FAQs on LCAs for H-1B

On April 15, 2009, the Department launched its iCERT Portal, creating a new electronic system for the submission of Labor Condition Applications. The following "Frequently Asked Questions" (FAQs) are in response to questions arising from the application of the new online system and the newly redesigned ETA Form 9035 and 9035E.

Question: I just received a denial of an LCA giving the reason of an invalid Federal Employer identification Number (FEIN) as assigned by the Internal Revenue Service (IRS). How do I correct this?

Answer: A denial for the FEIN value means that the FEIN entered in Section C.12 of the ETA Form 9035E by the employer could not be currently verified by the OFLC as a valid nine-digit FEIN assigned by the IRS. The Department is checking FEINs in response to recommendations of the General Accountability Office (GAO) in 2006 that the Department's review of LCAs for "obvious errors and inaccuracies" needed to improve to ensure employer compliance with program obligations. Limiting the certification of LCAs to only valid U.S. employers assists the Department in ensuring program integrity.

When the employer receives a denial of an LCA on this ground, it also receives additional instructions from Chicago National Processing Center (CNPC) on how to resubmit an LCA. In order for the employer to overcome the issue identified on the denial determination for any future LCAs submitted using the denied FEIN, the employer will first need to submit at least one document that clearly displays the FEIN and the name of the employer associated with the unique identification number. Such documents may include:

- Documentation from IRS noting assignment of FEIN
- Federal or State tax return (only acceptable with a pre-printed label) or a pre-printed tax coupon
- Documentation from employer's financial institution showing employer's FEIN
- Articles of incorporation, business license, or other certifications of business existence
- Secretary of State or Corporation Commission registration documents
- Official and/or government documents
- Other documentation showing the FEIN and name of the employer

In order to expedite the process, you may either fax, e-mail as a PDF attachment, or mail the requested information to the following:

FAX: (312) 886-1688. On the cover page of the fax, please write "LCA Business Verification Team - Proof of Valid FEIN", or

E-MAIL: LCA.Chicago@dol.gov. In the Subject Line, please write "LCA Business Verification Team - Proof of Valid FEIN", or

MAIL: Attn: LCA Business Verification Team - Proof of Valid FEIN
U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
844 N. Rush Street, 12th floor
Chicago, IL 60611

The employer will be notified via e-mail after the requested information has been reviewed. Only then should the employer submit a new LCA.

Question: I am filing on behalf of a new company, created through a recent merger. How do I get the information to DOL to avoid a denial?

Answer: The employer who is a “new” company (created through a merger, acquisition, sale, etc.) may submit the documentation described above to establish its new FEIN. It may then file an LCA.

Question: I filed an application for an LCA and it was denied based on an invalid FEIN, but in the past I received an approved PERM labor certification using the same FEIN. Will this continue to happen?

Answer: No. All prior FEIN verifications completed during the PERM employer existence verification process are now incorporated into the iCERT database, New FEIN verifications from the PERM system are inserted into the iCERT system on a daily basis, although it is advised that employers seeking to use a newly verified FEIN from a filed PERM application in connection with an LCA wait at least 2 days prior to filing the LCA to ensure the information has been coordinated between databases.

Question: What contact information should I enter in Section D (Employer Point of Contact Information) of the LCA Form ETA-9035 & 9035E?

Answer: The employer must enter the contact information of the employee who is authorized to act on the behalf of the employer. This cannot be an agent or attorney, unless the agent or attorney is a direct employee of the employer.

Question: How do I enter a prevailing wage survey on the new Labor Condition Application, ETA Form 9035 & 9035E (2009 version)?

Answer: The prevailing wage survey should be entered in Section G.11.b of the Labor Condition Application (LCA) with the survey company name and the **complete title of the survey** as it appears on the front cover of the survey. The field (Section G.11.b) holds up to 50 characters including spaces and punctuation marks. If the **complete survey title** does not fit in the field, type the full name of the survey until there is no space remaining. Do not abbreviate a survey company name or title of the survey. If the year is included in the survey title, do not include the date in Section G.11.b. Please enter the year in Section G.11.a.

> **Example:** A survey by Watson Wyatt called the Survey Report on Top Management Compensation, May 29, 2009 should appear in Section G.11.a and b as follows:

11. Prevailing wage source (Choose only one) * ☐ OES ☐ CBA ☐ DBA ☐ SCA ▪ Other	
11a. Year source published * **May 29, 2009**	11b. If "OES" and SWA did not issue prevailing wage **OR** "Other" in question 11, specify source *§* **Watson Wyatt: Survey Report on Top Management Compensation**

For additional information about prevailing wage survey entries, please refer to the ETA Form 9035CP- General Instructions for the 9035 & 9035E, Appendix II: Sample of Acceptable Wage Survey Sources. For additional information about the criteria for acceptable prevailing wage surveys, please refer to the May 9, 2005 ETA Prevailing Wage Guidance.

Question: How do I withdraw a certified labor condition application (ETA-9035/9035E) after receiving certification from the Department of Labor through the iCERT Portal?

Answer: An employer who received a certified LCA filed through the iCERT Portal may withdraw a certified labor condition application (LCA) electronically through the iCERT Portal, via e-mail or written notice.

A certified labor condition application (LCA) may be withdrawn at any time, provided the employee benefiting from the LCA is not currently working for the employer and the Administrator has not commenced an investigation. If an investigation has commenced, the LCA will remain pending until the investigation is complete.

To withdraw a certified LCA using the iCERT Portal, a Master account holder (Attorney/Employer) or Associate account holder (a subaccount user granted permission by the Master account holder) must login to the iCERT Portal, select the certified LCA he or she wishes to withdraw and click the withdraw button. The user is required to select a withdrawal reason from a dropdown list and enter a case note explaining the reason for withdrawal. The system will ask the user to verify the request to withdrawal the selected certified LCA. The user must click the verification button. Once the verification is made, the employer contact and the attorney contact, as listed on the LCA, will receive an e-mail indicating the withdrawal was successful. If the user does not have the authority to withdraw the certified LCA, either because of LCA status or account status, the iCERT Portal will not allow completion of the withdrawal. Withdrawing an LCA through the iCERT Portal is the only option that guarantees confirmation once the withdrawal is complete.

To withdraw a certified LCA via e-mail, the employer must send the request to the LCA Help Center at: www.OFLCPortal.gov. The e-mail subject line must include: Certified LCA Withdraw Request. Please scan the certified LCA and attach it to the body of the e-mail. In the body of the e-mail, please provide: the employer's name and Federal Employer Identification Number (FEIN) if available, the LCA number, an explanation for why you are withdrawing the certified LCA, and provide a statement that no employee is working on the LCA pursuant to it being withdrawn. The user must access the iCERT Portal to verify if the certified LCA was successfully withdrawn.

To withdraw a certified LCA through written notice, the employer must send the written request to:

Attn: H-1B Withdrawal
U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
200 Constitution Avenue NW, C-4318
Washington, D.C. 20210

Written notice must include: the employer's name and FEIN if available, the LCA case number, an explanation for why you are withdrawing the LCA, and verification that no employee is working on the LCA pursuant to it being withdrawn. The user must access the iCERT Portal to verify if the certified LCA was successfully withdrawn.

Please reference 20 CFR § 655.750(b) for further explanation of the requirements for withdrawing a certified LCA with the Department of Labor-ETA.