

TEXAS WORKFORCE COMMISSION LETTER

ID/No:	WD 15-10
Date:	March 24, 2010
Keyword:	ES; WorkInTexas.com
Effective:	Immediately

To: Local Workforce Development Board Executive Directors
Commission Executive Offices
Integrated Service Area Managers



From: Laurence M. Jones, Director, Workforce Development Division

Subject: **Foreign Labor Certification—Verification of Employment Eligibility**

PURPOSE:

To provide Local Workforce Development Boards (Boards) with information and guidance on recent changes to the U.S. Department of Labor (DOL) Foreign Labor Certification (FLC):

- H-2A agricultural nonimmigrant visa program; and
- H-2B nonagricultural nonimmigrant visa program, including:
 - identification of H-2B job postings in WorkInTexas.com;
 - verification of employment eligibility on H-2B job postings;
 - completion of Form I-9, Employment Eligibility Verification;
 - completion of the Employment Eligibility Verification Certificate for submission to employers; and
 - records retention.

BACKGROUND:

DOL's FLC nonimmigrant visa program permits employers to hire foreign workers to perform temporary labor or services. Prior to filing a petition for the workers with the U.S. Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS), employers must file an application with DOL certifying that:

- there are not sufficient workers who are able, willing, qualified, and available at the time and place where the foreign worker is to perform the work; and
- employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

On February 12, 2010, DOL published new regulations eliminating the requirement that the Commission verify the employment eligibility of job seekers referred to H-2A job postings. The regulations were effective March 15, 2010.

PROCEDURES:

H-2A Job Postings

Boards must be aware that effective March 15, 2010, Texas Workforce Center staff is no longer required to verify the employment eligibility of job seekers referred to H-2A job postings.

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Boards may make arrangements with employers that include Texas Workforce Center staff verifying the employment eligibility of job seekers.

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H-2B Job Postings

Identification of H-2B Job Postings in WorkInTexas.com

Boards must ensure that Texas Workforce Center staff can identify H-2B job postings. In WorkInTexas.com, these job postings are indicated by the following:

NLF

- The *FLC Job Type* is H-2B.
- An *FLC Case No.*, if the posting was entered by FLC staff.
- A statement in the *Job Description* indicating that the employment is temporary, including the start and end dates.

Verification of Employment Eligibility on H-2B Job Postings

Boards must ensure that Texas Workforce Center staff:

NLF

- verifies the job seeker's employment eligibility for all staff referrals on H-2B job postings;
- documents the job seeker's employment eligibility using Form I-9; and
- does not use E-Verify—USCIS's Internet-based employment eligibility verification system—to verify the employment eligibility of job seekers referred by staff to H-2B job postings.

Boards must be aware that expired documents are no longer acceptable for verifying employment eligibility.

NLF

Completion of Form I-9

Boards must ensure, when using Form I-9 to document a job seeker's employment eligibility, that Texas Workforce Center staff:

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- uses the most current Form I-9, available at www.uscis.gov/files/form/i-9.pdf;
- follows the requirements in the *Handbook for Employers* at www.uscis.gov/files/form/m-274.pdf; and
- records the completion date of Form I-9 in WorkInTexas.com *Job Posting Notes*.

Also provided for Boards' use is the Quick Reference Desk Aid for Form I-9, included as Attachment 1.

Completion of the Employment Verification Certificate

Wagner-Peyser-funded Employment Service (ES) staff is designated as the Texas Workforce Commission’s officials authorized to sign the Employment Eligibility Verification Certificate. Boards must ensure that ES staff:

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- uses the information in Form I-9 to complete the Employment Eligibility Verification Certificate, included as Attachment 2; and
- provides the completed Employment Eligibility Verification Certificate directly to the employer, by mail or in person, “no later than 21 business days after date of hire.” Because the date of hire will be unknown, Boards must ensure that ES staff provides the Employment Eligibility Verification Certificate to the employer at the time of the staff referral.

Records Retention

Boards must ensure that the original Form I-9, or a microfiche/microfilm copy, and a copy of the Employment Eligibility Verification Certificate are retained for three years from the date that an individual was last referred by the Board.

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Additionally, upon request by USCIS or other U.S. government officials, Boards must ensure that these documents are made available within three business days.

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INQUIRIES:

Direct inquiries regarding this WD Letter to wfpolicy.clarifications@twc.state.tx.us.

ATTACHMENTS:

Attachment 1: Quick Reference Desk Aid for Form I-9

Attachment 2: Employment Eligibility Verification Certificate

RESCISSIONS:

WD Letter 70-07, Change 1

WD Letter 70-07, Change 2

REFERENCE:

Immigration and Nationality Act (Pub. L. 82-414), as amended by Immigration Reform and Control Act of 1986 (Pub. L. 99-603)

8 C.F.R. Part 274a, Control of Employment of Aliens

20 C.F.R. Part 655, Subpart A, Labor Certification Process and Enforcement of Attestations for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers)

U.S. Department of Labor: Temporary Agricultural Employment of H-2A Aliens in the United States, *Federal Register*, Vol. 75, No. 29, published February 12, 2010

Technical Assistance Bulletin 137, issued December 19, 2006, and entitled “WorkInTexas.com Enhancements for Alien Labor Certification Job Postings”

FLEXIBILITY RATINGS:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by “must” or “shall.”

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by “may” or “recommend.”