



Labor Condition Application: Changes to the Form ETA-9035 and Form ETA-9035E

Stakeholder Briefing Sessions November 2018

**Office of Foreign Labor Certification
Employment and Training Administration**

U.S. Department of Labor

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Immigration and Nationality Act (INA) Section 212(n)



The INA provides that no foreign worker may be admitted or provided status as an H-1B, H-1B1, or E-3 nonimmigrant worker in an occupational classification unless the employer files a Labor Condition Application (LCA) with the Secretary of Labor. See 8 U.S.C. § 1182(n)

H-1B, H-1B1 and E-3 History

Regulations for filing and enforcement: 20 CFR Part 655, Subparts H and I

H-1B:

- Created in 1990 as a temporary worker program for “specialty” occupations and models of distinguished ability
- Maximum period of certification under the H-1B program is three years (per LCA)

H-1B1:

- Created in 2004 as part of the *United States- Chile Free Trade Agreement* and the *United States- Singapore Free Trade Agreement*
- Temporary worker program for professionals from Chile and Singapore in “specialty” occupations
- Maximum period of certification under the H-1B1 program is three years

E-3:

- Created by the *REAL ID Act of 2005* in the *Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief*
- Temporary worker program for professionals from Australia in “specialty” occupations
- Maximum period of certification under the E-3 program is two years (per LCA)

Specialty Occupation



- Requires the theoretical and practical application of a body of specialized knowledge
- Requires a Bachelor's degree or the equivalent (in the specific specialty)
 - ★ Examples may include the following: sciences, medicine, healthcare, education, biotechnology, and business specialties

About the LCA

- Attestation based
- Per 20 CFR 655.700 (b)(1), to participate in the employer-sponsored H-1B, H-1B1, and E-3 visa programs, the employer must first file an LCA with the Department and obtain certification

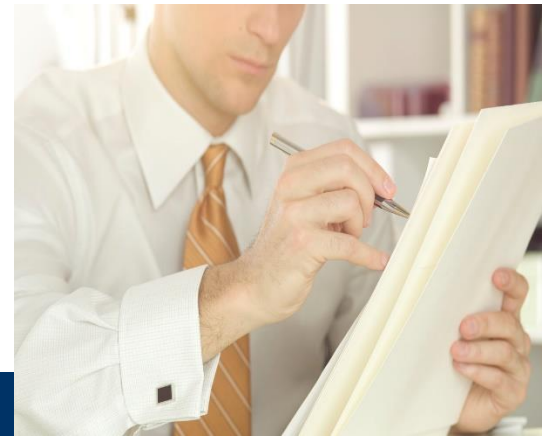
General Contents of the LCA

20 CFR 655.730(c)(4)



- Occupational classification
- Number of nonimmigrant workers sought
- Gross wage rate to be paid to each nonimmigrant (hourly, weekly, biweekly, monthly or annual)
- Starting Date
- Ending Date
- Place(s) of intended employment
- Prevailing wage for the occupation in the area of intended employment
- For H-1B, whether willful violator/H-1B dependent

Who can file an LCA?



- A U.S. employer or the employer's authorized agent or representative
- Per 20 CFR 655.715, employer means a person, firm, corporation, contractor, or other association or organization in the U.S. that has an employment relationship with the nonimmigrant worker(s) and/or U.S. worker(s)

LCA Filing, Forms ETA-9035 and ETA-9035E

- For all occupations, online filing of the Form ETA-9035E is required through the iCERT Visa Portal System accessible at <http://icert.doleta.gov>
- Two limited exceptions to electronic LCA filings:
 - (1) Physical disability that prohibits filing or
 - (2) Lack of Internet access
- An employer must petition the Administrator of OFLC for prior special permission to file an LCA by mail on the Form ETA-9035

Section A: Type of Visa

OMB Approval: 1205-0310
Expiration Date: XX/XX/XXXX

Labor Condition Application for Nonimmigrant Workers
Form ETA-9035 & 9035E
U.S. Department of Labor



Please read and review the filing instructions carefully before completing the Form ETA- 9035 or 9035E. A copy of the instructions can be found at <http://www.foreignlaborcert.doleta.gov/>. In accordance with Federal Regulations at 20 CFR 655.730(b), incomplete or obviously inaccurate Labor Condition Applications (LCAs) will not be certified by the Department of Labor (DOL). For all submissions, both electronic (Form ETA- 9035E) or paper (Form ETA- Form 9035 where the employer has notified DOL that it will submit this form non-electronically due to a disability or received permission from DOL to file non-electronically due to lack of Internet access), ALL required fields/items containing an asterisk (*) must be completed as well as any fields/items where a response is conditional as indicated by the section (§) symbol.

