

FY 2009

CONGRESSIONAL BUDGET JUSTIFICATION

FOREIGN LABOR CERTIFICATION

FOREIGN LABOR CERTIFICATION

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APPROPRIATION LANGUAGE

For the administration of foreign labor certifications and related activities under the Immigration and Nationality Act and related laws, \$77,970,000 of which: \$59,497,000 shall be available for the Federal administration of such activities; and \$18,473,000 shall be available for grants to States for the administration of such activities.

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EXPLANATION OF LANGUAGE CHANGE

No change except funding level.

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ANALYSIS OF APPROPRIATION LANGUAGE

Not Applicable.

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AMOUNTS AVAILABLE for OBLIGATION						
(Dollars in Thousands)						
FY 2007						
	Comparable		FY 2008 Estimate		FY 2009 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
A. Appropriation (Amount shown in Appropriation Language)	0	0	0	0	0	77,970
Reduction pursuant to (P.L. 110-161)	0	0	0	0	0	0
Other Supplementals and Rescissions	0	0	0	0	0	0
Appropriation, Revised	0	0	0	0	111	77,970
A.1) Subtotal Appropriation (adjusted)	0	0	0	0	111	77,970
Offsetting Collections From:	0	0	0	0	0	0
Reimbursements	0	0	0	0	0	0
Trust Funds	0	0	0	0	0	0
Fees	0	0	0	0	31	13,000
Transfer from General Fund to TES (Proposed Legislation)	0	0	0	0	0	0
A.2) Subtotal	0	0	0	0	31	13,000
B. Gross Budget Authority	0	0	0	0	142	90,970
Offsetting Collections	0	0	0	0	0	0
Deduction:	0	0	0	0	0	0
Reimbursements	0	0	0	0	0	0
Fees	0	0	0	0	-31	-13,000
B.1) Subtotal	0	0	0	0	-31	-13,000
C. Budget Authority	0	0	0	0	111	77,970
Before Committee	0	0	0	0	111	77,970
Offsetting Collections From:	0	0	0	0	0	0
Reimbursements	0	0	0	0	0	0
Fees	0	0	0	0	31	13,000
C.1) Subtotal	0	0	0	0	31	13,000
D. Total Budgetary Resources	0	0	0	0	142	90,970
Other Unobligated Balances	0	0	0	0	0	0
Unobligated Balance Expiring	0	0	0	0	0	0
E. Total, Estimated Obligations	0	0	0	0	142	90,970

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SUMMARY OF CHANGES			
(Dollars in Thousands)			
	FY 2008 Estimate	FY 2009 Request	Net Change
Budget Authority			
General Funds	0	77,970	+77,970
Trust Funds	0	0	0
Total	0	77,970	+77,970
Full Time Equivalents			
General Funds	0	111	+111
Trust Funds	0	0	0
Total	0	111	+111

Explanation of Change	FY 2008 Base		Trust Funds		FY 2009 Change General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Increases:								
A. Built-Ins:								
To Provide For:								
Personnel benefits	0	8,250	0	0	0	323	0	323
GSA Space Rental	0	1,355	0	0	0	24	0	24
Purchase of goods and services from other Government accounts	0	2,887	0	0	0	200	0	200
Built Ins Subtotal	0	0	0	0	0	547	0	547
B. Programs:								
Increase for IT Improvements		0	0	0	0	7,500	0	7,500
Increase in Foreign Labor Certification to restore funds for staff and other inflationary costs that were not provided under the Omnibus Bill of FY 2008	0	0	0	0	6	6,241	6	6,241
To provide a program increase to address anticipated workload increase		0	0	0	0	4,000	0	4,000
To provide for an increase for Grants to States		0	0	0	0	5,733	0	5,733
Programs Subtotal			0	0	+6	+23,474	+6	+23,474
C. Financing:								
To reflect a transfer from the PA Account	0	0	0	0	0	41,487	105	41,487
To reflect a transfer from the SUIESO Account	0	0	0	0	0	12,518	0	12,518
Financing Subtotal			0	0	0	+54,005	+105	+54,005
Total Increase	0	0	0	0	+6	+78,026	+111	+78,026
Decreases:								
A. Built-Ins:								

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Explanation of Change	FY 2008 Base		FY 2009 Change				Total	
			Trust Funds		General Funds			
To Provide For:								
One day less of Pay	0	8,250	0	0	0	-56	0	-56
Built Ins Subtotal	0	0	0	0	0	-56	0	-56
B. Programs:								
C. Financing:								
Total Decrease	0	0	0	0	0	-56	0	-56
Total Change	0	0	0	0	+6	+77,970	+111	+77,970

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SUMMARY BUDGET AUTHORITY and FTE by ACTIVITY

(Dollars in Thousands)

FY 2009

Program	FY 2007 Comparable		FY 2008 Estimate		Current Law		Legislative Proposal	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Administration	0	0	0	0	111	59,497	111	59,497
General Funds	0	0	0	0	111	59,497	111	59,497
State Grants	0	0	0	0	0	18,473	0	18,473
General Funds	0	0	0	0	0	18,473	0	18,473
Total	0	0	0	0	111	77,970	111	77,970
General Funds	0	0	0	0	111	77,970	111	77,970

