

## **FAQ for Extended RIR Conversion Date**

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Because the Reduction in Recruitment (RIR) application processing takes significantly less time than Traditional Recruitment (TR) to reach resolution on the application, the Department of Labor (DOL) previously encouraged employers to convert TR applications to RIR by following the process established by 66 FR 40584. As of this announcement, any TR application submitted to a SWA with a postmark dated on or before **March 28, 2005** may request conversion to RIR by following the established process.

### **Why might an employer want to convert a TR application to RIR?**

Because RIR applications do not undergo the same recruitment process, these applications generally reach final resolution (certification or denial) in significantly less time than TR applications. Therefore, it is often to the employer's advantage to convert applications from TR to RIR.

### **Is there a date by which an employer's original application must have been filed in order to be eligible for conversion from TR to RIR?**

Yes, applications must have been postmarked on or before **March 28, 2005**. This is an extension from the prior deadline and essentially includes all open TR cases in the backlog for which a job order has not been initiated.

### **Who may request RIR conversion?**

The employer, or its designated attorney or agent, may file the request for RIR conversion.

Aliens are not eligible to request conversion, and the Backlog Elimination Centers (BECs) will not respond to such requests.

### **Are applications for Schedule B occupations eligible for RIR conversion?**

No, under existing regulations, Schedule B applications are not eligible for the RIR process.

### **Is there a date before which an employer or their agent must send a request for RIR conversion to the BEC?**

There is no specific date by which an employer or their agent may request RIR conversion. **However, by regulation, once the BEC has posted the job order to begin the recruitment process, the application is no longer eligible for RIR conversion.** Since applications are processed by filing date, recruitment for TR applications is begun on a rolling basis based on priority date as cases are processed. Therefore, it is to the advantage of an employer who would like to

request an RIR conversion to do so as soon as possible to minimize the possibility that the BEC begins recruitment on the application.

**Will the BEC delay recruitment on a TR application so that the employer can request RIR conversion?**

No. Due to the Office of Foreign Labor Certification's (OFLC) intensive effort to eliminate the backlog, it is not practical for the BEC to delay recruitment on applications to await RIR conversion requests. Therefore, BECs will not delay recruitment to allow for RIR conversion. Requests for RIR conversion must be received prior to the beginning of supervised recruitment to be considered. Employers should send their requests and appropriate documentation as soon as possible to maximize their opportunity for RIR conversion.

**What is the supporting documentation required for a request for RIR conversion?**

The supporting documentation required for conversion to RIR processing is the same as that required for an application initially filed under the RIR process, with the addition of a written request for conversion. Employers or their attorneys should ensure the request includes:

- 1) A written request for conversion;
- 2) Documentation demonstrating that a pattern of recruitment has been established within the six months preceding the date the conversion request is received by the BEC, and that any U.S. workers were rejected solely for lawful, job-related reasons. Documentation must provide a description of the recruitment process used and the results of the recruitment process;
- 3) Contact information regarding the application including an e-mail address where a reply to the RIR conversion request can be sent.

**How should an employer or the employer's attorney send in an RIR Conversion request to the BEC?**

Send the required information listed above **by mail** to the appropriate BEC based on where the case was filed. The information should be addressed:

**For Philadelphia BEC:**  
ATTN: RIR Conversion Request & Documentation  
U.S. Department of Labor  
Employment and Training Administration  
1 Belmont Avenue, Suite 200

Bala Cynwyd, PA 19004

**For Dallas BEC:**  
ATTN: RIR Conversion Request & Documentation  
U.S. Department of Labor  
Employment and Training Administration  
700 North Pearl St., Suite 400N  
Dallas, Texas 75201

**How will the BECs process requests for RIR conversion?**

The BECs will process the requests for RIR conversion on a first-come, first-serve basis. Response times to requests will vary depending on the volume of responses. Employers will **not** receive a confirmation that the request was received.

BECs will review the documentation provided and determine whether the documentation provided is sufficient.

**What happens if the RIR conversion request is granted?**

If the request is granted, the employer or their designated attorney will be notified by e-mail and the application will be moved from the TR processing queue to the RIR processing queue. Applications will continue to be processed by filing date.

**What happens if the RIR conversion request is not granted?**

If BEC determines that the documentation provided is insufficient to warrant RIR conversion, the case will remain in the TR processing queue and be processed in priority order. An e-mail will be sent notifying the employer or their attorney that RIR conversion was denied.

**What if an employer has already had their RIR status denied, or has attempted to convert to RIR previously, is such an application eligible for RIR conversion?**

Yes. If the employer is able to remedy the shortcomings in the pattern of recruitment or documentation, requests for RIR conversion may be made even if RIR was denied previously up until the BEC begins supervised recruitment on the application, at which time the case is no longer eligible for conversion.

**In order to establish a "pattern of recruitment," which date is used as the reference point – the date the original application was received or the date the RIR conversion request is received?**

The point of reference for the pattern of recruitment is based upon the date the RIR conversion request was received. In other words, the earliest acceptable published advertisement or other recruitment activity must have occurred within six months prior to the date the RIR conversion request was received by the BEC. Earlier advertisements or other recruiting activities will not be considered by the BEC in determining whether a pattern of recruitment has been established.

**Can an employer requesting RIR conversion lose their "priority date" for the application?**

No, an application converted to RIR processing retains the priority date of the original application. Likewise, if the request for RIR conversion is denied, the case continues processing in the TR queue under the original priority date.