A. Employment-Based Nonimmigrant Visa Information

1. Indicate the type of visa classification supported by this application (Write classification symbol): *

H-1B

★ Visa Classification (H-1B, H-1B1, or E-3) appears as a dropdown option on the LCA

Section B: Temporary Need Information



- Job Title
- Standard Occupational Classification (SOC) Code
 - (Occupational Information Network (O*NET)/ Occupational Employment Statistics (OES))
- SOC Occupational Title (O*NET/ OES)
- Whether full-time
- Period of Employment (Start Date/ End Date)
- Worker positions needed (number of nonimmigrant workers)

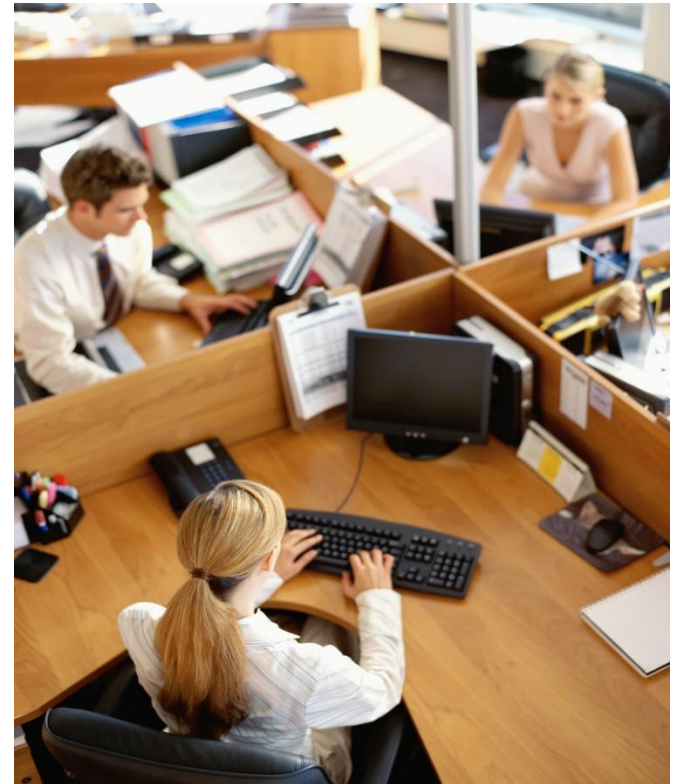
Section B(1): Temporary Need Information (Cont'd)

Job Title

- Title of the job opportunity to be filled by the worker(s)

★ Example: Computer Engineer

- The job title must be the same for all nonimmigrant workers working on a single LCA. The employer may file additional LCAs as needed.



Section B(2-3): Temporary Need Information (Cont'd)



- Section B.2 SOC/O*NET Code—
 - 6 digit code
 - Use the code which most clearly describes the work to be performed
- Section B.3 SOC/O*NET Occupational Title—
 - The occupational title associated with the SOC/ O*Net code
 - The iCERT System provides a drop down to allow users to choose SOC/O*NET code and occupational title

★ Example: **Computer Systems Analyst 15-1121**

More information on SOC codes can be found at <http://www.bls.gov/soc/>

Section B(4): Temporary Need Information (Cont'd)

Full- time?

- Indicate “Yes” or “No”
- Per 20 CFR 655.730(c)(6), the position covered by the LCA may be either full-time or part-time
- Full-time and part-time positions cannot be combined on a single LCA



The Department generally considers 35 hours per week or more to be full-time.

Section B(5-6): Temporary Need Information (Cont'd)



Period of Intended Employment:

- Beginning Date and Ending Date of the position
- ★ Per 20 CFR 655.730(b), an LCA shall be submitted no earlier than six months before the beginning date of the period of employment
- ★ The ending date of employment cannot be more than three years from submission of the LCA for H-1B and H-1B1 and two years for E-3 LCAs and H-1B1 extensions



Section B(7): Temporary Need Information (Cont'd)

Worker Positions Needed

Based on the visa classification entered on the LCA (either H-1B, H-1B1, or E-3)

1st: Enter the total number of worker positions being requested in Box 7

2nd: Indicate in the form boxes the *total* workers in *each* applicable category in Boxes 7a through 7f (if none, enter zero “0”):

- Box 7a-- New employment
- Box 7b-- Continuation of previously approved employment without change with the same employer
- Box 7c-- Change in previously approved employment
- Box 7d-- New concurrent employment
- Box 7e-- Change in employer
- Box 7f-- Amended petition



Definitions for each category can be found with the U.S. Citizenship and Immigration Services (USCIS)

Section B: Temporary Need Information (Cont'd)

