(4) A willful and substantial violation should be cited as "(Name of the firm on LCA) willfully and substantially failed to provide notice of the filing of the LCA(s) in violation of 20 C.F.R. § 655.734. See 20 C.F.R. § 655.805(a)(5)."

Maximum CMP: $5,000/violation Minimum Debarment: Two Years

(c) Any additional remedy: The ER may be required to provide the affected H-1B worker(s) with a copy of the applicable LCA(s), and/or re-post the required notice for the affected U.S. workers. Any other remedy may be formulated on a case by case basis, after consulting with DD/ADD, RIC, RSOL, NOSOL, and the NO/OEP/Immigration Team.

(d) A willful violation involving the displacement of a U.S. worker employed by the ER may be subject to an enhanced CMP (up to $35,000) and an enhanced debarment (minimum of three years). See FOH 71e00(e) and FOH 71e10.

71e06 Failed to accurately specify on the LCA (20 C.F.R. § 655.730(c) and 20 C.F.R. § 655.805(a)(6))

(a) See FOH 71d19.

(b) A violation of this standard can be non-substantial, substantial, willful, or willful and substantial.

(1) A non-substantial violation of this standard should be cited as "(Name of firm on LCA) failed to specify accurately on the LCA in violation of 20 C.F.R. § 655.730(c). See 20 C.F.R. § 655.805(a)(6)."

CMP: None Debarment: None

(2) A substantial violation should be cited as "(Name of firm on LCA) substantially failed to specify accurately on the LCA in violation of 20 C.F.R. § 655.730(c). See 20 C.F.R. § 655.805(a)(6)."

Maximum CMP: $1,000/violation Minimum Debarment: One Year

(3) A willful violation would be cited as "(Name of the firm on LCA) willfully failed to specify accurately on the LCA in violation of 20 C.F.R. § 655.730(c). See 20 C.F.R. § 655.805(a)(6)."

Maximum CMP: $5,000/violation Minimum Debarment: Two Years

(4) A willful and substantial violation would be cited as "(Name of firm on LCA) willfully and substantially failed to specify accurately on the LCA in violation of 20 C.F.R. § 655.730(c). See 20 C.F.R. § 655.805(a)(6)."

Maximum CMP: $5,000/violation Minimum Debarment: Two Years

(c) Any additional remedy: An ER who violates this standard may be required to file a new LCA containing the correct information. Other remedies may be formulated on a case by case basis after consulting with the DD/ADD, RIC, RSOL, NOSOL, and the NO/OEP/Immigration Team.

(d) A willful violation involving the displacement of a U.S. worker employed by the ER may be subject to an enhanced CMP (up to $35,000) and an enhanced debarment (minimum of three years). See FOH 71e00(e) and FOH 71e10.

71e07 Displaced a U.S. worker (20 C.F.R. § 655.738 and 20 C.F.R. § 655.805(a)(7))

(a) See FOH 71d04 and 71e10.

(b) A violation of this standard can be non-willful or willful.

(1) A non-willful violation should be cited as "(Name of firm on LCA) displaced a U.S. worker in violation of 20 C.F.R. §655.738. See 20 C.F.R. § 655.805(a)(7)."

Maximum CMP: $1,000/violation Minimum Debarment: One Year

(2) A willful violation should be cited as "(Name of firm on LCA) willfully displaced a U.S. worker in violation of 20 C.F.R. § 655.738. See 20 C.F.R. § 655.805(a)(7)."

Maximum CMP: $5,000/violation Minimum Debarment: Two Years

(c) Any additional remedy: The ER may be required to pay BWs to the displaced U.S. workers, to reinstate these workers (direct displacement only), and/or provide "front pay" to these workers. Remedies will be formulated on a case by case basis only after consulting with the DD/ADD, RIC, RSOL, NOSOL, and the NO/OEP/Immigration Team.

(d) A willful violation involving the displacement of a U.S. worker employed by the ER may be subject to an enhanced CMP (up to $35,000) and an enhanced debarment (minimum of three years). See FOH 71e00(e) and FOH 71e10.

(e) The ER can be debarred for placing a H-1B worker with a secondary ER which displaced(es) its U.S. worker(s), only if the H-1B worker was non-exempt (or placed under an LCA not solely used for exempt EEs) and one of the following criteria is met:

(1) At the time of the placement of the H-1B worker(s) with the secondary ER, the ER knew or had reason to know of the secondary ER's displacement of its U.S. worker(s); or

(2) The ER has been subject to an enforcement sanction based on a previous placement of an H-1B worker with the same secondary ER.

71e08 Failed to make the required displacement inquiry of another employer at a worksite where an H-1B nonimmigrant was placed, as required (20 C.F.R. § 655.738 and 20 C.F.R. § 655.805(a)(8))

(a) See FOH 71d04.

(b) A violation of this standard can be non-willful or willful. This violation will be cited only against the primary ER (being investigated) and not against the secondary ER. A displacement is not necessary for this violation to be cited.

(1) A non-willful violation should be cited as "(Name of firm on LCA) failed to make the required displacement inquiry of another employer at a worksite where an H-1B nonimmigrant was placed as required under 20 C.F.R. § 655.738. See 20 C.F.R. § 655.805(a)(8)."

