

## FAQs on RIR Conversion Opportunity



### 1. What is the Conversion Opportunity?

On October 6, 2006, the Department of Labor's Employment and Training Administration (ETA) issued a TEGL that extended the time available to convert a permanent labor certification application filed under traditional processing ("TR case") to a case requesting reduction in recruitment ("RIR") processing. This TEGL enabled the Department to assess additional interest in RIR conversions for cases still pending at ETA Backlog Elimination Centers (BECs). The Department has determined that additional guidance would further enable applicants to accurately assess their eligibility to request their case(s) be considered for conversion. Specifically, by this FAQ, the Department is addressing stakeholder community concerns that the employer will be "held harmless" for making such a request in light of simultaneous or subsequent recruitment instructions coming from the BEC in accordance with applicable regulations. Accordingly, the Department has developed the following limited policy whereby employers may better ascertain their eligibility to participate in this conversion opportunity.

### 2. Why would an employer want to convert its TR case to RIR using the hold harmless opportunity being offered?

The employer applicant can be assured it will be "held harmless" in the sense that the BEC will not deny the RIR conversion request simply because the BEC has initiated job order activity for traditional case recruitment. Instead, in cases where it has received notice from the employer of intent to convert, the BEC will hold the recruitment of the case in abeyance until the end of the specified conversion window, thus enabling the employer to comply with the recruitment for RIR purposes and promptly submit the RIR package.

RIR cases generally are completed and reach a disposition faster than TR cases. This enables the employer and alien beneficiary to move the case further to completion in the permanent labor certification process.

In addition, to assist the employer, the BEC will provide the prevailing wage determination for the petitioned job when acknowledging the conversion request.

### 3. Who is generally eligible for RIR conversion under this "new" opportunity?

An employer may file a request to convert to RIR if it has a currently pending TR application in one of the BECs (Dallas or Philadelphia) that meets the following conditions:

- The case has not already received a disposition, e.g. certification, denial;
- A Notice of Findings (NOF) has not been issued for the application, or a NOF has been issued but successfully rebutted at the time of sending the email request;
- The application is not for a Schedule B occupation; and
- The applicant or its attorney/agent has **not** received a **Recruitment Report Instructions Letter** from the BEC indicating that supervised recruitment has ended and providing instructions for the results.

#### 4. What is the “hold harmless” benefit for RIR conversion?

The “hold harmless” benefit allows the employer to commence recruitment without concern that the BEC will initiate job order activity before the employer can submit the recruitment request along with the recruitment, making the applicant ineligible to convert.

Any applicant who sends in an e-mail with the specified language before January 20, 2007, indicating its intent to request conversion of its TR case to RIR status will be granted the assurance that the RIR conversion will not be denied solely because the BEC has initiated TR recruitment activities. Therefore, the employer is free to engage in recruitment for preparation for the RIR package without the concern that the BEC will begin TR recruitment activities.

If the BEC does initiate TR recruitment activity, the BEC’s recruitment activity will be superseded by the “intent to convert” e-mail submitted under this opportunity and the employer will be allowed to apply for conversion, as long as the employer has not received a recruitment report instructions letter from the BEC, and if the application meets the requirements for an RIR conversion.

#### 5. What are the steps under this opportunity?

- a) No later than January 20, 2007, the applicant or its designated attorney sends an e-mail to the appropriate BEC using the language specified (see question 9 below) indicating its intent to convert a TR case to RIR status. The e-mail should also contain any proposed amendments (see question 20 below).
- b) The BEC will place the applicant’s case in “hold” status pending receipt of the RIR conversion package.
- c) The BEC will send the applicant a receipt e-mail with the new prevailing wage for the position upon which to base the wage offered in its recruitment, and the status of any proposed amendments, i.e., accepted or not.
- d) The BEC will send the employer any resumes the BEC has received in response to any job order activity or advertisement for the employer to consider in preparing its RIR recruitment results package. (Note: This only pertains to cases where a job order activity has been initiated or advertisement was posted by the employer before the employer sent the intent to convert e-mail. In such an instance, this advertisement may be submitted for consideration as part of the RIR conversion recruitment package.)
- e) The applicant engages in recruitment and prepares the RIR recruitment results report and supporting documentation (the RIR conversion package).
- f) The applicant or its designated representative sends the RIR conversion package to the appropriate BEC in hard copy, by regular mail, certified mail, or mail courier, with the subject “RIR Conversion Package – [case number]” no later than **April 1<sup>st</sup>, 2007**. ***If no package is postmarked for receipt by this date, the case will be closed. These applications do not revert to the TR queue and the decision to close is not subject to appeal.***
- g) Once the RIR conversion package is received by the BEC, the BEC staff will evaluate the package and determine whether the case can be converted to RIR status.

