

NOTE TO REVIEWER

AMENDMENT TO THE LABOR CONDITION APPLICATION (1205-0310) FOR H-1B NONIMMIGRANTS

On January 12, 2009, OMB approved a three year extension of Information Collection 1205-0310, Form ETA-9035 - Labor Condition Application (LCA). The LCA is used to collect information required by the Immigration and Nationality Act (INA) under 8 U.S.C. 101(a)(15)(H)(I)(B), 1182(n), 1184(c). The Information Collection also contains an electronic version of the form ETA-9035E and instructions ETA-9035CP.

On February 17, 2009 the President signed into law the American Recovery and Reinvestment Act of 2009 (ARRA). The law, in Division A, Section 1161, mandates that employers who are recipients of funding under Title I of the Emergency Economic Stabilization Act of 2008 (P.L. 110-343) or Section 13 of the Federal Reserve Act (12 U.S.C. 342 et. seq.) and who wish to hire foreign workers described in Section 101(a)(15)(h)(i)(b) of the Immigration and Nationality Act must comply with the same requirements as an H-1B dependent employer (as defined in Section 212(n)(3) of the INA at 8 U.S.C. 1182(n)(3)) and are not eligible for the exemption in Section 212(n)(E)(ii). This provision will be in effect for two years from the date of enactment.

The Employment and Training Administration (ETA) at the Department of Labor is responsible for certifying the LCAs. ETA is requesting expedited review and approval of this non-substantive change to our collection by March 15, 2009 because the vast majority of LCAs received by ETA are filed between March 15th and April 1st of each year. This is due to the cap of 65,000 H-1B visas available for each fiscal year and that all petitions for H-1B visas must contain an approved LCA from the Department of Labor. The Department of Homeland Security (DHS), which adjudicates the petitions for H-1B visas, allows employers to begin filing petitions for H-1B visas six months before the beginning of a fiscal year. Last year, DHS received over 150,000 petitions on April 1st.

The LCA contains the attestations that all participating employers must make as specified by Congress in the Immigration and Nationality Act (INA). The LCA, as currently approved by OMB, does not have the appropriate attestation needed for the entities subject to this new provision. These particular employers are not truly "H-1B dependent employers." They simply must comply with the same requirements as H-1B dependent employers. Therefore, it would be inappropriate to ask them to mark the box on the current collection confirming that they are "H-1B dependent employers." Rather, the form should ask them if they are subject to the provisions of the ARRA and if they are, they will then attest to the same attestations as H-1B dependent employers.

In order to accomplish this objective, ETA is proposing to attach an appendix to the current collection asking this specific question and copying the section of the form listing the attestations (already approved by OMB) for the H-1B dependent employers into the

appendix. Without such a change to this collection the recipients of the Federal funds who are subject to this new law will, effectively, be unable to participate in the H-1B program for FY 2010.

The hourly burden for this collection will not change significantly. Currently there are approximately 400 employers subject to this new law. ETA is unable to determine exactly how many of these employers also utilize the H-1B program because the U.S. Treasury Department, which publishes the list of the Federal funding recipients, does not list the EIN numbers of the recipients. A comparison by entity name proved difficult because some of the entities have multiple subsidiaries and it is unclear from the Treasury list if they are subject to the ARRA provision or not. ETA was unable to derive an exact number of respondents and responses. The Department therefore, estimates that approximately 100 entities on the U.S. Treasury Department list will utilize this program and will file, on average, three LCAs requiring the appendix for a total of 300 filings. Reading the instructions for the appendix and completing it will require an additional 5 minutes of time for a total burden of 25 reporting hours. The appendix will be part of the same record keeping as the rest of this information collection; therefore, there is no increase in the record keeping burden. There is no third-party disclosure.

H-1B employers, in general, are from a wide variety of industries. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required by this regulation are unknown. Absent specific wage data regarding such employers and employees, respondent costs were estimated at the same hourly wage as used in our primary application at \$25 an hour. Total annual respondent hour cost for the additional appendix is estimated at \$625 ($\25.00×25)

Type of Collection	Hourly Burden	Cost Burden
Reporting	25	\$625
Record Keeping	0	\$0
Third Party Disclosure	0	\$0