LABOR CONDITION APPLICATION (LCA-Form ETA 9035E)
For H-1B "Specialty Worker" Visa Classification

All employers hiring an international person in H-1B nonimmigrant status must first file a Labor Condition Application (LCA-Form ETA 9035E) with the U.S. Department of Labor (DoL). The LCA attests that the H-1B worker will be paid the actual wage for the occupation at the place of employment or the prevailing wage level for the occupation in the geographic area of employment, whichever is higher. The LCA also states that as of the date the LCA is filed, notice of the application has been provided to workers employed in the occupation in which H-1B nonimmigrants will be employed. At NDSU the OIP’s faculty and scholar services staff prepare the LCA, a hiring official signs the LCA, and the Assistant Director of Faculty Immigration files it with DoL.

A record of all applications must be maintained and available for public examination. These files must include:

1.) Form ETA 9035E;
2.) evidence of the prevailing wage (usually the prevailing wage determination from the State Employment Security Agency or SESA);
3.) memo indicating actual wage determination;
4.) evidence of posting notice to similarly employed workers that an LCA has been filed.

1.) Form ETA 9035E
The form ETA 9035E must be submitted to the DoL for approval prior to petitioning USCIS/Department of Homeland Security for H-1B status. This DoL requirement has to be met for both original H-1B petitions and extension petitions for H-1B specialty workers. An employer's willful or negligent compliance with procedures could result in fines, retroactive raises in the salaries of H-1B workers, and an employer's ineligibility to petition the Department of Labor to hire international employees for a year or longer. The Form ETA 9035E (signed by an official with actual hiring authority) attests that:

a. The H-1B worker will be paid the actual wage for the occupation at the place of employment or the prevailing wage level for the occupation in the area of employment whichever is higher.

b. The employment of the H-1B worker will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

c. At the time of filing the LCA, there is no strike, lockout, or work stoppage due to a labor dispute in this occupation.

d. As of the date of filing, notice of the LCA has been provided to workers employed in the named occupation. A copy of the LCA has been or will be provided to the H-1B worker.

e. NDSU is not H-1B dependent and has not committed a willful violation or a misrepresentation of a material fact on any LCA certified by the Department of Labor.

2.) Prevailing wage:
Obtained by the faculty and scholar services staff of the OIP (source in majority of H-1B cases is the ND State Employment Security Agency (SESA)).

3.) Memo indicating actual wage determination:
See Actual Wage Memo form.

4.) Posting:
If non-union employer, posting must be placed in two locations
At NDSU, posting is conducted in the hiring department and the Office of Human Resources. After the LCA (Form ETA 9035E) has been signed, a photocopy of the LCA must be posted with the posting statement titled “LABOR CONDITION APPLICATION H-1B TEMPORARY WORKERS". The hiring department’s posting notice is included in the H-1B paperwork provided by the OIP.