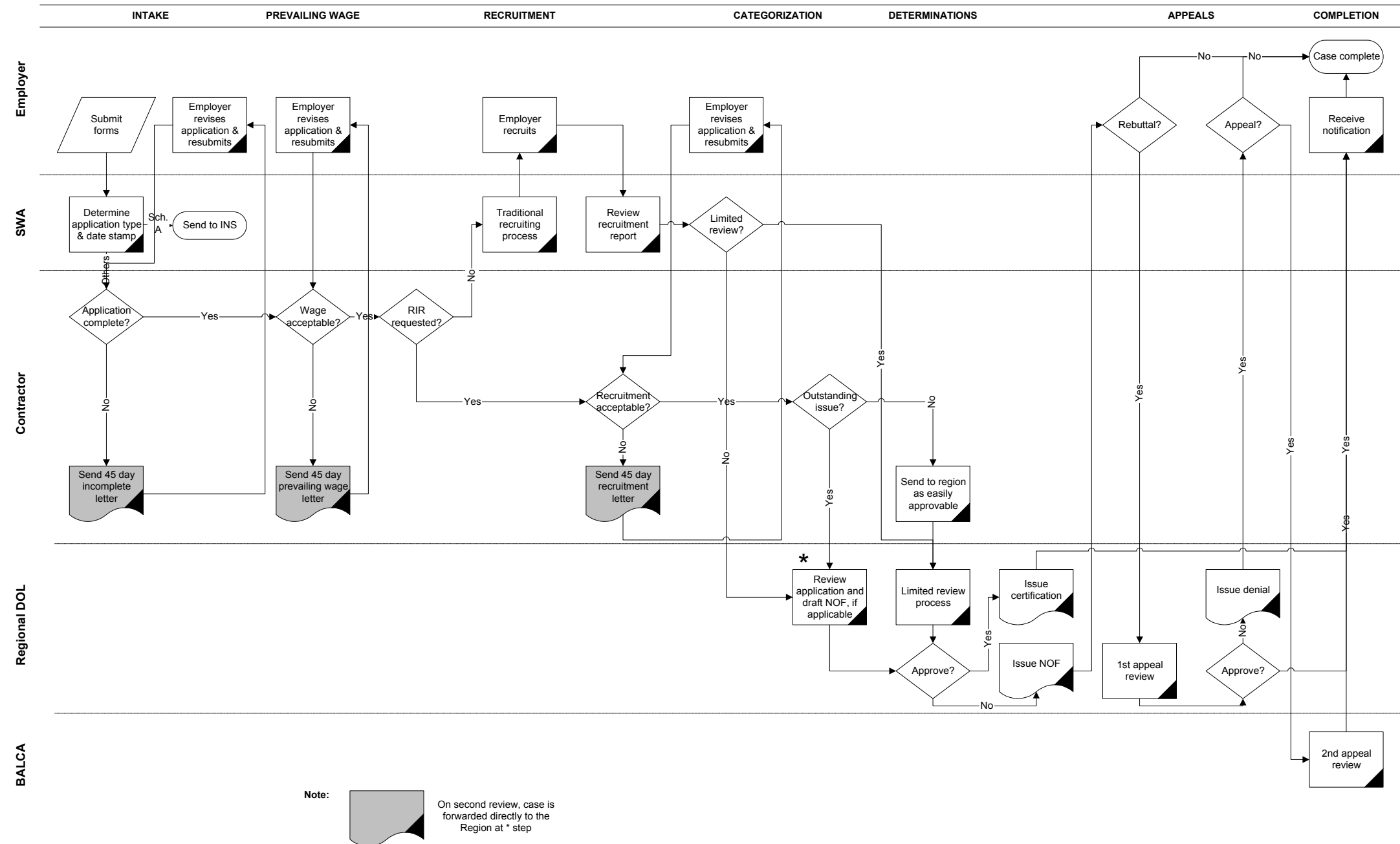


Figure 30 New process contracting alternative - Medium

