

American Staffing Association

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September 29, 2017

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

RE: ETA-9035; Comment Request for Information Collection for Form ETA-9035, Labor Condition Application for Nonimmigrant Workers (OMB Control Number 1205-0310), Revision of a Currently Approved Collection

Dear Mr. Thompson:

The American Staffing Association (ASA) is a national trade association comprised of member staffing firms that recruit, screen, and hire employees and place them on temporary assignments with clients on an as-needed basis. ASA submits the following comments with respect to the Department of Labor's (DOL) request for comments regarding Form ETA-9035, Labor Condition Application for Nonimmigrant Workers (LCA).

Temporary and contract staffing is one of America's largest service industries, employing nearly 15 million temporary and contract employees annually. Staffing firms play a vital role in the U.S. economy by providing employment flexibility for workers and just-in-time labor for businesses. Staffing firms provide workers with jobs, training, choice of assignments and work, flexibility, and a bridge to permanent employment for those who are just starting out, changing jobs, or out of work. Temporary and contract employees work in virtually every job category, including industrial labor, office support, health care, engineering, science and information technology, and various professional and managerial positions.

ASA's member staffing firms do not typically employ large numbers of H-1B workers but nonetheless have a strong interest in ensuring that the H-1B system works fairly and efficiently, so that (i) they and their clients have access to foreign skilled workers in cases when U.S. talent is not available; and (ii) staffing firms that utilize the H-1B program as intended are not undercut by companies that evade program requirements or exploit foreign workers to cut costs and improve margins. Abuses by certain H-1B dependent employers that bring in large numbers of H-1B workers at subpar and often unlawful wage rates are creating significant competitive harm to staffing firms that are trying to meet their clients' needs by employing U.S. workers at prevailing wage rates.

Accordingly, ASA supports the following proposed revisions to the LCA as set forth in the request for comments:

The Proposed LCA Revisions

ASA supports measures that would combat wage violations and address worker abuse and unfair competition, and the following LCA revisions are consistent with these objectives:

- Disclosure of the intended place(s) of employment, the number of workers performing work at such location(s), and the legal name of any secondary employer to which an H-1B worker will be placed or assigned to work
- Disclosure of the source used to determine the relevant prevailing wage
- Prohibition of deductions from employee wages for H-1B-related expenses

ASA further supports measures promoting a “U.S. workers first” approach, whereby America’s workers are not adversely affected by employers’ use of nonimmigrant workers:

- Prohibition against the use of nonimmigrant workers in a manner that would adversely affect the working conditions of workers similarly employed
- Prohibition against an H-1B dependent employer or willful violator displacing a U.S. worker 90 days before and after the filing of the H-1B visa petition
- Prohibition against an H-1B dependent employer or willful violator placing a nonimmigrant worker with a secondary employer and displacing a U.S. worker 90 days before, during, and 90 days after, such placement
- Requirement that prior to filing a LCA, an H-1B dependent employer or willful violator undertake good faith efforts to recruit U.S. workers and pay competitive wages

Finally, ASA supports increased transparency measures to ensure that H-1B program requirements are not evaded. In that regard, ASA supports the:

- Requirement that H-1B dependent employers identify and provide details regarding the statutory basis for exempt workers, including information pertaining to minimum salaries or degrees of higher learning
- Requirement that the LCA be maintained in the employer’s files and be made available for public examination and to DOL
- Requirement that the employer maintain sufficient documentation to verify the statements made in the LCA

By adopting the foregoing proposed changes to the LCA, DOL will help protect U.S. and nonimmigrant workers’ interests, protect against abuse of the H-1B system, and create a more level and competitive playing field.

American Staffing Association

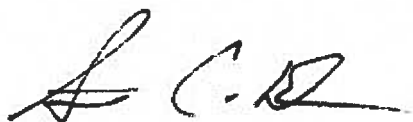
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Thank you for your consideration.

Very truly yours,

AMERICAN STAFFING ASSOCIATION

A handwritten signature in black ink, appearing to read "S. C. Dwyer". The signature is written in a cursive style with a large initial "S" and a distinct "Dwyer" ending.

Stephen C. Dwyer
General Counsel