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BUDGET AUTHORITY by OBJECT CLASS					
(Dollars in Thousands)					
		FY 2007	FY 2008	FY 2009	FY 09
		Comparable	Estimate	Request	Request/FY
Full-Time Equivalent					
11.1	Full-time permanent	0	0	8,536	8,536
11.3	Other than full-time permanent	0	0	1	1
11.5	Other personnel compensation	0	0	132	132
11.9	Total personnel compensation	0	0	8,669	8,669
12.1	Civilian personnel benefits	0	0	1,984	1,984
21.0	Travel and transportation of persons	0	0	111	111
23.1	Rental payments to GSA	0	0	1,379	1,379
23.3	Communications, utilities, and miscellaneous charges	0	0	227	227
24.0	Printing and reproduction	0	0	33	33
25.1	Advisory and assistance services	0	0	37,051	37,051
25.2	Other services	0	0	483	483
25.3	Other purchases of goods and services from Government accounts 1/	0	0	3,618	3,618
25.4	Operation and maintenance of facilities	0	0	45	45
25.7	Operation and maintenance of equipment	0	0	4,914	4,914
26.0	Supplies and materials	0	0	218	218
31.0	Equipment	0	0	685	685
41.0	Grants, subsidies, and contributions	0	0	18,473	18,473
42.0	Insurance claims and indemnities	0	0	80	80
Total		0	0	77,970	77,970
1/Other Purchases of Goods and Services					
From Government Accounts					
Working Capital Fund		0	0	3,570	3,570
DHS Services		0	0	48	48

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EMPLOYMENT AND TRAINING ADMINISTRATION

SIGNIFICANT ITEMS IN APPROPRIATION COMMITTEES' REPORTS

Not applicable.

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Introduction

This account provides for the administration of the foreign labor certification programs within the Employment and Training Administration. Under these programs, U.S. employers that can demonstrate a shortage of qualified, available U.S. workers and that there would be no adverse impact on similarly situated U.S. workers may seek the Secretary of Labor's certification as a first step in the multi-agency process required to hire a foreign worker to fill critical permanent or temporary vacancies. Major programs include the permanent, H-2A temporary agricultural, H-2B temporary non-agricultural and temporary highly skilled worker visas. The account is divided into State Grants and Federal activities.

Under the State grant activity, the office of Foreign Labor Certification (FLC) provides grants to state labor agencies in 54 states and U.S. territories to fund employment-related activities required for the administration of Federal foreign labor certification programs. This includes State Workforce Agency posting and circulation of job orders and other assistance to employers in the recruitment of U.S. workers, processing of employer requests for prevailing wage determinations for the permanent and temporary programs, state processing of H-2A agricultural and H-2B non-agricultural temporary labor certification applications, state safety inspection of housing provided by employers to workers, and state development of prevailing wage and prevailing practice surveys used to set wages and standards in a defined geographic area.

The Federal Administration activity supports all of ETA's activities related to foreign labor certification.

FLC programs include the Permanent Labor Certification Program (PERM), H-1B Specialty (Professional) Worker Program, H-1B1 Specialty Worker Program, E-3 Specialty Worker Program, H-2A Temporary Agricultural Program, H-2B Temporary Non-agricultural Program, and D-1 Crewmember Program.

Funding for ETA's office of Foreign Labor Certification derives from three sources: (1) dollars appropriated to the Foreign Labor Certification Account; (2) 5 percent of revenue from the H-1B fees collected by the Department of Homeland Security (this 5 percent supports labor certification processing activities and is separate from the DOL portion of H-1B funding allocated to U.S. worker training); and, (3) in the initial year of the account, a transfer of appropriations from the State Unemployment Insurance Employment Service Operations (SUIESO) Account, which OFLC has historically distributed to states as fiscal year formula grants to support foreign labor certification activities.

The 2009 Budget includes a total of \$90,970,000 for the Foreign Labor Certification program, including \$77,970,000 in discretionary appropriations and \$13 million in anticipated revenues resulting from DOL's portion of the H-1B fees authorized to support processing activities under the H-1B Visa Reform Act. The appropriations request includes:

- \$59,297,000 to cover Federal administrative costs, including ; and
- \$18,473,000 to support state foreign labor certification activities.

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Budget Authority Before the Committee (Dollars in Thousands)							
					FY 2009		
	FY 2007 Comparable	FY 2008 Enacted	FY 2008 Estimate	Diff. FY 07 Comp/ FY 08 Est	Current Law	Legislative Proposal	Diff. FY 08 Est /FY 09 Req
Activity Appropriation	0	0	0	0	59,497	59,497	59,497
FTE	0	0	0	0	111	111	111

Introduction

The office of Foreign Labor Certification (FLC) administers its foreign labor certification programs out of its National Office in Washington, DC, and two National Processing Centers – one in Atlanta, the other in Chicago. The Federal Administration activity supports all of FLC’s activities related to foreign labor certification, including Federal and contract staff to process applications, and system enhancements to improve efficiency and program integrity.

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For FY 2009, the Budget requests \$59,297,000 for the Federal administration activity, an increase of \$18,010 million over the 2008 enacted level. This increase includes \$7.5 million to establish a new web-based case management system to improve and streamline case processing and \$4 million for fixed cost increases and to fund contractor support to assist with ongoing processing delays

In FY 2009, the Foreign Labor Certification activity includes funding for Federal staff responsible for the activities described in the introduction. In addition, FLC funds support state responsibilities for processing of temporary labor certification applications.

A reduction to resources for administration of Foreign Labor Certification activities will put in jeopardy the Agency’s capacity to process employer-filed applications timely and fully implement already significantly delayed reform (audit, integrity, etc) initiatives. Resources under this budget activity cover Federal functions across numerous Foreign Labor Certification programs, including Permanent Labor Certification, H-2A, H-2B, H-1B, H-1B1, H-1C, D-1, and E-3. Consequently, the impact of a reduction in funding would be disruptive to the processing requirements that are very resource sensitive. For example, at the Federal level the temporary programs are a priority with statutory and program requirements for expedited processing that do not exist in the Permanent program.

Since processing timeframe requirements vary by program, or even within programs, each application is unique, and applications often raise one or more questions that require resolution before processing may precede that result in variable processing times that cannot be predicted easily. In the temporary labor certification programs, there have been large increases in new, first time filers, which increases application processing times and reduces benchmarking

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capability. As we continue to tighten our southern border, these programs utilization will increase especially but first time filers.