- h) If the case meets the criteria for RIR conversion, the case will be converted and processed as an RIR application. If the case is not eligible, or exhibits other deficiencies that make it ineligible for RIR conversion, the employer will receive a letter advising that the RIR conversion request has been denied and the case will be processed as a TR case retaining its original priority date.

## **6. What types of cases are appropriate for an RIR conversion request?**

For purposes of clarity, we are defining appropriate job opportunities for approval for RIR conversion as any position which has an SOC code falling into the following:

1. "In (high) demand" Occupations as listed on O\*NET
2. [High growth industries identified by ETA](http://www.doleta.gov/BRG/JobTrainInitiative/) (link: <http://www.doleta.gov/BRG/JobTrainInitiative/>)
3. Any position(s) identified by SWA information as in-demand or shortage occupations.

## **7. If an employer's job opportunity has a SOC code that is not within one of these categories, is the employer prohibited from filing an RIR conversion request?**

No. However, the applicant will have to provide evidence at the time of filing the RIR conversion package that the job opportunity is in an occupational field in a demand, high growth, or shortage occupation that is appropriate for a request for a waiver of supervised recruitment. The only exception is for Schedule B occupations. By regulation, the Department cannot accept job opportunities listed among the occupations on Schedule B as appropriate for RIR conversion and processing.

## **8. Under this opportunity, how long does the employer have to recruit and prepare the RIR conversion package once the employer sends in the "intent to convert to RIR" e-mail?**

This depends upon how quickly the applicant decides to take advantage of the "hold-harmless" opportunity and send in an "intent to convert to RIR" e-mail. The sooner the applicant or its representative sends in the intent to convert to RIR e-mail, the more time it will have to recruit before the package is due. All RIR recruitment report submissions for this opportunity must be received by or postmarked to the appropriate BEC no later than April 1, 2007.

## **9. What do I need to do to participate and ensure that I can begin recruitment for RIR conversion under this "hold-harmless" opportunity?**

Send in an e-mail to the appropriate BEC, using the language provided below, to the e-mail address of the BEC that has the case:

[RIRConversion@DAL.DFLC.US](mailto:RIRConversion@DAL.DFLC.US) for Dallas, and

[RIRConversion@PHI.DFLC.US](mailto:RIRConversion@PHI.DFLC.US) for Philadelphia.

The e-mail subject line should state: "**Intent to Convert to RIR - [case number]**". Employers should use the following language for the Intent to Convert to RIR E-mail filling in the appropriate information as needed (employer, case number, alien):

**Language for Intent to Convert to RIR E-mail**

**DRAFT**

\_\_\_\_\_ the employer applicant (the applicant) for Permanent Foreign Labor Certification hereby notifies the Backlog Elimination Center (BEC) run by the Department of Labor Office for Foreign Labor Certification of the applicant's intent to convert the Traditional Recruitment Application, with Case # \_\_\_\_\_ for Alien \_\_\_\_\_ to a Reduction in Recruitment (RIR) case.

It is acknowledged that:

This request must be received by the appropriate BEC no later than January 20, 2007, and the applicant or its attorney/agent has **not** received a **Recruitment Report Instructions Letter** from the BEC indicating that supervised recruitment has ended and providing instructions for the results.

The applicant understands that their case will be placed "on hold" and will not receive further processing pending receipt of the employer's recruitment results.