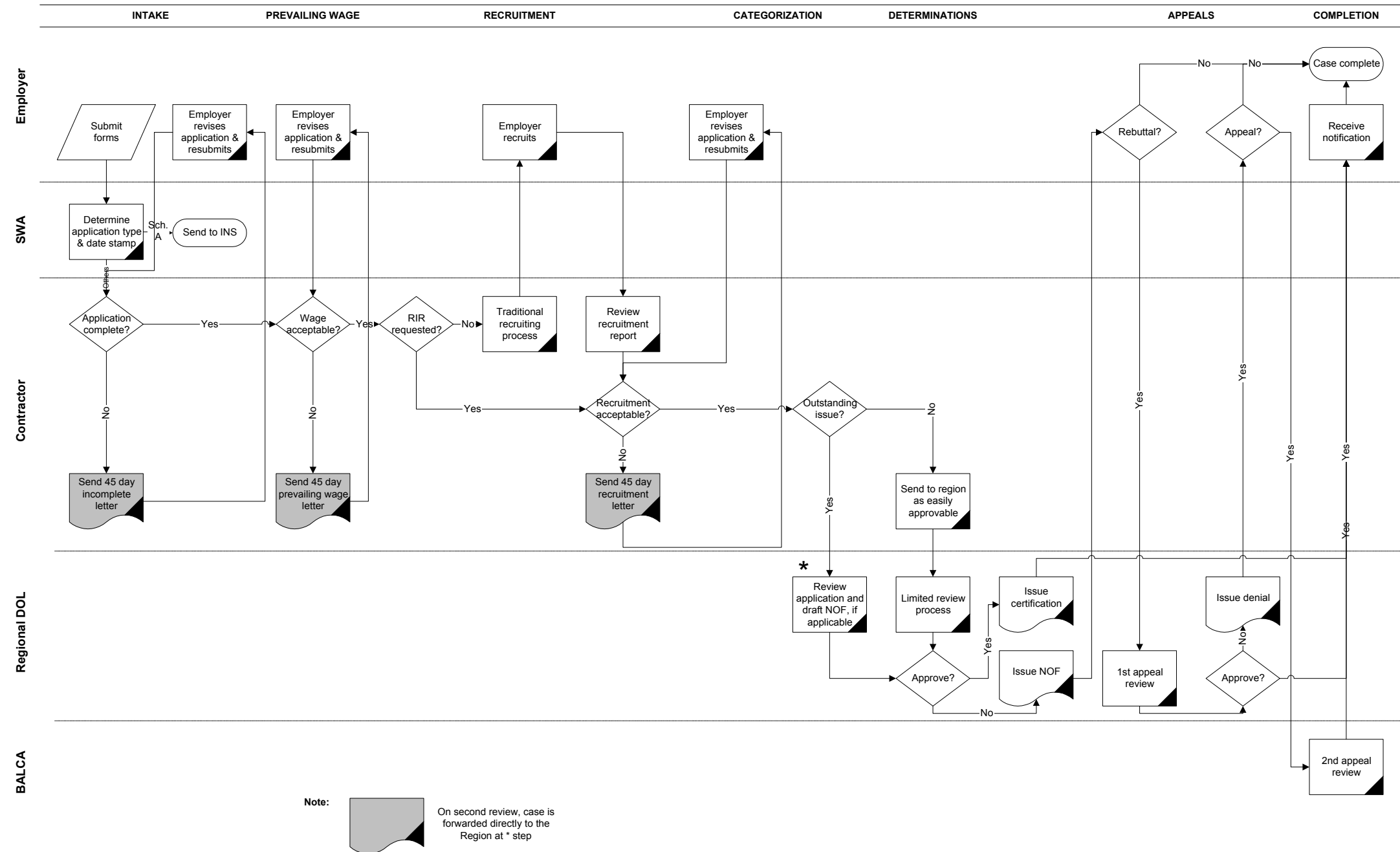
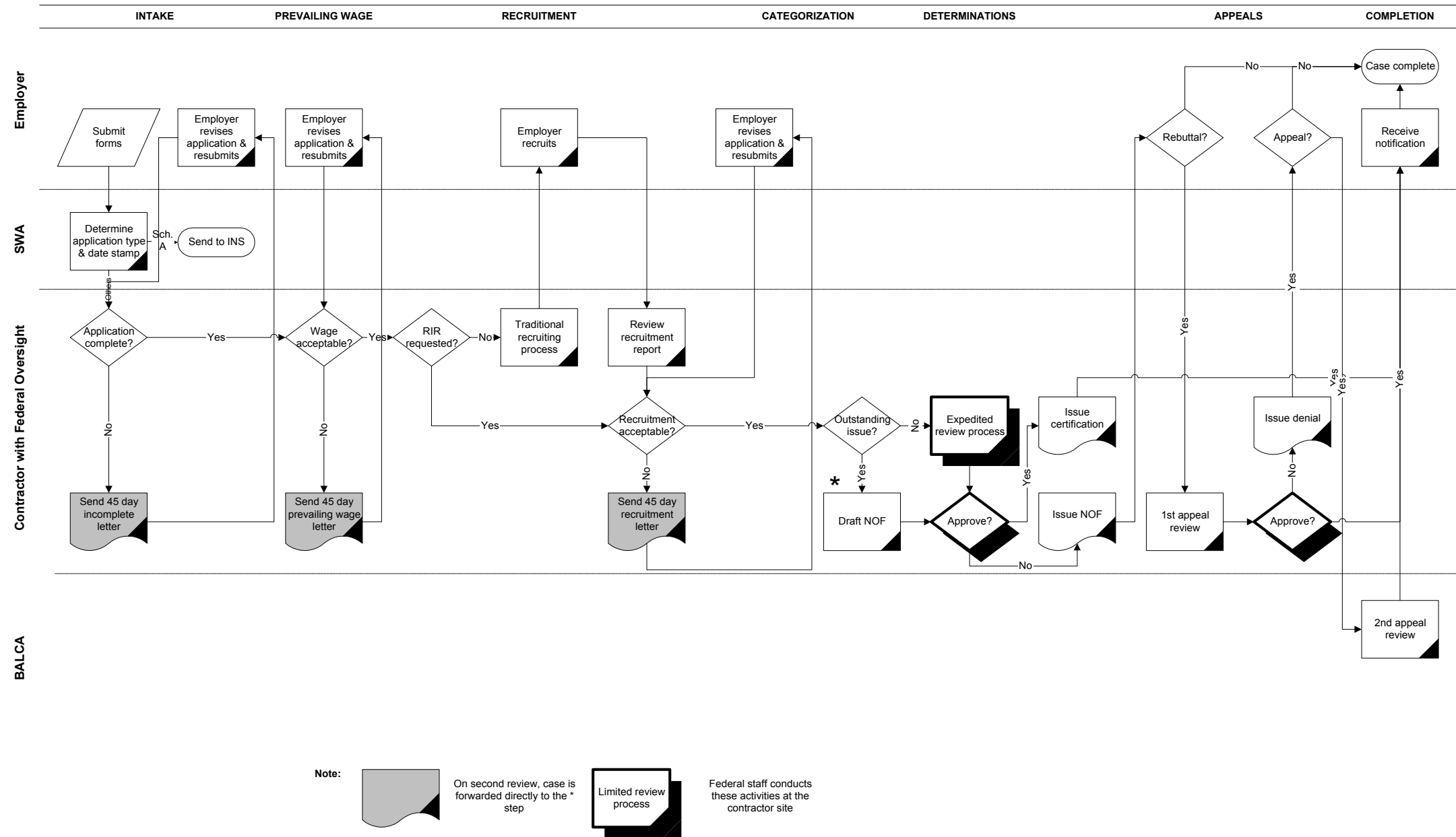


