



March 14, 2011

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Office of Foreign Labor Certification
U.S. Department of Labor
Room C4312
200 Constitution Avenue, NW
Washington, DC 20210

Via E-mail: ETA.OFLC.Forms@dol.gov

Re: ACIP Comments to DOL ETA-9089 Form (March 14, 2011)

The American Council on International Personnel (ACIP) submits the following comments in response to the proposed revised ETA-9089 form, issued by the U.S. Department of Labor (DOL) and published in the Federal Register (76 FR 2143) on January 12, 2011.

ACIP is an organization comprised of approximately 220 corporate and institutional members with an interest in the movement of personnel across national borders. Each of our members employs at least 500 employees worldwide, and in total, ACIP members employ millions of United States citizens and foreign nationals in all industries throughout the United States. ACIP sponsors seminars and produces publications aimed at educating human resource and legal professionals on compliance with immigration and employment verification laws, while working with Congress and the Executive Branch to facilitate the movement of international personnel.

ACIP appreciates the extensive efforts DOL has committed to incorporating our previous comments (dated October 19, 2007) to the new revised ETA-9089 form and corresponding instructions. As such, we are privileged to provide our feedback to the form, as follows:

1. C.12: Remove request for “Number of employees currently on the employer’s payroll in the area of intended employment.” For most large employers, the number of employees in an area of employment on the payroll changes virtually every day. In addition, if the employer is filing frequently, there is a significant administrative burden to answer this question that is of little or no relevance to the approvability of the application.
2. C.15: NAICS code should clearly reflect instructions. The NAICS provides codes containing 4-6 digits. The instructions state to “Enter the four to six-digit” NAICS code. The form at C.15 states that the NAICS code “must be at least 4 digits.” It would be clearer for the form to state: “NAICS code (must be 4 to 6 digits)” or “NAICS code (4 to 6 digits).”

3. C.16 and C.17: Additional Places for Explanations. The new form provides additional space for explanation of business necessity and layoffs. It would also be useful to include additional space for brief explanations for Question C.16 ("Is the employer a closely held corporation, partnership, or sole proprietorship in which the foreign worker has an ownership interest?") and Question C.17 ("Is there a familial relationship between the foreign worker and the owners, stockholders, partners, corporate officers, and/or incorporators?").
4. H.h: Allow more than 600 Characters for Explanation of Business Necessity. The space provided (limited to 600 characters) is merely one paragraph and most useful business necessity explanations often require more. It would be helpful to allow either unlimited characters or an option for an addendum.
5. I.2: Revise to ask about layoff of only U.S. workers. If a non-U.S. worker was laid off, the employer should be able to answer "NO." A revised question I.2 could be: "Has the employer had a layoff of U.S. workers in the occupation.....intended employment." Also, the instructions should reflect edit to form.
6. I.a.2a: Revise "Notice and Consideration" explanation. If a U.S. worker did not apply for a position after notice, consideration should not be necessary. In addition, notice is useless and consideration without notice should be sufficient if the employer considers the U.S. worker and determines that the person is not minimally qualified (or is not even a U.S. worker). A revised question I.a.2a would be: "If yes in question 2, please provide a brief explanation...describing either the consideration of the laid off U.S. worker or the notice that did not result in application by the U.S. worker to the position." Also, the instructions should reflect edit to form.

Once again, ACIP appreciates the opportunity to comment on this information collection and we look forward to a continued dialogue with DOL on issues concerning this important matter.

Sincerely,



Jasmine A. Majid
Director and Counsel for Agency Liaison