

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT OF 1995**

TABLE OF CONTENTS

SECTION	PAGE
A. JUSTIFICATION	2
A.1 CIRCUMSTANCES NECESSITATING DATA COLLECTION	2
A.2 HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED.....	2
A.3 USE OF TECHNOLOGY TO REDUCE BURDEN	3
A.4 EFFORTS TO IDENTIFY DUPLICATION.....	3
A.5 METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES	3
A.6 CONSEQUENCES OF LESS FREQUENT DATA COLLECTION	3
A.7 SPECIAL CIRCUMSTANCES FOR DATA COLLECTION	3
A.8 FEDERAL REGISTER NOTICE AND CONSULTATION OUTSIDE THE AGENCY.....	3
A.9 PAYMENT OF GIFTS TO RESPONDENTS	4
A.10 CONFIDENTIALITY ASSURANCES	4
A.11 ADDITIONAL JUSTIFICATION FOR SENSITIVE QUESTIONS.....	4
A.12 ESTIMATES OF THE BURDEN OF DATA COLLECTION	4
A.13 ESTIMATED COST TO RESPONDENTS	4
A.14 ESTIMATES OF ANNUALIZED COSTS TO FEDERAL GOVERNMENT	5
A.15 CHANGES IN BURDEN.....	5
A.16 TABULATION OF PUBLICATION PLANS AND TIME SCHEDULES FOR THE PROJECT	5
A.17 APPROVAL NOT TO DISPLAY OMB EXPIRATION DATE.....	5
A.18 EXCEPTIONS TO OMB FORM 83-I	5
B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS	5

A. JUSTIFICATION

A.1 Circumstances Necessitating Data Collection

The Department of Labor, Employment and Training Administration's (DOL-ETA) needs to reinstate, without modifications, the ETA Form 9081, Attestations by Facilities Temporarily Employing H-1C Nonimmigrant Aliens as Registered Nurses (OMB control number 1205-0415). In August of 2000 DOL-ETA and the Department of Labor, Employment Standards Administration (DOL-ESA) promulgated regulations at Title 20 CFR part 655, subparts L and M, governing the filing and enforcement of attestations by facilities seeking to employ aliens as registered nurses in Health Professional Shortage Areas (HPSAs) on a temporary basis under H-1C visas. (See 65 FR 51149, Aug. 22, 2000.)

On November 12, 1999, the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106-95, 113 Stat. 1312 amended the Immigration and Nationality Act (INA) to add a new section 101(a)(15)(H)(i)(c) and amend section 212(m), establishing the H-1C Program to reduce the shortage of qualified nurses in HPSAs. NRDAA allowed qualified hospitals to employ temporary foreign workers as registered nurses for up to three years under H-1C visas. Facilities seeking to employ aliens as registered nurses in HSPAs on a temporary basis under the H-1C program are required to file an attestation with the Department of Labor. Each facility must attest that (1) it meets the definition of "facility" based on the Social Security Act and the Public Health Service Act, (2) it did not and will not lay off a registered nurse in the period between 90 days before and 90 days after the filing of any H-1C petition, (3) it will not employ a number of H-1C nurses that exceeds 33% of the total number of registered nurses employed by the facility, and (4) it will not authorize the H-1C nurse to perform nursing services at any worksite other than a worksite controlled by the facility or transfer the H-1C nurse's place of employment from one work place to another.

The NRDAA expired on June 13, 2005. However, on December 20, 2006, with the enactment of Public Law 109-423, Congress reauthorized the H-1C program for an additional three years. The elements of the program are unaffected. The provisions take effect immediately and the attestation process is administered by DOL-ETA; complaints and investigations regarding attestations are the responsibility of DOL-ESA. The reauthorization expires on December 20, 2009. The vehicle for employers or facilities to make attestations to DOL-ETA is ETA Form 9081, and to expedite implementation of the reauthorized statute, the Department is requesting a reinstatement, without modifications, to this form until December 20, 2009.

A.2 How, by Whom, and For What Purpose the Information is to be Used

The Department is required by the statute to process attestations submitted by eligible employers seeking to employ alien registered nurses on a temporary basis under the H-1C program. As noted above, an employer must meet the definition of "facility" based on the Social Security Act and the Public Health Act and make other attestations to the Department regarding the employment of one or more alien registered nurses. The data obtained through this information collection is primarily used to make the determination regarding the employer's eligibility to apply for a temporary visa under the H-1C program. The Department's regulations provide that,

unless the attestation submitted by the eligible employer is incomplete or appears obviously inaccurate on its face, the Secretary shall certify the application and return it to the employer within thirty (30) days. The INA requires the Department to make available for public examination, on a periodic basis, a list of facilities that have filed petitions for H-1C registered nurses and make available copies of such attestations and petitions filed.

A.3 Use of Technology to Reduce Burden

The ETA Form 9081 will be made available via the Internet through the OFLC's main website at <http://www.foreignlaborcert.doleta.gov/>. Employer applications need to be submitted directly to the Office of Foreign Labor Certification (OFLC) by mail along with original signature and supporting documentation.

