

March 20, 2002

MEMORANDUM FOR: REGIONAL CERTIFYING OFFICERS

FROM: DALE M. ZIEGLER /s/
Chief
Division of Foreign Labor Certification

SUBJECT: Evaluating Reduction in Recruitment (RIR) Requests in an Environment of Increased Layoffs

Background: GAL 01-97, change #1, states that among the factors to be considered by the Certifying Officer in making determinations on RIRs are:

Adequacy of the recruitment conducted by the employer applicant, e.g., newspaper advertising, job fairs, Internet;

Availability of U.S. workers for the occupation involved in the employer's application...

Issue: Recognizing that labor shortages and surpluses vary by regions and states, for purposes of consistency in applying GAL 01-97, change #1, clarification has been requested regarding additional procedures that should be followed by Regional Certifying Officers (CO's) on evaluating RIR requests when available information indicates that there may have been layoffs in the occupation by the employer or layoffs in the occupation in the area of intended employment.

In an effort to provide more definitive guidance, the following standard operating procedures should be followed in the evaluation RIR requests:

1. Criteria for Evaluating RIR Applications:

A. U.S. Worker Availability: In determining whether an RIR should be permitted the CO should assess the availability of U.S. workers. In making that assessment the CO shall:

- Consider recent regional office experience in processing non-RIR cases involving occupations similar to those for which the employer is requesting RIR. E.g., did a market test for similar occupations in the area of intended employment produce qualified U.S. worker(s) for those occupations?
- Contact State agencies to obtain information on the labor market. Such information may be based, for example, on the State's recent experience in processing cases involving

occupations involved in the employer's application, type of workers registered for unemployment benefits, type of workers registered in the states' job bank, or current labor market studies available from the state labor market information unit.

· Review current relevant articles that may have appeared within the last 6 months in newspapers, trade or professional journals concerning the availability of workers in the occupation in the area of intended employment.

If, after evaluating all of the information obtained the CO is confident qualified U.S. workers may be available for the occupation involved in the RIR, the RIR request should be denied and returned to the state agency for further processing.

B. Establishment of Pattern of Recruitment: The recent change in the economy should not change the established policy set-forth in GAL 01-97, change #1, regarding what is required of an employer applicant to show evidence of a pattern of recruitment for RIR purposes. Specifically, once it has been determined that RIR processing is appropriate for the area of intended employment and the occupation; CO's are reminded that the following, and not more, are required:

- one print advertisement in a newspaper of general circulation or a relevant journal, plus
- enough other activities to show evidence that a pattern of recruitment has been completed to adequately test the labor market for the occupation of the subject application. These may include a combination of:

job order with the state workforce agency

internal company recruitment activities

company and commercial internet web page ads

Community, college or other job fairs

private employment agency

additional print advertisements

In order to clarify the intent of GAL 1-97, Change 1's statement regarding state priority in processing denied RIRs, it is ETA policy that when an RIR is denied the

application shall be returned to the SWA for regular processing in the order of the application's priority date.

2. Layoffs in the Employer-Applicant Firm: If the CO has reason to believe that the employer-applicant firm may have, subsequent to testing the labor market, laid off any workers within the last 6 months, a letter should be sent to the employer-applicant. CO's should state their understanding that the employer has laid off workers who may qualify for the occupation involved in its application and the following information is needed before a determination can be made on the application:

- Within the last 6 months has the [insert name of employer] laid off any workers in the occupation of [insert name of the occupation involved in the application and its DOT code]? If yes, provide the information requested below.

Provide the number of workers that were laid off from the occupation of [insert name of the occupation involved in the application and its DOT code]?

Provide documentation, by geographic area and worker, of the consideration given to the laid off workers for the position for which certification is sought. If any U.S. workers were rejected for the position for which certification is sought, the employer must provide the lawful job related reasons for each worker rejected.

- If the employer responds satisfactorily to the above inquiry concerning the number of workers, the application should be certified.
- If the employer declines to provide the requested information and/or documentation or otherwise does not respond satisfactorily to the letter requesting information about the number of workers laid off and the consideration given to them, a Notice of Findings should be sent to the employer. This will notify the employer of the intention to deny the application if the employer does not respond satisfactorily to the request about the number of workers it laid off and does not satisfactorily document the consideration given to the workers that were laid off, including the lawful job-related reasons for each U.S. worker that was rejected.

3. General Layoffs in the Industry or Occupation in the Area of Intended Employment After Filing the Application: If the Certifying Officer has reason to believe that there have been layoffs by other employers that may involve the occupation involved in the employer-applicant's application subsequent to the test of the labor market, the Certifying Officer should provide the employer with the option of publishing one

additional advertisement consistent with the ad provided in the original RIR application, or requesting that the application be remanded to the state for regular processing. If the employer chooses to run the additional ad, the employer will be instructed that, after allowing a minimum of two weeks for U.S. workers to respond, the employer is to submit a written result of this recruitment effort. This report is to be consistent in form with recruitment results provided in the RIR application. Based on the recruitment results, the CO should approve or deny the RIR, or issue a NOF, as appropriate.

4. Layoffs by the Employer-Applicant Firm, and General Layoffs in the Industry or Occupation in the area of intended employment: If the Certifying Officer has reason to believe that there have been layoffs by the employer-applicant and additionally other employers in the area have laid off workers in the occupation involved in the employer-applicant's application, the Certifying Officer should obtain information on the possible availability of qualified U.S. workers.

- The procedures outlined in 2 and 3 above should be followed.

Necessary Action: Certifying Officers advise staff processing RIR requests to implement the standard operating procedures outlined above immediately.

Should you have any questions contact Pat Stange or me.