

Labor Condition Application for H-1B, H-1B1 and E-3 Nonimmigrant Workers
Form ETA-9035CP –General Instructions for the 9035 & 9035E
U.S. Department of Labor

B. Secondary Displacement: The employer will not place any H-1B nonimmigrant worker employed pursuant to this application at another employer's worksite where there are indicia of an employment relationship between the nonimmigrant(s) and that other/secondary employer UNLESS the employer applicant first makes an inquiry as to whether the other employer has displaced or intends to displace a similarly employed U.S. worker in an essentially equivalent job within the period beginning 90 days before and ending 90 days after the placement, and the employer applicant has no contrary knowledge.

If the other employer displaces a similarly employed U.S. worker during such period, the displacement will constitute a failure to comply with the terms of the LCA and the employer applicant may be subject to civil money penalties and debarment. See 20 CFR 655.738.

C. Recruitment and Hiring: Prior to filing any petition for an H-1B nonimmigrant worker pursuant to this application, the employer took or will take good faith steps meeting industry-wide standards to recruit U.S. workers for the job for which the nonimmigrant is sought, offering compensation at least as great as required to be offered to the H-1B nonimmigrant. The employer will (has) offer(ed) the job to any U.S. worker who (has) applied and is equally or better qualified than the H-1B nonimmigrant worker.

Under the Immigration and Nationality Act (INA) Section 212 (n)(1)(G)(ii), 8 U.S.C. 1182, the "recruitment and hiring" labor condition statement does not apply to the employment of an H-1B nonimmigrant worker who is a "priority worker" (defined as a person with extraordinary ability, or outstanding professors or researchers, or certain multi-national executives or managers) within the meaning of Section 203 (b)(1)(A), (B), or (C) of the INA, 8 U.S.C. 1153.

6. Indicate whether the employer has read and agrees to the additional employer labor conditions statements in Subsection 2(A) through (C). The employer must agree to all three labor condition statements of Section H, subsection 2. Answer this question only if the employer marked "Yes" to either or both questions in Item H.1 or Item H.2 (indicating that the employer is either an H-1B dependent employer or a willful violator, or both) and, also, the employer marked "No" to the question in Item H.3 ("No" to exempt H-1B nonimmigrant workers).
-

Section I Public Disclosure Information

1. Indicate whether the employer's required public disclosure information will be located at the employer's principal place of business in the U.S. AND/OR the place of employment in the U.S. The employer may select more than one box.

If the employer elects to store the public access file electronically, the employer must make the file available and accessible for government or public inspection upon request, at the particular location(s) provided in Section I of the Form ETA-9035/9035E.

Section J Notice of Obligations

Note: If the employer is submitting this form non-electronically, the employer must sign and date the application prior to submission. If submitting this form electronically, the employer must sign and date the application immediately upon receipt of the certified application and before submission to USCIS.

Items J. (A) through (C). Read this Section.

1. Enter the last (family) name of the person with authority to sign as the employer.
2. Enter the first (given) name of the person with authority to sign as the employer.
3. Enter the middle name of the person with authority to sign as the employer, if applicable.
4. Enter the job title of the person with authority to sign as the employer.
5. The person with authority to sign as the employer must sign the application. **Read the entire application and verify all contained information prior to signing.**

Labor Condition Application for H-1B, H-1B1 and E-3 Nonimmigrant Workers
Form ETA-9035CP –General Instructions for the 9035 & 9035E
U.S. Department of Labor



For paper filings, the application should be signed prior to submission to the Department. For electronic submissions, the employer will sign and date the LCA after receiving certification from the Department.

6. The person with authority to sign as the employer must date the application. Use a month/day/full year (MM/DD/YYYY) format.

**Section K
LCA Preparer**

This section must be completed if the preparer of this LCA is a person other than the one identified in either Section D (employer point of contact) or E (attorney or agent) of this application. For example, an employee of the attorney (e.g., paralegal) would complete the LCA preparer section. If the employer or attorney/agent contact listed in section D or section E was the person preparing and submitting the LCA, then this section will be left blank.

1. Enter the last (family) name of the person preparing this LCA by or on behalf of the employer.
 2. Enter the first (given) name of the person preparing this LCA by or on behalf of the employer.
 3. Enter the middle name of the person preparing this LCA by or on behalf of the employer, if a middle name exists.
 4. Enter the Firm/Business name of the person preparing this LCA by or on behalf of the employer.
 5. Enter the e-mail address of the person preparing this LCA by or on behalf of the employer. The entry must be in the format name@emailaddress.top-level domain.
-

**Section L
U.S. Government Agency User ONLY**

Read this section. No entries required.

**Section M
Signature Notification and Complaints**

Read this section. No entries required.

**Section N
OMB Paperwork Reduction Act (1205-0310)**

Read this section. No entries required.