The applicant must demonstrate a pattern of recruitment for the job for the RIR conversion request to be accepted.

The applicant understands that recruitment must take place at **100% of the prevailing wage** to be provided by the BEC in a subsequent communication.

The applicant understands any proposed amendments to the application should be attached to this communication.

The applicant understands that they must send the recruitment results demonstrating a test of the labor market that has identified no qualified US applicants no later than **April 1, 2007**.

Finally, the applicant understands that **failure** to return the results of the recruitment by April 1, 2007 will result in the case being closed, and no further processing will take place for the case. The application will not revert to TR processing and the decision to close will not be subject to appeal.

Signed,

Applicant or Designated Attorney or Agent \_\_\_\_\_ Date

Each e-mail should refer only to one application.

The employer should then begin recruitment and, when completed, send the RIR conversion package to the BEC in hard copy. The cover sheet should include the following reference: "**RIR Conversion Package - [case number]**"

**10. Will the employer get an e-mail confirming receipt of its request?**

The employer or its designated representative will receive an e-mail with the prevailing wage determination and the status of any proposed amendments to the application included by the employer in its intent to convert e-mail. The speed of the response will depend upon the volume of requests sent to the BECs.

**11. Can an employer send one “intent to convert to RIR” e-mail for multiple cases?**

No. To make tracking and processing possible for the BECs, and expedite the conversion process, requests for multiple applications should be sent in multiple e-mails, each addressing only one application.

**12. What if the BEC has already initiated job order activity on the employer’s case before the employer sends in the e-mail indicating the intent to convert to RIR status under this opportunity?**

Once the BEC receives the intent to convert to RIR status e-mail, the case will be put in “hold” status pending receipt of the RIR conversion package to ensure the employer has an adequate chance to recruit and evaluate the recruitment results.

However, the Department acknowledges that some e-mails will be received after the BEC begins to initiate job order activity. If the conversion request meets the eligibility criteria stated above, once the employer or its designated agent sends in the e-mail with a notice of intent to convert to RIR between December 20, 2006 and January 20, 2007, the employer will be allowed to make the RIR conversion even if the BEC has initiated recruitment activity (assuming the RIR conversion package is complete and the case exhibits no other deficiencies that would otherwise lead to RIR conversion denial).

In the event that job order activity was initiated by a BEC prior to the intent to convert e-mail being received, and/or if the employer has published an advertisement, the BEC will compile all resumes received from applicants and send them to the employer on or around February 1, 2007. Employers must consider these resumes in preparing its RIR conversion package, and provide to DOL the specific, job-related reasons for disqualification of any qualified U.S. workers.

**13. What if the employer has begun recruitment to convert the application to RIR status and has published ads? Can the employer still file for RIR conversion under this opportunity?**

If the employer has already placed an advertisement and begun recruitment under TR, it is unlikely that conversion at that point will result in a substantially faster resolution to the application. Such an employer may wish to simply continue with its TR application.

If the employer in this instance chooses to convert, the requirements for RIR applications have not materially changed. If you have recruited for RIR conversion prior to December 20, 2006, that recruitment should be sufficient for this purpose if it meets the criteria listed below. The recruitment must have taken place within the 180 days prior to submitting the RIR conversion package, and must have been undertaken with the correct prevailing wage.

In the event that job order activity was initiated by a BEC prior to the intent to convert e-mail being received, and/or if the employer has published an advertisement, the BEC will compile all resumes received from applicants and send them to the employer on or around February 1, 2007. Employers must consider these resumes in preparing its RIR conversion package, and provide to DOL the specific, job-related reasons for disqualification of any qualified U.S. workers.

**14. What if an employer submitted an “Intent to Convert to RIR” e-mail prior to the January 20, 2007 deadline, but shortly thereafter, received a letter explaining that the BEC has initiated job order activity on the case and informing the employer to begin recruitment?**

This likely means that the letter from the BEC had been mailed prior to the e-mail being received and the case being put on hold pending the employer’s RIR conversion package under the hold-harmless opportunity. The employer should continue to recruit and prepare the RIR conversion package. The BEC will defer to the e-mail sent before the timeline and allow the conversion if the case meets all the appropriate conversion requirements.