Maximum CMP: $1,000/violation Minimum Debarment: One Year

(2) A willful violation should be cited as "(Name of firm on LCA) failed to make the required displacement inquiry of another employer at a worksite where an H-1B nonimmigrant was placed as required under 20 C.F.R. § 655.738. See 20 C.F.R. § 655.805(a)(8)."

Maximum CMP: $5,000/violation Minimum Debarment: Two Years

(c) Any additional remedy: Remedies will be formulated on a case by case basis only after consulting with the DD/ADD, RIC, RSOL, NOSOL, and the NO/OEP/Immigration Team.

(d) A willful violation involving the displacement of a U.S. worker employed by the ER may be subject to an enhanced CMP (up to $35,000) and an enhanced debarment (minimum of three years). See FOH 71e00(e) and FOH 71e10.

71e09 Failed to recruit in good faith steps, as required (20 C.F.R. § 655.739 and 20 C.F.R. § 655.805(a)(9))

(a) See FOH 71d03.

(b) A violation of this standard can be non-substantial, substantial or willful.

(1) A non-substantial violation of this standard should be cited as "(Name of firm on LCA) failed to recruit in good faith as required under 20 C.F.R. § 655.739. See 20 C.F.R. § 655.805(a)(9)."

CMP: None Debarment: None

(2) A substantial violation should be cited as "(Name of firm on LCA) substantially failed to recruit in good faith as required under 20 C.F.R. § 655.739. See 20 C.F.R. § 655.805(a)(9)."

Maximum CMP: $1,000/violation Minimum Debarment: One Year

(3) A willful violation would be cited as "(Name of firm on LCA) willfully failed to recruit in good faith as required under 20 C.F.R. § 655.739. See 20 C.F.R. § 655.805(a)(9)."

Maximum CMP: $5,000/violation Minimum Debarment: Two Years

(4) A willful and substantial violation would be cited as "(Name of firm on LCA) willfully and substantially failed to recruit in good faith as required under 20 C.F.R. § 655.739. See 20 C.F.R. § 655.805(a)(9)."

Maximum CMP: $5,000/violation Minimum Debarment: Two Years

(c) Any additional remedy: The ER must assure future compliance. Other remedies may be formulated on a case by case basis after consulting with the DD/ADD, RIC, RSOL, NOSOL, and the NO/OEP/Immigration Team.

(d) A willful violation involving the displacement of a U.S. worker employed by the ER may be subject to an enhanced CMP (up to $35,000) and an enhanced debarment (minimum of three years). *See* FOH 71e00(e) and FOH 71e10.

71e10 Displaced a U.S. worker within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the LCA in the course of committing a willful failure and/or willful misrepresentation of a material fact on an LCA as prohibited under 20 C.F.R. § 655.738 and 20 C.F.R. § 655.805(a)(10)

(a) This violation will be cited when the investigation disclosed that the ER did two things: committed a willful violation *and*, during the course of that violation (within a specific time period), displaced a U.S. worker employed by the ER. The applicable violations are listed in (2) below. A citation under this provision is the only citation appropriate for this

displacement situation. When citing this violation, do NOT additionally charge ER with the willful failure/misrepresentation that the ER committed.

(1) *Displacement.* The ER "displaced" a U.S. worker employed by the ER only if the EE's loss of his/her job meets the criteria for displacement/"lay off" described in FOH 71d04(d). The displacement must occur within the period beginning 90 days before and ending 90 days after the date of filing of any H-1B visa petition (Form I-129/I-129W). The date of Form I-129/I-129W filing is the "Receipt Date" appearing on the Notice of Action, Form I-797.

(2) *Willful failures and/or willful misrepresentations*

(A) *Willful failures* -

(i) failed to pay wages (including benefits provided as compensation for services and/or wages for certain nonproductive time);

(ii) failed to provide working conditions as required;

(iii) filed an LCA for H-1B nonimmigrant(s) during a strike/lockout;

(iv) failed to provide notice of the filing of the LCA as required;

(v) failed to specify accurately on the LCA the number of workers sought, the occupational classification in which the H-1B nonimmigrant(s) will be employed, and/or the wage rate and conditions under which the H-1B nonimmigrant(s) will be employed;

(vi) failed to make the required displacement inquiry of another ER at a worksite where H-1B nonimmigrant(s) were placed; and/or

(vii) failed to recruit in good faith as required.

(B) *Willful misrepresentations* -

(i) misrepresented on the LCA the H-1B nonimmigrant's occupation;

(ii) misrepresented on the LCA the number of H-1B nonimmigrants sought;

(iii) misrepresented on the LCA the gross wage rate and/or how it should be paid (whether hourly, weekly, biweekly, or monthly);

(iv) misrepresented on the LCA the starting and ending dates of the H-1B nonimmigrant's employment;

(v) misrepresented on the LCA the place(s) of intended employment;

(vi) misrepresented on the LCA the PW rate for the occupation in the area of intended employment and/or the specific source relied upon by the ER to determine the wage; and/or

(vii) misrepresented on the LCA the ER's status as to whether or not the ER is H-1B-dependent and/or a willful violator, and if the ER is H-1B-dependent and/or a willful violator, whether the ER will use the application only in support of petitions for exempt H-1B nonimmigrants.

