

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION
2015 H-2B Interim Final Rule FAQs

Round 14: Amended Appendix B

January 5, 2016

Q: Why was the Employer Declaration on Form ETA-9142B, Appendix B amended to refer to obligations to “U.S. workers who are hired during the recruitment period for positions covered by this application” rather than “U.S. workers in corresponding employment, as defined in 20 CFR 655.5”? What is the time period covered by the “recruitment period”?

A: The Department of Labor Appropriations Act, 2016, Division H, Title I of Public Law 114-113 (“2016 DOL Appropriations Act”), provides that the Department of Labor (“Department”) may not use any funds to enforce the definition of corresponding employment found in 20 CFR 655.5, or any reference thereto. See Sec. 113. In order to comply with the 2016 Department of Labor Appropriations Act, the Department has removed references to corresponding employment from the Form ETA-9142B, Appendix B and will not spend Fiscal Year (FY) 2016 funds to enforce the definition of corresponding employment. However, the 2016 DOL Appropriations Act did not vacate this regulatory provision, and it remains in effect, thus imposing a legal duty on H-2B employers, even though the Department will not use any FY 2016 funds to enforce it.

The Department will continue to enforce all other requirements in the H-2B regulations not affected by the 2016 DOL Appropriations Act, including the provisions in 20 CFR 655.15 and 20 CFR 655.16 that require the employer to file the Form ETA-9142B, *H-2B Application for Temporary Employment Certification* with the Office of Foreign Labor Certification and a job order with the State Workforce Agency and to abide by the job order assurances in 20 CFR 655.18, including offering “to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2B workers.” 20 CFR 655.18(a)(1).

Employers must continue to comply with the recruitment requirements found in 20 CFR 655.40-46 and 655.48, which include conducting recruitment within 14 calendar days from the date the Notice of Acceptance is issued unless otherwise instructed by the certifying officer, 20 CFR 655.40(b), continuing “to accept referrals and applications of all U.S. applicants interested in the position until 21 days before the date of need,” 20 CFR 655.40(c), and complying with the obligation to accept and hire any qualified and available U.S. workers. 20 CFR 655.40(e). Additionally, all required recruitment “must contain terms and conditions of employment that are not less favorable than those offered to the H-2B workers, and, at a minimum, must comply with the assurances applicable to job orders as set forth in § 655.18(a).” 20 CFR 655.41(a).

The Form ETA-9142B – Appendix B has been updated to reflect that employers are still certifying they will provide the required conditions of employment for U.S. workers who are hired during the recruitment period for positions covered by the application, including the active recruitment period and the period the job order is posted by the SWA, continuing until 21 days before the date of need. See 20 CFR 655.40(b) and (c).