In the event a BEC initiated job order activity prior to the intent to convert e-mail being received, and/or if the employer has published an advertisement, the BEC will compile all resumes received from applicants and send them to the employer on or around February 1, 2007. Employers must consider these resumes in preparing its RIR conversion package, and provide to DOL the specific, job-related reasons for disqualification of any qualified U.S. workers.

**15. How will an employer know that a TR case has been successfully converted to RIR?**

The [public disclosure system \(PDS\)](http://pds.pbls.doleta.gov/) (link to: <http://pds.pbls.doleta.gov/>) will be modified to include TR and RIR case designations. An employer or its designated attorney or agent will be able to check PDS and see whether a given case has been converted to RIR.

If the conversion is denied for any reason, a letter will be sent to the employer and its designated attorney or agent.

**16. What if an employer receives a prevailing wage from the BEC and wants to challenge it?**

The employer must submit the challenge documentation to the BEC Certifying Officer (CO). Employers are encouraged to submit documentation refuting the prevailing wage as quickly as possible to avoid problems in meeting their obligation to submit the RIR recruitment package by the deadline (April 1, 2007). If the employer wishes to challenge the BEC determination with a prevailing wage which it has already obtained from the SWA, it may do so. However, SWAs are under no obligation to provide prevailing wage determinations for RIR conversion applications.

**17. What if the application is not sufficiently complete for the BEC to make a prevailing wage determination?**

If a case is not sufficiently complete to allow the BEC to make an appropriate prevailing wage determination, the employer will receive an e-mail to indicate that the RIR conversion cannot continue at this time for the reason stated above. The application will continue being processed as a TR application.

**18. When an employer or its representative receives an e-mail with the prevailing wage determination from the BEC in response to the intent to convert request,**

**does that mean that the BEC has determined that the application is free of deficiencies?**

No. For some cases, the BECs may be performing only preliminary application screening sufficient to provide prevailing wage determinations to employers to assist in recruiting and preparation of the RIR conversion package. There may still be deficiencies in the application that result in the RIR not being approved, in a Notice of Findings being issued, etc.

**19. What will the BECs accept as constituting a Pattern of Recruitment for the purpose of an RIR conversion request?**

The standard for RIR conversion remains similar to the standard that was in place in the past. The Department, however, recognizes that employers may not have sufficient assurance of an acceptable pattern and may thus be reluctant to file. Therefore, the Department will find an RIR request acceptable in terms of amount of recruitment if it contains at a minimum the following:

1. One print advertisement in a newspaper of general circulation or an appropriate national journal which includes the same minimum requirements as the ETA-750A.
2. One other additional recruitment step, to be taken from
  - a. GAL 1-97, Change 1, "Measures for Increasing Efficiency in the Permanent Labor Process," such as newspaper ads, job fairs, internet advertising,

**OR**

- b. The list of additional recruitment steps for professional positions now listed in 20 CFR 656.17(e)(ii), which include the following:
  - Job fairs
  - Employer's web site
  - Job search web site other than the employer's
  - On-campus recruiting
  - Trade or professional organizations
  - Private employment forms
  - Employee referral program
  - Campus placement office
  - Local and ethnic newspapers
  - Radio and television advertisements

These will be acceptable even if the recruitment is for a non-professional position.

The employer must also post the job opportunity internally and/or with the collective bargaining representative for 10 consecutive days.

As before the recruitment must establish a pattern of recruitment within the six months prior to filing the request to convert to RIR under the "hold harmless" opportunity.

**20. What changes is an employer permitted to make to its application prior to RIR conversion?**

The policy for amending an application at a Backlog Elimination Center has not changed. Amendments may be submitted up until recruitment begins. If an employer wishes to amend a case that it also wishes to convert to RIR, it may seek to do so. However, changes to the original Form ETA-750 will not be accepted if they collectively constitute a new job opportunity.