Figure 31 New process contracting alternative - Maximum



4.4 Productivity and financial analysis

After assessing the feasibility of using a contractor to perform some of the tasks currently performed by staff at the SWAs and Regional offices, PwC estimated the potential productivity gains and level of effort required under three contractor scenarios. While this analysis includes cost savings estimates, the primary focus of the evaluation should continue to be on which solution will be the most effective at processing the caseload by the time PERM is in place. In addition, this analysis does not include issues that are difficult to quantify, such as enhancing consistent application of regulations when processing cases. These issues are just as important as the productivity and financial issues discussed below⁴⁰.

4.4.1 Assumptions

The estimates were generated using the following assumptions:

- Minimum scenario: contractor has lowest level of responsibility as identified in Figure 28 and processes all on-hand cases at the top 10 SWAs except California.
- Medium scenario: contractor has moderate level of responsibility and processes all on-hand cases at the top 10 SWAs except California.
- Maximum scenario: contractor has highest level of responsibility and processes all on-hand cases at the top 10 SWAs except California.
- Contractor takes on-hand SWA cases only; affected SWAs continue to process incoming cases; Regional DOLs continue to process their caseloads.
- Contractor utilizes solutions identified in Section 3.2.6 for processing, including centralized processing, specialized teams, and minor systems improvements.
- The productivity of the contractor for SWA tasks is based on the California SWA's productivity prior to 245(i) of approximately 581 cases/staff year, compared to a historical nation-wide baseline productivity of 426 cases/staff year⁴¹. The productivity of the contractor for DOL tasks is based on the Philadelphia DOL

⁴⁰ The processing times were based on interviews with SWA and Regional DOL staff. These figures are illustrative only; a detailed work/time study should be conducted to further quantify the times and savings.

⁴¹ The contractor may achieve higher productivity since it will be able to implement best practices. This report will use CA productivity statistics for SWA level tasks and Philadelphia DOL productivity for DOL tasks and compare these to a nation-wide historical baseline of 426 cases/staff year for SWA tasks and 1,171 cases/staff year for DOL tasks. The CA statistics may be overstated because large proportions (75%-80%) of CA cases are RiRs for high technology occupations. This proportion may decrease with the recent rise in unemployment and deteriorating economic conditions.

productivity of 1,848 cases/staff year, compared to a historical nation-wide baseline productivity of 1,171 cases/staff year⁴².

- All cases are already data entered and filed by SWA staff and that data conversion to the contractor is successful.

PwC assumed that the contractor would process cases from the top 10 SWAs, excluding California, as this would involve the majority of the caseload (approximately 180,900 cases) while limiting the integration issues involved if more SWAs were included. If processing of the caseload from the initial 10 SWAs was successful, caseloads from other SWAs could be transferred to the contractor as well.

PwC also assumed that the contractor would be able to eliminate the caseload at each of the 10 SWAs by taking all the on-hand cases. PwC assumed that these SWAs would continue to process incoming cases in order to ease the transition to the PERM system for SWA staff. If the DOL decides that allowing parallel processing of cases would result in more integration and consistency issues, the contractor could take both on-hand and incoming cases. On the Regional level the caseloads are already processed, so PwC assumed it would make less sense for the contractor to re-process these applications.

In addition, PwC assumed that processing improvements could occur since the contractor would be starting with a “clean slate”. These would include transferring best practices from other SWAs, the use of specialized teams, using enhanced technology, and centralized processing. By implementing these improvements PwC assumed that the contractor would be able to achieve the productivity of California, which is considered a leading SWA. This is a conservative assumption, as the time estimates do not include any improvements that could result in quicker processing times than those found in California.

A final assumption PwC included was that cases were already filed and data entered. During interviews with SWAs PwC learned that most SWAs concentrated on filing all their 245(i) cases before resuming processing so that they could be located and found if applicants requested a status update. PwC thus assumed that all SWAs would complete filing and data entering their caseloads by the time the contractor was brought on board.