**Does the original application need to be withdrawn to request RIR conversion?**

No, simply send the request and appropriate documentation to the BEC as described above.

**Does the Prevailing Wage used to establish a pattern of recruitment need to be 100% of the current prevailing wage for the occupation?**

Yes, as per current regulation governing recruitment for Foreign Labor Certification applications, recruitment should be done at 100% of the prevailing wage.

**Can an employer request RIR conversion for a closed or withdrawn application?**


No, only cases currently open and in process at the BEC are eligible.

However, if the employer is using the "No BEC Contact" procedure to reconstruct a case or the "Reopen" procedure to request reopen for a case you believe was closed in error as described in prior FAQs, you may submit your RIR conversion request and supporting documentation along with your reconstructed case. If requesting RIR conversion with another action, employer submissions should be clear that multiple actions are being requested, and documentation for each should be provided.

<b>U.S. DEPARTMENT OF LABOR</b> EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM Washington, D.C. 20210	<b>CLASSIFICATION</b> Foreign Labor Certification
	<b>CORRESPONDENCE SYMBOL</b> OFLC
	<b>ISSUE DATE</b> October 6, 2006

**ADVISORY: FOREIGN LABOR CERTIFICATION**  
**TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 7-06**

**TO:** OFLC-NATIONAL PROCESSING CENTER DIRECTORS  
 OFLC-BACKLOG ELIMINATION CENTER DIRECTORS  
 STATE WORKFORCE AGENCY DIRECTORS (PREVAILING WAGE)

**FROM:** EMILY STOVER DeROCCO   
 Assistant Secretary

**SUBJECT:** Foreign Labor Certification: Reduction-in-Recruitment (RIR) Conversion;  
 Extension of the RIR Eligibility Date, and Amendments to General  
 Administration Letter No. 2-02.

- Purpose.** To extend the eligibility date the Department of Labor (Department) uses for determining whether RIR re-application requests are timely.
- References.** 20 CFR § 656.21 (2001); 69 FR 43716 (July 21, 2004); 66 FR 40584 (Aug. 3, 2001); General Administration Letter (GAL) No. 07-97; GAL No. 2-02 Attachment B; and Training and Employment Notice (TEN) No. 12-05.
- Background.** Under regulations governing the Permanent Labor Certification Program in effect prior to March 28, 2005, the Department processed most employer applications for permanent certification under a "Traditional Recruitment" (TR) standard. Under this process, employers seeking to test their local labor markets for available, qualified United States workers were supervised in their recruitment activities.

The TR process often took extensive time to complete and contributed to the growing number of backlog cases. Therefore, the Department began to encourage employers to utilize the streamlined "Reduction-in-Recruitment" (RIR) process. On August 3, 2001, the Department published a final rule at 66 FR 40584 establishing a process for converting TR labor certification applications into RIR applications for the permanent employment of aliens in the United States. This regulation amended 20 CFR 656.21(i)(6) and included a provision allowing employers to convert TR cases they filed on or before August 3, 2001, to RIR applications, at their option.

<b>RESCISSIONS:</b>	<b>EXPIRATION DATE:</b> September 30, 2007
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The Department has found the RIR application processing time takes significantly less time than the TR application processing time. The TR processing time delays the filing process for employers because they may be required to wait for up to nine months or longer to receive a resolution (denial or certification) of their case. Accordingly, the Department has encouraged employers to use the RIR process to expedite the labor certification filing process. Such conversions allow an employer to complete its recruitment prior to filing a permanent labor certification application, thus shortening the time potentially required to reach a determination in any given case.

The Department initiated the RIR process via non-regulatory guidance in General Administration Letter (GAL) 1-97. Subsequent to the publication of the final RIR conversion rule in 2001, the Department issued additional, updated guidance to advise on and encourage use of the process through GAL No. 2-02, which originally expired on November 30, 2004. Later, the Department extended the expiration date for GAL No. 2-02 through December 31, 2006 in TEN No. 12-05. Neither of these later guidance documents extended the original August 3, 2001, deadline for conversion to RIR procedures in the final rule.

On July 21, 2004, the Department published an Interim Final Rule at 69 FR 43716 (effective August 20, 2004) granting the Employment and Training Administration's (ETA) Division of Foreign Labor Certification (now the Office of Foreign Labor Certification) the discretion to transfer permanent labor certification applications pending in state workforce agencies and ETA regional offices to centralized Backlog Elimination Centers (BECs) for processing. ETA opened the BECs in October 2004. The Department's goal is to have all backlogged permanent labor certification applications eliminated by September 30, 2007.

In December 2004, the Department amended 20 CFR Part 656 again through 69 FR 77386 (Dec. 27, 2004). This regulatory amendment had the effect of removing the RIR conversion date in the current Code of Federal Regulations, but did not alter the processing of cases filed prior to March 28, 2005. For those purposes, the previous regulation remains in effect.

To further assist its backlog elimination goal, the Department has determined the RIR conversion date at section 656.21(i)(6) of the previous regulation should be extended. Given the extensive backlog of older cases, which remains even with the implementation of a streamlined labor certification process, the Department has determined that it would be contrary to the public interest to delay implementation of this change and to withhold this benefit from applications filed under the regulation in effect prior to March 28, 2005.

By announcement of this TEGL in the Federal Register, the Department is allowing employers that filed their applications before the removal of 20 CFR 656.21(i)(6) to process their applications under the RIR process with the exception of those cases that are already being processed under 20 CFR 656.21(f)(1) of the basic labor