

Although the OFR may make minor technical edits to the version of the IFR posted with today's announcement, the substance of the IFR will remain the same. The version to be published in the Federal Register will be the official version that amends the current regulations.

OFLC has prepared Frequently Asked Questions to help stakeholders better understand the Wage Protections IFR.

- [View the Frequently Asked Questions on the Wage Protections IFR](#)

Effect of the Interim Final Rule:

The IFR will only apply to the following:

- An *Application for Prevailing Wage Determination*, Form ETA-9141, pending with OFLC's National Prevailing Wage Center (NPWC) as of the effective date of the regulation;
- An *Application for Prevailing Wage Determination*, Form ETA-9141, filed with the NPWC on or after the effective date of the regulation; and
- A *Labor Condition Application for Nonimmigrant Workers* (LCA), Form ETA-9035/9035E, filed with OFLC on or after the effective date of the regulation where the OES survey data is the prevailing wage source, and where the employer did not obtain the prevailing wage determination from the NPWC prior to the effective date of the regulation.

Implementation Schedule:

- On **October 8, 2020**, employers and their authorized attorneys or agents will be able to:
 - Access revised OES prevailing wage data for each SOC and area of intended employment at <https://www.flcdatacenter.com/>;
 - Use the Foreign Labor Application Gateway (FLAG) system to submit LCAs at <https://flag.dol.gov/>; and
 - Continue to submit requests for prevailing wage determinations using the FLAG system.
- On **October 13, 2020**, the NPWC will begin issuing prevailing wage determinations using the revised OES prevailing wage data computed for the Interim Final Rule. This brief delay in issuing wage determinations is necessary to complete the required technical changes to the FLAG system's internal prevailing wage determination module and reduce the risk of unintended system problems or errors that may impact customers and OFLC staff.
- OFLC will continue to issue non-OES based prevailing wages (e.g. employer-provided surveys or collective bargaining agreements) without delay.

September 30, 2020. OFLC Publishes Updated Wage Data for the Commonwealth of Northern Mariana Islands.

The Office of Foreign Labor Certification (OFLC) received an updated wage survey from the Governor of the Commonwealth of Northern Mariana Islands (CNMI) for the CW-1 program. OFLC has approved the Governor's survey for 402 occupations and will issue updated CW-1 prevailing wages using this data from September 30, 2020, through June 30, 2021. The updated wage table includes prevailing wage data for a total of 820 occupations.

- [View the Updated CW-1 Wage Table for September 30, 2020, through June 30, 2021](#)

September 25, 2020. OFLC Announces Permanent Issuance of Electronic PERM Labor Certifications

The Office of Foreign Labor Certification (OFLC) announced that it is permanently adopting the electronic issuance of PERM labor certifications to employers (and their authorized attorneys or agents).

On March 24, 2020, OFLC announced that—due to the impact of the COVID-19 pandemic—that it would electronically issue PERM labor certifications to employers (and their authorized attorneys or agents) through June 30, 2020. On June 16, 2020, OFLC announced that it was extending the period during which it would electronically issue PERM labor certifications through September 30, 2020.

On July 30, 2020, the Department of Labor (Department) signed a memorandum of agreement (MOA) with the Department of Homeland Security (DHS). Among other things, the MOA provides DHS access to all applications for permanent labor certification submitted to OFLC through the PERM online system, including the ability to verify that a PERM application has been certified. The enhanced information sharing and collaboration under the MOA also eliminates the need for duplicate certification requests and increases the integrity of the PERM program by supporting efforts to combat instances of fraud and abuse in connection with labor certification and employment-based immigrant and non-immigrant programs.

DHS regulations require that—in order to file a USCIS Form I-140, *Immigrant Petition for Alien Workers* (Form I-140), with U.S. Citizenship and Immigration Services (USCIS)—employers must concurrently submit an original labor certification issued by the Department, unless the **original labor certification** was already provided to USCIS in support of a different petition.

When a permanent labor certification was granted in the past, OFLC would send the original certified ETA Form 9089, *Application for Permanent Employment Certification*, and a Final Determination letter on "security paper" to the employer (or their authorized attorney/agent). To be valid, a certified ETA Form 9089 must contain the following completed sections:

- Section O - Signed and dated by the OFLC Certifying Officer;
- Section L - Signed and dated by the foreign worker;
- Section M - Signed and dated by the form preparer, if applicable; and
- Section N - Signed and dated by the employer; and
- Footer on each page identifying the validity period of the certification.

The employer (or their authorized attorney/agent) then would submit the original signed paper ETA Form 9089, along with the USCIS Form I-140 and all other supporting documentation and appropriate fees, to USCIS.

As of March 24, 2020, employers (or their authorized attorney/agent) who file a PERM application and are granted a permanent labor certification by OFLC have received the certified ETA Form 9089 and Final Determination letter by email. In circumstances where employers (or their authorized attorneys or agents) submit the application for permanent labor certification by mail and are not able to receive the certified ETA Form 9089 documents by email, OFLC has and will continue to send the original security paper ETA Form 9089 and Final Determination letter by mail. At this time, OFLC expects to continue using UPS regular delivery to send the documents (i.e., approximately 2 to 8 days depending on delivery location).

Before filing a Form I-140 with USCIS, the electronic copy of the certified ETA Form 9089 that is provided by OFLC via email, must be printed, and signed and dated in the appropriate sections by the:

- Foreign worker;
- Preparer (if applicable); and
- Employer.

Important Reminder: To ensure receipt of electronic permanent labor certification documents and all other correspondence from the Atlanta National Processing Center, OFLC reminds stakeholders to add plc.atlanta@dol.gov to their address book or "safe list" within email system(s) to avoid being filtered as spam.

August 28, 2020. OFLC Releases corrected LCA and Prevailing Wage Public Disclosure Data for the Third Quarter of Fiscal Year 2020

The Office of Foreign Labor Certification (OFLC) has released a corrected version of the following public disclosure data files for the third quarter of Fiscal Year 2020:

- [PW Disclosure Data FY 2020 Q3.xlsx](#)
- [H-1B H-1B1 E-3 FY2020 Q3.xlsx](#)

The [public disclosure files](#) include all final determinations OFLC issued for these programs during the October 1, 2019, through June 30, 2020, reporting period of FY 2020.

Earlier this month, an error was discovered in the PW_Disclosure Data FY 2020 Q3.xlsx file in which the PRIMARY_WORKSITE_COUNTY column was not populating for all records. This has been corrected.

The H-1B H-1B1 E-3 FY2020 Q3.xlsx file contained an error in which some records for which the CASE_STATUS column indicated "Certified – Withdrawn" should have indicated a status of "Withdrawn". This too has been corrected.

August 12, 2020. Department of State Determination on National Interest Exceptions to Presidential Proclamation 10052 as it Relates to H-1B, H-2B, L-1A, L-1B, and Certain J-1 Visa Programs

On August 11, 2020, the Assistant Secretary of Consular Affairs for the U.S. Department of State (DOS), in consultation with the Secretaries of Labor and Homeland Security, determined additional types of travel that may qualify for a national interest exception to [Presidential Proclamation 10052](#) for H-1B, H-2B, L-1A, L-1B and certain J-1 visa programs. The announcement regarding this determination can be accessed [here](#). The announcement updates a notice from July 30, 2020, and discusses expanded categories of visa applicants who may qualify for a national interest exception to Presidential Proclamation 10052.