⁴² Calculated using processing statistics from Bi-weekly Reports, Feb 16 – July 31st, 2001. Source: Alien Labor Certification Backlog ETA Division of Foreign Labor Certifications, Washington D.C., 2001.

4.4.2 Findings

Based upon the level of contractor effort utilized, the estimated gains in productivity vary as presented in the table below.

Figure 32 Comparison of three contractor scenarios

	Base case	Maximum level of contractor effort	Medium level of contractor effort	Minimum level of contractor effort
Overall Productivity (Cases/staff year)	312	444	389	374
Change in Productivity	N/A	42%	25%	20%
Cost/case for cases processed	\$266	\$187	\$213	\$222
% Cost Savings	N/A	30%	20%	16%
Hrs/case⁴³	6.02	4.24	4.83	5.03
Level of effort for completion of cases in one year	0 Contractor 425 SWA 154 DOL 579 Total	359 Contractor 23 SWA 26 DOL 408 Total	307 Contractor 23 SWA 135 DOL 465 Total	262 Contractor 68 SWA 154 DOL 484 Total

As stated in the assumptions, these estimates may either be overestimated – due to the decrease in the proportion of incoming RiR applications – or overstated – due to the additional productivity a contractor may realize. The estimates are only for a high level understanding of the potential impact of using a contractor.

4.4.3 Recommended contractor scenario

As the table above illustrates, the maximum level of contractor involvement could result in significant productivity increases and cost savings, allowing the entire caseload to be addressed with fewer resources. The maximum scenario would also improve chances of standardized processing since both the SWA and Regional level processing (except for final approval and actual certification) will be conducted by one contractor in one location. In addition, it would

⁴³ The base case figure is the total number of staff hours dedicated to foreign labor certification divided by the number of cases processed. It is different than the cycle times presented in Fig. 12. This is because the cycle times in Fig. 12 do not include management, mailroom, filing, and other administrative duties.

replace the two-step process with a single step process and eliminate the numerous steps involved with mailing cases, setting up new case files with case numbers, and other administrative steps since the scenario assumes that Federal staff will be co-located at the contractor site.

However, the maximum level of contractor involvement requires deeper levels of contractor knowledge. The other contractor scenarios are less risky in terms of the knowledge level of the contractor, but under these alternate scenarios the SWAs maintain responsibility for significant steps in the certification review process. The success of the lower levels of contractor effort is therefore dependent to some extent upon performance of the SWAs.

One area that is being explored in greater detail is regulatory issues associated with assigning certain tasks to a contractor. During the project, PwC participated in a few high-level discussions on issues with the current regulations in terms of contracting out tasks in the permanent labor certification program. One possibility for implementing the contractor option that does not appear to involve extensive regulatory change is nationalizing the processing of applications in the backlog. This might offer a solution for using a contractor to process cases in the backlog without requiring a lot of time for changing existing regulations, which is something to consider given the goal for PERM implementation within the next 18 months.

If the logistics issues and training/knowledge issues are addressed and if no major regulatory changes are required, the DOL should consider the maximum contractor option. The maximum option provides numerous benefits and stands the greatest chance of success in reducing the caseload before the PERM system is implemented. In addition, DOL should consider having the contractor process on-hand cases from the top ten SWAs so that integration issues are minimized and the majority of the backlog is processed by the contractor.

4.5 Implementation plan

This section discusses options for implementing the recommended contractor alternative. Sections 4.5.1 through 4.5.3 outline how circular A-76 – which covers the performance of commercial activities – may be relevant, and section 4.5.4 describes one way to implement a contractor alternative through a phased workplan that includes a simulation/pilot test.

4.5.1 A-76 summary

A-76 is an executive rule that provides policy and guidance for government agencies to use in deciding whether to contract out for commercial activities. It was established in 1966 and reflects long-standing executive branch policy to use the private sector for goods and services to the extent that it is cost effective. Since A-76 is an administrative initiative, it does not have any statutory basis authorized by Congress. The OMB has encouraged the use of A-76 as one of a series of tools available to agencies to reduce costs in a balanced budget environment and enhance performance through competition and choice, with a most recent request for agencies to re-inventory their activities in 1998. However, to date only the Defense Department has made widespread use of A-76.

4.5.2 Benefits and costs of conducting an A-76 study

Figure 33 below lists the benefits and costs associated with a typical A-76 study.

Figure 33 Benefits and costs of conducting an A-76 study

Parameter	Benefits	Costs
Resources	<p>Of the A-76 studies conducted, an average of 20% savings:</p> <p>Between 1995-2000, of 289 studies with data:</p> <ul style="list-style-type: none"> ▪ \$290 million in savings annually ▪ 40% have been won by the contractor ▪ 10,660 positions covered 	<ul style="list-style-type: none"> ▪ Study and implementation costs reduce savings: GAO estimates military A-76 study costs \$364 - \$9,000 per position; does not include separation and transition costs ▪ In FY 1997 – 1999, A-76 studies have cost more than the savings generated
Time	<ul style="list-style-type: none"> ▪ Reasoned and thorough 	<ul style="list-style-type: none"> ▪ DOD A-76s taking 2 years to complete
Politics	<ul style="list-style-type: none"> ▪ Thorough process that allows government employees to also compete ▪ Contains protections for government employees when activities are transferred 	<ul style="list-style-type: none"> ▪ Most of the government positions are retained
Implementation	<ul style="list-style-type: none"> ▪ Recognized process with guidelines 	<ul style="list-style-type: none"> ▪ DOL will need to inventory commercial activities ▪ Implementation is complicated: for example, of the 204,000 positions the DOD expects to subject to cost comparison through 2007, only 97,000 have been announced and 12,000 completed.

