

July7, 2014

Submitted via email to ETA.OFLC.Forms@dol.gov

William L. Carlson, Ph.D.
Administrator, Office of Foreign Labor
Certification, Room C-4312
Employment & Training Administration
U.S. Department of Labor
200 Constitution Avenue NW.
Washington, DC 20210

Re: Comment Request for Information Collection for Form ETA-9089, Application for Permanent Employment Certification (OMB Control Number 1205-0451), Extension of Currently Approved Collection

Dear Dr. Carlson:

The Council for Global Immigration (The Council) and the Society for Human Resource Management (SHRM) are pleased to submit these comments in connection with the extension of Form ETA-9089, Application for Permanent Employment Certification. The Council and SHRM appreciate the ongoing opportunities to engage with the Office of Foreign Labor Certification (OFLC) on the PERM process.

The Council for Global Immigration, a strategic affiliate of SHRM, is a nonprofit trade association comprised of leading multinational corporations, universities, and research institutions committed to advancing the employment-based immigration of high-skilled professionals. The Council bridges the public and private sectors to promote sensible, forward-thinking policies that foster innovation and global talent mobility.

Founded in 1948, the Society for Human Resource Management (SHRM) is the world's largest HR membership organization devoted to human resource management. Representing more than 275,000 members in over 160 countries, the Society is the leading provider of resources to serve the needs of HR professionals and advance the professional practice of human resource management. SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China, India and United Arab Emirates.

COMMENTS AND RECOMMENDATIONS

The Council and SHRM are pleased to make the following recommendations:

I. Improve Website to make Crucial Information Necessary to Complete Form ETA-9089 Easier to Find

To properly complete Form ETA-9089, applicants need to have several documents or pieces of information. We recommend OFLC's web page contain a distinct section with a list of information and links that applicants need in order to properly complete the form. For example, links to where the following information can be obtained would be helpful: Federal Employment Identification Number (FEIN), Standard Occupational Classification (SOC) Code or eight digit O*NET/OES extension, North American Industry Classification System (NAICS), Prevailing Wage Determination (PWD) for each State Workforce Agency where such information is available, and Metropolitan Statistical Area (MSA) where work will take place.

II. Extend Form ETA-9089 as Currently Planned and Begin Work on a New Revised Form

Given that the form is set to expire on August 31, 2014, the Council supports the planned extension of Form ETA-9089 as it currently exists. Through frequent stakeholder meetings and other liaison opportunities, OFLC has been willing to work with the employer community when questions arise about how to properly complete the form and how officers adjudicate the form. We understand, as we were told during the December 2013 stakeholder meeting, that OFLC estimates that the implementation of any new form, from start to finish, would take approximately two years.

The Council commented on prior proposed revisions with our October 19, 2007 and March 14, 2011 comments. We understand through stakeholder meetings that any modifications at this time would require a new proposed form. As OFLC has acknowledged that the revision process is lengthy, we urge OFLC to begin the process of developing a new revised form immediately if the agency has not yet done so. As we have been commenting on proposed revisions for nearly seven years, we urge the agency to avoid further delay.

We understand that the implementation of a new form would require more than just a change to the form itself – it would also require an overhaul of OFLC's technological infrastructure and retraining of officers. We therefore urge the agency to request the funding necessary for technology and staffing from Congress to ensure a smooth transition to a new form.

When the time comes to implement a new form, we encourage the agency to rigorously consider all technological and training challenges that it is likely to face. We thank the agency for including the employer community in beta testing of form implementation in the past. We are willing and eager to participate in such beta testing again when the time comes and strongly recommend that agency hold off on the final implementation of any new form until the system has been thoroughly tested.

III. Incorporate the Following Modifications into a Revised Form ETA-9089

When Form ETA-9089 is revised, we look forward to providing feedback, as we did with prior proposed revisions with our October 19, 2007 and March 14, 2011 comments. We encourage OFLC to incorporate the following modifications into any proposed form:

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- The foreign national's name as the first field on the form, to facilitate quick and easy identification of the form. The foreign national's name should also be displayed in the online system, rather than just the case number.