**Form ETA-9035/9035E Appendix A
H.5. Attainment of Educational Degree for “Exempt” H-1B Nonimmigrants**

H-1B Dependent Employers or Willful Violator Employers ONLY - For Master’s or Higher Degree Exemptions ONLY

For the LCA that you are filing, all workers subject to the LCA must meet the same exemption(s) claimed in Section H.

You must complete and attach Appendix A with documentation for any H-1B nonimmigrant worker subject to the application if the statutory exemption for that worker:

- Will be based **only** on the Master’s or higher degree exemption.

Do **NOT** complete and attach Appendix A with documentation for an H-1B nonimmigrant worker subject to the application if the statutory exemption for that worker:

- Will be based on the \$60,000 annual wage exemption; or



Labor Condition Application for H-1B, H-1B1 and E-3 Nonimmigrant Workers
Form ETA-9035CP –General Instructions for the 9035 & 9035E
U.S. Department of Labor

- Will be based on both exemptions (i.e. both the Master's or higher degree and the \$60,000 annual wage).

Pursuant to 20 CFR 655.738 and 655.739, an employer that is H-1B dependent or a willful violator is generally subject to the attestation obligations regarding displacement and recruitment of U.S. workers. However, these additional statutory obligations do not apply to an employer where the LCA is used only for the employment of "exempt" H-1B nonimmigrant worker(s), as described in 20 CFR 655.737, who either (1) receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least \$60,000; or (2) attains a master's or higher degree (or its equivalent) in a specialty related to the intended employment.

For purposes of claiming the exemption, "master's or higher degree (or its equivalent)" means a foreign academic degree from an institution which is accredited or recognized under the law of the country where the degree was obtained, and which is equivalent to a master's or higher degree issued by a U.S. academic institution. The equivalence to a U.S. academic degree cannot be established through experience or through demonstration of expertise in the academic specialty (i.e., no "time equivalency" or "performance equivalency" will be recognized as substituting for a degree issued by an academic institution). 20 CFR 655.737(d)(1).

A "specialty related to the intended employment" means that the academic degree is in a specialty which is generally accepted in the industry or occupation as an appropriate or necessary credential or skill for the person who undertakes the employment in question. A "specialty" which is not generally accepted as appropriate or necessary to the employment would not be considered to be sufficiently "related" to afford the H-1B nonimmigrant status as an "exempt" H-1B nonimmigrant. 20 CFR 655.737(d)(2).

Where the employer has designated that the LCA will be used to support H-1B petition(s) and/or request(s) for extension of status for "exempt" H-1B nonimmigrant workers based on attainment of a master's or higher degree (or its equivalent) in a specialty related to the intended employment, the employer must fully complete and submit the Form ETA-9035, Appendix A. The employer must disclose the educational attainment information for all "exempt" H-1B nonimmigrant workers who will be employed under the LCA for which the employer is claiming the exemption because the worker has a "master's or higher degree (or its equivalent)." Where multiple H-1B nonimmigrant workers attained the same degree in the same field of study from the same institution on the same date, the employer is only required to disclose the educational attainment information once on the Form ETA-9035, Appendix A. Because each of the initial five (5) educational attainment information sections is identical, the instructions for completing the collection elements are only described one time below. Each field within the educational attainment information section must be completed.

NOTE: If the employer will claim the exemption for workers with a "master's or higher degree or higher (or its equivalent)" for more than five (5) workers with different educational attainment information, the employer must report as many additional sections of educational attainment information as are necessary to cover all "exempt" H-1B nonimmigrant workers who will be employed under the LCA.

a. Educational Attainment Information 1

1. Enter the number of H-1B nonimmigrant workers that the H-1B dependent or willful violator employer will seek exemption status based on attainment of a master's or higher degree (or its equivalent) in a specialty related to the intended employment who attended the same institution with the same field of study and date of degree. The total number of H-1B nonimmigrant workers entered in this field must not be greater than the entry for "Total Worker Positions Being Requested for Certification" provided in Item B.7, Form ETA-9035. Where multiple sections of educational attainment information are entered, the sum of the number of H-1B nonimmigrant workers entered in this field in each section must not be greater than the entry for "Total Worker Positions Being Requested for Certification" provided in Item B.7, Form ETA-9035.
2. Enter the full name of the accredited or recognized institution (e.g., college or university) that awarded the degree to the H-1B nonimmigrant worker(s).
3. Enter the field of study in which the degree was awarded to the H-1B nonimmigrant worker(s).
4. Enter the date on which the degree was awarded to the H-1B nonimmigrant worker(s) using MM/DD/YYYY format (e.g., 06/01/2017).

NOTE: The employer is required to provide documentation at the time of filing which substantiates the academic information provided. The documentation is limited to the following: a copy of the degree, a transcript, or an official letter from the academic institution which granted the degree. All documentation must be provided at the time of the application's filing for consideration with the application. Any document in a foreign language must be accompanied by a full and complete English language translation.