

**From:** [David Muusz](#)  
**To:** [ETA, OFLC Forms - ETA](#)  
**Subject:** ETA Form 9089  
**Date:** Tuesday, September 15, 2020 5:19:13 PM  
**Attachments:** [Comment Letter ETA Form 9089 - University of Michigan.pdf](#)

---

Dear Mr. Pasternak –

Attached please find the written comments on the proposed changes to the ETA Form 9089, submitted on behalf of the University of Michigan.

Should I be able to provide any additional information, please do let me know.

Sincerely,

David Muusz

--

David Muusz

Assistant Director for Faculty and Staff Immigration Services  
International Center | University of Michigan  
515 E. Jefferson Str. | 1500 SAB | Ann Arbor, MI 48109  
Tel: 734-647-7277 | Fax: 734-647-2181 | [muusz@umich.edu](mailto:muusz@umich.edu) | [www.internationalcenter.umich.edu/fsis](http://www.internationalcenter.umich.edu/fsis)



**Faculty & Staff Immigration Services**

September 14, 2020

Mr. Brian Pasternak  
U.S. Department of Labor  
Employment and Training Administration  
Office of Foreign Labor Certification  
200 Constitution Ave., N.W.  
Box PPII 12-200  
Washington, DC 20210

RE.: Information Collection Request ETA Form 9089, Application for Permanent Employment Certification

Submitted via email: [ETA.OFLC.Forms@dol.gov](mailto:ETA.OFLC.Forms@dol.gov)

Dear Mr. Pasternak –

I serve as the Assistant Director for Faculty and Staff Immigration Services at the International Center on the Ann Arbor campus of the University of Michigan. I am submitting these comments on behalf of the University in response to the proposed changes to ETA Form 9089, Application for Permanent Employment Certification (PERM or Labor Certification), published in the Federal Register, Vol. 85, No 139, Monday July 20, 2020, pp 43877 – 43878. The University of Michigan is a large public university with more than 60,000 regular and temporary employees working in higher education, health care and research across Michigan. A small but meaningful number of University faculty and staff are employed pursuant to a variety of non-immigrant statuses, including currently, approximately 700 faculty and staff in H-1B status. Each year, the University pursues green card sponsorship for a subset of its international employees. Over the past five years, we have pursued PERM applications under both the “basic” and “special handling” provisions for approximately 300 individuals. As such, the proposed changes to the ETA Form 9089 and the certification process have a direct and significant impact on the University. Therefore, we appreciate the opportunity to comment on the proposed changes.

We are supportive of the goals of the stated changes, namely to “provide greater clarity on program requirements, reduce overall reporting burden, facilitate better quality applications for government review, and promote greater efficiency in the issuance of labor certification decisions under the PERM employment visa program.” Some of the proposed changes, such as 1.) replacing the paper-based labor certification decision with an electronically issued *Final Determination: Permanent Employment Certification Approval*, 2.) eliminating duplicative fields, 3.) reorganizing form sections and 4.) creating a specific *Appendix D: Special Recruitment for College and University Teachers* (among other appendices)

will help achieve in this goal. In particular, the replacement of the paper decision with an electronic document will allow significant efficiency gains.

However, some additional clarifications and/or changes would be helpful. Therefore, we propose the following amendments:

1. Section A, question 14 requests the “number of current employees on payroll in the area of intended employment.” The form instruction clarifies that “[the] area of intended employment is the area within normal commuting distance of the address of the place of intended employment.” While this appears to be a straightforward data request, it is not. For example, the University of Michigan operates multiple campuses, each in a different Metropolitan Statistical Area (MSA), but all within a distance that one could reasonably describe as “normal commuting distance.” Similarly, other employers may have different and distinct employment locations that are in geographically distinct areas that are nonetheless within normal commuting distance.

Requiring this additional breakdown of employment data would serve to increase the reporting burden for employers without meaningfully increasing transparency and/or meeting a clear regulatory requirement. Therefore, we would recommend retaining the current form edition’s question on the total number of employees. In the alternative, should OFLC determine that it is important to distinguish between the number of employees at different employment locations, then additional clarification on how to respond to this question would be helpful.

