

# H-2B Temporary Labor Certification Program

## Stakeholder Webinar

*February 22, 2016*

Office of Foreign Labor Certification  
Employment and Training Administration  
U.S. Department of Labor

## Webinar Briefing Outline

- **Background**
- **Briefing Section I**  
*Backlog Reduction Initiative*  
*Use of Emergency Procedures*
- **Briefing Section II**  
*Public Disclosure Initiative*  
*H-2B Case Processing Times*

## Background

- Employers are experiencing significant delays in processing H-2B applications due to several factors
  1. Temporary cessation in processing for 17 days to implement changes mandated by the 2016 DOL Appropriations Act (*enacted Dec. 18, 2015*)
  2. Simultaneous increase in applications filed between Dec. 26, 2015 through Jan. 15, 2016 (*2,420 filed this year vs. 1,087 last year*)
  3. iCERT system network “slowness” during Jan. 2016 resulting from implementation of required IT security requirements

## Background

- Impact of these factors . . .
  - Created a significant and temporary backlog of pending H-2B applications
  - Impaired OFLC staff from performing timely case actions within regulatory timeframes
  - Negatively impacted some employers from hiring foreign workers when needed
  - Created uncertainty and instability for small businesses that depend on a temporary workforce for the Spring-Summer seasons



## Briefing Section I

### **Backlog Reduction Initiative** *Use of Emergency Procedures*

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Background

- OFLC considers the factors creating these significant processing delays and backlogs to be unforeseen events wholly outside the employers' control
- Factors constitute “good and substantial” cause for employers to request emergency procedures under 20 CFR 655.17 of their currently pending H-2B application
- Providing employers with an opportunity to use emergency procedures can help address the current backlog of H-2B applications

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Eligibility Criteria

1. Employer has a *pending* H-2B application with the Chicago NPC, including a valid PWD obtained under 20 CFR 655.10 filed with the H-2B application; **AND**
2. Employer's pending application meets one of the following conditions:
  - A. Has not received an initial Notice of Acceptance (NOA) or Deficiency (NOD) within the 7-business-day timeframe of the application filing date; **OR**
  - B. Has received a NOD beyond the 7-business-day timeframe and has not yet received a NOA (*i.e., authorizing recruitment of U.S. workers*)

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Examples of Employers NOT Eligible

- Employer has a pending H-2B application and received a *timely* NOD
- Employer has a pending H-2B application and already received a NOA authorizing recruitment
- Employer has an application that is not in a pending status (e.g., withdrawn, denied)

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Timeframe for Submitting Requests

- This emergency procedures initiative is time limited
  - Begins Monday, February 22, 2016 (at 12:01AM)
  - Ends Friday, April 1, 2016 (at 12:00 midnight)
- OFLC reserves the right to extend this initiative beyond April 1 to deal with the current backlog situation
- To process requests in an equitable and efficient manner, OFLC has established a schedule for employers to submit requests to the Chicago NPC

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Timeframe for Submitting Requests

H-2B Application Filing Week with Chicago NPC	Timeframe for Submitting Requests to Chicago NPC
January 3 – January 16	February 22 – February 28
January 17 – January 30	February 29 – March 6
January 31 – February 13	March 7 – March 13
February 14 – February 27	March 14 – March 20
February 28 – March 12	March 21 – March 27
March 13 – April 1	March 28 – April 1

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Step 1: Eligible Employer Submits Request

- No need to formally submit a new H-2B application or job order to use these emergency procedures
- However, employer must positively request that its pending H-2B application and job order be “incorporated by reference” into a request for emergency procedures and that it is withdrawing its prior application (*although the pending application will remain in the processing queue*)
- Employer may submit the request to the Chicago NPC via email, fax, or U.S. mail

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Step 1: Eligible Employer Submits Request

**Email:** [ER.H2B.Chicago@dol.gov](mailto:ER.H2B.Chicago@dol.gov)

Include the iCERT Case Number, Application Filing Date, and the words “H-2B Emergency Request” in email subject line

***DO NOT USE the TLC.Chicago@dol.gov email address***

**Fax:** (312) 886-1688

ATTN: H-2B Emergency Request

**US Mail:** U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, Chicago National Processing Center, 11 West Quincy Court Chicago, IL 60604-2105, ATTN: H-2B Request for Emergency Handling

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Step 1: Eligible Employer Submits Request

Dear Certifying Officer,

In accordance with guidance published by the Department of Labor's Office of Foreign Labor Certification (OFLC) on February 19, 2016, I am requesting emergency treatment under 20 CFR 655.17. The Chicago National Processing Center's current application backlog, which has been generated by unforeseen events wholly outside of my control, including unforeseen market conditions, constitutes good and substantial cause for the emergency treatment of my application. My application is eligible for emergency treatment under 20 CFR 655.17 based on the criteria for eligibility set by OFLC. I request that pursuant to 20 CFR 655.17(b), my previously submitted application and proposed job order be incorporated by reference into this request for emergency treatment, so that it is unnecessary for me to file a separate new application or proposed job order. I am also withdrawing my previous application in light of this request for emergency treatment, which incorporates my prior application and proposed job order and thus replaces my previous application. I understand that my place in the application queue will continue to be determined by my original application date.