(3) The ER who is cited for this violation may be either H-1B-dependent or nondependent. NOTE: The enhanced penalty does not add to any substantive obligation imposed on a non-dependent ER.

(b) A violation of this standard should be cited as "(Name of firm on LCA) displaced a U.S. worker within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the LCA in the course of committing a willful failure to *(insert the failure that was willful)* and/or a willful misrepresentation of a material fact in an LCA as prohibited under 8 U.S.C. §1182(n)(2)(C)(iii), 20 C.F.R. § 655.738, 20 C.F.R. § 655.805(a)(10), and 20 C.F.R. § 655._____ *(insert applicable C.F.R. cite or cites from subpart H (20 C.F.R. § 655.730 – 20 C.F.R. § 655.734 and/or 20 C.F.R. § 655.739))*."

Maximum CMP: $35,000/per violation Minimum Debarment: Three years

(c) Any additional remedy: To be determined on a case by case basis after consultation with NO/OEP/Immigration Team.

(d) This violation does not include the concept of "secondary displacement." (see FOH 71d(04)).

71e11 Required/accepted from an H-1B worker, payment or remittance of the additional $750/$1,000/$1,500 fee incurred in filing an H-1B petition (20 C.F.R. § 655.731(c)(10)(ii) and 20 C.F.R. § 655.805(a)(11))

(a) See FOH 71d08(b).

(b) A violation of this standard should be cited as "(Name of firm on LCA) required or accepted from an H-1B worker, payment or remittance of the additional $750/$1,000/$1,500 fee incurred in filing an H-1B petition as prohibited under 20 C.F.R. § 655.731(c)(10)(ii). See 20 C.F.R. § 655.805(a)(11)."

Maximum CMP: $1,000/violation Debarment: None

(c) Any additional remedy: The ER must assure future compliance. All monies paid by the H-1B worker for any part or all of the $750/$1,000/$1,500 filing fee must be restored to the H-1B worker. The ER shall be assessed for this reimbursement, even if the H-1B worker had paid the money to a third party.

71e12 Required or attempted to require an H-1B nonimmigrant to pay a penalty for ceasing employment prior to an agreed upon date (20 C.F.R. § 655.731(c)(10)(i) and 20 C.F.R. § 655.805(a)(12))

(a) See FOH 71d20.

(b) A violation of this standard should be cited as "(Name of firm on LCA) required or attempted to require an H-1B nonimmigrant to pay a penalty for ceasing employment prior to an agreed upon date in violation of 20 C.F.R. § 655.731(c)(10)(i). See 20 C.F.R. § 655.805(a)(12)."

Maximum CMP: $1,000/violation Debarment: None

(c) Any additional remedy: The ER must assure future compliance and repay the H-1B worker any penalty money which he/she paid.

71e13 Discriminated against an employee for protected conduct (20 C.F.R. § 655.801 and 20 C.F.R. § 655.805(a)(13))

(a) See FOH 71d05.

(b) Violation should be cited as "(Name of firm on LCA) discriminated against an employee for protected conduct as prohibited under 20 C.F.R. § 655.801. See 20 C.F.R. § 655.805(a)(13)."

Maximum CMP: $5,000/violation Minimum Debarment: Two years

(c) Any additional remedy: The ER must assure future compliance. Remedies will be formulated on a case by case basis after consulting with the DD/ADD, RIC, RSOL, NOSOL, and the NO/OEP/Immigration Team.

71e14 Failed to make available for public examination the LCA and necessary document(s) at the employer's principal place of business or worksite (20 C.F.R. § 655.760(a) and 20 C.F.R. § 655.805(a)(14))

(a) See FOH 71c04.

(b) A violation of this standard should be cited as "(Name of firm on LCA) failed to make available for public examination the LCA and necessary document(s) at the ER's principal place of business or worksite in violation of 20 C.F.R. § 655.760(a). See 20 C.F.R. § 655.805(a)(14)." A CMP may be assessed if the violation impedes the public's ability to get the information it needs to file a complaint or it impedes WH's ability to determine if a substantive violation has occurred (see 20 C.F.R. § 655.810(b)(1)(vi)).

Maximum CMP: $1,000/violation Debarment: None

(c) Any additional remedy: The ER shall be required to create the required public access materials and to comply in the future.

(d) The ER's failure to maintain public access material may instead be cited as a failure to maintain documentation (see FOH 71e15), but not both for the same failure.

71e15 Failed to maintain documentation, as required (20 C.F.R. § 655.731(b), 20 C.F.R. § 655.738(e), 20 C.F.R. § 655.739(i), and/or 20 C.F.R. § 655.760(c) and 20 C.F.R. § 655.805(a)(15))

(a) See FOH 71d21.

(b) A violation of this standard should be cited as "(Name of firm on LCA) failed to maintain documentation, as required by 20 C.F.R. § 655.731(b), 20 C.F.R. § 655.738(e), 20 C.F.R. §655.739(i), and/or 20 C.F.R. § 655.760(c). See 20 C.F.R. § 655.805(a)(15)." A CMP may be assessed only if the violation impedes WH's ability to determine if an H-1B violation exists (see 20 C.F.R. § 655.810(b)(1)(vi)).

