

FOREIGN LABOR CERTIFICATION

BUDGET AUTHORITY BEFORE THE COMMITTEE						
(Dollars in Thousands)						
	FY 2008 Enacted	FY 2009 Enacted	Diff. FY08 Enacted / FY09 Enacted	Recovery Act	FY 2010 Request	Diff. FY09 Enacted / FY10 Req
Activity Appropriation	54,005	67,950	13,945	0	68,436	486
FTE	75	131	131	0	131	0

Note: In FY 2008 Foreign Labor Certification was funded in two accounts. Federal Administration was funded in the ETA Program Administration account and Grants to States were funded in Employment Service National Activities. In FY 2009 all funds for FLC were appropriated to the FLC activity in SUIESO. For display purposes FY 2008 funds and FTE are included above.

Introduction

The Immigration and Nationality Act (INA) delegates specific responsibilities to the U.S. Secretary of Labor for the administration of certain employment-based immigration programs which require a labor certification. These responsibilities include determining whether there are able, willing, and qualified U.S. workers for a requested position for which certification is required and whether there would be any adverse impact on similarly employed U.S. workers should labor certification be granted. Accordingly, statutory and regulatory provisions require all employers seeking a labor certification for either permanent or temporary nonimmigrant labor to first apply to the Secretary of Labor for certification. The Secretary has delegated these responsibilities to the Office of Foreign Labor Certification (FLC) within the Employment and Training Administration (ETA).

The programs currently administered by the FLC include the Permanent Labor Certification Program (PERM), H-1B Specialty Occupations Program, H-1B1 Specialty Worker Program (Chile and Singapore), E-3 Specialty Worker Program (Australia), H-2A Temporary Agricultural Program, H-2B Temporary Non-agricultural Program, and the D-1 Crewmember Program.

ETA has organized FLC as follows: A National Office is responsible for policies and administration while two National Processing Centers, one each in Atlanta and Chicago, adjudicate all program applications. Also, a FLC Prevailing Wage and Help Desk Center is scheduled to open in fiscal year 2009.

Performance goals established by the Department use indicators related to the visa programs it administers:

- Percent of H-1B applications processed within seven days of the filing date for which no prevailing wage issues are identified;
- Percent of employer applications for permanent labor certification, under the streamlined system, that are resolved within six months of filing;
- Percent of H-2A applications with no pending state actions processed within fifteen days of receipt and thirty days from the date of need; and
- Percent of the H-2B applications process within sixty days of receipt.

FOREIGN LABOR CERTIFICATION

Two programs that contribute significantly to the overall performance goal to “Address worker shortages through the Foreign Labor Certification Program” are PERM and H-1B. Both these programs have been subject to a DOL Program assessment. In response to assessment findings, ETA is taking several steps to improve the integrity of the PERM program. These steps include revising the application to promote clarity and ease of use by employers, and modifying the current electronic filing system to incorporate the changes to the application form. ETA is also enhancing audit activities and implementing new oversight.

ETA is also taking several steps to improve the H-1B program in response to assessment findings. ETA has obtained approval from the Office of Management and Budget for an enhanced application form and is working to revise the current electronic filing system to incorporate the necessary changes and implement mandatory registration and several validation edits.

Performance for all four application programs is expected to remain the same or slightly increase over the next two years. FLC also plans to revise the PERM measure and implement a new program integrity measure. The current PERM measure, employer applications resolved within six months, will be extended to nine months. The original measure was developed prior to implementation of the program. The enhancement of integrity actions during FY 2008 and early 2009 demonstrate that a nine month measure will more accurately reflect actual program performance. The new integrity compliance rate will be measured as the percent of resolved applications that have been selected for integrity review and found in compliance. ETA is currently developing baseline targets for an enhanced PERM performance measure and a new PERM integrity measure. These measures are scheduled for approval and implementation at the beginning of FY 2010.

Funding Mechanism

Funding for FLC derives from two sources. The first source is dollars appropriated to the State Unemployment Insurance and Employment Service Operations (SUIESO) Account, which FLC has historically distributed to states as fiscal year formula grants to support foreign labor certification activities. Since FY 2009, the appropriations contained in SUIESO were also used to support Federal program administration. The second funding source is five 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.

In FY 2010, ETA requests \$68,436,000 for the Foreign Labor Certification program – an increase of \$486,000 over the 2009 enacted level. The requested funds will be used to support Federal Administration and State Grant activities which are discussed in the following sections.

