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# OFLC Stakeholder Notice Regarding Handling of Applications and Responses After Government Shutdown

## OFLC Stakeholder Notice Regarding Handling of Applications and Responses After Government Shutdown

[1]

Submitted by Chief Editor on Nov 4th 2013

OFLC appreciates the challenges the regulated community has experienced as a result of the lapse in appropriations, which resulted in the cessation of the operation of OFLC's electronic systems, and further resulted in a backlog of documents submitted to OFLC during that period by mail, hand-delivery, or email. As a result of the government shutdown, OFLC is implementing the following temporary changes to its standard procedures related to document timeliness:

1. **Submissions mailed, couriered, or emailed to OFLC and received between October 1 and October 18:**

Submissions are applications that the National Processing Centers (Chicago, Atlanta, or Prevailing Wage Center) could not receive electronically through the iCERT system during the shutdown, and were mailed, delivered by private courier (Federal Express, etc.) or emailed to OFLC. These include Applications for Permanent Employment Certification (PERM, ETA 9089), Applications for Temporary Employment Certification (H-2B, H-2A ETA 9142), and Applications for Prevailing Wage Determinations (ETA 9141).

Because of the backlog in submissions that were mailed, delivered or emailed to OFLC for shutdown-related reasons or otherwise, **all submissions received by OFLC between October 1 and October 18 will be considered received on October 18**. For example, a PERM application mailed to the Atlanta National Processing Center on October 5 will be given a receipt date of October 18, 2013. If an October 18 receipt date on an application would otherwise render out-of-date the recruitment or prevailing wage determination used for the application, the application will be deemed to have been timely filed for the purpose of the recruitment or the prevailing wage determination.

2. **PERM and H-2B submissions with time-sensitive recruitment or prevailing wage determinations NOT mailed or delivered to OFLC during the shutdown:**

Employers that decided not to mail or deliver PERM or H-2B submissions to OFLC because of the shutdown may now have recruitment or prevailing wage determinations that are out-of-date because of the shutdown-related delay. These employers may now mail or file electronically in PERM or iCERT (see note below about iCERT filing) submissions for receipt **NO LATER THAN November 14, 2013**. This accommodation applies only to PERM and H-2B applications that had timely recruitment or prevailing wage determinations during the shutdown period and are now unsuitable for filing due to expired recruitment or prevailing wage determinations. Employers with time-sensitive recruitment or prevailing wage determinations who delayed their filings until after October 18, 2013 will be deemed to have been timely filed for the purpose of the recruitment or the prevailing wage determination. For mailed submissions, please include a pink sheet of paper as a cover page for the submission and label that cover sheet as a "shutdown pre-empted submission" so that it is properly handled in our mailrooms.

**Note for PERM and H-2B iCERT filers:** PERM and H-2B applications with out-of-date recruitment or prevailing wage determinations may also be submitted electronically. The system will warn the user that the application contains information that will cause the application to be denied, but such an application will not be denied for this reason. As with PERM and H-2B submissions with out-of-date recruitment or prevailing wage determinations that are mailed, no application with expired recruitment or expired prevailing wage determinations will be accepted after November 14, 2013.

3. **Employer responses to OFLC directives that were due between October 1 and October 18, 2013 but were NOT transmitted to OFLC:**

In the H-2A, H-2B and PERM programs, some employers may have been directed by OFLC to respond by a deadline that occurred from October 1, 2013 to October 18, 2013. **Responses that were due to the OFLC during this period but NOT transmitted will have their due dates extended to November 14, 2013.** The deadline extension applies to the following documents in the following programs:

**For Prevailing Wage Determinations:**

Responses to Requests For Information

**In H-2A and H-2B:**

- Responses to Notices of Deficiencies or Requests for Further Information
- Audit Responses
- Responses to Notices of Intent to Debar

**In PERM:**

- Responses to information requests related to employer sponsorship
- Audit/AAIR responses
- Responses to Requests For Information
- Responses to requests for review of advertisements in supervised recruitment
- Responses to supervised recruitment (Recruitment Instructions Letters)
- Responses to Notices of Intent to Revoke or to Debar

4. **Employer responses to OFLC directives that were due between October 1 and October 18, 2013 and were transmitted to OFLC during that period:**

Responses to OFLC directives in the H-2A, H-2B and PERM programs (those noted in no. 3 above) that were due between October 1 and October 18, 2013, and were transmitted via mail, hand-delivery or email during that time will be **considered received on October 18 and timely**.

If an applicant transmitted an application or response by mail, hand-delivery or email between October 1 and October 18, 2013, and the employer has not received notice that the transmission was undeliverable, the employer should **NOT** re-submit it.

Employers are reminded that if they view a PERM application as erroneously denied during this period based on out-of-date recruitment, they may submit the request for reconsideration to the attention of the government error queue.

None of the temporary procedures established in this notice apply to appeals to the BALCA. Employers are encouraged to contact the BALCA for information related to deadlines applicable to appeals.

### **Nonimmigrant Visas:**

H Visa [2]

### **Agency:**

OFLC [3]

DOL [4]

### **Green Card:**

PERM - Labor Certification [5]

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