Information Technology Improvements Needed for Foreign Labor Certification

A total of \$7,500,000 is requested for technological improvements to Foreign Labor Certification case management systems that will be required under current law. This amount does not address proposed regulatory IT change proposals. Exhibit 300 BY09 - ETA - FLC Automated Systems (Public FINAL1)

\$7,500,000 is requested for an integrated, web-based case management system. In the absence of a fee structure (this request does not include start-up costs to implement an application fee in the permanent program, for example), these resources will support the Department's initial steps to consolidate the various case management systems currently in use into two integrated systems. The Department spends a large portion of resources developing and maintaining four different case management systems that are all utilized by the same staff at the OFLC National Processing Centers (NPCs). This situation has resulted in substantial administrative inefficiencies and a lack of communication among the systems to combat fraud and abuse. Since nearly 80 percent of H-1B visa holders are sponsored for permanent employment in the United States, these funds will be used to develop a seamless H-1B/PERM case management system that will track an employer's use of the H-1B and, subsequently, the PERM program.

Similarly, employers and agents who utilize the H-2A temporary agricultural visa program also tend to utilize the H-2B temporary non-agricultural visa program. By developing a more integrated solution for these temporary visa programs, employers will have a single point-of-access to file applications and the Department's staff will be able to more quickly process cases when seasonal peaks in filing occur.

These resources will also be used to re-engineer the current H-2A/H-2B systems and develop a single, integrated Internet-based system allowing for the electronic filing and processing of employer applications. The current H-2A/H-2B application processes, for instance, are completely a paper exercise, creating inefficiencies that make the program expensive to administer. An employer who is seeking to hire temporary foreign workers under the H-2B program must file a paper application with the SWA serving the area of intended employment. This application is accompanied by several other paper documents (e.g., advertisements, assurances, and inspection reports) designed to support the employer's need for foreign workers. These paper applications are then forwarded to DOL for further manual processing.

In order to transform and improve the processing of permanent and temporary labor certification applications, the Department is proposing the development of an integrated Internet-based filing system to perform the following functions:

On-Line Employer Account/Application Filing Module - For the H-2A/H-2B programs, this module would allow employers and/or their agents to establish on-line accounts where the required forms and supporting documentation can be electronically created, maintained, and retrieved. The system would perform a set of edit checks on the application to ensure completeness, and allow customers to upload supporting evidence or other documentation into their temporary case folder. This functionality would allow the Department to quickly review the

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temporary need of the employer, as required by regulations, and provide a common vehicle for communicating with the employer to resolve any obvious deficiencies. A public disclosure function would be available so that employers, authorized agents, congressional staff, and the general public can view the status of their cases at any time.

National Prevailing Wage Determination Module - This module would allow SWA staff to access a national system for determining the prevailing wage in each occupation requested by the employer. By centralizing and automating this critical step in the application process, SWA determinations on prevailing wages would be quicker and more consistent across the country.

Document Scanning and Records Management Module - This module would allow NPC staff to electronically scan the contents of the permanent and temporary labor certification case files received by the state (e.g., audit documentation, recruitment report, newspaper advertisements), upload the scanned files into the employer's case folder, and retrieve the print files electronically at any time. This capability would eliminate all remaining paper associated with the permanent and temporary labor certification applications and, more importantly, expand the number of staff to process applications during peak filing seasons without tying them to one of the NPCs.

The temporary labor certification programs are antiquated and paper-based, with case management systems that are for all practical purposes non-existent and largely unusable for case management or effective tracking, problems compounded by under resourcing and outdated regulations. The result in FY 2007 – and the probable outcome in future years, so long as resources fail to compensate – included considerable H-2B delays in the states for which the NPCs were in the end unable to compensate, significant reallocation of limited resources in the NPCs that ultimately required putting a halt to a number of processing activities in the permanent program in order to support continued H-2A and H-2B temporary processing, and serious repercussions for employers who were unable to get their workers when needed. Dissatisfaction regarding the delays was well documented in Congressional, employer, and media reports.

As the Department seeks to streamline the regulations governing temporary labor certification, it is also making a focused effort to modernize, integrate, and add integrity to the systems underlying the processing of these critical applications.

Impact on Program Performance

The systems and enhancements described above are required for effective implementation of current program requirements. Additional system changes, also described above, would be required to implement fee legislation. More specifically:

Improve Efficiency in Case Processing - By filing the initial application and uploading supporting evidence on-line, the system can quickly review the employer application for any obvious inaccuracies or omissions, and allow the NPC staff to make an initial determination on the employer's temporary need for foreign workers, the most time consuming aspect of case processing. This will ultimately result in faster processing by both the SWAs and the Department and allow the employer to more quickly file the petition with U.S. Citizenship and Immigration Services (USCIS).

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Provide Greater Flexibility in Reducing Pending Workloads - By having a capability to access all permanent and temporary case documentation on-line at any time, the Department will be able to more effectively manage its workload and leverage other staff resources located in remote offices for processing all applications during the peak filing seasons, as opposed to mailing large volumes of paper halfway across the country.

Improve Departmental Response to Congressional and Customer Inquiries - For the first time, employers, congressional staff, and the public will be able to quickly check the status of their permanent and temporary labor certification applications at any time without having to call or write the Department. This enhancement will provide greater transparency in the process and allow Federal staff to respond more quickly to FOIA and other congressional requests for case information.

Substantially Reduce Administrative Waste and Inefficiencies - When taken together, these enhancements will substantially reduce the amount and volume of paper which slows down the current process. Electronic files are much easier and cheaper to maintain, and the Department will be able to convert physical space devoted to storing paper into office space at each NPC for additional analysts to process cases. More importantly, by integrating the various case management systems currently in use to two integrated systems, the Department will realize short-term savings on hardware purchases/maintenance and long-term savings in application development/maintenance.