B. Temporary Need Information

1. Job Title * Hardware Engineer																									
2. SOC (ONET/OES) code * 17-2061	3. SOC (ONET/OES) occupation title * Computer Hardware Engineer																								
4. Is this a full-time position? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Period of Intended Employment																								
	<table border="1"> <tr> <td>5. Begin Date * <i>(mm/dd/yyyy)</i> 04/01/19</td> <td>6. End Date * <i>(mm/dd/yyyy)</i> 04/01/20</td> </tr> </table>	5. Begin Date * <i>(mm/dd/yyyy)</i> 04/01/19	6. End Date * <i>(mm/dd/yyyy)</i> 04/01/20																						
5. Begin Date * <i>(mm/dd/yyyy)</i> 04/01/19	6. End Date * <i>(mm/dd/yyyy)</i> 04/01/20																								
7. Worker positions needed/basis for the visa classification supported by this application																									
<table border="1"> <tr> <td style="text-align: center;">7</td> <td colspan="2">Total Worker Positions Being Requested for Certification *</td> </tr> <tr> <td colspan="3">Basis for the visa classification supported by this application <i>(indicate total workers in each applicable category)</i></td> </tr> <tr> <td style="text-align: center;">4</td> <td>a. New employment *</td> <td style="text-align: center;">0</td> </tr> <tr> <td style="text-align: center;">3</td> <td>b. Continuation of previously approved employment without change with the same employer*</td> <td style="text-align: center;">0</td> </tr> <tr> <td style="text-align: center;">0</td> <td>c. Change in previously approved employment *</td> <td style="text-align: center;">0</td> </tr> <tr> <td></td> <td>d. New concurrent employment *</td> <td></td> </tr> <tr> <td></td> <td>e. Change in employer *</td> <td></td> </tr> <tr> <td></td> <td>f. Amended petition *</td> <td></td> </tr> </table>		7	Total Worker Positions Being Requested for Certification *		Basis for the visa classification supported by this application <i>(indicate total workers in each applicable category)</i>			4	a. New employment *	0	3	b. Continuation of previously approved employment without change with the same employer*	0	0	c. Change in previously approved employment *	0		d. New concurrent employment *			e. Change in employer *			f. Amended petition *	
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3	b. Continuation of previously approved employment without change with the same employer*	0																							
0	c. Change in previously approved employment *	0																							
	d. New concurrent employment *																								
	e. Change in employer *																								
	f. Amended petition *																								

Section C: Employer Information



- Legal Business Name
- Trade Name/Doing Business As (DBA)
- Address 1, Address 2, City, State, Postal Code, Country, Province, Telephone Number, Extension
- Federal Employer Identification Number (FEIN)
- NAICS Code

Section C(1-2): Employer Information

(Cont'd)

Legal Business Name

- Full and exact legal name of the employer (e.g. business, person, association, firm, corporation, partnership, or organization) filing the application as reported to the Internal Revenue Service (IRS)

Trade Name/Doing Business As

- DBA
- Employer's assumed name or alias name



Example: The DBA for employer “Computers, Software, & Widgets, Inc.” could be “CSW, Inc.”

Section C(12): Employer Information (Cont'd)



FEIN or EIN:

- Unique 9 digit number in the following format XX-XXXXXXX
- Used by employers in connection with business activities
- Used to identify the business entity

★ All employers, including private households, **MUST** obtain an FEIN from the IRS before completing the LCA

★ Do not enter a social security number in lieu of an FEIN

★ The FEIN is obtained through the IRS at www.irs.gov

Section C(13): Employer Information (Cont'd)



North American Industry Classification System (NAICS code):

- Standard used by Federal statistical agencies in classifying business establishments to collect, analyze, and publish statistical data related to the U.S. business economy
- A business is assigned one NAICS code based on its primary business activity
- A listing of NAICS codes can be found at: <http://www.census.gov/epcd/www.naics.html>

★ The Online System will provide a drop down menu of NAICS codes

(Content taken from the U.S. Census Bureau, <http://www.census.gov>)

Section C: Employer Information (Cont'd)

C. Employer Information

1. Legal business name *		
GLOBAL COMPUTERS, INC.		
2. Trade name/Doing Business As (DBA), if applicable		
GLOBAL, INC.		
3. Address 1 *		
200 CONSTITUTION AVENUE		
4. Address 2		
SUITE 200		
5. City *	6. State *	7. Postal code *
WASHINGTON	DC	20211
8. Country *	9. Province	
UNITED STATES		
10. Telephone number *	11. Extension	
(202) 123-4566	111	
12. Federal Employer Identification Number (FEIN from IRS) *	13. NAICS code (must be at least 4-digits) *	
11-0000000	54151	

Section D: Employer Point of Contact Information



An employee of the employer whose position:

- Authorizes the employee to provide information and supporting documentation concerning the LCA
 - Allows the employee to communicate with the Department on behalf of the employer
 - Information in this section must be different from the attorney/agent information listed in Section E, unless the attorney is an employee of the employer
- ★ Once the employer contact is entered on the LCA form and the LCA is submitted to the Department, it cannot be changed

Section D: Employer Point of Contact Information (Cont'd)

D. Employer Point of Contact Information

Important Note: The information contained in this Section must be that of an employee of the employer who is authorized to act on behalf of the employer in labor certification matters. The information in this Section must be different from the agent or attorney information listed in Section E, unless the attorney is an employee of the employer.