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- H4-B & H7/H7-A (Major and alternate fields of study): As employers generally consider all acceptable fields of study to be equally acceptable, these two fields should be collapsed into one question – “Major field (s) of study.” If combining the questions is not possible, Question H7/H7-A should appear immediately after H-4B, rather than separating the two questions by unrelated questions involving required training and experience. A revised form should also increase the space available for listing acceptable fields of study, as the current space often necessitates extensive abbreviation.
- H6/6-A & H10/10-A (Experience in job offered and alternate experience): As employers normally seek a particular skill set rather than experience in a specific job title, there should be no need to distinguish between experience in the job offered and in related positions. Therefore, these questions should be combined and simplified as follows:
 - Is experience required for the job? Yes/No
 - If yes, number of months experience required:
 - Identify the job title(s) of the acceptable positions/occupations:

If OFLC nonetheless believes that it is necessary to distinguish between experience in the job offered and experience in related positions/occupations, we recommend an alternate combination of the questions to avoid the current confusion that exists as a result of the use of the word “required” in H6 and “acceptable” in H10:

- Is experience required for the job? Yes/No
- If yes, is experience in the job offered acceptable to meet this requirement? Yes/No
 - If yes, list number of months experience required in job offered:
- Is experience in an alternate occupation/position acceptable? Yes/No
 - If Yes, list number of months experience required in alternate occupation/position:
 - Identify the titles of the acceptable alternative position(s)/occupation(s):

We also recommend increasing the space available for listing alternate positions/occupations, as the current available space often necessitates extensive abbreviation.

- H8 (alternate combination of education/experience): We recommend that this question follow the combined questions H6 and H10 to make clear that the alternate combination of education and experience listed in H8 is an alternative to both H6 and H10.

In addition, if H8 is answered “yes,” there is presently no way to indicate whether the required experience referred to is in the job offered or in alternate occupations. Therefore, the following question should be added after current question H8-C:

- Identify the job title(s) of the acceptable positions/occupations:
- H8-C (amount of experience required for alternate combination of education/experience): It is inconsistent and confusing to have Questions H6 and H10 phrased in terms of months and Question H8 phrased in terms of years. Therefore, the wording of H8-C should be changed to:
 - If applicable, indicate the number of months experience acceptable in question 8
- H9 (foreign educational equivalent acceptable): We recommend that this question immediately follow combined questions H4 and H7, so that all the education questions are together, before the work experience questions.
- H12 (are the job opportunity’s requirements “normal”): Historically, OFLC has used this question to consider whether the job opportunity’s requirements fall within the Specific Vocational Preparation (SVP). If this is the intended purpose of this question, we recommend the question be rephrased as follows:
 - Do the job opportunity’s requirements fall within the Specific Vocational Preparation (SVP)?

If the language in the question remains unchanged, the answers should be interpreted according to the usual meaning of “normal”, i.e., common/usual in the industry for jobs of this nature with similar duties.

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- I.a (Occupation type): As some of the prior questions on the form do not apply to Special Handling cases, we recommend that this question be asked as one of the introductory questions on the form – perhaps after current section B. The form functionality should then automatically grey-out questions H12, H13 and H15 for Special Handling cases, as those questions are only applicable to standard applications.

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- J13 (year relevant education completed): J13 should allow a full date that education was completed rather than just the year of completion. This will avoid confusion or conflict with the hire date of the employer.
- J18 & J20: To maintain consistency with the suggestions above to combine questions H6 and H10, we recommend that these two questions be combined as follows:
 - Does the alien have the experience required as listed in [new combined question H6/H10]?: Yes/No/NA

If DOL believes that it is necessary to continue to distinguish between experience in the job offered and experience in related positions/occupations, we would still recommend combining questions J18 and J20 as follows:

- Does the alien possess the number of months of experience in the job offered listed in question No. ____?: Yes/No/NA
 - Does the alien possess the number of months of experience in the alternate occupation/position listed in question No. ____?: Yes/No/NA
- J19 (does alien possess the alternate combination of education/experience in H8): Should questions J18 and J20 be combined, J19 should follow the combined question.

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- Section K (Alien Work Experience) requires that the phone number of the employer and the name of the alien's supervisor be included in the Job Details (box 9). As these two pieces of discrete information are required for every job and are not part of the job description, the Form should have separate fields for these two pieces of information. Adding separate fields for these two items will also help ensure that an employer does not inadvertently fail to include the information.
- K.a.7 (end date of most recent job): The system should be reprogrammed so one can type in "to the present" (or add a drop down menu with this selection).

General Comments:

- We recommend allowing the size of the boxes in H11, H14, and K9 to expand to match the length of the text so that the information is not routinely turned into an Addendum. It is difficult to follow the flow of the information when one has to regularly refer to addenda and then back again to the main part of the Form.

- We recommend adding a place to include licenses that were not necessarily obtained as part of a job experience (or clear instructions of how to include the license information in section K).
- The “Kellogg” language should be formalized as a question on the form:
 - Will the employer accept any suitable combination of training, education, and experience?: Yes/No/NA

The Council and SHRM once again thanks OFLC for the opportunity to comment on the extension of Form ETA-9089. We would be pleased to provide additional feedback at any time.

Sincerely,



Lynn Shotwell
Executive Director
Council for Global Immigration



Mike Aitken
Vice President, Government Affairs
Society for Human Resource Management