

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION

H-2B Program Frequently Asked Questions

January 2, 2020

- 1. Has the Department of Homeland Security announced that it will be accepting more petitions from employers requesting an employment start date before April 1, 2020?**

No. As of January 2, 2020, the Department of Homeland Security (DHS) has not announced whether it will be accepting additional petitions from employers requesting an employment start date before April 1, 2020.

On November 20, 2019, DHS [announced](#) that November 15, 2019, was the final receipt date for new cap-subject H-2B petitions for the first half of fiscal year 2020 (October 1, 2019 – March 31, 2020) and it will reject new cap-subject H-2B petitions received after November 15, 2019, that request an employment start date before April 1, 2020. The Department of Labor's Office of Foreign Labor Certification (OFLC) processes all employer applications seeking temporary labor certification under the H-2B program, regardless of whether DHS has announced that the applicable numerical limitations on the total number of H-2B visas during a fiscal year has been reached. For more information and current announcements concerning the H-2B visa cap administered by DHS, employers are encouraged to visit the [Cap Count for H-2B Nonimmigrants](#) page of the United States Citizenship and Immigration Services website.

- 2. I received a temporary labor certification from OFLC containing an employment start date before April 1, 2020, but DHS rejected my petition due to the first-half cap being reached. May I return my temporary labor certification and file a new application for the same job opportunity with OFLC requesting an employment start date on or after April 1, 2020?**

Yes. With limited exceptions, under [20 CFR 655.15\(f\)](#), only one *Application for Temporary Employment Certification* (Form ETA-9142B and appendices) may be filed for worksite(s) within one area of intended employment for each job opportunity with an employer for each period of employment.

OFLC will issue a Notice of Deficiency (NOD) when an employer has filed a new H-2B application and has not returned the first certification covering the same job opportunity before the Certifying Officer reviews the application. This NOD will require the employer to justify the bona fides of the new H-2B application. OFLC may not accept for processing a new or subsequent H-2B application covering the same employer and job opportunity without the first labor certification being returned.

Employers can return a temporary labor certification that is no longer needed, at any time, using the following procedure:

- Email the Chicago National Processing Center at TLC.Chicago@dol.gov;
- Include the phrase “*H-2B Cert Return Notification*” followed by the full case number in the email subject line; and
- Include the full case number and employer name in the body of the email and a brief explanation as to the certification return.

Example: Acme Company will not use the certification for H-400-1234-56789 due to the H-2B cap being reached.