

SUPPORTING STATEMENT
PARTIAL OVERTIME EXEMPTION FOR REMEDIAL EDUCATION
29 U.S.C. § 207(q), 29 C.F.R. § 516.34
OMB No. 1215-0175

1. The Fair Labor Standards Act (FLSA), sets the federal minimum wage, overtime pay, recordkeeping, and youth employment standards of most general application. *See* 29 U.S.C. §§ 206, 207, 211, 212. FLSA requirements apply to employers of employees engaged in interstate commerce or in the production of goods for interstate commerce and of employees in certain enterprises, including employees of a public agency; however, the FLSA contains exemptions that apply to employees in certain types of employment. *See* 29 U.S.C. § 213, *et al.*

The FLSA generally requires employers to pay overtime hours worked by covered employees at time and one-half the employee's regular rate of pay. *See* 29 U.S.C. § 207(a)(1); 29 C.F.R. Part 778. FLSA section 7(q) provides a partial overtime exemption that allows an employer to employ any employee who lacks a high school diploma or whose reading level or basic skills is at, or below, the eighth grade level for up to ten overtime hours per week without paying the usually required half-time premium, if the employee is receiving remedial education during such overtime hours. 29 U.S.C. § 207(q); *See also* 29 C.F.R. § 778.603. The employer-provided remedial education must be designed to provide up to eighth grade level basic skills or to fulfill the requirements for a high school diploma or General Educational Development (GED) certificate and may not include job-specific training. *Id.* The employer must also compensate for time spent in such remedial education at no less than the employee's regular rate of pay. *Id.*

Regulations, 29 C.F.R. Part 516, Records to be Kept by Employers, contains the basic recordkeeping requirements for employers of employees subject to FLSA protections. In addition to the basic recordkeeping requirements, employers using this partial overtime exemption must indicate the hours an employee engages in exempt remedial education each workday and total hours each workweek. 29 C.F.R. §§ 516.34, 778.603. The employer may either state the hours separately or make a notation on the payroll. *Id.* The subject information collection relates only to the § 516.34 requirements. Regulations, 29 C.F.R. § 516.5-.6, cleared under Control No. 1215-0017, specify the period of time an employer must preserve these records.

2. The Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) uses these records to determine whether covered employers have complied with FLSA section 7(q). Employers use the records to document FLSA compliance.
3. The regulations prescribe no particular order or form of records. Employers may maintain and preserve records in such forms as microfilm or automated word or data processing. Because the regulatory requirement to keep records under FLSA section 7(q) is purely a recordkeeping requirement, the provisions of the Government Paperwork

- Elimination Act (GPEA) do not apply to this information collection. The WHD would only review these employer records in association with a FLSA investigation.
4. This information collection does not duplicate existing requirements. Similar information is not available from any other source. The Office of Management and Budget (OMB) reviews and approves the general FLSA recordkeeping requirements found in Regulations, 29 C.F.R. Part 516, under control number 1215-0017; however, the OMB controls the unique recordkeeping requirements contained in Regulations 29 C.F.R. § 516.34, the subject of this submission, under control number 1215-0175.
 5. This information collection does not have a significant economic impact on a substantial number of small entities.
 6. The FLSA generally uses the workweek as the basis to determine whether an employer has made the proper wage payments to its employees. The WHD has a statutory responsibility to determine that FLSA-covered employees receive overtime pay when due. Less frequent collection of information would prevent the WHD from determining compliance with the remedial education provisions of FLSA section 7(q).
 7. There are no special circumstances involved with this information collection.
 8. The DOL published a notice on October 1, 2008, in the *Federal Register* to invite public comments about this information collection. 73 Fed. Reg. 57152. The agency received no comments. In addition, regular agency contacts with respondent employers during the course of investigation and compliance activities have not indicated the information collection or the related recordkeeping impose any substantive problems or undue burdens.
 9. The DOL makes no payments or gifts to respondents completing these recordkeeping requirements.
 10. The DOL makes no assurances of confidentiality to respondents. As a practical matter, the DOL would only disclose information collected under these requests in accordance with the provisions of the Freedom of Information Act, 5 U.S.C § 552; the Privacy Act, 5 U.S.C. § 552a; and related regulations, 29 C.F.R. Parts 70, 71.
 11. The DOL asks no sensitive questions in these recordkeeping requirements.
 12. The DOL estimates that maintaining the time and payroll records of each affected employee takes approximately 1 minute per week during a period of ten weeks, for ten minutes per year. The agency also estimates approximately 30,000 employees receive remedial education, for an annual burden of 5000 hours (30,000 employees x 10 minutes/60). The DOL also estimates an average of two employees who receive remedial education per employer using this partial overtime exemption, for a total number of 15,000 respondents. 30,000 employees/2 employees per employer. The DOL bases its estimates on historical data obtained from investigation activity.

Any employer subject to the FLSA may utilize the partial overtime exemption for remedial education. The DOL has used the April 2008 average hourly rate of \$17.91 for production or nonsupervisory workers on nonfarm payrolls to estimate respondent costs, because there is no specific data available regarding employers utilizing the exemption. *The Employment Situation: June 2008*—Table B-3, p. 26, DOL, BLS, http://www.bls.gov/news.release/archives/empsit_07032008.pdf. Accordingly, the DOL estimates annual respondent costs to be \$89,550. \$17.91 x 5000 hours.

13. The DOL associates no operations or maintenance costs with this information collection, beyond the value of the respondents time reported in Item 12.
14. There are no federal costs associated with these recordkeeping requirements.
15. The DOL has not changed the annual burden.
16. The DOL does not publish this information collection.
17. The DOL associates no forms with this information collection; however, the agency has published the OMB Control Number for this information collection at 29 C.F.R. 516.0.
18. The DOL is not requesting an exception to the certification requirements for this information collection.