1. Contact's last (family) name *	2. First (given) name *	3. Middle name(s) *
SMITH	MARY	JANET
4. Contact's job title *		
DIRECTOR OF HUMAN RESOURCES		
5. Address 1 *		
200 CONSTITUTION AVENUE		
6. Address 2		
SUITE 200		
7. City *	8. State *	9. Postal code *
WASHINGTON	DC	20211
10. Country *	11. Province	
UNITED STATES		
12. Telephone number *	13. Extension	14. E-Mail address
(202) 123-4566	222	SMITH.MARY@EMAIL.COM

Section E: Attorney or Agent Information (if applicable)

- Must be different from the employer's point of contact information in Section D, unless the attorney is an employee of the employer



Section E: Attorney or Agent Information (if applicable) (Cont'd)

E. Attorney or Agent Information (if applicable)

1. Is the employer represented by an attorney or agent in the filing of this application? * If "Yes", complete the remainder of Section E below.		<input checked="" type="checkbox"/> Yes		<input type="checkbox"/> No	
2. Attorney or Agent's last (family) name § JONES		3. First (given) name § JOHN		4. Middle name(s) § JAMES	
5. Address 1 § 100 CONSTITUTION AVENUE					
6. Address 2 SUITE 300					
7. City § WASHINGTON		8. State § DC		9. Postal code § 20210	
10. Country § UNITED STATES		11. Province			
12. Telephone number § (202) 765-4321		13. Extension		14. E-Mail address JONES@JONESLAW.COM	
15. Law firm/Business name § JONES AND JONES, LLP.				16. Law firm/Business FEIN § 00-0000000	
17. State Bar number (only if attorney) § 12345			18. State of highest court where attorney is in good standing (only if attorney) § DISTRICT OF COLUMBIA		
19. Name of the highest court where attorney is in good standing (only if attorney) § UNITED STATES SUPREME COURT					

Section F: Employment and Wage Information

NEW



Place of Employment Information:

- A place of employment means the worksite where the work actually is performed by a nonimmigrant
- Must identify ALL intended places of employment, including those of short duration
- Must be a physical location in the U.S.
- Cannot be a Post Office Box (P.O. Box)
- Must be defined with geographic specificity
- Up to ten (10) locations
- Additional LCAs must be filed for any additional intended places of employment
- If the LCA is submitted non-electronically, attachments to the LCA are permitted for completion of the ten locations

Section F(1-10): Employment and Wage Information (Cont'd)



- Estimated number of workers that will perform work at the specific place of employment (from the worker positions entered in Section B.7) ~~NEW~~
- Must identify whether the employer is placing the nonimmigrant worker(s) with a secondary entity ~~NEW~~
- Must disclose legal business name of the secondary entity, including any trade name or DBA name ~~NEW~~
- A secondary entity is another entity at which or with which LCA workers will be placed during the period of certification
- Each worksite location must have a corresponding wage rate paid to nonimmigrant workers

Section F(1-10): Employment and Wage Information (Cont'd)

F. Employment and Wage Information

Important Note: The employer must define the intended place(s) of employment with as much geographic specificity as possible. Each intended place(s) of employment listed below must be the worksite or physical location where the work will actually be performed and cannot be a P.O. Box. The employer must identify all intended places of employment, including those of short duration, on the LCA. 20 CFR 655.730(c)(5). If the employer is submitting this form non-electronically and the work is expected to be performed in more than one location, an attachment must be submitted in order to complete this section. An employer has the option to use either a single Form ETA-9035/9035E or multiple forms to disclose all intended places of employment. If the employer has more than ten (10) intended places of employment at the time of filing this application, the employer must file as many additional LCAs as are necessary to list all intended places of employment. See the form instructions for further information about identifying all intended places of employment.

a. Place of Employment Information 1

1. Enter the estimated number of workers that will perform work at this place of employment under the LCA. *		1
2. Indicate whether the worker(s) subject to this LCA will be placed with a secondary entity at this place of employment. *		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3. If "Yes" to question 2, provide the legal business name of the secondary entity. \$ XYZ Company		
4. Address 1 * 123 Independence Ave		
5. Address 2 Suite 456		
6. City * Chicago		7. County * Cook
8. State/District/Territory * Illinois		9. Postal code * 60004
10. Wage Rate Paid to Nonimmigrant Workers * From* \$ <u>76,000</u> To \$ <u>85,000</u>		10a. Per: (Choose only one)* <input type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Bi-Weekly <input type="checkbox"/> Month <input checked="" type="checkbox"/> Year

Sections F(11-14): Employment and Wage Information



Prevailing Wage Rate

- Prevailing Wage Amount (dollars and cents)
- Hourly, Weekly, Bi-Weekly, Monthly, or Yearly