A.4 Efforts to Identify Duplication

The procedures and documentation requirements for the H-1C program are unique and very specific to avoid duplication of activities. The ETA Form 9081 continues to be unique and the Department is unaware of any other approved OMB collections that gather similar information.

A.5 Methods to Minimize Burden on Small Businesses

There are only 14 hospitals that are eligible for participation in this program. The statute establishes the information to be reported and the supporting documentation needed. The Department has no control over the documentary burden created by statute; however, the form, which is the basis of this collection, is streamlined in order to collect only required information and thus minimize the burden.

A.6 Consequences of Less Frequent Data Collection

If the information collected in the ETA Form 9081 is not collected, the Department will be unable to make accurate determinations, as required by the statute, regarding the eligibility of certain facilities to employ alien registered nurses on a temporary basis under the H-1C program and will be in direct violation of the law.

A.7 Special Circumstances for Data Collection

These data collection efforts do not involve any special circumstances.

A.8 Federal Register Notice and Consultation Outside the Agency

ETA consulted with USCIS, which assured ETA that the form was acceptable. Because the form was originally part of a proposed rule and exempt under 5 CFR 1320.8(d)(3), comments were submitted during the comment period for the proposed rule. During that time ETA received comments from the American Immigration Lawyers Association and the Commission on Graduates of Foreign Nursing Schools, as well as from an affected hospital; the comments favored using the form. Nothing in the program has changed since the regulations and original form were promulgated. Moreover, the form has not changed since that time, and ETA is

requesting that it now be reinstated.

In addition, in accordance with the Paperwork Reduction Act of 1995, a notice was published in the Federal Register on April 24, 2007, Vol. 72, No. 78, pages 20372-20373. The public was given 60 days to submit comments; none was received pertinent to the issues raised in the notice.

A.9 Payment of Gifts to Respondents

There is no payment to respondents involved with this information collection.

A.10 Confidentiality Assurances

Information provided by employers under this information collection request is not exempt from disclosure under the FOIA. Public law requires that all attestations filed by employers be available for public examination.

A.11 Additional Justification for Sensitive Questions

There are no sensitive questions included in the proposed data collection.

A.12 Estimates of the Burden of Data Collection

The annual national burden for this information collection is comprised of the respondents completing and submitting the ETA Form 9081. The ETA Form 9081 is completed by the employer, or the employer's authorized attorney/agent, on an occasional basis when the need to employ an alien registered nurse at the employer's facility arises. All items on the ETA Form 9081 are to be completed from information that is readily available to the employer.

The hourly burden for this report has changed only due to a mathematical error during the last submission. Program experience has shown that approximately 14 facilities will submit 172 attestations each year for H-1C nonimmigrant nurses. On average, employers spend approximately one hour completing information on the ETA Form 9081 (172 X 1 hour = 172 total burden hours). The total annual cost of collecting information on the ETA Form 9081 (\$7,848) is based on the average hourly rate of \$45.63 for Human Resource Managers in the private sector as published by the Bureau of Labor Statistics (Occupational Employment and Wages, May 2006).

Report Item	Number of Respondents	Responses Per Year	Total Responses	Hours Per Response	Annual Burden Hours	Annual Cost
ETA Form 9081	14	12.3	172	1	172	\$7,848

A.13 Estimated Cost to Respondents

There is no cost burden associated with this data collection for the respondents.

A.14 Estimates of Annualized Costs to Federal Government

ETA will continue to collect and maintain all information submitted on the ETA 9081 through the OFLC. It is estimated that the OFLC staff will spend the following time each year reviewing the applications, making eligibility determinations, and creating the required disclosure file for public examination:

<u>GS-Level/Step</u>	<u>Total Staff</u>	<u>Hourly Rate</u>	<u>Total Hours</u>	<u>Total Cost</u>
GS-15/1	1	\$44.59	17	\$758
GS-14/1	1	\$37.91	26	\$986
GS-12/1	1	\$26.98	250	\$6,745

The total estimated annual cost to the Federal government for this data collection is \$8,489. The hourly rate used to calculate cost is the average hourly rate for an employee in the Federal service (based on 2007 GS locality pay schedules [http://www.opm.gov/oca/07tables/.](http://www.opm.gov/oca/07tables/))

A.15 Changes in Burden

The total annual burden hours requested for this collection of information are 172 hours, which is an increase of 104 hours from the most recent OMB approved inventory of 68. This increase in burden hours results from a correction of a mathematical error in the estimated burden in the original supporting statement.

A.16 Tabulation of Publication Plans and Time Schedules for the Project

No collection of information will be published for any reason other than the required disclosure file for public examination.

A.17 Approval Not to Display OMB Expiration Date

The expiration date for OMB approval will be displayed. We are not seeking approval to have this concealed.

A.18 Exceptions to OMB Form 83-I

No exceptions are requested in the "Certification of Paperwork Reduction Act Submissions."

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This data collection does not employ any statistical methods.