

TEXAS WORKFORCE COMMISSION LETTER

ID/No:	WD 70-07, Change 1
Date:	February 3, 2009
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: Form I-9: Verification of Employment Eligibility for **Temporary H-2A Agricultural and H-2B Nonagricultural** Job Seekers—*Update*

PURPOSE:

To provide Local Workforce Development Boards (Boards) with **updated** information and guidance on:

- identifying **temporary H-2A agricultural and H-2B nonagricultural** job postings in WorkInTexas.com;
- requiring verification of employment eligibility for job seekers referred on **temporary H-2A agricultural and H-2B nonagricultural** job postings;
- completing Form I-9, Employment Eligibility Verification;
- completing the **revised** Employment Eligibility Verification Certificate for submission to employers; and
- retaining Form I-9 and Employment Eligibility Verification Certificate records.

CHANGES TO WD LETTER 70-07:

New information in this WD Letter is indicated by:

- A ~~strikethrough~~ of the original language, which indicates that language has been deleted; and
- **Bold** typeface, which indicates new or clarifying language.

BACKGROUND:

The U.S. Department of Labor's (DOL) ~~Alien~~ **Foreign** Labor Certification H-2A **agricultural and H-2B nonagricultural** nonimmigrant visa program permits employers to hire foreign workers to perform temporary or seasonal **agricultural and nonagricultural** labor or services. Prior to filing a petition for one or more H-2A or H-2B 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 H-2A or H-2B worker is to perform the work; and
- employment of the H-2A or H-2B worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

~~On November 6, 2007, DOL issued Training and Employment Guidance Letter (TEGL) 11-07, entitled “Clarification of Certain Procedures for Processing H-2A Labor Certification Applications.” On November 14, 2007, DOL issued TEGL 11-07, Change 1, rescinding and replacing TEGL 11-07, that:~~

- ~~• further clarifies procedures for processing H-2A Labor Certification Applications;~~
- ~~• describes programmatic changes to the processing of H-2A job postings; and~~
- ~~• requires state workforce agencies to verify the employment eligibility of any job seeker referred on an H-2A job posting.~~

On December 4, 2007, DOL conducted a Webinar to review the basic requirements of TEGL 11-07, Change 1, and provide detailed information on completing Form I-9. Form I-9, along with basic instructions, is included as Attachment 1, and is available at <http://www.uscis.gov/i-9>.

The Webinar PowerPoint presentation is available at <http://www.twc.state.tx.us/boards/wdletters/letters/70-07tegl.pdf>.

In December 2008, DOL published its new regulations on H-2A temporary agricultural employment and H-2B temporary nonagricultural employment. The new H-2A regulations became effective January 17, 2009, and the new H-2B regulations became effective January 18, 2009.

PROCEDURES:

~~Boards must be aware of the following requirements effective December 15, 2007.~~

Boards must ensure that Texas Workforce Center staff:

- asks employers filing a temporary job posting if the job posting is being placed in connection with a future application for H-2A or H-2B workers; and
- if the answer is yes, refers employers to the Texas Workforce Commission’s (Commission) Foreign Labor Certification unit staff (previously the Alien Labor Certification [ALC] unit) at (512) 475-2571, who will enter the job posting request.

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

H-2A job postings in WorkInTexas.com contain:

- an ALC Case Number at the bottom of the *General Details* section of the job posting;
- the **following statements in the job description:**
 - **“temporary employment (start date – end date)”**
 - **“do not refer without hardcopy”;** and
 - **“clearance order”;** and
- the statement **“employment eligibility verification required for all staff referrals”** in the contact information.

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

H-2B job postings in WorkInTexas.com contain:

- an ALC Case Number at the bottom of the *General Details* section of the job posting;
- the statement **“temporary employment (start date – end date)”** in the job description; and
- the statement **“employment eligibility verification required for all staff referrals”** in the contact information.

Verification of Employment Eligibility

Boards must be aware that under DOL’s new regulations, Texas Workforce Center staff must now verify the employment eligibility of any job seeker referred by staff on an H-2B job posting.

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Prior to making a referral to an employer on a **temporary H-2A agricultural or H-2B nonagricultural** job posting, Boards must ensure that Texas Workforce Center staff:

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- verifies the job seeker’s employment eligibility;
- documents the job seeker’s employment eligibility using Form I-9; **and**
- **records the completion date of Form I-9 in WorkInTexas.com Job Posting Notes.**

Completion of Form I-9

Boards must ensure that when using Form I-9 to document a job seeker’s employment eligibility, Texas Workforce Center staff follows the requirements provided in the *Handbook for Employers* at <http://www.uscis.gov/files/nativedocuments/m-274.pdf>. Also provided for Boards’ use is the Quick Reference Desk Aid for Form I-9, included as Attachment 2.

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Note: Boards must ensure that Texas Workforce Center staff does not use E-Verify—USCIS’s Internet-based employment eligibility verification system—to verify the employment eligibility of job seekers referred to **temporary H-2A agricultural and H-2B nonagricultural** job postings.

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Completion of the Employment Eligibility Verification Certificate

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

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- **uses the revised version of the Employment Eligibility Verification Certificate, included as Attachment 3;**
- uses the information in Form I-9 to complete the Employment Eligibility Verification Certificate;
- **records the completion date of the Employment Eligibility Verification Certificate in WorkInTexas.com Job Posting Notes; 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 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 **the Commission**, 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: Form I-9 and instructions
- Attachment 2: Quick Reference Desk Aid for Form I-9
- Attachment 3: Employment Eligibility Verification Certificate

RESCISSIONS:

WD Letter 70-07

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)
- 20 C.F.R. Part 655, Subpart B, Labor Certification Process for Temporary Agricultural Employment in the United States (H-2A Workers)

United States Department of Labor Training and Employment Guidance Letter No. 11-07, Change 1, issued November 14, 2007, and entitled “Clarification of Certain Procedures for Processing H-2A Labor Certification Applications”
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.”