Maximum CMP: $1,000/violation Debarment: None

(c) Any additional remedy: The ER shall be required to develop and maintain the necessary documentation, and to comply in the future. Other remedies may be formulated on a case by case basis after consulting with the DD/ADD, RIC, RSOL, NOSOL, and the NO/OEP/Immigration Team.

(d) The ER's failure to maintain documents that must be available to the public (*e.g.*, an LCA) may instead be cited as a public access failure (see FOH 71e14) but not both for the same violation.

71e16 Failed to cooperate in the investigation, as required (20 C.F.R. § 655.800(c))

(a) A violation should be cited as "(Name of firm on LCA) failed to cooperate in the investigation as required by 20 C.F.R. § 655.800(c)." A CMP may be assessed only if the violation impedes WH's ability to determine if a violation exists (see 20 C.F.R. § 655.810(b)(1)(vi)).

Maximum CMP: $1,000/violation Debarment: None

(b) Any additional remedy: The ER must assure future compliance and provide any records requested. Other remedies may be formulated on a case by case basis after consulting with the DD/ADD, RIC, RSOL, NOSOL, and the NO/OEP: Immigration Team.

71e17 Failed to comply with the provisions of subpart H or I (20 C.F.R. §655.7xx and 20 C.F.R. § 655.805(a)(16))

(a) See FOH 71d22.

(b) H-1B ERs are required to comply with all the provisions contained in 20 C.F.R. § 655 subparts H or I. Any violation(s) of these regulations that are not listed in the preceding FOH sections (FOH 71e01 through 71e16) are cited under this standard, with the appropriate subpart H citation.

(c) Violations under this standard are cited as "(Name of firm on LCA) failed to comply with the provisions of subpart H or I in violation of (*insert the applicable section of subpart H*). See 20 C.F.R. § 655.805(a)(16)." A CMP may be assessed only if the violation impedes WH's ability to determine if an H-1B violation(s) exists (see 20 C.F.R. § 655.810(b)(1)(vi)).

Maximum CMP: $1,000/violation Debarment: None

(d) Any additional remedy: The ER shall be required to take appropriate action to correct any violation, and to comply in the future.

71f REMEDIES

71f00 General

The regulations authorize the Administrator to impose CMPs, BWs, and other appropriate remedies. The assessment of penalties and remedies is subject to administrative review.

71f01 Civil money penalty

Use Form WH-592 (IMMACT CMP Worksheet) (FOH 54: WH-592-1) to compute CMPs. A CMP can be assessed not to exceed $1,000, $5,000 or $35,000 depending on the violation. The CMP form takes into consideration the seven penalty assessment criteria found in 20 C.F.R. § 655.810(c) and the number of violations that should be cited (based on the number of workers affected or similar factors). For example, 15 workers willfully underpaid means 15 violations occurred. Additionally, the form, as in other programs, allows for no CMPs to be assessed if certain factors are met. See FOH 71e for a list of violations and remedies.

71f02 Back wages

(a) If the investigation finds that an H-1B worker was not paid correctly (willfully or otherwise), BWs must be assessed. The BWs shall be equal to the difference between the amount that should have been paid (required wages) and the amount that was actually paid to such H-1B worker(s). (INA § 212(n)(2)(D); 20 C.F.R. § 655.810(a)). Any BWs computed are shown on the standard Form WH-56, Summary of Unpaid Wages.

(b) ***Redacted 7e***

(c) ***Redacted 7e***

71f03 Other remedy(ies)

Any other remedy as deemed appropriate by the Administrator may be sought. For example, if an ER failed to post the required notice, the ER must post immediately at worksites where workers are currently working and agree to comply with the posting requirement in the future. Also, if the ER failed to offer benefits to H-1B workers (as are offered to its U.S. workers), the ER must offer the benefits to the H-1B workers retroactive to the date they should have been offered or provided, and agree to comply in the future.

71f04 Employer's satisfaction of penalties and remedies

(a) The CMPs, BWs and any other remedy(ies) are immediately due for payment or performance upon assessment by the Administrator unless a timely request for an administrative hearing is filed. In such cases, the ER need not comply with any remedy until the administrative review process is concluded.

(b) The performance of any remedy shall follow procedures established in the determination letter, the DOL's Administrative Law Judge (ALJ) decision, or the DOL's Administrative Review Board (ARB) decision, whichever is applicable.

(c) Installment payment schedules are allowed following normal WH procedures.

71f05 **Debarment**

(a) The DO shall notify ETA and the USCIS of the final determination of any violation requiring debarment, in accordance with 20 C.F.R. § 655.855.

(b) The debarment of an ER under the H-1B program prohibits the ER's future sponsorship of any alien on any "temporary" visa (not merely on H-1B visas) or as permanent residents ("green cards") for a prescribed period of time.

(c) The debarment is not a "remedy" imposed by WH, and is not discretionary for ETA or the USCIS. Debarment for at least the specified period automatically follows a DOL final agency action finding a debarable violation such as a misrepresentation of a material fact or a willful failure to pay the required wage rate. The USCIS has discretion to debar an ER for longer than the minimum period.

