



April 12, 2019

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

Thomas M. Dowd
Deputy Assistant Secretary, Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Box PPII 12-200
Washington, DC 20210

RE: FR Doc. 2019-01941 Agency Information Collection Activities; Proposed Revision of a Currently Approved Collection; Request for Comments; Form ETA-9141, Application for Prevailing Wage Determination (OMB Control Number 1205-0508)

Dear Mr. Dowd:

Goel & Anderson, LLC submits the following comment in response to the proposed revised ETA-9141 and instructions published in the Federal Register on February 12, 2019. As a corporate immigration law firm, Goel & Anderson routinely files ETA-9141s on behalf of employers and appreciates the opportunity to comment in the form of two requests for clarification of language in Section F of the proposed form.

1. Section F.a. Job Description, Question 3.a.

The proposed form would request the “occupation(s)” of any employees the position supervises. The proposed instructions for this part clarify that subordinates’ “occupations, i.e., SOC and title” must be provided. OFLC frequently requests this information in RFIs for pending wage determination requests. However, OFLC’s RFIs also typically request subordinates’ job *duties*. Please confirm whether providing SOC codes generally will obviate RFIs for subordinates’ job duties; and, in any event, consider revising the form to explicitly request subordinates’ SOC and title consistent with the form’s instructions.

2. Section F.c. Alternative Job Requirements

The proposed form and corresponding instructions state, “While an employer may specify alternative requirements, the substantial equivalency of the alternative requirements to minimum requirements will not be evaluated.”

This instruction follows longstanding NPWC guidance as to substantial equivalency. However, that same NPWC guidance* (reprinted below, in relevant part) also states that the alternative requirements “will not be considered” in making the wage determination. The proposed ETA-9141 and instructions are silent on this point. Please clarify in the new form and instructions whether alternative requirements will be *considered* in making the wage determination.

“Must I list alternative job requirements on the ETA Form 9141? Is there a section on the ETA Form 9141 where I can list the alternative requirements?”

If an employer intends to accept alternative job requirements and to list such requirements on the ETA Form 9089, the employer must list its alternative job requirements on the ETA Form 9141. Specifically, the employer should list its alternative job requirements in either the Special Requirements block (D.b.5) or the Job Duties block (D.a.6) of the ETA Form 9141. This is to reflect a line of BALCA decisions affirming our ability to require the same information on the job opportunity on both forms.

It should be noted, as will be indicated in a note on the prevailing wage determination, that **the NPWC will not consider the alternative job requirements when making the wage determination**; prevailing wage determinations will be based ONLY on the job requirements listed by the employer in the Minimum Requirements block (D.b) of the ETA Form 9141. Nor does the NPWC make any evaluation of the substantial equivalence of the alternative job requirements to the primary minimum job requirements listed. That evaluation will continue to be made in the adjudication of the Application for Permanent Employment Certification.

June 21, 2012

(Emphasis added in NPWC’s response.)

We will gladly clarify or provide additional information in support of these comments and thank DOL for its consideration.

Sincerely,

GOEL & ANDERSON, LLC

* OFLC Frequently Asked Questions and Answers. <https://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#q!574>. Enter keywords “PERM Prevailing Wages,” then select Program Type: Prevailing Wage (PERM, H-2B, H-1B, H-1B1, and E-3), and click *Search*.

