



GMS Flash Alert

Immigration Edition

2023-118 | June 8, 2023



United States – New PERM Application Process Effective June 1

The U.S. Department of Labor (DOL) transitioned its PERM application filing process from its legacy PERM portal to [the Foreign Labor Application Gateway \(FLAG\) system](#) as of June 1, 2023. Following this transition, all PERM labor certification applications must be submitted through the FLAG system using a new version of the Form ETA 9089, *Application for Permanent Employment Certification*.¹ All PERM applications submitted using the legacy portal will continue to be processed by the DOL through that portal, and employers with pending applications in the legacy portal may respond to audit requests or requests for information, withdraw applications, request reconsideration or appeal, and continue to use the Help Desk Inquiry system on the legacy portal.²

WHY THIS MATTERS

Beginning June 1, 2023, employers submitting PERM labor certification applications for foreign worker employees must submit the applications through the FLAG system using the new version of the Form ETA 9089, and ensure that all additional information fields required on the new Form ETA 9089 are completed prior to submission. Although the legacy PERM portal was retired at 7:00 pm EDT on May 31, 2023, employers should continue to monitor their accounts in the legacy portal if they continue to have applications pending in the legacy portal. The DOL will continue to process PERM applications submitted through the legacy portal using that portal, and any future case actions or requests relating to those applications must be made through the legacy portal.

Background

The Office of Foreign Labor Certification (OFLC) of the DOL initially announced that it would be transitioning PERM application filings to the FLAG system as of May 16, 2023. In preparation for the transition, the OFLC conducted two webinars on April 19 and April 20, 2023 to educate stakeholders on the new version of the PERM form and the FLAG system filing process.³

The OFLC subsequently announced on May 11, 2023, that the transition to the new FLAG-based PERM application process was postponed to June 1, 2023.⁴ The OFLC stopped accepting applications in the legacy PERM portal after 6:59

pm EDT on May 31, 2023, although mailed-in applications post-marked on or before May 31, 2023 continued to be accepted in the legacy system.⁵ As of June 1, 2023, all PERM applications must be submitted through the FLAG system using the new version of the Form ETA 9089. Those with pending applications in the legacy PERM portal, however, may still upload responsive documents to audit requests or requests for information, withdraw applications, request reconsideration or appeal, and use the Help Desk Inquiry system on the legacy PERM portal as normal.⁶

The OFLC indicated that in response to stakeholder requests, the agency used the delay in implementing the new FLAG-based PERM application process to establish procedures that allow employers to link Prevailing Wage Determinations to a PERM application where the employer no longer has access to the FLAG account from which the Prevailing Wage Request was submitted.⁷ Although this feature was not available when the new FLAG-based PERM application process launched on June 1, 2023, it is now available in the FLAG system.

The Revised FLAG-Based PERM Application Form

With the new FLAG-based PERM application process, the Form ETA 9089 will be auto-populated with information contained in the Prevailing Wage Determination issued by the DOL for the specific PERM application. Although some of the auto-populated information may be updated at the PERM application filing stage, OFLC has advised that modifying fields imported from the Prevailing Wage Determination may lead to delays in the processing of the PERM application.

The new PERM application form also includes additional fields requiring employers to provide more detailed information in key areas, including the following:

- Additional worksites, roving, and telecommuting requirements;
- The number of company employees in the area of intended employment;
- Additional information on the wage and benefits associated with the job opportunity;
- Expanded details on the foreign worker's qualifications; and
- Business necessity justification for job requirements that may be considered by the DOL as beyond those normally required for the occupation.

OFLC indicated that the new FLAG-based PERM application process and the new Form ETA 9089 were designed to streamline the PERM process, standardize information and data collection, and promote greater efficiency and transparency into OFLC's review of PERM applications.⁸

KPMG INSIGHTS

The additional information fields on the new Form ETA 9089 will likely increase the time required to prepare and file a PERM application with the DOL. As such, employers are advised to work closely with immigration counsel to allocate ample time for the preparation, review, and submission of PERM applications using the new FLAG system. Additionally, while the new PERM application process and the new Form ETA 9089 were designed to streamline the PERM process, employers should expect technical challenges in the initial stages of the transition to the FLAG system.

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

- 1 See Department of Labor, [OFLC announces case submission for the Form ETA 9089 for PERM in FLAG on June 1, 2023](#) (May 26, 2023).
- 2 *Ibid.*
- 3 See presentation materials for the OFLC's Public Stakeholder Webinar [here](#), and the recording of OFLC's Stakeholder Technical Webinar on PERM Modernization [here](#).
- 4 See Department of Labor, [Office of Foreign Labor Certification Postpones Date for Submitting Revised PERM and CW-1 Forms in the Foreign Labor Application Gateway to June 1, 2023](#) (May 11, 2023).
- 5 *Supra* note 1.
- 6 *Ibid.*
- 7 *Ibid.*
- 8 See OFLC's Public Stakeholder Webinar materials [here](#).

* * * *

Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or the following professional with the KPMG International member firm in Canada:



Sylvia Yong

Manager / Attorney, U.S. Immigration

KPMG Law LLP – Tax + Immigration, Canada

Tel. +1 416-943-7894

sylviayong@kpmg.ca

** Please note the KPMG International member firm in the United States does not provide immigration or labour law services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.*

The information contained in this newsletter was submitted by the KPMG International member firm in Canada.

© 2023 KPMG LLP, an Ontario limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



© 2023 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG LLP is the U.S. firm of the KPMG global organization of independent professional services firms providing Audit, Tax and Advisory services. The KPMG global organization operates in 147 countries and territories and has more than 219,000 people working in member firms around the world.

Each KPMG firm is a legally distinct and separate entity and describes itself as such. KPMG International Limited is a private English company limited by guarantee. KPMG International Limited and its related entities do not provide services to clients.

GMS Flash Alert is a publication of the KPMG LLP Washington National Tax practice.