**Current PERM Audit Language – Sample Template 1**

Pursuant to 20 CFR § 656.24(b)(2)(i), the Certifying Officer must consider a U.S. applicant able and qualified for the job opportunity if the worker, by education, training, experience or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupations as customarily performed by other U.S. workers similarly employed.  A U.S. applicant is able and qualified for the job opportunity if the applicant can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training.

O\*NET is an online resource utilized to identify normally acceptable requirements of education, training and experience, or combination thereof, for SOC Job Codes.  If any of the requirements for the job opportunity differ from those identified as normally acceptable, the employer should submit documentation establishing business necessity and address how the requirements at issue apply to any U.S. applicants.  Unsupported statements, mere assertions of fact without the submittal of supporting documentation, and declarations of employer preference, convenience, or efficiency are insufficient to meet the requirements below.

* 1. If the employer rejected U.S. applicant(s), explain what process or steps the employer conducted to assess each applicant.  If the applicant(s) do(es) not meet employer’s requirements as indicated on the ETA Form 9089, the employer must explain how each applicant’s education, experience and training does not qualify him/her for the job opportunity.

* 1. If the employer requires one specific educational degree for a job opportunity, the employer must explain in detail, why only that particular degree is acceptable for the job opportunity and explain, in detail, the exclusion of similar degrees.

* 1. If a job opportunity is for an advanced degree, the employer must explain in detail, why a lower degree in the same field, and experience, is not acceptable for the job opportunity.

* 1. Please explain, in detail, why each U.S. applicant could not have attained the skills necessary to perform the job duties listed in Section H of the ETA Form 9089 during a reasonable period of on-the-job training.  The reason(s) an applicant cannot be trained for the job opportunity must be specific to each applicant.

e. If the employer rejected any applicant on the ground that the- applicant is not a U.S. worker during the course of recruitment, please provide a statement, along with supporting documentation, explaining what process or steps the employer conducted to assess each one of these applicant(s).  The statement must include how the employer determined that the applicant was not a U.S. worker as defined under 20 CFR § 656.3; and therefore, was lawfully disqualified for consideration of the job opportunity.

**Current PERM Audit Language – Sample Template 2**

The job experience required by the employer in Section H- 8 of the ETA Form 9089, \_\_\_\_\_\_\_\_\_\_\_\_, is beyond that normally required for the job opportunity as defined by O\*Net.  Please provide an explanation and documentation supporting the business necessity for this requirement.  Unsupported statements, mere assertions of fact without the submittal of supporting documentation, and declarations of employer preference, convenience, or efficiency are insufficient to support business necessity.

Business necessity must be provided for the minimum baselines identified by O\*Net; this includes any required special skills, training, or qualifications listed on the ETA Form 9089.  For example, Job Zone 4 occupations indicate an SVP level range of 7<8.  This range is equivalent to over two years up to and including four years.  The employer must provide business necessity for any requirement exceeding the minimum baseline requirement of SVP level 7.

The listing below includes examples of supplemental documentation.  This list is not exhaustive rather it provides the employer with evidentiary recommendations for establishing the business necessity standard.

1. A detailed statement from the employer’s Department/Division Head, or other suitably knowledgeable representative for the employer, explaining the complexity of the job opportunity as defined by Section H of the ETA Form 9089, how the requirement(s) at issue is/are directly related to performance of the specific job duties, and any other pertinent information.

1. Evidence of prior hiring practices to include:  copies of resumes of incumbents documenting what is customarily required for the same or similar job opportunities; list, chart or similar document of current employees in the same or similar job opportunity and their qualifying background, education, experience or combination thereof.  The employer should redact any sensitive information.

1. Opinion statement by an expert in the field explaining the complexity of the job opportunity and how the requirement(s) at issue is directly related to performance of the specific job duties.

1. To demonstrate the requirements at issue are normal to the occupation within the industry, the employer may submit evidence from external sources establishing the industry standard, such as advertisements for the same or similar occupations in the industry.