2. Section F.a requests information on the worksite for the foreign worker. The worksite is partially defined by reference to the MSA/ Occupational Employment Statistics (OES) area. Section F.b, however, requests information on additional worksites based on geographic area. The term “geographic area” is not well defined, but appears to be different from the MSA/OES area or the “area of intended employment” referenced in section A. We believe this may be confusing to responders and suggest that it be clarified so that any intended differences in the various terminology are apparent.
3. Appendix A, section B requires information on the degrees earned by the foreign worker that are “relevant” to the job opportunity. However, the form instruction asks that only diplomas/degrees that “qualify the foreign worker for the job opportunity” be listed. It would be helpful if the form language matched the form instruction and clarified that only diplomas/degrees need to be listed if they are used to qualify the foreign worker for the position.
4. Appendix A, sections C and D (foreign worker training qualifications) are helpful additions to the form, compared to the ad hoc approach of listing these qualifications in section K of the current form edition. However, as is the case with the current edition of the ETA Form 9089, many of the questions in section C do not necessarily apply, particularly for licenses and certifications. For example, a certification or license may be granted to the foreign worker upon completion of an exam for which one could qualify through a variety of avenues. Should an employer require a particular training that may result in eligibility for a license or certification, the employer should

be prepared to provide information on the training. However, if only the license or certification is relevant for the job opportunity for which sponsorship is sought, the way or ways in which the foreign worker may have qualified for the license or certification are not relevant.

Requiring employers to provide additional information on how an individual foreign worker may have qualified for a license or certificate that is often granted by the State in which the foreign worker will be employed has the effect of increasing the reporting burden, without collecting useful additional information. Therefore, to streamline the information collection process and to facilitate better quality applications, we would recommend deleting the reference to "training" in section C and incorporating "training" into section D and changing the wording of the questions of section C so that employers are directed to report only the relevant information, e.g. "License/certification attained," "Name of issuing authority," and "Month/year awarded."

5. The first sentence of the form instructions for Appendix A, section D appears to be missing the words "that qualify the foreign worker." Accordingly, we believe the sentence should be re-written to read: "Identify any other relevant special skills, abilities, and/or proficiencies the foreign worker possesses *that qualify the foreign worker* for the minimum requirements of the job opportunity for which the employer is seeking permanent labor certification."
6. Appendix D, questions 2-4 request the "Name(s) of national professional journal, educational organization publication, or other publication" where the position for which permanent labor certification is sought was advertised. As written, it appears an allowance is created for advertisements in publications other than a national professional journal, as required by regulation (20 CFR 656.18(b)(3)). If an advertisement in a national professional journal, whether in paper or on-line, remains a requirement, it would be helpful if questions 2-4 were to be split so that the employer is directed to provide the name of the national professional journal that was used to advertise the position in one question and to provide space for the additional advertisements in the separate questions. Alternatively, if the Office of Foreign Labor Certification intends to clarify what types of publications may be considered a national professional journal for purposes of 20 CFR 656.18(b)(3), it would be helpful if this clarification was provided explicitly in the form instructions or other supporting documents.
7. As indicated in the *Supporting Statement for the Application for Permanent Employment Certification*, Appendix D expands the fields to allow an employer an opportunity to provide more detailed information as to why the foreign worker was more qualified than the U.S. worker who applied for the job. However, the form field on Appendix D that appears to be designated for this purpose is labeled "Specify additional recruitment information." The form instructions indicate that this box is to be used to "[describe] all other recruitment conducted by the employer for the position, including sources used." Neither the form itself nor the form instruction clarify that the information sought is an analysis of the reasons why the foreign worker was more qualified than the U.S. worker who applied. Furthermore, as stipulated in 20 CFR 656.18(b), this information must be provided in a separate statement, signed by an official who has actual hiring authority.

If the information that already must be provided in the separate statement must also be included on Appendix D, we believe the form and form instructions should be amended to make this clear; as stated, it appears that the form and form instruction suggest that this information is not required in Appendix D. Also, requiring inclusion of this information on the form would, in effect, duplicate the information that is to be provided and, as such, run counter to the purpose of the proposed changes.

Clarifying the ETA Form 9089, its form completion instructions and other supporting documents as discussed above will have a significant impact on the University as well as the larger regulated community. The University therefore requests that the Office of Foreign Labor Certifications consider changing the proposed form, as suggested. The University of Michigan thanks the OFLC for the opportunity to comment on this proposed change.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'D' and 'M' followed by a horizontal line.

David Muusz  
Assistant Director for Faculty and Staff Immigration Services  
International Center  
University of Michigan  
515 E. Jefferson Ave.  
Ann Arbor, MI 48109  
[muusz@umich.edu](mailto:muusz@umich.edu)