



PROPOSED CHANGES TO LABOR CONDITION APPLICATION (LCA) FORM USED FOR H-1B, E-3 & H-1B1 PETITIONS

The U.S. Department of Labor (DOL) recently proposed drastic changes to the Form ETA-9035, Labor Condition Application (LCA) which must be filed in connection with H-1B, E-3 and H-1B1 visa petitions.

Employee Must Be Identified on New LCA Form

The current LCA is not specific to an individual new hire candidate or employee, but rather seeks only information regarding the position and the employer. The proposed LCA would require that the employer identify the individual by name, country of citizenship, date of birth, and immigration status. The employer would also be required to state whether a PERM Application for Permanent Employment Certification has been filed for the individual. These changes would enable side-by-side comparison of the information provided by employers in connection with the H-1B and E-3 programs and the PERM labor certification program.

Employer Must Provide Greater Detail Regarding Offered Position

In addition to requiring the employer to name the individual beneficiaries, with a new limit of 10 beneficiaries per application, the new LCA form would require additional information regarding the position offered to the beneficiaries. Employers would be required to specify whether the place of employment is a business premises, a private household, or the worker's residence. Job placement agencies would be required to provide additional information concerning the placement of workers at an end-client site and would be required to specifically confirm whether the position offered is a bona fide job opportunity. If the employer relies on an alternative wage survey for determination of the prevailing wage in the geographic area, the employer must provide additional details regarding the survey source, survey publisher and the date of survey publication. These changes would enable the DOL to evaluate more readily the nature of the position and the manner in which the employer determined the prevailing wage for similar positions in the geographic area.

"H-1B Dependent" Employer Requirements

For H-1B dependent employers subject to additional regulatory requirements, the new LCA form would require greater detail concerning the recruitment efforts conducted or the basis for any exemption from the recruitment requirements. These changes would enable the DOL to evaluate more readily an H-1B dependent employer's compliance with the H-1B dependent employer recruitment obligations, and would allow the DOL to better determine whether the employer has properly claimed an exemption from those additional obligations.

Notice & Comment Period Ends September 7, 2012

It is important to note that these changes have been proposed, but are not yet scheduled for implementation. The DOL publication of the proposed changes opened a “notice and comment” period which will close on September 7, 2012. The DOL must review and consider the comments before the proposed changes could be implemented. Employers who wish to comment on the proposed changes should contact their FosterQuan immigration attorney for assistance in preparing an appropriate comment to address any employer concerns with this newly proposed information collection by the DOL.

As always, FosterQuan will continue to monitor government regulatory activity and legislative proposals that impact on an employer’s immigration-related obligations in order to assist employers in evaluating how new regulations and government proposals will impact their compliance programs and procedures. FosterQuan will provide future updates via the FosterQuan [website](#) and in future Immigration Updates ©.