4.5.3 Implications for DOL

Given the benefits and costs associated with typical A-76 studies, the Department of Labor will need to consider the following when making a decision on whether A-76 is appropriate to use for the Permanent Labor Certification program:

Figure 34 A-76 implications for Permanent Labor Certification program

Issue	Description
What does A-76 cover?	A-76 covers the performance of governmental activities at the Federal level. Given that many Permanent Certification duties are conducted at the SWA level and that several contracting options involve an augmentation of staff at the DOL level rather than an outright replacement by contracting staff, A-76 may have limited applications.
Is A-76 mandatory?	A-76 is a recognized tool to use for contracting purposes. However, it is not clear whether A-76 is mandatory whenever agencies consider transferring activities from in-house provision to private sector provision. A close review of the DOL inventory of commercial and governmental activities, as well as consultation with A-76 legal resources, should help determine whether DOL has the flexibility to choose whether or not to pursue A-76
Re-engineer Permanent Labor Certification?	By design, A-76 includes a re-engineering of government services in order to create the Most Efficient Organization. Conducting an A-76 will require a thorough re-design of potentially 10 DOL regional offices to create the MEO. This may be of little value as the re-engineered offices will be changing with the proposed PERM process.
Cost savings	A-76 is designed to determine how to provide services at the lowest cost, either through a MEO or through the contractor. However, given DOD experience cost savings may be small, especially given the study costs. In addition, cost savings may run counter to the objective of clearing the caseload quickly.
Time savings	The multiple and thorough steps involved in conducting an A-76 will make it of little use in helping to reduce the caseload quickly – by the time the study is complete the PERM process will be in place.

It appears from the above considerations that the DOL should not (to the extent the DOL has the flexibility) consider A-76 as a tool to implement the contractor option. The study will involve significant resources; not cover much of the overall process (depending on the degree to which the contractor augments or replaces Regional staff); not be complete to generate benefits by the time the PERM process is in place; involve re-engineering a process that will disappear as PERM is implemented.

4.5.4 Implementation workplan

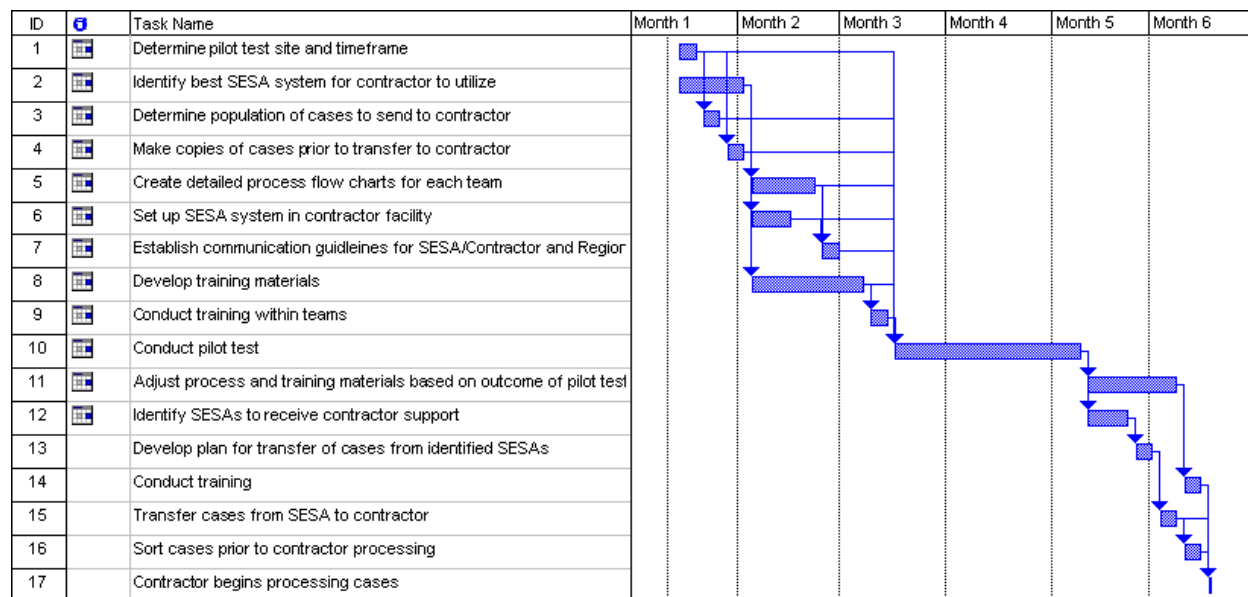
If DOL determines that contracting out is a feasible option for backlog reduction, the first step is to conduct a simulation/pilot test. Conducting a simulation/pilot test is a good first step in implementing the contractor option for the following reasons:

- A simulation test would allow the DOL to validate the maximum level of contractor effort as the appropriate level of contractor responsibility.
- Results of the simulation test will also help the DOL make decisions regarding the most efficient number of SWAs that should be included in the contractor option and the most effective population of cases to include in the contractor effort.
- A simulation test would also help validate new procedures, quantify actual processing times, and identify and resolve integration issues.
- A simulation test would help identify and apply best practices for case processing.
- Cases would still be processed during the test period.
- Simulation testing can build support for contracting out by demonstrating results.
- Simulation testing can identify and define parameters for the DOL to specify in the contract award, thereby reducing risk during the actual contract period. DOL could also use these parameters in a performance-based contract, which would align contractor incentives with DOL objectives to quickly and effectively clear the caseload.