1. If a job opportunity did not previously exist within the business, the employer can justify the need for the specific requirement referenced above by providing documentation showing any new demands made on the employer, such as copies of contracts, new program explanations, client specifications, etc.

1. Other appropriate document(s) as determined by the employer establishing business necessity for the referenced issue.

**Current PERM Audit Language – Sample Template 3**

As identified in the regulations at 20 CFR § 656.17(l), the employer must be able to demonstrate the existence of a bona fide job opportunity. Based on the information provided in the application, the Certifying Officer needs additional documentation (listed below) to evaluate whether the job opportunity has been and is clearly open to any qualified U.S. workers.

The employer must provide copies of the following documents and information (when applicable):

1. A copy of the articles of incorporation, partnership agreement, or similar documents establishing the employer.
2. Any business licenses held by the employer and/or individuals within the company necessary for the operation of the business and/or services provided.
3. A list and/or organization chart of all corporate/company officers and shareholders/partners of the corporation/firm/business, their titles, and positions in the business structure.
4. Copies of Federal Tax Returns for the employer from 2017 through the current year. If Federal Tax Returns are not available for the current year, the employer may provide copies of Federal Quarterly Tax Forms (940 and/or 941 forms) or other similar Federal tax documents.
5. Copy of the employer’s by-laws, if applicable.
6. A statement from the employer addressing the following:
7. The relationships of all corporate/company officers and shareholders/partners to each other and to the foreign worker.
8. The relationships of all corporate/company officers and shareholders/partners to each other and to the foreign worker.
9. The total investment in the business entity and the amount/percentage of investment of each officer, incorporator/partner and the foreign worker.
10. The employee(s) within the company with payroll sign-off responsibility.
11. The names and titles of all officials with the authority to interview and hire applicants for positions within the organization; and the names of the officials who have control or influence over hiring decisions involving the position for which labor certification is sought.
12. When the job opportunity listed in Section H-3 was created, the individual(s) who previously held the position and the duration each individual held the position, prior to when the foreign worker started working in the job opportunity.

**Current PERM Audit Language – Sample Template 4**

The employer filed the ETA Form 9089 Form to employ a full-time \_\_\_\_\_\_\_\_\_\_\_\_. However, given the nature and size of the employer’s business, it is not certain the employer has the need to employ a permanent full-time \_\_\_\_\_\_\_\_\_\_\_\_\_. Therefore, the employer must demonstrate that a bona fide full-time job opportunity actually exists and is available to U.S. workers, per the Department’s regulations at 20 CFR § 656.3, which states in part, employment means permanent, full-time work by an employee for an employer other than oneself and 20 CFR § 656.10(c)(8) the job opportunity has been and is clearly open to any U.S. worker.

The employer must demonstrate and provide evidence to establish the job opportunity of \_\_\_\_\_\_\_\_\_\_\_\_ constitutes permanent full-time employment within the employer’s business. The employer must provide a statement addressing the following questions and provide any supporting evidence and/or documentation:

1. When was the job opportunity of \_\_\_\_\_\_\_\_\_\_\_\_\_ created within the employer’s business?
2. What caused the employer to create the job opportunity, to include but not limited to, contractual obligations, business expansion, unforeseen circumstances or other event? You must provide copies of any applicable documents referenced in the statement.
3. How many employees currently hold or previously held this job opportunity? You must indicate who previously held the job opportunity/position, the required degree or experience held by the individual(s) qualifying them for this position, the duration each individual held the position, and if applicable, who currently holds the position.
4. How many hours per week does/did each employee work? You must provide supporting evidence of payroll records or W-2/1099 Statements.
5. If this is a newly created job opportunity, what change(s) in the business’ operation caused the position to be created? Document how this job opportunity constitutes full-time employment: i.e., at least 35 hours per week.

Provide a more detailed description of the job duties required of the job opportunity to include specific tasks, work products, etc. and how it relates to the employer’s current operations.

**Form name:**53rd Annual Immigration and Naturalization Institute