FOREIGN LABOR CERTIFICATION

Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2008	54,005	75
2009	67,950	131

NOTE: Excludes Recovery Act Funding. See budget activity head table.

FOREIGN LABOR CERTIFICATION

PERFORMANCE GOAL INDICATORS

Address worker shortages through the Foreign Labor Certification Program										
	FY 2005		FY 2006		FY 2007		FY 2008		FY 2009	FY 2010
	Goal Not Achieved		Goal Not Achieved		Goal Not Achieved		Substantially Achieved			
Performance Indicator	Target	Result	Target	Result	Target	Result	Target	Result	Target	Target
Percent of H-1B applications processed within seven days of the filing date for which no prevailing wage issues are identified	100%	100%	100%	100%	100%	98.4%	100%	100%	100%	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%	92%	92%	92%
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%	56%	61%	62%
Percent of the H-2B applications processed within 60 days of receipt	90%	85%	90%	56%**	90%	62.4%	64%	71%	71%	71%
Baseline(s):										
Data Sources: Program Electronic Review Management (PERM) system, Case Management System (CMS), H-1B Electronic Processing System.										
Comment:										

FOREIGN LABOR CERTIFICATION

WORKLOAD SUMMARY			
Actions	FY 2008 Actual	FY 2009 Target	FY 2010 Target
Carry-In, New Applications,	102,197	135,000	135,000
PERM Applications Processed	61,997	100,000	100,000
PERM Applications Remaining	40,200	35,000	35,000
H-1B Applications Processed	405,641	470,909	518,100
H-2A Applications Processed	5,338	9,288	13,932
H-2B Applications Processed	11,214	18,935	24,615
Budget Resources	\$54,005	\$67,950	\$68,436
Grants to States	\$12,518	\$15,129	\$15,129
Federal Administration	\$41,487	\$52,821	\$53,307

FOREIGN LABOR CERTIFICATION

BUDGET ACTIVITY by OBJECT CLASS						
(Dollars in Thousands)						
		FY 2008 Enacted	FY 2009 Enacted	Recovery Act	FY 2010 Request	Change FY 10 Req / FY 09 Enacted
11.1	Full-time permanent	8,652	11,297	0	11,564	267
11.3	Other than full-time permanent	110	140	0	143	3
11.5	Other personnel compensation	488	621	0	633	12
11.9	Total personnel compensation	9,250	12,058	0	12,340	282
12.1	Civilian personnel benefits	2,530	2,939	0	2,954	15
13.0	Benefits for former personnel	33	42	0	42	0
21.0	Travel and transportation of persons	187	238	0	239	1
22.0	Transportation of things	13	17	0	17	0
23.1	Rental payments to GSA	1,224	1,558	0	1,566	8
23.3	Communications, utilities, and miscellaneous charges	314	400	0	402	2
24.0	Printing and reproduction	25	32	0	32	0
25.1	Advisory and assistance services	14,229	19,118	0	19,214	96
25.2	Other services	60	76	0	76	0
25.3	Other purchases of goods and services from Government accounts 1/	4,690	3,971	0	3,991	20
25.4	Operation and maintenance of facilities	306	390	0	392	2
25.7	Operation and maintenance of equipment	7,707	10,813	0	10,867	54
26.0	Supplies and materials	337	429	0	431	2
31.0	Equipment	582	740	0	744	4
41.0	Grants, subsidies, and contributions	12,518	15,129	0	15,129	0
Total		54,005	67,950	0	68,436	486
1/Other Purchases of Goods and Services From Government Accounts						
	Working Capital Fund	4,490	3,971	0	3,991	20
	DHS Services	200	0	0	0	0

FOREIGN LABOR CERTIFICATION

CHANGES IN FY 2010

(Dollars in Thousands)

Activity Changes

Built-In

To Provide For:

Costs of pay adjustments	282
Personnel benefits	15
Travel	1
GSA Space Rental	8
Communications, utilities & miscellaneous charges	2
Advisory and assistance services	96
Purchase of goods and services from other Government accounts	20
Operation and maintenance of facilities	2
Operation and maintenance of equipment	54
Supplies and materials	2
Equipment	4
Built-Ins Subtotal	486

	Estimate	FTE
Base	68,436	131