Prevailing Wage Rate Source

- Must choose only ONE source
- F.12 National Prevailing Wage Center (NPWC)
Prevailing Wage Determination
 - Prevailing Wage Tracking Number (issued by the Department)
 - PWD: P-xxx-xxxxx-xxxxxx

Section F (11-14): Employment and Wage Information (Cont'd)

Prevailing Wage Rate Source (Cont'd)

- F.13 OES Prevailing Wage
 - Obtained from Bureau of Labor Statistics (BLS) OES wage through iCERT System at <http://icert.doleta.gov> or the Foreign Labor Certification Online Data Center at www.flcdatabcenter.com
 - OES Wage Level and source year: I, II, III, IV or Not Applicable (N/A)

13. <input checked="" type="checkbox"/>	A PW obtained independently from the Occupational Employment Statistics (OES) Program	
	a. Wage Level (check one): § <input type="checkbox"/> I <input type="checkbox"/> II <input type="checkbox"/> III <input checked="" type="checkbox"/> IV <input type="checkbox"/> N/A	b. Source Year §

Section F (11-14): Employment and Wage Information (Cont'd)



Prevailing Wage Rate Source (Cont'd)

- Another Legitimate Source or an Independent Authoritative Source F.14 a-b
 - Collective Bargaining Agreement (CBA): Agreement negotiated at arm's-length between a union and an employer
 - Davis-Bacon Act (DBA): Government contracts for payment on public works projects
 - McNamara-O'Hara Service Contract Act (SCA): Government contracts that furnish services in the U.S. through the use of service employers

Section F (11-14): Employment and Wage Information (Cont'd)



Prevailing Wage Rate Source (Cont'd)

- “Other/PW Survey” F.14 c-d
 - Reflects the weighted average wage paid to workers similarly employed in the area of intended employment;
 - Reflects the median wage of workers similarly employed in the area of intended employment if the survey provides such a median and does not provide a weighted average wage of workers similarly employed in the area of intended employment;
 - Is based on the most recent and accurate information available; and
 - Is reasonable and consistent with recognized standards and principles in producing a prevailing wage

Section F (11-14): Employment and Wage Information (Cont'd)



Prevailing Wage Rate Source (Cont'd)

- “Other/PW Survey” F.14 c-d
 - Conducted by an independent authoritative source (professional, business, trade, educational or governmental association, organization, or other similar entity, not owned or controlled by the employer, which has recognized expertise in an occupational field)
 - Published in a book, newspaper, periodical, loose-leaf service, newsletter, or other similar medium
 - Reflects the average wage paid to workers similarly employed in the area of intended employment
 - Based upon recently collected data—e.g., within the 24-month period immediately preceding the date of publication of the survey
 - Represents the latest published prevailing wage finding by the authoritative source for the occupation in the area of intended employment.

Section F (11-14): Employment and Wage Information (Cont'd)

Prevailing Wage Rate Source (Cont'd)

- “Other/Prevailing Wage Survey”
 - Provide the type and year of the prevailing wage source
 - Indicate survey company name
 - Provide specific title of the survey

14. <input checked="" type="checkbox"/>	A PW obtained using another legitimate source (other than OES) or an independent authoritative source	
	a. Source Type (<i>check one</i>): § <input type="checkbox"/> CBA <input type="checkbox"/> DBA <input type="checkbox"/> SCA <input checked="" type="checkbox"/> Other/ PW Survey	b. Source Year § 2017
	c. If responded "Other/ PW Survey" in question 14.a, enter the name of the survey producer or publisher § XYZ Survey Publisher	
	d. If responded "Other/ PW Survey" in question 14.a, enter the title or name of the PW survey § Survey of Computer Systems Analysts	

Section G: Employer Labor Condition Statements

- Filer must read and agree to all four labor condition statements
- Employer must develop and maintain documentation supporting labor condition statements
- A copy of the LCA and supporting documentation must be retained for public examination at the place of employment or the employer's principal place of business

Section G: Employer Labor Condition Statements (Cont'd)

- 1) **Wages.** The employer attests that H-1B, H-1B1, or E-3 nonimmigrant workers:
 - will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for occupational classification in the area of intended employment;
 - will be paid wage for time in nonproductive status due to a decision of the employer or due to the nonimmigrant worker's lack of a permit or license;
 - will be offered benefits and eligibility for benefits on the same basis, and in accordance with the same criteria, as is offered to U.S. workers; the employer shall not make deductions to recoup a business expense of the employer, including attorney fees and other costs connected to the performance of H-1B, H-1B1, or E-3 program functions, which are required to be performed by the employer. This includes expenses related to the preparation and filing of this LCA and related visa petition information.

Section G: Employer Labor Condition Statements (Cont'd)

- 2) **Working Conditions** - The employer attests that:
- the employment of H-1B, H-1B1, or E-3 nonimmigrant workers in the named occupation will not adversely affect the working conditions of similarly employed U.S. workers;
 - nonimmigrant workers will be afforded working conditions on the same basis, and in accordance with the same criteria, as offered to U.S. workers.

