



May 25, 2023

Brian D. Pasternak  
Administrator, Office of Foreign Labor Certification  
Employment and Training Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Room N-5311  
Washington, DC 20210

**Re: Office of Foreign Labor Certification's Planned Implementation of Form ETA-9089, Application for Permanent Employment Certification, into DOL's Foreign Labor Application Gateway (FLAG) System**

Dear Administrator Pasternak:

The U.S. Chamber of Commerce is very concerned about the manner in which DOL's Office of Foreign Labor Certification ("OFLC") intends to implement the rollout of its revised ETA-9089, Application for Permanent Employment Certification, into the agency's Foreign Labor Application Gateway (FLAG) system. We appreciated the Department's decision to delay the ETA-9089 implementation earlier this month but given the growing chorus of concerns from many American businesses over this issue, it has become clear to us that more time is needed before this policy change is effectuated. More time is needed not only for DOL to address problems with these changes, but also for stakeholders to provide meaningful feedback to the Department in order to ensure a smooth transition of this form into the FLAG system. For the reasons set forth below, we urge the Department to further delay the implementation of Form ETA-9089 into the FLAG system for the remainder of the current fiscal year.

American businesses appreciate the Department's desire to use the FLAG system to create new processing efficiencies for the employment-based permanent residency applications. Many Chamber members have used the FLAG system for other types of foreign labor certifications (e.g. H-2A and H-2B visas) and they have had positive experiences utilizing the system for those purposes. Unfortunately, many businesses have become very concerned with the implementation of this form into the FLAG system because there has been a lack of significant stakeholder engagement with respect to these changes.

DOL made the Form ETA-9089 available for stakeholders to review in the FLAG system approximately one month ago and the FLAG form is significantly different from the currently available Form ETA-9089 currently being utilized by our members. These differences concern not only how the form is structured, but also how stakeholders must properly complete the form to obtain critically needed permanent resident employees.

The most commonly cited concern is the way in which the FLAG system's ETA-9089 will require stakeholders to submit the prevailing wage determination (PWD) information into the online system. The FLAG system's ETA-9089 form does not allow the user to provide DOL with previously-filed PWDs to the online form, nor does it allow companies to access a PWD issued to a company's previous law firm. In addition, the FLAG system does not always capture the accurate wage for the PWD. These design flaws do not address the problems associated with the Department's inefficiencies; they merely create new ones that will contribute to the already growing processing backlogs at the Department. These PWD-related issues could prove fatal to the applications of American companies that are struggling to attract and retain critical talent and must be addressed before the FLAG system's usage for filing the ETA-9089 becomes mandatory.

The FLAG System's ETA-9089 contains many new questions that must be answered by employers, as well as multiple new open text fields and different wording used for both the form's questions and instructions. The systems that most companies use for the PERM process are incompatible with this new FLAG system. These issues raise concerns over the rushed nature of implementing this new form and the likely chaos that it would cause for companies across a host of industries.

If DOL moves ahead with implementing this form change as scheduled, the Department would only undermine its goals of streamlining the PERM adjudication process. Entities that attempt to use the FLAG ETA-9089 form will almost certainly run into all sorts of problems trying to acclimate to a brand-new system. On the other hand, companies that choose to avoid the headaches with the new FLAG system's ETA-9089 will choose to file their PERM cases by mail, which will only serve to slow down DOL's processing efficiency with having to input these forms that are filled out by hand into the Department's systems.

Based on feedback provided by members who were able to see these form modules from DOL, the Department has provided an insufficient level of notice on the significant changes it is asking businesses to implement. In addition, the webinars the Department made available to the public provide no meaningful opportunities for employers to comment on these proposed changes. Unless the Department delays the implementation of this rule into the FLAG system, Chamber members will not be

properly apprised of their new obligations under this radically different process, nor will they have the ability to provide meaningful feedback on these changes.

At a time when American companies are having significant difficulties in meeting their workforce needs, DOL should not be embarking upon these types of significant form changes without allowing businesses to become acquainted with all the changes associated with filing out the ETA-9089 on the FLAG system. Delaying implementation for the remainder of the fiscal year will provide DOL with the ability to address the issues that have been cited and to provide interested stakeholders with the opportunity to learn how to use this system before its usage becomes mandatory.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Baselice', with a large, sweeping flourish extending to the left.

Jonathan Baselice  
Vice President, Immigration Policy  
U.S. Chamber of Commerce