The following workplan is a high-level implementation plan for using a contractor for assistance in reducing the backlog under the maximum scenario. It includes the simulation/pilot test and was developed under the following assumptions:

- The contractor will process applications using an existing SWA automated system.
- The contractor will use specialized teams for processing applications.
- A tracking system and procedure will be outlined.
- No A-76 study is required, given the limitations discussed above.
- RFP development will occur simultaneously with the simulation test.

Figure 35 Implementation workplan

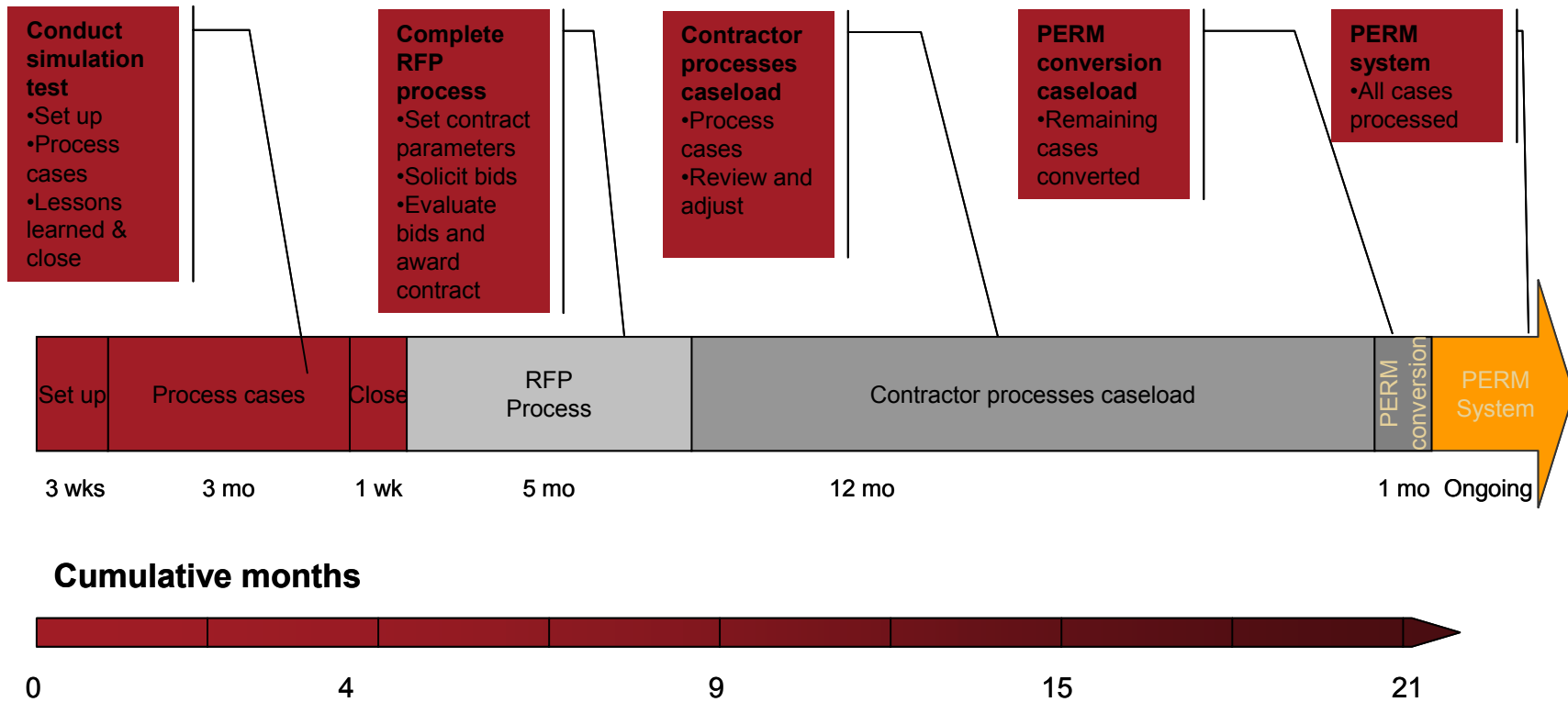


With the conclusion of the simulation test, the DOL would be able to decide whether or not to go forward with the contracting option. If the DOL does decide to do so, the DOL would need to prepare a detailed implementation plan that would specify transition processes, roles and responsibilities of the contractor, and the number of SWAs and types of cases the contractor would process. After drafting the detailed implementation plan, a contractor would be selected and would have approximately one year to process the outstanding caseload. By the end of the period, the PERM system will be online to accept any ongoing applications. Any outstanding or unprocessed cases at the end of the contracting period should be allowed to convert to the new PERM system without losing the application priority date⁴⁴. Figure 36 below shows how the simulation test, contractor processing, and PERM conversion can be incorporated into a timeline that addresses the current caseload, new incoming cases received over the course of the year, and the implementation of the PERM system.