See 20 CFR 655.732



Section G: Employer Labor Condition Statements (Cont'd)

- 3) **Strike, Lockout, or Work Stoppage** - The employer attests that:
- on the date the application is signed and submitted, there is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the area of intended employment;
 - if such a strike, lockout, or work stoppage occurs after the application is submitted, the employer will notify the Employment & Training Administration (ETA) within three (3) days of such occurrence; in that event, the application will not be used in support of a petition filing with USCIS for H-1B, H-1B1, or E-3 nonimmigrant workers to work in the same occupation at the place of the employment until ETA determines the strike, lockout, or work stoppage has ceased.

Section G: Employer Labor Condition Statements (Cont'd)



- 4) **Notice** - The employer attests that the notice of the LCA filing:
- was provided no more than 30 days before filing of the LCA or will be provided on the day the LCA is filed to workers employed in the occupational classification;
 - shall be provided to workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing shall be provided either through physical posting in conspicuous locations where H-1B, H-1B1, or E-3 nonimmigrant workers will be employed, or through electronic notification to employees in the occupational classification for which nonimmigrant workers are sought;
 - shall be provided no more than 30 days before the date the LCA is filed and no later than the day the LCA is filed and remain posted for 10 days, except that if employees are provided individual, direct notice by e-mail, notification need only be given once. Notice documentation shall be maintained in the employer's records;
 - shall be made in accordance with the requirements of 20 CFR 655.734 and contain the following statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

Section G: Employer Labor Condition Statements (Cont'd)

G. Employer Labor Condition Statements

! Important Note: In order for your application to be processed, you MUST read Section G of the Form ETA-9035CP - General Instructions for the 9035 & 9035E under the heading "Employer Labor Condition Statements" and agree to all four (4) labor condition statements summarized below.

- (1) **Wages:** The employer shall pay nonimmigrant workers at least the prevailing wage or the employer's actual wage, whichever is higher, and pay for non-productive time. The employer shall offer nonimmigrant workers benefits and eligibility for benefits provided as compensation for services on the same basis as the employer offers to U.S. workers. The employer shall not make deductions to recoup a business expense(s) of the employer including attorney fees and other costs connected to the performance of H-1B, H-1B1, or E-3 program functions which are required to be performed by the employer. This includes expenses related to the preparation and filing of this LCA and related visa petition information. 20 CFR 655.731;
- (2) **Working Conditions:** The employer shall provide working conditions for nonimmigrants which will not adversely affect the working conditions of workers similarly employed. The employer's obligation regarding working conditions shall extend for the duration of the validity period of the certified LCA or the period during which the worker(s) working pursuant to this LCA is employed by the employer, whichever is longer. 20 CFR 655.732;
- (3) **Strike, Lockout, or Work Stoppage:** At the time of filing this LCA, the employer is not involved in a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the area(s) of intended employment. The employer will notify the Department of Labor within 3 days of the occurrence of a strike or lockout in the occupation, and in that event the LCA will not be used to support a petition filing with the U.S. Citizenship and Immigration Services (USCIS) until the DOL Employment and Training Administration (ETA) determines that the strike or lockout has ended. 20 CFR 655.733; and
- (4) **Notice:** Notice of the LCA filing was provided no more than 30 days before the filing of this LCA or will be provided on the day this LCA is filed to the bargaining representative in the occupation and area of intended employment, or if there is no bargaining representative, to workers in the occupation at the place(s) of employment either by electronic or physical posting. This notice was or will be posted for a total period of 10 days, except that if employees are provided individual direct notice by e-mail, notification need only be given once. A copy of the notice documentation will be maintained in the employer's public access file. A copy of this LCA will be provided to each nonimmigrant worker employed pursuant to the LCA. The employer shall, no later than the date the worker(s) report to work at the place(s) of employment, provide a signed copy of the certified LCA to the worker(s) working pursuant to this LCA. 20 CFR 655.734.

1. I have read and agree to Labor Condition Statements 1, 2, 3, and 4 above and as fully explained in Section G of the Form ETA-9035CP – General Instructions for the 9035 & 9035E and the Department's regulations at 20 CFR 655 Subpart H. *

X Yes No

Section H, Subsection 1: Additional Employer Labor Condition Statements

(H-1B Employers Only)

1. Is the employer H-1B dependent?
2. Is the employer a willful violator?
3. If “Yes” to either question 1 or 2, will the employer use this application only to support H-1B petitions or extensions of status for exempt H-1B nonimmigrants?
4. If “Yes” to an exemption in Item H.3, is exception based on either \$60,000 or higher annual wage, Master’s Degree or higher in related specialty, or both?
5. If marked “Master’s Degree or higher in related specialty” in Item H.4, employer must complete and attach Appendix A.