Legislative Proposal: Permanent Labor Certification Program Application Fee

OFCL is seeking legislation in FY 2008 to amend the Immigration and Nationality Act to establish a fee structure for the PERM Program. The legislation would support the full cost recovery of expenses associated with the administration of the program. A separate account would be established within the U.S. Treasury Department and proceeds would be utilized exclusively for the identified program and be available until exhausted. OFCL would adjust the fee annually through rulemaking.

OFCL proposes to enhance operational efficiency and performance accountability by establishing a cost-based fee on employers submitting applications to the Department of Labor for certification of permanent employment of immigrant aliens in the United States. This proposal was also included in the President's Budget for Fiscal Years 2005-08. For applications submitted subsequent to this initial period, the fee would be set at the level that the Secretary of Labor determines would adequately recover the full costs to the Department in carrying out permanent foreign labor certification activities.

Currently, the Department does not charge employers a fee for the processing of permanent foreign labor certification applications. However, since employers significantly benefit from the admission of these workers and receive expedited review of their applications under the new streamlined process, it is appropriate that they pay the operating expense for providing this service. It is also important to note that fees are charged by the Department of Homeland Security for the processing of similar immigrant visa petitions.

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Under this proposal, the funds collected from employer filing fees will offset the funds appropriated to the permanent labor certification program. The Administration's FY 2008 legislative proposal set the fee level at \$650, which would result in a \$65 million offset to budget authority in the Program Administration account. Fee revenue would be deposited as offsetting receipts into a special account in the U.S. Treasury, and remain available to the Secretary of Labor to cover the costs of administering the permanent labor certification program, including any applicable state costs where program-specific information is provided, e.g., prevailing wage determinations that are used in making permanent labor certifications. Staff resources would be supported through fee revenue, rather than appropriations, providing both a reliable source of funding and flexibility to increase Federal and/or contract staff as needed, consistent with demand for program services.

Legislative Proposal: H-2A Temporary Agricultural Program Processing Fee

This proposal would authorize fee funding for the H-2A temporary foreign labor certification program and is designed to promote financial self-sufficiency, operational efficiency, and performance accountability. The proposal would, as an initial step, authorize the Secretary of Labor to retain the fee currently paid by employers submitting applications to DOL for the certification of temporary employment of non-immigrant aliens in the United States under the H-2A agricultural worker visa program. The proceeds from the fee would be exclusively used to cover the expenses of the Department, including state expenses, related to the processing of these labor certifications. After the first year, the Secretary would be authorized to adjust the fee to cover the full cost of administering the H-2A temporary agricultural program. (The proposal assumes a total of less than \$1 million in revenue in the first year of fee collection authority, based on fee collections as currently set.)

The Immigration and Nationality Act authorizes the Secretary of Labor to assess a fee to recover costs of processing H-2A labor certification applications. The application fee is currently set at \$100, plus \$10 per alien worker requested, up to \$1,000, for each application submitted. The statute, however, provides no mechanism for dedicated use of these funds by the Secretary. Currently, fee revenues are deposited and combined with other revenue in the General Fund of the U.S. Treasury. This legislative proposal would clarify - and, by establishing a separate Treasury account, ensure - that funds remain with DOL to offset its costs in carrying out H-2A temporary agricultural foreign labor certification activities. The proposal would also tie funding to demand by providing for fee adjustments as program costs increase over time.

Currently, the processing of H-2A applications is resource-intensive and time-consuming. The process is paper-based. The authorizing statute and agency regulations together create a program that - even at the labor certification stage - is very complex to administer. The number of built-in assurances and worker protections; the sheer breadth of industries, crops, and agricultural occupations; and the peculiarities of each (piece rates, working conditions, crop cycles, specialized requirements of each industry), all require significant staff time for coordinating with State Workforce Agencies, providing assistance to employers and their representatives, and reviewing and ruling on applications, even when the analyst is already familiar with a particular field or agricultural sector.

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The fee would be used in lieu of appropriated funds to maintain and improve the quality and efficiency of program operations, make infrastructure improvements to case processing systems, and strengthen customer service. The fee revenue would be used to maintain and improve the quality and efficiency of program operations, make infrastructure improvements to case processing systems, and strengthen customer service.

Legislative Proposal: H-2B Temporary Non-Agricultural Labor Certification Fee

This proposal would authorize the Secretary of Labor's collection of a cost-based user fee in the H-2B temporary non-agricultural foreign labor certification program to promote financial self-sufficiency, efficiency in operations, and accountability in performance. Under the proposal, the application fee would be set at \$125, at a minimum, plus \$50 per alien worker requested, for each application submitted during an initial period beginning thirty days after the date of enactment of the bill and ending one year after the date of enactment. For applications submitted subsequent to this initial period, the fee would be set at the level the Secretary of Labor determines would recover the full costs to the Department in carrying out H-2B temporary non-agricultural foreign labor certification activities.

The H-2B program has remained inefficient, paper-laden, and resource-intensive because of inadequate funding and additional legislative constraints. The number of H-2B applications filed with OFLC has more than doubled since FY 2000 and the total number of workers requested in FY 2006 was 239 percent more than what it was six years ago. Large disparities between this employer demand and the limited resources across foreign labor certification programs contributed to the current significant Federal and state H-2B labor certification processing backlogs.

Absent additional funding or funding alternatives, OFLC will be less and less efficient in its processing and will experience regular recurrences of major, months-long backlogs that prevent employers from receiving workers they need to run their businesses. A reasonable and flexible fee structure is a critical and necessary step to ensure adequate resource levels, timely processing, appropriate infrastructure improvements, and program responsiveness.

Currently, the Department of Labor does not charge employers a fee for the processing of H-2B temporary labor certification applications. However, employers significantly benefit from the admission of these workers, processing is largely resource-intensive and employers receive expedited review under the Department's own guidelines. It is, therefore, appropriate employers pay the operating expense for providing this service.

