

Frequently Asked Questions on Non-Receipt of 45-Day Letters and on the Process for Addressing Related Requests to Reopen

The Office of Foreign Labor Certification (OFLC) is aware that some employers or their legal representatives who have received “case closed” letters may not have previously received a “45-day” Center Receipt Notification Letter (“45-day letter”) from the Backlog Elimination Center (BEC) processing their respective cases. In additional instances, cases may have been closed after employers or their representatives responded timely to a 45-day letter.

In the backlog, once the vital information in an application is fully entered into the OFLC database, a 45-day letter is the precursor to further processing of that application; the letter functions both as notice to the employer that its application has come up for full processing in the queue, and as a request for confirmation from the employer or its representative that the employer wishes to continue with the case. In cases where the letter attaches a list of corrections or deficiencies in the application, an employer must correct or address these before processing can continue. When a BEC does not receive a response to its 45-day letter, or this response is incomplete in responding to corrections, it closes the case

The process and remedy described below are available to employers who believe a case has been closed due to issues surrounding the receipt of or response to 45-day letters, including:

- Employers who did not receive a 45-day letter after one was issued by a Backlog Elimination Center (BEC); and
- Employers who believe a case was closed after a timely and complete response to a 45-day letter. This includes employers advised of closure through either a case closure letter or a screenshot.

This process is not available for applications closed on grounds unrelated to non-receipt of or timely response to a 45-day letter, including applications withdrawn by an employer or its representative; applications for which the response to the 45-day letter was untimely or insufficient; or cases closed for late or insufficient response to any other correspondence or requests other than a 45-day letter.

This process is also not an appropriate mechanism for employers, legal representatives, or workers named on an application to inquire about case status or issues not related to case closure. Under any of these additional circumstances, individuals are asked to make use of the more appropriate processes and remedies already in existence at the BECs.

What should I do if I received a “case closed” letter but no 45-day Center Receipt Notification Letter? What if I responded timely to a 45-day letter but my case was subsequently closed? How can I notify the Backlog Elimination Center that I believe my case was erroneously closed and request the Center to reopen the case?

Employers who believe one or more of their cases has been closed for reasons covered by this FAQ, and who wish to request those cases be reopened, must take the following steps:

1. E-mail the BEC where the closed case was pending, the Dallas BEC at reopenrequest@dal.dflc.us or the Philadelphia BEC at reopenrequest@phi.dflc.us.
2. The subject line of the e-mail should read "Request to Reopen".
3. Please limit each e-mail request to one application or case number; the nature of the process developed to respond to these requests limits to one the case numbers that can be addressed as a result of any inquiry. Employers with requests for multiple reopenings may submit as many e-mails as appropriate.
4. The body of the e-mail must include the following information, to allow the BEC to locate, reopen, and prepare to resume processing the appropriate case:
 - Name of employer and correct current address.
 - Correct ETA case number, not a case number from a state workforce agency; alternatively, the e-mail should explain why an ETA case number cannot be provided.
 - Correct current contact information for the employer's attorney or agent (including name, address, and e-mail address).
 - Name of the alien named on the application.

The body of the e-mail must describe the reason(s) for the request, that is, why the employer believes the case was closed improperly, such as

- "I am the employer/attorney on the application described below. I did not receive a 45-day letter but subsequently received a case closure letter."
- "I am the employer/attorney on the application described below. I received neither a 45-day letter nor a case closure letter, but the H-1B mailbox indicates my case has been closed."
- "I am the employer/attorney on the application described below. I received and responded timely to a 45-day letter but subsequently received a case closure letter."

What can I expect in response to my request to reopen?

Upon each Center's receipt of the employer or representative's e-mail request, the Center will issue a standardized, automated electronic notification that the Center has received the request. Response time will vary, depending on volume

of requests received through this electronic mailbox. The employer will receive a second e-mail informing them of the BEC's determination to either reopen the case or keep the case closed. If the employer's request is approved and the case reopened, this second e-mail will include a screenshot of the employer's case reflecting the case is active. If an application is incomplete, the second e-mail will also include the 45-day letter originally sent to the employer and a corrections list. Employers and their representatives will not be receiving a separate 45-day letter or corrections letter by mail, and should treat these documents as requests for action.

Employers should review the screenshot to ensure the BEC has reopened the correct case. If the screenshot shows the appropriate application, the employer will be able to confirm that its case is open and being processed because the "case status" section will not say "closed", but rather another phase of the process.

How do I respond to the second e-mail from the BEC, containing the screenshot and other information if relevant?

The BEC will treat the employer's original electronic request to reopen as the equivalent of a confirmation (in response to a 45-day letter) that the employer wishes to continue processing of a case and, if no additional changes or information are needed, will continue processing the case in the appropriate order.

If an application was deemed incomplete at the time the BEC issued the original 45-day letter, and the attachments to the electronic response to the employer includes a corrections letter requests the curing of deficiencies, or any additional information, then – as with any 45-day letter – the employer or its representative must provide the additional information within 45 days to prevent further delays or re-closure of the application. Employers must submit such responses in hard copy, through the mail.

May I contact the BECs by regular mail instead of email?

No, the request to re-open a case must come into the centers electronically.

Who may make the request to re-open a case if we believe it was improperly closed?

Only the employer or attorney of record may make the request to re-open a case. A request from an alien will not be addressed.

Do I have to submit my request to re-open a case within a certain time period?

Yes, to be considered for reopening, all requests must be received by a BEC within 30 days of the publication of the policy announcement or within 30-days of the receipt of a case closed letter, whichever is later.

To whom will responses be sent?

The email responses will only be sent to the employer or attorney who initiated the request.

What do I do if I have not received a “45-day” letter by July 21, 2006?

If an employer does not receive a “45-day” letter by July 21, 2006, email the appropriate Backlog Elimination Center at nobecontact@dal.dflc.us for the Dallas BEC or nobecontact@phi.dflc.us for the Philadelphia BEC. The email must contain the following information:

- A. Attorney name and address
- B. Employer’s name and address
- C. Alien’s name and address
- D. Priority Date
- E. State or Regional location and/or number where case was originally filed

OFLC will publish its policy regarding such cases under separate cover.