



Faculty & Staff Immigration Services

September 22, 2017

Mr. William Thompson II
Administrator
Office of Foreign Labor Certification
Box 12-200
Employment & Training Administration
U.S. Department of Labor
200 Constitution Ave, N.W.
Washington, DC 20210

RE: Comment Request for Information Collection for Form ETA-9035, Labor Condition Application for Nonimmigrant Workers

Submitted via email: ETA.OFLC.Forms@dol.gov

Dear Mr. Thompson -

I am the Assistant Director for Faculty and Staff Immigration Services at the International Center on the Ann Arbor campus of the University of Michigan. I am submitting these comments on behalf of the University in response to the proposed changes to the Form ETA 9035, or Labor Condition Application (LCA), published in the Federal Register, Vol 82, No. 148, August 3, 2017, pp 36158. The University of Michigan is a large public university with approximately 58,000 regular and temporary employees working in higher education, health care and research across Michigan. Of these employees, approximately 700 are H-1B status holders. In addition, several other employees hold E-3 status. For each H-1B petition (or E-3 application), an LCA is required. As such, the proposed changes to the LCA application form have a direct and significant impact on the University. Therefore, we appreciate the opportunity to comment on the proposed changes.

We are supportive of the stated goals of these changes, namely “to streamline parts of the current information collection to assist the regulated community with form completion; provide greater clarity of existing employer obligations under the programs; and promote greater program transparency.” Some of the proposed changes, such as (1) re-ordering the information on the form so that the prevailing wage rate and the wage rate to be paid to nonimmigrant workers appear in the same section and (2) updating the prevailing wage source section to allow for easier completion when relying on the OFLC Online Wage Library for calculating a prevailing wage determination, generally achieve this goal. However, some additional clarifications and/or changes would be helpful. Therefore, we propose the following amendments:

- Section B.2 (SOC (ONET/OES) code) currently allows for the inclusion of a six-digit code only. However, in the Bureau of Labor Statistics taxonomy, each SOC code has an additional two decimals. This complete eight-digit number provides significant additional information and clarity. For example, the generic “Biological Scientists, All Other” (19-1029) includes the following, subsumed occupations/codes: Bioinformatics Scientist (19-1029.01), Molecular and Cellular Biologists (19-1029.02) and Geneticists (19-1029.03). Whereas the generic “all other” code and Bioinformatics Scientists code do not provide much relevant data about the specific vocational preparation needed, especially the Job Zone and Education, the latter two codes do. Inclusion of the additional two decimal place digits will allow employers to classify their positions more accurately and to indicate more clearly whether a given position should be deemed a specialty occupation – the eligibility standard for H-1B and E-3 status – by providing additional information to USCIS. In addition, and more generally, allowing for the complete SOC code to be used on the LCA will enhance clarity and program transparency.



Faculty & Staff Immigration Services

- Section F (places of intended employment) currently allows for the inclusion of three separate places of intended employment. The form instructs employers to use “as much geographic specificity as possible.” Whereas many University employees work on campus and have a single employment location, many others may be employed at multiple university-operated clinics and other off-campus locations. As a result, multiple LCAs may be required. In effect, this decreases program transparency, complicates form completion and makes compliance more onerous. Instead of requiring the filing of multiple LCAs, Section F should be amended so that the number of employment locations can be increased. Technically, it should be feasible to allow for any number of locations, but if a fixed number must be used, we propose increasing the number of allowed places of intended employment to ten or more to allow for more specificity with employees that are located at multiple sites.
- Section F.2 (placement with a secondary employer): Although the Cover Pages to the form provide a brief explanation of the circumstances under which the question has to be answered in the affirmative, it would be helpful if the question itself were rephrased to clarify that, in order for the question to be answered in the affirmative, there must be “‘indicia’ of an employment relationship,” and that mere placement at a secondary location does not necessitate a positive answer. Alternatively, the Cover Pages could include a more comprehensive explanation of the requirement and/or an additional “important note” could be added to the form itself – akin to the note that already appears on the form in section F. Without this additional clarification, based on the question as written, employers are likely to over-report such placements. This will result in flawed data, which undercuts program transparency.
- Section H.5 (Appendix A): This appendix only requires completion under certain circumstances. The questions in this section should be marked to clarify they are conditional and are only required to be completed if the employer (1) is deemed H-1B dependent, or a willful violator, and (2) is claiming an exemption of the additional attestations for such employers, and (3) the exemption is based, in whole or in part, on the H-1B nonimmigrant having earned a Master’s degree or higher in a related specialty. Additionally, it would be helpful if an “important note” or other clarification could be added to the appendix to reiterate under what circumstances the appendix is to be completed

Clarifying the LCA language as discussed above will have a significant impact on the university as well as the larger regulated community. The University therefore requests that the Office of Foreign Labor Certifications consider changing the proposed form, as suggested. The University of Michigan thanks the OFLC for the opportunity to comment on this proposed change.

Sincerely,

David Muusz
Assistant Director for Faculty and Staff Immigration Services
International Center
University of Michigan

515 E. Jefferson Ave.
Ann Arbor, MI 48109

muusz@umich.edu