Since appropriations for Federal and state activities currently fall far short of the true cost of the program, an H-2B fee would potentially be adjusted to a level higher than the portion of appropriations, within the larger account, currently supporting H-2B activities. The revenue would be deposited as offsetting receipts into a special account in the U.S. Treasury, and remain available to the Secretary of Labor to cover the costs of administering the H-2B temporary labor certification program, including state costs for initial review of temporary labor certification applications, instructions to employers for recruitment, and supervision of recruitment. At the Federal level, FTE would be supported through fee revenue, rather than appropriations,

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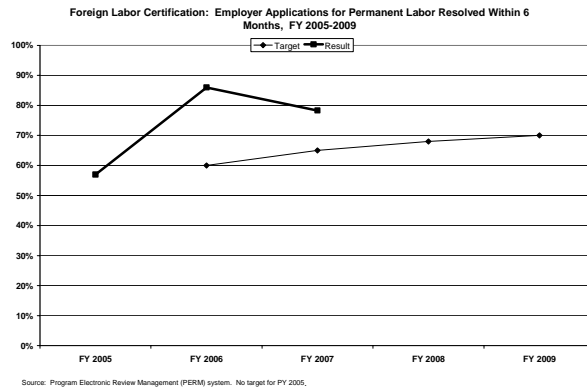
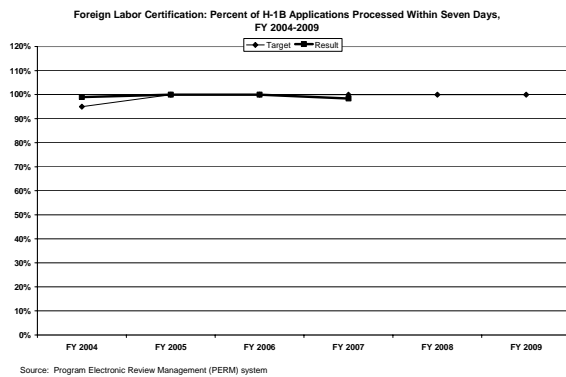
providing both a more reliable source of funding and flexibility to increase staff as needed, consistent with demand for H-2B program services.

The proposed fee would permit the Department to maintain timely processing, program integrity, and program responsiveness. With adequate resource levels, the Department could ensure 60-day processing in "clean" cases without complications, permitting employers access to workers needed to run their businesses while maintaining program mandates to protect the interest of U.S. workers in these job opportunities.

Performance Results

Permanent Program

For PERM, 73.8 percent of applications were processed within six months, exceeding the target of 65 percent, though performance declined from the prior years. PERM performance was affected by the reallocation of resources to eliminate an applications backlog in the H-2B Temporary Non-agricultural Program. In FY 2008, the DOL will closely monitor implementation of the Fraud Rule for impact upon PERM processing and redirect resources that were used to eliminate the H-2B backlog to the PERM program as needed. Keeping these factors in mind, the target for PERM application processing within six months will be 76% by FY 2009.

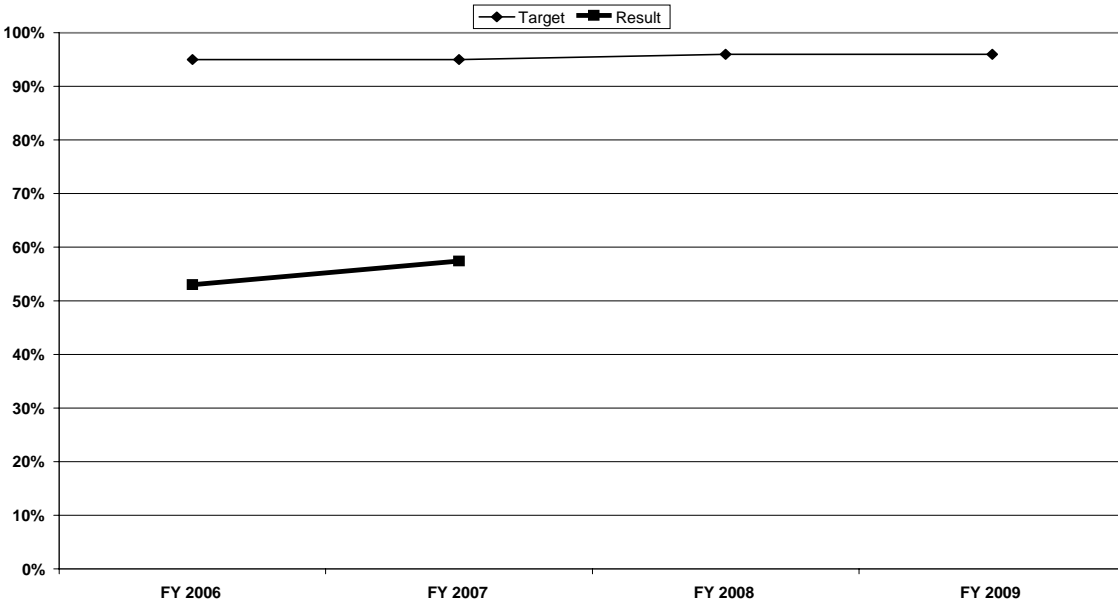


H-2A Program

Results for the H-2A Temporary Agricultural Program were far below the target in FY 2006 and FY 2007. OFLC is meeting the statutory processing timeframe to accept or request a modification of applications within seven days of receipt, but is experiencing delays in obtaining recruitment reports and housing inspections from employers and SWAs. The number of H-2A applications increased by 19 percent during this period. OFLC conducted training for the SWAs to provide guidance and clarification of the requirements for the H-2A program, including how to conduct housing inspections. The President has directed DOL to review regulations implementing the H-2A program and institute changes providing farmers with an orderly and timely flow of foreign legal workers, while protecting the rights of American laborers. The target for processing H-2A applications within 30 days will be 61 percent.