(d) Upon notification by the DO, ETA shall suspend the ER's LCA (if applicable) and shall not approve an LCA or any applications for any other employment program administered by ETA (*i.e.*, H-2A, H-2B, Permanent Labor Certification "green card") for the length of the debarment period imposed by the USCIS.

(e) WH's notification to the USCIS may recommend a debarment period within the range specified by the H-1B statute for the type of violation committed by the ER (see FOH 71j01). The USCIS has final authority concerning the length of the debarment period.

(f) The debarment of the ER does not invalidate the visas for H-1B workers already employed by the ER and does not require that these H-1B workers leave the U.S. These H-1B workers may continue their employment with the ER until the expiration dates of their H-1B visas. During this employment, they remain under the H-1B program's protections. If the ER is still debarred at the time that the H-1B workers' H-1B visas expire, any extension requests by the ER for these H-1B workers will not be approved. The debarment also bars ETA from approving an application for permanent employment (*i.e.*, issuing a green card for any worker sponsored by the ER).

71f06 **An employer's refusal to comply, to pay back wages, and/or to perform the remedy(ies)**

If an ER refuses to comply, to pay BWs, and/or to perform the remedy(ies) after the assessment has become the final agency action, see FOH 71i02.

71g REVIEW and DISPOSITION

71g00 Review

(a) *Redacted 7e*

(b) *Redacted 7e*

71g01 Disposition

(a) *Redacted 7e*

(b) *Redacted 7e*

(c) *Redacted 7e*

71h WRITTEN NOTIFICATION OF INVESTIGATION FINDINGS

71h00 General

(a) *Written notification of investigation findings to the employer.* Upon JRC review and approval of any finding and remedy (if any), the ER must be provided with a determination letter. This letter can be personally served at the final conference or the DD/ADD may mail the determination letter to the ER. (The C and any interested party must also be provided with written notification. See subparagraphs (d) and (e) below for the procedure to notify any interested party, including the C.)

(b) The determination letter will follow the format and text of the prototype letter, using the options appropriate to the particular investigation. The Summary of Violation(s) and Remedy(ies) and the Summary of Unpaid Wages (Form WH-56)) (if BWs are due and the form has not previously been provided to the ER) will be attached to the determination letter. The form used to compute CMPs shall not be attached to the determination letter or otherwise provided to the ER. Additionally, the WHI may share with the ER the Wage Transcription and Computation Sheet, Form WH-55, but it shall not be attached to the determination letter. The RSOL must review and approve every determination letter. Therefore, the WHI must be prepared to provide RSOL with any material needed for its review. See FOH 71g00(a). If the NO/OEP/Immigration Team and NOSOL were included in the JRC, they also must review the determination letter. See FOH 71g00(a)(4). If the NO/OEP/Immigration Team and NOSOL were not included in the JRC, the NO will continue to review the determination until the determination letters are incorporated into WHISARD. The regulations at 20 C.F.R. § 655.815 require that the determination letter incorporate all of FOH 71h00(c) below.

(c) The determination letter will:

(1) Set forth the determination of the Administrator and the reason or reasons therefore, and in the case of a finding of violation(s) by an ER, prescribe any remedy, including the amount of any BWs assessed, the amount of any CMP assessed and the reason therefore, and/or any other remedy assessed;

(2) Inform any interested party that he/she may request a hearing pursuant to 20 C.F.R. § 655.820;

(3) Inform any interested party that in the absence of a timely request for a hearing, received by the ALJ within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the addresses of the ALJ (with whom the request must be filed) and all parties upon whom copies of the request must be served.

(5) Where appropriate, inform the parties that, pursuant to 20 C.F.R. § 655.855, the Administrator shall notify ETA and USCIS of the occurrence of a violation by the ER; and

(6) Advise that the C and any interested party will receive a copy of the determination letter as described in subparagraphs (d) and (e) below. The determination letter and the interested party cover memo (see subparagraphs (d) and (e)) are to be mailed to the C and any interested party on the same day the determination letter is provided, or mailed, to the ER.

(d) *Written notification of investigation findings to any interested party.* An interested party must be provided with a copy of the determination letter with his/her individual cover memo (as discussed in subparagraph (e) below and FOH 71h01) and provided an opportunity to appeal the investigation findings. A Summary of Unpaid Wages (Form WH-56) that may be attached to the determination letter sent to the ER will not be attached to the determination letter copy provided to any interested party, including the C. An interested party is defined in the regulations (20 C.F.R. § 655.715) as a person or entity who or which may be affected by the actions of an H-1B ER or by the outcome of a particular investigation, and includes any person, organization or entity who or which has notified the Department of his/her/its interest or concern in the Administrator's determination. An interested party will include the following: any C; any H-1B worker due BWs or any H-1B worker who believes he/she is owed BWs but none were computed; any worker directly affected by a non-monetary remedy, such as a reinstatement order for a retaliation violation; any U.S. worker who has alleged that he/she was displaced or not recruited by the H-1B-dependent or willful violator ER; any collective bargaining representative of the investigated ER where the investigation found a notification violation; any secondary ER who displaced a U.S. worker; any person, organization, or entity who or which has notified the Department of his/her/its interest or concern in this determination; and any attorney or other representative of an interested party who has identified his/her representative status to WH.