Section H, Subsection 1: Additional Employer Labor Condition Statements

(H-1B Employers Only)

H-1B Dependent Employers:

- Determination is the proportion of H-1B workers employed and the number of full-time equivalent workers in the U.S.
- If employer marks “No” and is (or becomes) H-1B dependent, the submitted LCA shall be deemed invalid and may not be used in support of a new H-1B petition or extension of an H-1B petition
- By marking “No”, employer also acknowledges that if it uses the LCA (despite its invalidity), it is required to comply with the Additional LCA Statements in Subsection 2

Section H, Subsection 1: Additional Employer Labor Condition Statements

(H-1B Employers Only)

Willful Violator:

- Employer was found during the five years preceding the date of the LCA (and after October 20, 1998) to have committed a willful violation or a misrepresentation of material fact
- Finding of violation was by the Employment and Standards Administration of the Department or the U.S. Department of Justice
- If employer marks “No” and was found, prior to the date of filing, to have committed a willful violation or a misrepresentation, the submitted LCA shall be deemed invalid and may not be used in support of a new H-1B petition or extension of an H-1B petition
- By marking “No”, employer also acknowledges if it uses the LCA (despite its invalidity), it is required to comply with the Additional Employer LCA Statements in Subsection 2

Section H, Subsection 1: Additional Employer Labor Condition Statements (H-1B Employers Only)

a. Subsection 1

1. At the time of filing this LCA, is the employer H-1B dependent? §	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. At the time of filing this LCA, is the employer a willful violator? §	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3. If "Yes" is marked in questions H.1 and/or H.2, you must answer "Yes" or "No" regarding whether the employer will use this application <u>ONLY</u> to support H-1B petitions or extensions of status for exempt H-1B nonimmigrant workers? §	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4. If "Yes" is marked in question H.3, identify the statutory basis for the exemption of the H-1B nonimmigrant workers associated with this LCA. §	<input type="checkbox"/> \$60,000 or higher annual wage <input checked="" type="checkbox"/> Master's Degree or higher in related specialty <input type="checkbox"/> Both
H-1B Dependent or Willful Violator Employers -Master's Degree or Higher Exemptions ONLY	
5. Indicate whether a completed Appendix A is attached to this LCA covering any H-1B nonimmigrant worker for whom the statutory exemption will be based <u>ONLY</u> on attainment of a Master's Degree or higher in related specialty. §	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Appendix A: Attainment of Educational Degree for “Exempt” H-1B Workers

- H-1B Dependent Employers or Willful Violators ONLY
- For any H-1B nonimmigrant worker subject to the Master’s or higher degree exemption ONLY
- Foreign degree from an accredited or recognized institution and equivalent to a degree issued by a U.S. academic institution
- Degree is in a specialty which is generally accepted in the industry or occupation as an appropriate or necessary credential or skill
- Employer must disclose educational attainment for ALL exempt H-1B workers, unless workers attained the same degree in the same field from the same institution on the same date

Appendix A: Attainment of Educational Degree for “Exempt” H-1B Workers ~~NEW~~

H.5. Attainment of Educational Degree for “Exempt” H-1B Nonimmigrants

a. Educational Attainment Information 1

1. Enter the number of “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.	1
2. Name of accredited or recognized institution that awarded the degree Princeton University	
3. Field of study in which the degree was awarded Computer Science	4. Date degree was awarded 2012

Appendix A: Attainment of Educational Degree for “Exempt” H-1B Workers

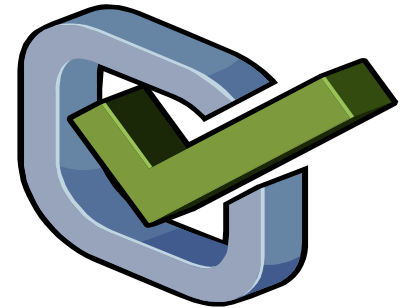
- The employer is required to provide ALL documentation at the time of filing which substantiates the academic information provided
- The documentation is limited to the following: a copy of the degree, a transcript, or an official letter from the academic institution which granted the degree
- Any document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

Section H, Subsection 2: Additional Employer Labor Condition Statements

(H-1B Employers Only) 

H-1B Dependent Employers and Willful Violators must agree to the following:

- **No Displacement**
- **No Secondary Displacement**
- **Recruitment and Hiring**



Section H, Subsection 2: Additional Employer Labor Condition Statements (H-1B Employers Only)



A. Displacement:

Employer attests that it will not displace any similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the date of filing a petition for an H-1B nonimmigrant worker supported by the LCA

Section H, Subsection 2: Additional Employer Labor Condition Statements (H-1B Employers Only)



B. Secondary Displacement:

- The employer will not place any H-1B workers at another employer's worksite where there are indications of an employment relationship between the nonimmigrant(s) and the 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 the period listed on LCA, the displacement will constitute a failure to comply with the terms of the LCA
- Employer-applicant may be subject to civil money penalties and debarment