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Foreign Labor Certification: H-2A Applications Processed Within 15 Business Days,
FY 2006-2009

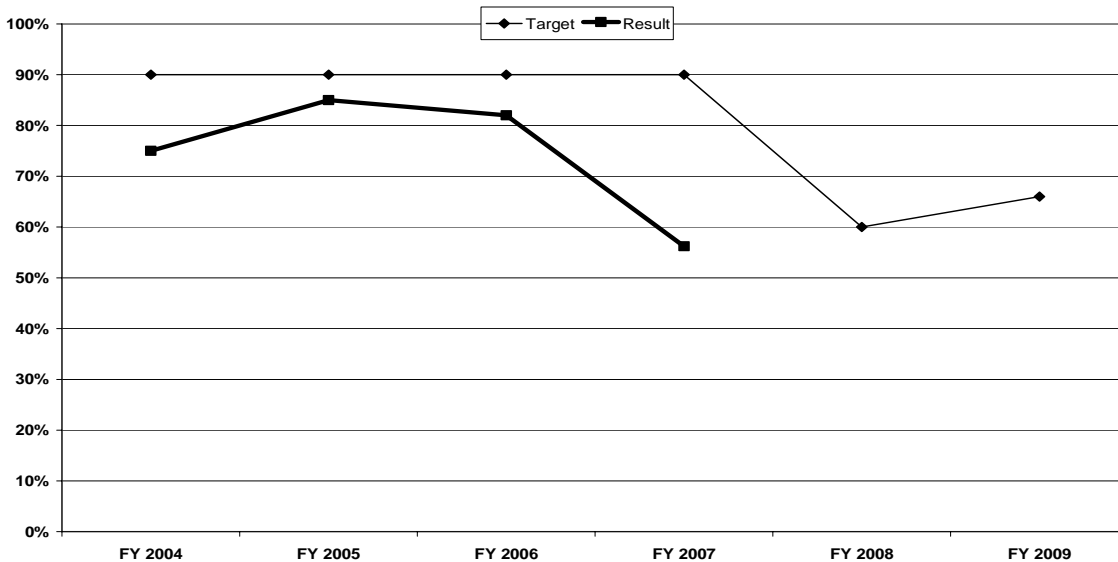


Source: Program Electronic Review Management (PERM) system

H-2B Program

Until a new processing system is implemented and a fee structure reduces the sensitivity of the application process to federal resource levels, OFLC has revised its performance targets for processing H-2B applications within 60 days to a more realistic but still aggressive goal of 64% in FY 2008 and 65% in FY 2009. OFLC justified this 30% reduction in target because, despite undertaking a number of management actions to address the performance issue, OFLC does not expect an immediate improvement as employer demand for H-2B workers has been increasing and resources available from Congress have remained below the President's request.

Foreign Labor Certification: H-2B Applications Processed Within 60 Days,
FY 2004-2009



Source: Program Electronic Review Management (PERM) system

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CHANGES IN FY 2009

(Dollars in Thousands)

Activity Changes

Built-In

To Provide For:

Personnel benefits	323
One day less of Pay	-56
GSA Space Rental	24
Other services	0
Purchase of goods and services from other Government accounts	200
Operation and maintenance of facilities	0

Built Ins Subtotal **491**

Net Program **17,519**

Direct FTE **6**

	Estimate	FTE
Base	41,978	105
Program Increase	17,519	6

STATE GRANTS

Budget Authority Before the Committee (Dollars in Thousands)							
					FY 2009		
	FY 2007 Comparable	FY 2008 Enacted	FY 2008 Estimate	Diff. FY 07 Comp/ FY 08 Est	Current Law	Legislative Proposal	Diff. FY 08 Est /FY 09 Req
Activity Appropriation	0	0	0	0	18,473	18,473	18,473
FTE	0	0	0	0	0	0	0

Introduction

Under its State Grant activity, FLC provides grants to state labor agencies in 54 states and U.S. territories to fund employment-related activities required for the administration of Federal foreign labor certification programs. This includes State Workforce Agency posting and circulation of job orders and other assistance to employers in the recruitment of U.S. workers, processing of employer requests for prevailing wage determinations for the permanent and temporary programs, state processing of H-2A agricultural and H-2B non-agricultural temporary labor certification applications, state safety inspection of housing provided by employers to H-2A workers, and state development of prevailing wage and prevailing practice surveys used to set wages and standards in a defined geographic area. Although each state receives thousands of requests for prevailing wage determinations each year, most state activities center around the inspections, surveys, and general, staff-intensive processing of paper applications filed in the temporary programs. The current H-2A and H-2B labor certification programs were established in 1986 through the Immigration Reform and Control Act, which split the former “H-2” temporary labor certification program into agricultural and non-agricultural components.

In accordance with the requirements of their foreign labor certification grant allocations, state labor agencies submit annual work plans to the OFLC national office to establish continued eligibility for the grant, describe the specific activities and workload expectations for the year, and explain program priorities, including how grant funds will be allocated between agricultural and non-agricultural programs. In particular, the State Grants funding activity supports:

- State processing of H-2B temporary non-agricultural labor certification applications.
- State receipt of applications for H-2A temporary agricultural labor certification, performing prevailing wage and prevailing practice surveys, processing of job orders, and ensuring/conducting housing inspections are completed.
- Providing prevailing wage determinations for non-agricultural labor certification programs – including H-1B, H-2B, and the permanent program – in accordance with DOL guidance.
- State reporting of workload data that, in combination with OFLC’s own tracking of performance and trend data at the Federal level, will allow OFLC to better estimate and project state share costs.

STATE GRANTS

FY 2009

The 2009 Budget includes \$18,473,000 to support state foreign labor certification activities, an increase of \$5.956 million above the FY 2008 appropriation.

In FY 2009, the State Grants activity will fund state responsibilities for processing of temporary labor certification applications and corresponding activities under the H-2A agricultural and H-2B non-agricultural worker programs and for providing employers with prevailing wage determinations for the H-1B, H-2B and Permanent (PERM) programs. In addition, State Workforce Agency (SWA) staff, at the request of employers, review private employer wage surveys and ascertain whether to accept the wage from the private survey as the acceptable wage for the proposed position. State funds also support housing inspections, employment eligibility verification duties, and participation in the intra-state and inter-state job clearance system.

