

FAQs Round 10

Notice of Filing

[Does the language on the electronic in-house media Notice of Filing need to be exactly the same as the language on the physical in-house Notice of Filing?](#)

The regulations require that the employer publish the notice internally using in-house media--whether electronic or print--in accordance with the normal internal procedures used by the employer to notify its employees of employment opportunities in the occupation in question. The language should give sufficient notice to interested persons of the employer's having filed an application for permanent alien labor certification for the relevant job opportunity. It is not required to mirror, word for word, the physical posting. In most cases, the physical posting language will be the most efficient way to electronically post the Notice of Filing; in others, the software program used to create the electronic in-house posting may be unable to accept all of the language used in the physical Notice of Filing. In every case, the Notice of Filing that is posted to the employer's in-house media must state the rate of pay and apprise the reader that any person may provide documentary evidence bearing on the application to the Certifying Officer. If there is insufficient space to include the Certifying Officer's address, then information as to where the address can be found must be provided.

Advertisement Content

[Does the advertisement have to contain the so-called "Kellogg" language where the application requires it to be used on the application?](#)

Where the "Kellogg" language is required by regulation to appear on the application, it is not required to appear in the advertisements used to notify potential applications of the employment opportunity. However, the placement of the language on the application is simply a mechanism to reflect compliance with a substantive, underlying requirement of the program. Therefore, if during an audit or at another point in the review of the application it becomes apparent that one or more U.S. workers with a suitable combination of education, training or experience were rejected, the application will be denied, whether or not the Kellogg language appears in the application.

[Can jobs requiring experience be advertised through an on-campus placement office?](#)

For professional positions, the regulations at 20 CFR 656.17(e)(1)(ii)(D) permit, as an additional recruitment step, optional pre-filing recruitment at or through a college or university placement office. The preamble to the regulation (69 Fed. Reg. 77325, 77345 (Dec. 27, 2004)) assumed that this option would be used only if the employment opportunity requires a degree but no experience. The Department has examined this policy in light of the fact that many college and university placement offices maintain job listings that are used by alumni with experience as well as recent college or university graduates. Consequently, the job opportunities requiring experience are included in the listings making campus placement offices a viable recruitment source for professional job requiring experience as well as not requiring

experience. As a result, the Department is clarifying its position and permitting this option to be used for employment opportunities even if the job requires experience in addition to the degree.

Is the employer required to include the statement, "any suitable combination of experience of education, training, or experience is acceptable" on the application when the employer requires experience in an alternate occupation and not in the job offered?

No, the employer is not required to include the statement on the application if the employer has indicated it requires experience in an alternate occupation and not in the job offered. The "any suitable combination of experience of education, training, or experience is acceptable" statement is only required where there are primary as well as alternative requirements and then only if the alien is already employed by the employer and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's "alternative" as opposed to its "primary" requirements.

Audit

Can the employer submit alternative evidence in the absence of primary evidence in response to an audit request?

Under the procedures outlined in 20 CFR 656.20, in response to an audit, employers must present the required documentation. The documentary evidence the regulations require the employer to maintain in its compliance file is what is sought in an audit request. For example, the use of an employer's web site is to be documented by dated copies of pages from that site advertising the occupation involved in the application. However, if the employer does not have the primary evidence suggested by the regulation, it may attempt to satisfy the request through the use of alternative evidence not specifically listed in 656.17. In the case of the employer's web site, in the absence of a copy of the posting, the employer may provide an affidavit from the official within the employer's organization responsible for the posting of such occupations on the web site attesting, under penalty of perjury, to the posting of the job. Whether such evidence will be accepted depends upon the nature of the submission and the presence of other primary documentation. The more primary evidence is not provided, the more likely the audit response will be found to be non-responsive.

The United States Citizenship and Immigration Services (USCIS) has posted a sample of a Notice of Filing for a Schedule A permanent labor certification on their website. Will the Department of Labor accept/honor such a posting as sufficient proof of the Notice of Filing for a non-Schedule A permanent labor certification?

An employer may use the posting sample of a Notice of Filing issued by the USCIS and such a posting will be honored by the Department of Labor (DOL) provided that the Notice of Filing includes the employer's name when filing under the basic labor certification process. DOL will honor the use of the sample form, but is not endorsing or requiring its use. Employers may use other forms, as long as they comply with the PERM regulation. Please note that, while the USCIS sample does not include an employer name field, the Notice must contain the name of the employer if the application is filed under 20 CFR 656.17.

From previous "approved" FAQ drafts:

Advertisement Content

After completing our recruitment, but before filing the ETA Form 9089, our company's name was changed after it was wholly acquired by another company. Does the company name used in the advertisements used for recruitment have to match the company name used on the ETA Form 9089?

The employer must conduct recruitment using its legal name at the time of the recruitment. However, an Application for Permanent Employment Certification (ETA Form 9089) must be filed in the name of the employer's legal name at the time of submission. If a merger, acquisition, or any other corporate change in ownership occurs between the time of recruitment and the time of submission, resulting in a disparity between the employer's name shown on the advertising used to recruit for a job opportunity and the employer's name on the submitted ETA Form 9089, the employer must be prepared to provide documentation -- in the event of an audit -- proving that it is the successor in interest, a determination made based on the totality of the circumstances, including whether the current employer has assumed the assets and liabilities of the former entity with respect to the job opportunity.