(e) As mentioned in subparagraph (d) above, any interested party, including the C, will be provided his/her own copy of the determination letter with his/her individualized cover memo. The cover memo is individually tailored to properly notify each interested party of the investigation results. The determination letter with its cover memo can be hand-delivered or mailed. If mailed, see FOH 71h01 below. If hand-delivered, for evidentiary purposes, the investigation file must be properly annotated. (The Summary of Unpaid Wages, Form WH-56, will never be provided to an interested party as part of the investigation.)

71h01 Service of determination letter and cover memo

(a) Copies of the determination letter must be provided to the ER, the C, and any interested party. As mentioned in FOH 71h00(e) above, an individualized cover memo, attached to the determination letter, is provided to each interested party. A copy of any cover memo should not be mailed to the ALJ or the ER as to do so could unnecessarily disclose the identity of witnesses or others affected by the investigation and could disclose other private information. A copy of any cover memo must also be provided to any DOL official (except the ALJ) who is listed as a "cc" on the determination letter.

(b) The determination letter should be served upon the ER and any interested party by certified mail or personal service. All letters mailed by certified mail should have the certified mail number typed on the letter to identify these documents for evidence. If these documents are mailed, they must be mailed within 10 days of the final conference. In exceptional circumstances, these documents may be transmitted electronically (see subparagraph (e) below).

(c) A copy of the determination letter, plus a copy of the complaint, must be mailed to the ALJ, as provided in 20 C.F.R. § 655.815(b). These documents may be sent by regular mail. Copies of the determination letter and any cover memos should be mailed to DOL officials.

(d) The WHI should routinely request Cs and any individuals from whom they seek information relating to the investigation to provide a postal address and to notify WHI of any change in the address. In all cases, determination letters and cover memo should be mailed to an individual or entity at his/her/its last known postal address. The letter must be sent to the

interested party even if his/her address is believed to be no longer current. By sending the letter to the interested party's last known address, WH satisfies the notification requirements of the statute and regulation. Any envelopes returned as undeliverable should be retained in the investigation file.

(e) The WHI also may (if permitted by his/her office's policy) E-mail the determination letter to the ER, the C, or other interested party if there is some doubt about the currency of the individual's postal address. In such instances, a hard copy of the E-mail should be retained in the investigation file along with the documents identified in (d) above. To the extent technology permits, the WHI shall utilize any available E-mail options for receipts that the message has been delivered to the E-mail address and has been "opened" or "read" by the recipient. A hard copy of such receipts should be retained in the investigation file.

71i POST-DETERMINATION LETTER ISSUES

71i00 Request for hearing

(a) The H-1B statute provides that any interested party—including the C and the ER—may request an ALJ hearing, which is to be held within 60 days of the date of WH's determination letter. The request for hearing must be filed directly with the ALJ and must be received within 15 calendar days of the date on the determination letter, as explained in the letter. Should a request for hearing be submitted to the DO (rather than to the ALJ as directed in the determination letter), the request must be forwarded immediately to the ALJ. It is the ALJ who will make the determination about whether or not a request for a hearing is properly filed and timely.

(b) WH will not be a participant in many ALJ hearings. WH has the discretion to participate in any hearing, but its participation is required only where WH has determined that the H-1B ER has committed a violation and that particular determination has been challenged (20 C.F.R. § 655.820(b)(2)). Where the C or other interested party requests a hearing on a "no violation" determination, the C or the interested party will be the prosecuting party and the ER will be the respondent (20 C.F.R. § 655.820(b)(1)). WH will not conclude an H-1B investigation where the C or other interested party requests a hearing. A case will be concluded only after the investigation findings become a final agency action.

71i01 Handling of investigation findings that become a final agency action

(a) The investigation findings become a final agency action of the Secretary upon the earliest of the following events:

(1) Where the Administrator issued the determination letter and no timely request for hearing (within 15 calendar days of the date of the determination letter) is made by any party pursuant to 20 C.F.R. § 655.820; or

(2) Where, after a hearing, the ALJ issues a decision and order (D and O) and no timely petition for review (within 30 calendar days of the date of the D and O) is filed with the ARB, pursuant to 20 C.F.R. § 655.845; or

(3) Where, after a review, the ARB either declines within 30 days to entertain the appeal, pursuant to 20 C.F.R. § 655.845(c), or the ARB reviews and affirms the ALJ's determination. To determine whether a timely request for an ALJ hearing or a petition to the ARB has been filed or granted, the WHI should inquire of the ALJ or the ARB: ALJ: 202-693-7300; ARB: 202-693-6200.

(b) ***Redacted 7e***

71i02 Unfulfilled performance of remedy(ies)

Redacted 7e

71i03 Fulfilled performance of remedy(ies)

Redacted 7e

71i04 Installment payments

Redacted 7e

71j PROGRAM COORDINATION

71j00 Exchange of Information between WH and the Department of Homeland Security's USCIS

(a) The sharing of information and referrals between the USCIS and WH should follow principles developed in the 1998 INS (currently USCIS) Memorandum of Understanding (FOH 50f20).