The funds OFLC provides to the SWAs for administering the “front end” of the H-2A and H-2B programs are almost exclusively for personnel who accept applications and interact with employers, especially growers participating in the H-2A program. Funding will provide H-2B employers with the services necessary to process their applications and administer program requirements.

SWAs’ temporary certification workloads continue to grow steadily and significantly every year. The H-2A agricultural labor certification program experienced a 20% increase in applications from FY 2006 to FY 2007, and the H-2B temporary labor certification program experienced nearly a 30% increase in applications in FY 2007. Even in the permanent program, where the state role has been reduced, SWAs continue to provide employers with a growing number of prevailing wage determinations. With increasing use by employers of foreign labor certification programs (in part a result of increased border security and penalties for using illegal labor) and inadequate resources to keep pace, program backlogs will continue to grow, employers will be unable to fill their workforce needs, and local communities and businesses will suffer economic hardship and express their concerns with elected officials. A funding increase is essential in FY 2009 to assist SWAs meet critical processing and staffing needs in order to handle the continuing year-to-year growing workloads.

H-2A Temporary Agricultural Program Workload Increase

	Employers Requesting	Employers Certified	Workers Requested	Workers Certified	Number of Applications
FY 2007	7,740	7,491	80,413	76,818	4,704
FY 2006	6,780	6,611	62,308	57,291	3,892
Increase	960	880	18,105	19,527	812
Percent Increase	14%	13%	29%	34%	21%

STATE GRANTS

H-2B Temporary Non-agricultural Program Workload Increase

	Employers Requesting	Employers Certified	Workers Requested	Workers Certified
FY 2007	14,565	10,797	360,147	254,615
FY 2006	11,267	9,182	247,287	199,734
Increase	3,298	1,615	112,860	54,881
Percent Increase	28%	17%	44%	28%

If the requested increase is not provided:

- Employers will not receive the workers they need in order to effectively administer their businesses. States will continue to experience significant delays in their ability to process H-2A and H-2B applications. This occurrence will adversely affect businesses that, by definition, have not been able to find a U.S. worker to fill the jobs they are seeking foreign labor to perform. There have been countless media stories and widespread Congressional interest about this past H-2B's filing season and its financial impact on employers nationwide. With the returning worker provisions under the H-2B program "sun setting", the pressure on the remaining available visas will be enormous further adding to the processing pressures on SWAs and DOL.
- SWA-provided prevailing wage determinations will be delayed across all FLC programs, which will further delay all application processing.

STATE GRANTS

CHANGES IN FY 2009

(Dollars in Thousands)

Activity Changes		
Built-In		0
Built Ins Subtotal		0
Net Program		5,955
Direct FTE		0
	Estimate	FTE
Base	12,518	0
Program Increase	5,955	0

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Performance History

Foreign Labor Certification (FLC) program performance indicators tie to statutory, regulatory, or internal processing requirements for four major foreign labor certification programs administered by the Department. The Department tracks FLC program progress using the following measures:

- The percent of Labor Condition Applications in the H-1B visa program for highly skilled workers – applications now almost always filed electronically – processed within the statutory seven-day timeframe when no prevailing wage or other issues have been identified.
- The percent of employer applications filed for permanent labor certification (PERM) adjudicated within six months of filing.
- The percent of H-2A temporary agricultural applications processed within 15 days of receipt and 30 days from the date of employer need when there is no pending state action on the application.
- The percent of H-2B temporary non-agricultural applications processed within 60 days of receipt.

Details about specific targets and results for FYs 2004-2009 are included in the Performance Goal Indicator table in the program narrative for the Office of Foreign Labor Certification. The H-1B result for the number of applications processed within seven days generally falls less than two percentage points short of the target of 100 percent. Elimination of the 363,000 permanent labor certification program application backlog occurred by October 2007. The regulation governing the re-engineered PERM program became effective in March 2005 and the PERM processing system has out-performed the annual target over the last two years. However, the performance result for permanent labor certification declined in FY 2007 as resources normally dedicated to PERM were reallocated to eliminate an applications backlog in the H-2B Program. In FY 2008, the Department will closely monitor implementation of the fraud prevention and detection regulation that took effect in July 2007 for impact upon PERM processing. The OFLC intends to dedicate resources previously committed to eliminate the H-2B backlog back to the PERM program, and will monitor and manage resource levels across programs – including resources formerly dedicated exclusively to backlog reduction – to strengthen program integrity across foreign labor certification programs, improve processing efficiency and effectiveness, and ensure permanent and temporary programs all meet their performance targets.

Results for the H-2A Temporary Agricultural Labor Certification Program to process applications within 15 days have not met the annual target for several years. Statutory processing timeframes to accept or request a modification of applications within seven days of receipt are being met by the Department, but delays in obtaining recruitment reports and housing inspections from employers and State Workforce Agencies (SWAs) continue to occur. The H-2A targets were readjusted for FY 2008-09 to reflect ambitious but achievable expectations.

Results for the H-2B Temporary Non-agricultural Program to process applications within 60 days of receipt dropped from 85% in FY 2005 to 56% in FY 2006, but increased moderately in FY 2007 to 62.4%. Like H-2A, the Department has reset H-2B targets for FY 2008-09. Limited resources has impacted performance at both the state and Federal levels.

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The downward trend in performance results illustrates the difficulty of keeping up with increased employer demand for foreign workers and utilization of the foreign labor certification processes with limited appropriated resources that have failed to keep pace. In FY 2007, demand on foreign labor certification programs increased in a range from 10 percent (PERM program) to about 30 percent (H-2B program) while resources remained constant. The Department is seeking ways to improve performance by streamlining the application processes and mitigating the resource sensitivity of the programs, while strengthening improving program integrity. However, these efficiency and effectiveness measures and actions will not restore the ability of DOL to meet processing timeframes.