Section H, Subsection 2: Additional Employer Labor Condition Statements (H-1B Employers Only)



C. Recruitment and Hiring:

- Prior to filing any petition for an H-1B nonimmigrant pursuant to an LCA, the employer took or will take good faith steps meeting industry-wide standards to recruit U.S. workers for the job for which the H-1B worker is sought
- Employer must offer the U.S. worker a wage that is at least equal to the wage offered to the H-1B worker
- Employer is required to have offered the job to any U.S. worker who applied and was equally or better qualified for the job than the H-1B worker

Section H, Subsection 2: Additional Employer Labor Condition Statements (H-1B Employers Only)



C. Recruitment and Hiring (Cont'd):

- Per INA Section 212(n)(1)(G)(ii), this attestation does not apply to the employment of an H-1B nonimmigrant worker who is a “priority worker”
- “Priority worker”, as defined by INA Section 203(b)(1)(A), (B) or (C), is a person with extraordinary ability, or outstanding professors or researchers, or certain multinational executives or managers
- For additional information, contact the USCIS at <http://www.uscis.gov> or (800) 375-5283

Section H, Subsection 2: Additional Employer Labor Condition Statements (H-1B Employers Only)

If you marked “Yes” to questions H.a.1 (H-1B dependent) and/or H.a.2 (H-1B willful violator) and “No” to question H.a.3 (exempt H-1B nonimmigrant workers), you **MUST** read Section H – Subsection 2 of the Form ETA-9035CP – General Instructions for the 9035 & 9035E under the heading “Additional Employer Labor Condition Statements” and indicate your agreement to all three (3) additional statements summarized below.

b. Subsection 2

- A. **Displacement:** An H-1B dependent or willful violator employer is prohibited from displacing a U.S. worker in its own workforce within the period beginning 90 days before and ending 90 days after the date of filing of the visa petition. 20 CFR 655.738(c);
- B. **Secondary Displacement:** An H-1B dependent or willful violator employer is prohibited from placing an H-1B nonimmigrant worker(s) with another/secondary employer where there are indicia of an employment relationship between the nonimmigrant worker(s) and that other/secondary employer (thus possibly affecting the jobs of U.S. workers employed by that other employer), unless and until the employer subject to this LCA makes the inquiries and/or receives the information set forth in 20 CFR 655.738(d)(5) concerning that other/secondary employer’s displacement of similarly employed U.S. workers in its workforce within the period beginning 90 days before and ending 90 days after the date of such placement. 20 CFR 655.738(d). Even if the required inquiry of the secondary employer is made, the H-1B dependent or willful violator employer will be subject to a finding of a violation of the secondary displacement prohibition if the secondary employer, in fact, displaces any U.S. worker(s) during the applicable time period; and
- C. **Recruitment and Hiring:** Prior to filing this LCA or any petition or request for extension of status for nonimmigrant worker(s) supported by this LCA, the H-1B dependent or willful violator employer must take good faith steps to recruit U.S. workers for the job(s) using procedures that meet industry-wide standards and offer compensation that is at least as great as the required wage to be paid to the nonimmigrant worker(s) pursuant to 20 CFR 655.731(a). The employer must offer the job(s) to any U.S. worker who applies and is equally or better qualified for the job than the nonimmigrant worker. 20 CFR 655.739.

6. **I have read and agree** to Additional Employer Labor Condition Statements A, B, and C above and as fully explained in Section H – Subsections 1 and 2 of the Form ETA-9035CP –General Instructions for the 9035 & 9035E and the Department’s regulations at 20 CFR 655 Subpart H. *

Yes No

Section I: Public Disclosure Information

- Public disclosure information will be kept at either:
 - Employer's principal place of business or
 - Place of employment
- 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

Section J: Notice of Obligations

- For electronic filing, the person with authority to sign as the employer must sign and date the application immediately upon receipt of the certified application and before submission to USCIS
- For non-electronic filing, the person with authority to sign as the employer must sign and date the application prior to submission
- Following receipt of certified LCA employer must:
 - Print and sign hard copy of LCA if filing electronically
 - Maintain the original signed and certified LCA
 - Make a copy of the LCA and necessary supporting documentation available for public examination at the employers principal place of business

Section K: LCA Preparer



- Complete this section if the preparer of the LCA is a person other than the one identified in Section D (Employer Point of Contact) or Section E (Attorney/Agent) of the LCA
 - Leave this section blank if the employer or attorney/agent contact (listed in Sections D and E) prepared the LCA
- ★ An employee of the attorney (e.g., paralegal) would complete this section

Incomplete or Obviously Inaccurate LCAs



Per 20 CFR 655.730(b), incomplete or obviously inaccurate LCAs will not be certified by the Department.

More Information

- <https://www.foreignlaborcert.doleta.gov/>
- <https://icert.doleta.gov/>
- <https://www.foreignlaborcert.doleta.gov/faqsanswers.cfm>