Amendments must be submitted with the e-mail declaring intent to convert to RIR status. The employer or its attorney or agent may submit the amendment(s) in the body of the e-mail or as an attachment to the e-mail.

**21. What should an employer's recruitment package look like? What should be in the recruitment results report?**

The RIR "hold harmless" opportunity does not seek to materially change the RIR conversion process. A recruitment report should be substantially similar to all other reports generated and submitted for an RIR conversion request. A report should summarize recruitment activities and results. It does not have to be supported by the resumes of all applicants, but should discuss the recruitment results.

If, however, U.S. workers were rejected, the reasons for those rejections must be sufficiently clear to enable the BEC to determine if the job opportunity was sufficiently open to U.S. workers. In addition, if the employer received resumes from the BEC in connection with TR recruitment initiated by the BEC and/or the employer prior to the declaration of intent to convert to RIR, employers must consider these resumes in preparing their RIR conversion package and provide to DOL the specific, job-related reasons for disqualification of any qualified workers.

**22. What if an applicant or its designated attorney or agent sends in an e-mail indicating an intent to convert to RIR, but fails to send the RIR conversion package to the BEC postmarked by April 1, 2007?**

An applicant taking advantage of the hold-harmless opportunity but failing to return the RIR package in a timely manner will result in the case being **closed** by the BEC.

The BECs are operating under a date certain to eliminate the permanent labor certification backlog. OFLC has created this "hold harmless" opportunity to alleviate employers' concern that they will begin recruitment only to find out that they are not eligible because the BEC initiated recruitment in the meantime. However, given the date certain to complete the backlog, the BECs cannot place cases in "hold" status for an extended (or indefinite) period of time without assurance that the RIR conversion will take place. Therefore, the BEC will close cases where the RIR conversion package is not postmarked on or received by the appropriate BEC by April 1, 2007. As stated above, these applications will not revert to the TR status and the decision to deny the application will not be subject to appeal.

**23. What if an employer sends in an RIR conversion package on time, but the BEC denies the request to convert to RIR?**

If the case cannot be converted to RIR for reasons other than those covered by the “hold harmless” opportunity (*i.e.*, the BEC completing recruitment), then the case will continue processing as a TR case. The employer may attempt to convert to RIR again after remedying the reasons for denial; however, the “hold harmless” assurance will no longer be in place. In other words, if an RIR conversion package is submitted and the request for RIR conversion is denied, the employer may submit a second request; but if the BEC has begun the recruitment the second request will be denied.

#### **24. What are reasons an RIR conversion would be denied?**

A request to convert would be denied if the job is not appropriate for RIR conversion (including, but not limited to, a Schedule B occupation). It could also be denied if:

- The recruitment is insufficiently documented.
- The recruitment was undertaken at a prevailing wage less than the prevailing wage provided by the BEC and not successfully challenged by the employer
- There are otherwise eligible U.S. workers found as a result of the recruitment.

#### **25. If an applicant is unsure at this time whether it wishes to convert to RIR, may it still convert to RIR later? Will the applicant still receive the “hold harmless” benefit?**

Employers may continue to submit RIR conversion requests under the TEGL of October 6, 2006.

However, the hold harmless policy will only be in effect for cases for which an intent to convert request is obtained between December 20, 2006 and January 20, 2007. An employer who files for RIR conversion after the “hold harmless” period (that is, does not submit a request prior to January 20, 2007) will not receive the benefit of the “hold harmless” opportunity and may be denied RIR conversion if the BEC has initiated job order activity.

#### **26. Can an employer conduct all recruitment in 30 days or less?**

The Department is cognizant of the strict timeline imposed by this hold harmless opportunity. It reminds employers that under RIR, recruitment may be conducted within a 30-day time period, as long as it is undertaken to recruit for a bona fide job opportunity and all U.S. workers who apply for any job opportunity are fully considered. In some cases, recruitment may be conducted in a 30-day time period. In others, in order to fully consider the applicant pool, a longer time frame may result. This is why the Department is allowing all employers sufficient time to conduct recruitment and submit the recruitment report, as long as it is postmarked by April 1, 2007.