Through this request, I understand that I may be granted permission to recruit U.S. workers on an expedited basis, which, if my application otherwise meets the criteria for acceptance, will be set forth in the Notice of Acceptance issued by the Certifying Officer. This request for emergency treatment is made with respect to the following H-2B application(s):

Case Number:                      Date Filed:                      Employer Name:                      Start Date of Need:

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Step 2: Chicago NPC Processes Employer Request

- Chicago NPC support team will receive and process each request to verify eligibility
- Ineligible employers will receive notification that their request was not approved
- Eligible employers will receive a standard approval notification that should be retained as documentation with its application
- A copy of the employer's request and approval notification will be retained in the iCERT System administrative case file

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Step 2: Chicago NPC Processes Employer Request

- Employer's new pending H-2B application will remain in the original queue based on the date the original application was received; no special processing queue
- Chicago NPC Analysts will process the emergency application in a manner consistent with the handling of other emergency applications (*i.e., in the order the application was received into the Chicago NPC*)
- Chicago NPC Analysts will perform a review of the pending H-2B application in accordance with standard operating procedures

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Step 2: Chicago NPC Processes Employer Request

- If the application and/or job order does not meet program requirements, a NOD will be issued
- If the application and/or job order meets program requirements, a NOA will be issued containing the following expedited recruitment instructions:
  1. Place a job order with the SWA for a period of not less than 10 calendar days; and
  2. Place one (1) newspaper advertisement, which may be published on any day of the week, meeting the advertising requirements of 20 CFR 655.41, during the period of time the SWA is actively circulating the job order for recruitment

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Step 2: Chicago NPC Processes Employer Request

- Expedited recruitment instructions are similar to those permitted during the transition period established to implement the H-2B Interim Final Rule (*April 29, 2015*)
- Recruitment of U.S. workers using emergency procedures must be authorized through the issuance of a NOA by the Chicago NPC
- Employers are not permitted to initiate recruitment of U.S. workers prior to the issuance of NOA
- Employer must conduct the recruitment steps within 14 calendar days from the date of the NOA

## Backlog Reduction Initiative

### *Use of Emergency Procedures (20 CFR 655.17)*

#### Step 3: Employer Completes Expedited Recruitment

- Recruitment report may not be submitted until the employer-conducted recruitment is complete and the SWA job order is active for a period of not less than 10 calendar days
- Recruitment reports should be submitted via email directly to the Chicago NPC at [TLC.Chicago@dol.gov](mailto:TLC.Chicago@dol.gov) with the subject "ATTN. H-2B: [Case Number] Recruitment Report"
- Chicago NPC Analysts will review all documentation and make a final determination on the application as required by 20 CFR 655.50



## Briefing Section II

### **Public Disclosure Initiative** *H-2B Case Processing Times*

## **Public Disclosure Initiative**

### *H-2B Case Processing Times*

- Current backlog situation has created uncertainty for small businesses that depend on a temporary workforce for the Spring-Summer seasons
- We recognize that it is difficult for employers to find answers to questions such as . . .
  - What is the size of the current backlog of H-2B applications requiring an initial decision?
  - Which calendar week is the Chicago NPC working pending cases and what progress is being made?
  - If I get a deficiency notice, how long does it typically take to complete the entire process?

## Public Disclosure Initiative

### H-2B Case Processing Times

- To address this concern, OFLC began disclosing case processing information related to the current backlog situation on Feb. 19, 2016

Location: iCERT System home page  
<http://icert.doleta.gov>

Update Schedule: At least weekly (by COB Mondays)

- Data is based on transactional H-2B records contained within the iCERT System, which is routinely used to disclose quarterly and annual performance information
- Reliability and accuracy of the data is very good

## Public Disclosure Initiative

### H-2B Case Processing Times

The screenshot shows the iCERT Visa Portal System interface. At the top, there is a red navigation bar with the United States Department of Labor logo and text: "UNITED STATES DEPARTMENT OF LABOR Employment & Training Administration". To the right of the logo are links for "A to Z | Site Map | FAQs | Forms | About DOL | Contact Us | Español" and a search box labeled "Enter Search Term". Below the navigation bar is a secondary menu with links for "ETA Home", "Find Job & Career Info", "Business & Industry", "Workforce Professionals", "Grants & Contracts", "TAA Program", "Foreign Labor Certification", "Performance & Results", and "Regions & States".