⁴⁴ This will require a regulatory change; however this change is one of the more feasible options discussed in section 3.2.3 and the change can be made in time for the new PERM system.

Figure 36 Caseload Reduction Timeline

Simulation Test Timeline:



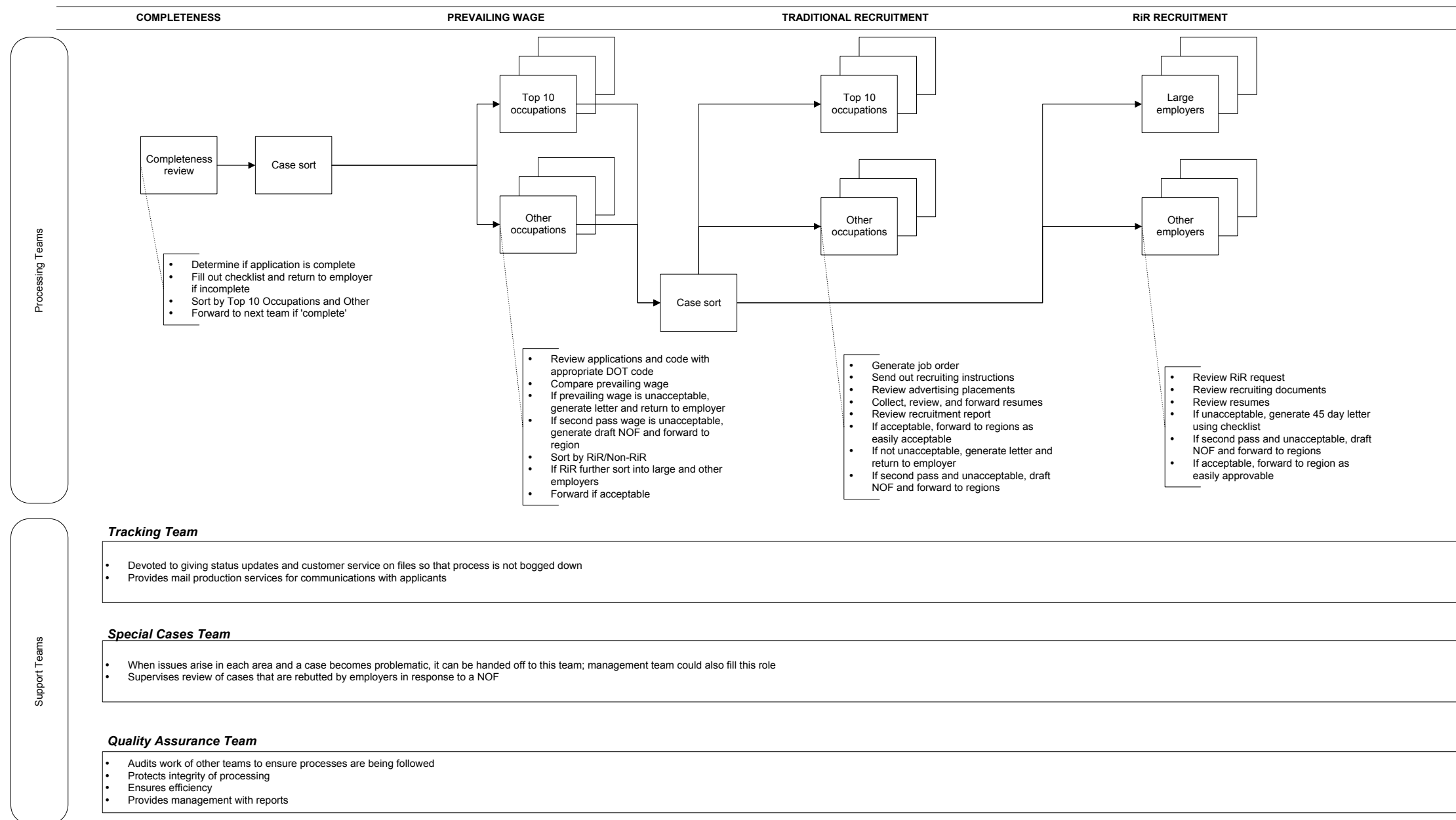
4.5.5 Contractor process flow

Using all of the information gathered from the interviews, problem solving sessions, and productivity analysis, PwC created a high-level process flow for the recommended contractor option. The process involves specialized teams that are based upon steps in the current process and the types of applications that have been historically received. Depending on the step in the process, teams are organized by type of application, type of occupation and employer. A tracking team and a team for handling special or problem cases are included in the process so that bottlenecks are not created in the processing teams. The process involves the following teams:

- Completeness Team – Review applications for completeness; send 45 day letter with checklist highlighting deficiencies for incomplete applications; separate complete applications into ‘Top 10 occupations’ and ‘Other occupations’ for continuation in processing.
- Prevailing Wage Teams – Divided into two teams who process by type of occupation; review application and code with appropriate DOT code; generate letter to employer if wage is unacceptable; sort approved applications by RiR and non-RiR and forward to next team.
- RiR Teams – Sort applications by employer so that large employer applications are processed together; review RiR request; review recruiting documents; generate letter if required; forward to Regional Office if acceptable.
- Traditional Recruiting Teams - Sort applications by occupation so that applications for same occupation are processed together; generate job orders; send out recruiting instructions, review advertisements; forward resumes to employer; review recruiting reports; generate letter to employer if required; forward to Regional Office if acceptable.
- Tracking Team - Provides status updates and customer service so that processing teams are not delayed by searching for tracking information.
- Special Cases Team – Deals with issues or special cases that arise throughout the process; trained in all steps of the process so that problem cases do not remain with processing teams.
- Quality Assurance Team – Audits work of all teams to ensure consistent processing; ensures processing integrity and efficiency.