(b) For H-1B investigations, much of the communication between WH and the USCIS will be conducted through one of the four service centers where H-1B petitions are adjudicated and where all related paperwork (*i.e.* LCA and all USCIS forms) is maintained. The service centers, current contact person, public telephone numbers and internal telephone numbers for WH use only are as follows:

Eastern: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, and West Virginia

St. Albans, VT
Public: 800-375-5283 (the same number for all four centers)
Jackie Moyer-Padilla, Internal: 802-527-3259 x235

Northern: Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wisconsin, and Wyoming

Lincoln, NE
Public: 800-375-5283
Ron Ryan, Internal: 402-323-2560/2561

Southern: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas

Dallas, TX
Public: 800-375-5283
Thomas Prusinowski, Internal: 214-962-2023
Henry Jacobs, Internal: 214-962-2017
Gary Conroy, Internal: 214-962-2025
Cheryl Parker, Internal: 214-962-2021
Ron Thomas, Internal: 214-962-2022
Melissa Griffin, Internal: 214-962-2032

Western: Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington

Laguna Nigel, CA
Public: 800-375-5283
Rand Gallagher or Tim Bowman, Internal: 949-389-3236/3230

(c) The Northern Service Center (Lincoln, NE) handles all questions and adjudication of petitions pertaining to North America Free Trade Agreement (NAFTA) and all major and minor professional sports teams. The Eastern Service Center (Vermont) handles H-1C petitions (area nurse shortages).

(d) For questions pertaining to the Form I-9, the WHI should contact the District of Columbia USCIS number at 1-800-357-2099 or 202-305-1949. The local USCIS District Office addresses and telephone numbers can be found at this web address: http://www.immigration.gov/graphics/fieldoffices/distsub_offices/index.htm.

71j01 Debarment notification to the USCIS

(a) The H-1B statute requires the debarment of the ER when there is a final DOL action finding that the ER has committed a violation for which this penalty is prescribed. Debarment is not negotiable; if the finding of an appropriate violation becomes final, then debarment is required. The USCIS imposes the debarment, upon notification from WH that a final DOL action has occurred.

(b) A debarring violation is one of the following:

(1) Misrepresented a material fact on the LCA;

(2) Filed an LCA during a strike or lockout in the course of a labor dispute;

(3) Displaced a U.S. worker;

(4) Failed to make an inquiry about displacement of a U.S. worker of the secondary ER;

(5) Retaliated against a WB;

(6) Substantially failed to provide notice of LCA filing;

(7) Substantially failed to be specific on the LCA;

(8) Substantially failed to recruit U.S. workers;

(9) Willfully failed to pay the required wage rate;

(10) Willfully failed to offer fringe benefits;

(11) Willfully failed to provide working conditions;

(12) Willfully filed a petition during a strike or lockout in the course of a labor dispute;

(13) Willfully displaced a U.S. worker;

(14) Willfully failed to make an inquiry about displacement of a U.S. worker of the secondary ER;

(15) Willfully failed to provide notice of the LCA filing;

(16) Willfully failed to be specific on the LCA;

(17) Willfully failed to recruit U.S. workers;

(18) Willfully misrepresented a material fact on the LCA.

(c) The DD/ADD will send the notification to the USCIS utilizing the "USCIS Notification Letter." The notification will be sent only after the DOL finding of a debarring violation has become final (as provided in 20 C.F.R. § 655.855(b)).

(d) The USCIS debarment means that the ER will not be able to sponsor any future alien under any INA program. Any nonimmigrants already employed under the sponsorship of the debarred ER are not affected by the ER's debarment; existing visas are not revoked and workers are not deported. For the length of the debarment period, the USCIS will not approve the ER's petitions under H-1B, H-2A, H-2B, or any other nonimmigrant program, or under the permanent employment based program.

(e) The debarment period is a minimum of either one year, two years, or three years, depending on the violation cited (see 20 C.F.R. § 655.810(d)). ***[Redacted 7e]***

(f) When the USCIS receives any complaint from a worker or any other person it will refer this information through channels to WH.

71j02 Exchange of information between ETA and WH

(a) The exchange of information between ETA and WH should take place informally. ETA National Processing Centers and State Office of Workforce Security officials can be located at http://ows.doleta.gov/foreign.asp.

(b) For purposes of making a complaint to WH, ETA is not considered to be an "aggrieved party" with respect to any information ETA receives from an ER in connection with the ER's sponsorship of an alien in any immigrant ("green card") or nonimmigrant program (H-1B, H-1C, H-2A, H-2B).

(c) When ETA receives any complaint, directly or through the Job Service Complaint System, it will immediately refer this information to WH through channels to the RA of the appropriate RO.

(d) ETA will implement the debarment of a violating ER based upon notification from WH as specified in the regulations (20 C.F.R. § 655.855(a) and (d)). Upon the DOL enforcement action's becoming final, the DD/ADD will notify ETA NO utilizing the ETA debar notification letter. The notification will be mailed to:

U.S. Department of Labor
Employment and Training Administration
Division of Foreign Labor Certification
200 Constitution Ave., NW, Room C4312
Washington, DC 20210

(e) The letter will inform ETA of the calendar period that WH has recommended to the USCIS for debarment of the ER. The letter must include a copy of the LCA utilized during the investigation.

