

# Three Takeaways from the DOL's New Labor Condition Application Form

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Effective Nov. 19, U.S. employers seeking to file H-1B, H-1B1 and E-3 petitions (extension, new or amendment) must use the new ETA 9035 form, the legally required Labor Condition Application (LCA). The most important changes to the new form include requiring employers to indicate if the H-1B, H-1B1 and E-3 worker will be placed at a third-party worksite; provide the full name and address of the third-party entity; and note the number of foreign workers at each worksite listed on the LCA. Further, for H-1B dependent employers, the new LCA requires that educational documents, including the degree, transcripts, translations, and possibly education evaluations if applicable, be uploaded prior to the online submission of the LCA.

## Why a new form?

The DOL is taking necessary steps to protect American workers by directing U.S. government agencies to aggressively confront entities committing visa program fraud and abuse. In their June 2017 news release, Secretary of Labor Alexander Acosta announced, "...We will enforce vigorously H-1B laws, including the heightened use of criminal referrals." Both the DOL and the Trump administration seek to reduce H-1B visa fraud where U.S. employers place these foreign workers at third-party worksites. Thus, the new form is a means to gather information, names, and documentation of such entities, facilitating the referral of information where there is criminal fraud to the Office of Inspector General.

## What are the objectives of the U.S. Department of Labor's Office of Foreign Labor Certification (OFLC)?

The OFLC is located within the DOL's Employment and Training Administration and oversees the hiring of foreign workers in the United States. Under the DOL's directives and in keeping with the Trump administration's immigration objectives, the OFLC is tasked to better protect American workers, confront fraud, and increase transparency with this new form.

## What is the timeframe for using the new form?

The new LCA will be available on the DOL's icert portal on Nov. 19. Any employers filing by mail must use the new form. Any USCIS H-1B, H-1B1 and E-3 petitions filed on or after Nov. 19, 2018, using the old form will be accepted, if certified.

## Practice Tips

U.S. employers placing foreign workers at third-party worksites should:

- Advise these third-party worksites of the new LCA, the requirement to provide their name and addresses to the DOL, and the possible referral to other U.S. government agencies who may visit their worksite.
- Identify foreign workers to be assigned to third-party worksites early and gather the necessary education documents for submission to the DOL icert portal.
- Ensure that both the U.S. employer and the third-party worksite are prepared for any possible DOL audit or visit asking to review H-1B files, including the LCA Public Access Files (PAFs).
- Ensure the accuracy of the legal name and full street addresses of each of the third-party worksites to be provided on the LCA.

Please feel free to reach out to Carlton Fields Senior Counsel Maria Mejia-Opaciuch (305) 539-7319 or [mmejia-opaciuch@carltonfields.com](mailto:mmejia-opaciuch@carltonfields.com).

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