The following page contains a high-level process map of a process flow for the permanent labor certification process:

Figure 37 New process contracting alternative - Team structure



4.5.6 Next Steps

The recommendations and conclusions reached in this report are based upon a high-level management review aimed at determining a short-term approach for backlog reduction prior to the implementation of the PERM system. During the course of this project, several external events have occurred that are likely to have an effect on the permanent labor certification program and the PERM system. The tragic attacks that took place on September 11, 2001 have increased the focus on tightening U.S. immigration policies. In addition, prior to September 11th, the economy was slowing, creating a higher unemployment rate and an increase in the supply of American workers. While demand for workers in the past far outpaced supply, this trend had been reversing itself slowly prior to September 11th. Projections since September 11th indicate that unemployment rates will continue to rise as the economy continues to soften.

These events will impact the permanent labor certification program in two main ways:

- The events of September 11th may result in tighter immigration controls and enhanced oversight of people in the U.S. on visas. The new political environment may make the future of the new PERM system less certain. If the PERM system does not get implemented, many of the concepts of this management review still can be utilized, but some of the assumptions and conclusions will need to be revisited and revised. In addition, there may be efforts to increase requirements so that SWAs and the DOL are more certain that only qualified applicants are given certifications.
- The weakening economy has created a surplus of American workers, which in turn decreases the number of applications eligible for approval via the RiR process. The current permanent labor certification program relies on the RiR method of processing to gain efficiencies. With the rise in unemployment and a corresponding decrease in RiR-eligible applications, SWA and DOL offices will experience lower productivities and increased rates of backlog growth. Thus, the productivity projections in this study are likely to be optimistic, creating the need for an even larger level of funding to process the surge in applications associated with 245(i).

Based on these impacts to the permanent labor certification program, PwC has developed a set of next steps that DOL may choose to pursue, depending on final decisions regarding immigration policy and based upon the lower productivities DOL will most likely experience due to the U.S. economic slowdown.

If plans for the PERM program proceed and implementation is likely to occur within the next year and half, DOL should consider the following:

- Conducting a simulation test for contracting out steps in the permanent labor certification program.
- Conducting detailed time studies to determine productivity effects and savings related to using a contractor.

If the PERM program will not be implemented within the next year and a half, DOL may want to consider the following:

- Developing a re-engineered process for permanent labor certification that may include contracting out and/or centralization to improve efficiencies and generate cost savings. This process would most likely draw on the findings in this report, but would eliminate the assumption that the new process would be for an interim time period only.
- Completing a more detailed study of the process in California and creating a plan for rolling out a similar process in the existing State Workforce Agencies (SWAs).
- Conducting a benchmarking study of the State Department's National Visa and National Passport Center to determine the success of these programs and to determine if the drivers of these programs are similar to the current permanent labor certification process. Based on initial research conducted for the management review project, it appears that there are many parallels with the two programs.
- Develop a re-engineered process for permanent labor certification that may include process changes and centralization to increase the standardization of application processing and improve quality oversight. This would involve additional assessment of procedures to determine that only qualified aliens are accepted for positions, that there are no U.S. workers available, and there is no negative impact on the U.S. labor market.

If the future of the PERM system is uncertain at this point and will not be defined in the near future, DOL may want to consider:

- Developing a policy briefing paper on the outlook of the permanent labor certification program and the PERM process in light of changes in the economy and the changing viewpoints on immigration.
- Investigate policy and economic changes and how they will affect PERM and the efforts for backlog reduction.

If the number of applications eligible for filing under the RiR process is expected to sharply fall, DOL may want to consider:

- Developing a re-engineered process to improve productivities and prevent the backlog from growing at a faster rate. Depending on the outlook for PERM, the new process may be short-term and/or may include the use of a contractor.
- Updating estimates for productivity improvements and cost savings related to the three contractor scenarios presented in the report.

Ultimately the options the DOL decides to pursue over the coming months will be driven by the political and economic climates surrounding permanent labor certification. If the environment is very uncertain, a policy paper may help define the various influences on the program, assess their impact, and give decision makers a better understanding of the current situation and what can be done. If the environment is more certain and the plan for the PERM system remains intact, DOL can continue with some of the contracting options laid out earlier in the report. If it becomes clear that PERM will not be implemented, the DOL should still consider how the current process could be improved. Options under this scenario could include designing new processes to increase processing efficiency; designing new processes to increase effectiveness; and benchmarking similar procedures that exist elsewhere to see what can be applied to permanent labor certification.