Program Assessment Rating Tool (PART)

Program	Year	Rating
<u>Foreign Labor Certification H-1B</u>	2004	Moderately Effective
<u>Permanent Labor Certification</u>	2004	Adequate

The H-1B Labor Certification program was evaluated in 2004. The PART found that of the program demonstrated increased efficiency in processing Labor Condition Applications and ease of use for employers. The process is automated and enables the program to issue a determination on most applications within one day of application submission. However, vulnerability to fraud and abuse exists because the Department of Labor has limited authority to review the Labor Condition Application.

In FY 2009, OFLC will continue taking significant steps to address PART recommendations by remedying system weaknesses (for example, to identify inappropriate wage rates or address technical errors in applications as they are reviewed); developing better mechanisms for sharing program data with other DOL programs and with immigration agencies across government (starting with DHS and DOS); and reviewing whether it can begin validating employers through their FEIN as a fraud deterrent.

The PART for the Permanent Labor Certification Program recommended development and implementation of a streamlined, automated process for employers to submit Labor Certification Applications by the Department and identified challenges with labor certification fraud including applications filed on behalf of fictitious employees and the illegal sale of certifications; and the lack of specific, ambitious targets that are consistent with the program plans to eliminate backlogs of applications.

In FY 2009, OFLC plans to establish a cost-based fee in the permanent labor certification program (transmitted to the Congress in 2008) with cost estimates at approximately \$650 to fully process a permanent labor certification application. OFLC will also refine its methodology to capture cost impacts of system integration (greater efficiency of integrating PERM case management system with those of temporary labor certification programs) and implement greater

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program integrity (which will require greater scrutiny to certain applications, likely reducing processing times).

Efficiency Measures

H-1B Labor Condition Applications

The Department is refining its methodology and assumptions for measuring the cost of processing applications in the H-1B Program. The program currently utilizes an estimate of program dollars divided by number of applications processed. The H-1B Program operates a highly automated system which enables the program to issue a determination on most applications within one day of application submission. However, achieving greater accuracy and eliminating errors in the processing or completion of applications while keeping productivity high, will improve the timeliness and costliness of processing applications. While the FY 2009 target to reduce costs for processing costs for H-1B is \$9.8, in calendar year 2008, FLC will review this measure to determine if it is the appropriate measure to demonstrate efficiency for this program.

Permanent Labor Certification

The Permanent Labor Certification Program efficiency measure is also currently an estimate of program dollars divided by number of applications processed. However, achieving greater accuracy and eliminating errors in the processing or completion of applications while keeping productivity high, will improve the timeliness and costliness of processing applications. Use of “flags” in an automated processing system to indicate highs of errors or inaccuracies can result in audits and appeals which require intensive investigations and adjudications. A methodology that captures cost impacts of system integration (greater efficiency of integrating PERM case management system with those of temporary labor certification programs), in addition to identifying integrity measures (which require greater scrutiny of certain applications) will possibly demonstrate reduced processing times and increased costs. In calendar year 2008, the Department will analyze the effect of implementing the fraud detection and integrity measures on staff requirements and processing rates. This analysis will be used to redefine the existing cost per application efficiency measure.

Program	Efficiency Measure	FY 2009 Target
H-1B	Cost per application	\$9.8
PERM	Cost per application	\$675

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WORKLOAD SUMMARY (Dollars in Thousands)				
	FY 2007 Actual	FY 2008 Target	FY 2009	
			Current Law	Legislative Proposal*
Foreign Labor Certification				
Carry-In, New Applications, Rebuttals, Remands	550,900	135,000	148,500	148,500
PERM Applications Processed	280,000	85,000	93,500	93,500
PERM Applications Remaining	0	50,000	22,000	22,000
H-1B Applications Processed	250,000	250,000	600,000	600,000
H-2A Applications Processed	5,800	7,000	7,900	7,900
H-2B Applications Processed	15,000	18,000	17,000	18,000
Budget Activity Total (State Grants)	\$13,013	\$12,518	\$18,473	\$18,473
Budget Activity Total (Program Administration)	\$37,480	\$41,487	\$59,497	\$59,497

* OFLC's legislative proposals seek authority to institute a fee but are not associated with specific requests for funding. The fee proposals do not impact the workload estimates for FY 2009.

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PERFORMANCE GOALS AND INDICATORS

Address worker shortages through the Foreign Labor Certification Program											
	FY 2004		FY 2005		FY 2006		FY 2007		FY 2008		FY 2009
	Goal Not Achieved		Goal Not Achieved		Goal Not Achieved		Goal Not Achieved				
Performance Indicator	Target	Result	Target	Result	Target	Result	Target	Result	Target	Result	Target
Percent of H-1B applications processed within seven days of the filing date for which no prevailing wage issues are identified	95%	99%	100%	100%	100%	100%	100%	98.4%	100%	RNA	100%
Percent of employer applications for permanent labor certification under the streamlined system that are resolved within 6 months of filing	--	-	Baseline	57%	60%	86%	65%	73.8%*	75%	RNA	76%
Percent of H-2A applications with no pending state actions processed within 15 days of receipt and 30 days from the date of need.	--	--	--	--	95%	57%**	95%	55%	60%	RNA	61%
Percent of the H-2B applications processed within 60 days of receipt	90%	75%	90%	85%	90%	56%**	90%	62.4%	64%	RNA	65%
Baseline(s):											
Data Sources: Program Electronic Review Management (PERM) system, Case Management System (CMS), H-1B Electronic Processing System.											
Comment: * FY 2007 result for PERM will not be final until 01 April 2008. ** In the FY 2008 CBJ, OFLC inadvertently reported an incorrect and significantly higher result for the H-2A and H-2B processing indicator than the actual result, which was confirmed through a more recent data query.											