71k H-1B1 Nonimmigrant Workers

71k00 Background and Enforcement Responsibilities

(a) The U.S.-Chile Free Trade Agreement (Chile FTA) and the U.S.-Singapore Free Trade Agreement (Singapore FTA) were implemented by the U.S. Congress through legislation (9/3/2003). The Chile FTA Implementation Act amends the INA to create a new visa category—the H-1B1 visa—for the temporary entry and employment in the U.S. of professionals from countries with which the U.S. has entered into agreements identified in §214(g)(8)(A) of the INA. (See INA § 101(a)(15)(H)(i)(b1).) The H-1B1 visa is available for individuals in specialty occupations who seek to come to the U.S. temporarily to engage in professional activities for an ER. These INA amendments were effective 1/1/2004. The INA as amended identifies two agreements with countries that qualify for the H-1B1 program—the Chile FTA and Singapore FTA. Both agreements state that they cover "a business person seeking to engage in a business activity as a professional, or to perform training functions related to a particular profession, including conducting seminars, if the business person otherwise complies with immigration measures applicable to temporary entry."

(1) The number of Chilean professionals entering the U.S. on H-1B1 visas is limited to 1,400 annually.

(2) The number of Singaporean professionals entering the U.S. on H-1B1 visas is limited to 5,400 annually.

(b) The Department has made the existing H-1B regulations generally applicable to H-1B1 nonimmigrants, rather than writing new rules for the H-1B1 program. The DOL's responsibilities regarding H-1B1 visas are to be implemented in a manner similar to those regarding the H-1B program for temporary employment of nonimmigrant aliens in specialty occupations and as fashion models. The new section 20 C.F.R. § 655.700(d)(1) lists the provisions of the H-1B regulations that do not apply to H-1B1 nonimmigrants:

(1) H-1B1 visas are not available to fashion models of distinguished merit and ability;

(2) Provisions related to H-1B dependent ERs and willful violators of the H-1B1 rules are not included in the legislation establishing the H-1B1 visa (specifically 20 C.F.R. §§ 655.710(b); .730(d)(5)and(e)(3); .736; .737; .738; .739; .760(a)(8), (9) and (10); part of .705(c); .805(a)(7), (8) and (9).

(3) Portability of H-1B status provision is inapplicable to H-1b1 nonimmigrants. (See FOH 71a00(b).)

(c) ER's responsibilities under H-1B1 program are identified in 20 C.F.R. § 655.700(d)(4).

(1) LCA must be filed and approved by ETA for "coverage" to exist. Filing procedures are identified in 20 C.F.R. § 655.700(d)(3). ETA will compile and maintain a list of H-1B1 labor attestations (20 C.F.R. § 655.760(b)).

(2) Enforcement provisions: WH will receive, investigate and make determinations or complaints filed by any aggrieved person or organization regarding the failure of an ER to meet the terms of its attestation. Penalties for failure to meet conditions of the labor attestations are the same as those under the H-1B program.

71l E-3 Nonimmigrant Workers

71100 Background and Enforcement Responsibilities

(a) The "Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005" was signed into law by the President on 5/11/2005. Division B, Title V, Section 501 of the Act adds a new nonimmigrant visa classification for certain treaty aliens who are coming to the U.S. solely to perform services in a specialty occupation. The new visa category—the E-3 visa—is for the temporary entry and employment in the U.S. of professionals from the country of Australia with which the U.S. has entered into an agreement identified in § 214(g)(8)(A) of the INA. (See INA § 101(a)(15)(E)(iii).) The E-3 visa is available for Australian nationals who seek to come to the U.S. temporarily to engage in professional activities for an ER. These INA amendments were effective **TBA**.

(b) The Department has made the existing H-1B regulations generally applicable to E-3 nonimmigrants, rather than writing a new rule for the E-3 program. The DOL's responsibilities regarding E-3 visas are to be implemented in a manner similar to those regarding the H-1B program for temporary employment of nonimmigrant aliens in specialty occupations and as fashion models. The new section 20 C.F.R. § 655.700(d)(1) lists the provisions of the H-1B regulations that do not apply to E-3 nonimmigrants:

(1) Provisions related to H-1B dependent ERs and willful violators of the H-1B rules are not included in the legislation establishing the E-3 visa (specifically 20 C.F.R. § 655.710(b); §§ 655.730(d)(5) and (e)(3); § 655.736; § 655.737; § 655.738; § 655.739; § 655.760(a)(8), (9) and (10); part of §655.705(c); § 655.805(a)(7), (8) and (9).

(2) Portability of H-1B status provision is inapplicable to E-3 nonimmigrants. (See FOH 71a00(b).)

(c) ER's responsibilities under E-3 program are identified in 20 C.F.R. § 655.700(d)(4).

(1) LCA must be filed and approved by ETA for "coverage" to exist. Filing procedures are identified in 20 C.F.R. § 655.700(d)(3). ETA will compile and maintain a list of H-1B1 labor attestations (20 C.F.R. § 655.760(b)).

(2) Enforcement provisions: WH will receive, investigate and make determinations or complaints filed by any aggrieved person or organization regarding the failure of an ER to meet the terms of its attestation. Penalties for failure to meet conditions of the labor attestations are the same as those under the H-1B program.