The main content area is titled "Welcome to the iCERT Visa Portal System". It features a login section with "Username:" and "Password:" input fields, a "Log In" button, and links for "New to the iCERT System? Create Your Portal Account Today" and "Forgot your username or password? Click Here". To the right of the login section is a "Labor Certification REGISTRY" graphic.

Below the login section is a "Alerts" section with tabs for "PERM & PW Processing Times", "Forms", "User Guides", and "Legacy Accounts". The "PERM & PW Processing Times" tab is active, displaying "H-2B Case Processing Information". This section includes the text: "To help employers better understand the current processing timeframes for H-2B applications at the Chicago NPC, the OFLC is disclosing case processing information through its iCERT System, which w... More". It also shows "Posted Date: 02/19/2016" and "Visa Classification: 'H2B'". Below this is a table with two columns: "RELEVANT DOCUMENT(S)" and "RELEVANT URL LINK(S)". The first row shows "H-2B Case-..." under the first column and "None" under the second.

To the right of the "H-2B Case Processing Information" section is an "ICERT CASE STATUS CHECK" section with the text: "Enter up to 30 case numbers, one per line (e.g., G-100-12345-123456)" and a "Case Numbers" input field. Below the input field is a "Check Status" button. At the bottom right is a "FIND CURRENT FAQs" section with the text: "To find the latest Frequently Asked Questions (FAQs) issued by the OFLC, Click Here".

## Public Disclosure Initiative

### H-2B Case Processing Times

#### I. Issuance of Initial Notices of Acceptance (NOA) or Deficiency (NOD)

Case Receipt Week	Total Cases Submitted*	Total Cases Issued First NOA or NOD	Percent Receipt Week Completed
<b>MOST RECENT WEEK COMPLETED</b>			
Dec 27 – Jan 2	643	643	100%
<b>CURRENT PROCESSING STATUS</b>			
Jan 3 – Jan 9	1,078	747	69%
<b>A LOOK AT WHAT'S AHEAD – NEXT 4 WEEKS</b>			
Jan 10 - Jan 16	572	N/A	N/A
Jan 17 - Jan 23	338	N/A	N/A
Jan 24 - Jan 30	220	N/A	N/A
Jan 31 - Feb 6	322	N/A	N/A

\* Figures may change slightly because applications submitted and withdrawn are excluded

## Public Disclosure Initiative

### H-2B Case Processing Times

#### II. Average Case Processing Times (measured in calendar days)

Processing Activity	Current Status
Average Number of Days to Process Cases with No Deficiencies (cumulative over the last 2 weeks)	56 calendar days
Average Number of Days to Process Cases with Deficiencies (cumulative over the last 2 weeks)	69 calendar days

#### **Important Notes:**

- Average processing times are measured as the total number of calendar days from Case Receipt Date to Final Determination Date
- A “rolling 2-week” average is used in the calculations on applications that are certified (full or partial) and denied
- Calculations exclude withdrawn cases
- Cycle time measures represent a “typical” or average case; actual processing times may vary depending the material facts or circumstances of the case

## Public Disclosure Initiative

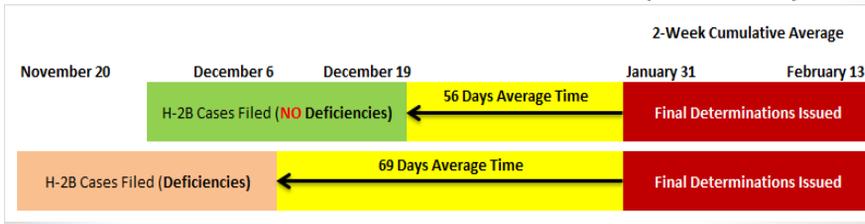
### H-2B Case Processing Times

#### A WORD OF CAUTION!

- Periods of unanticipated disruptions or delays in processing will adversely influence the calculation of averages
- The data must be considered within the context of *when* the cases were initially filed with the Chicago NPC

For example:

- If the current 2-week average is based on final determinations issued Jan. 31 to Feb. 13, 2016, it means most cases were filed some time between late Nov. to Dec. 19, 2015 (*shown below*)



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