

**SUPPORTING STATEMENT
APPLICATIONS TO EMPLOY FULL-TIME STUDENTS AT
SUBMINIMUM WAGES IN RETAIL OR SERVICE ESTABLISHMENTS,
INSTITUTIONS OF HIGHER EDUCATION, AND AGRICULTURE
FORMS WH-200, WH-201, AND WH-202
OMB CONTROL NUMBER 1215-0032**

1. The Fair Labor Standards Act (FLSA) requires that the Secretary of Labor, to the extent necessary to prevent curtailment of employment opportunities, provide certificates authorizing the employment of full-time students at not less than 85 percent of the applicable minimum wage or less than \$1.60, whichever is higher, in (1) retail or service establishments and agriculture (29 U.S.C. § 214(b)(1); 29 C.F.R. § 519.1(a)); and (2) institutions of higher education (29 U.S.C. § 214(b)(3); 29 C.F.R. § 519.11(a)).

The FLSA and the regulations set forth the application requirements as well as the terms and conditions for the employment of full-time students at subminimum wages under certificates and the temporary authorization to employ such students at subminimum wages. *See* 29 U.S.C. § 214(b)(4); 29 C.F.R. §§ 519.3-.6, 519.13-.16. These subminimum wage certificates generally remain valid for one year. 29 C.F.R. §§ 519.4(b), 519.6(a), 519.14(b), 519.16(a).

These subminimum wage programs are designed to increase employment opportunities for full-time students; however, they also set limits on such employment and prescribe safeguards to protect full-time student employees and full-time employment opportunities of other workers. *See* 29 C.F.R. §§ 519.1(b), 519.11(b).

2. Forms WH-200, WH-201, and WH-202 are voluntary-use application forms an employer may prepare and sign to request a certificate authorizing the employment of full-time students at subminimum wages. Both the applicant and U.S. Department of Labor (DOL) maintain a copy of any submitted form. The WHD reviews each form to determine whether to grant or deny subminimum wage authority.

A retail, service, or agricultural employer uses Form WH-200 to request authority to employ more than six full-time students at subminimum wages for up to a monthly number of hours not exceeding: (1) 10 percent of the total monthly hours worked by all employees of the employing establishment; or (2) specific percentages, based on historic employment data, of total employee hours.

An institution of higher education uses Form WH-201 to request authority to pay subminimum wages to its full-time student employees. The reverse side of Form WH-201 also serves as a “Notice of Temporary Authority” poster that provides temporary authority for the institution to employ full-time students at subminimum wages for 30 days after forwarding the properly completed application to the WHD.

A retail, service, or agricultural employer uses Form WH-202 to request authority to employ up to six full-time students at subminimum wages throughout the employer's enterprise on any given day. The FLSA specifically requires this information collection. 29 U.S.C. § 214(b)(4)(D).

3. The WHD enters information collected on the forms into the WHD Certificate Processing System (CPS). The CPS allows the WHD to send a preprinted application that only requires updates to certain specified information (e.g., changed information, signing, and recording total employment hours during the most recent twelve months) to an employer applying to renew an existing authorization. In conformance with the Government Paperwork Elimination Act, the WHD makes Forms WH-200, WH-201, and WH-202 available in PDF fillable format for printing and downloading at <http://www.dol.gov/esa/whd/forms/wh-200.pdf> (Form WH-200), <http://www.dol.gov/esa/whd/forms/wh-201.pdf> (Form WH-201), and <http://www.dol.gov/esa/whd/forms/wh-202.pdf> (Form WH-202).

The DOL also assessed the practicability of developing an on-line submission option for these forms but determined it is not practical to do so. The regulations 29 C.F.R. §§ 519.3(a) and 519.13(a) require the application (i.e., Forms WH-200, WH-201, or WH-202) to be “signed by an authorized representative of the employer.” In order to meet this regulatory requirement, the DOL would need to obtain a public key infrastructure (PKI) certificate for each authorized employer representative, costing the agency between \$25.00 and \$35.00 for each PKI certificate—as compared to mailing costs of \$.45 for each mailed submission. In addition, the DOL would need to develop the Web pages for employers to submit the information. These development costs easily exceed the total annual mailing cost and are not justified for information collections that receive less than a combined total of 400 annual responses.

4. These information collections do not duplicate existing requirements. No similar information is available from any other source, because this subminimum wage program is unique to the WHD.
5. While these information collections involve small businesses, the collections do not significantly impact them. The use of Forms WH-200, WH-201, and WH-202 to apply for authority to employ full-time students at subminimum wages is voluntary, and automation of the certificate renewal process reduces burden for more than 75 percent of all respondents.
6. Applications for full-time student certificates are annually required, as prescribed by the regulations. 29 C.F.R. §§ 519.4(b), 519.6(a), 519.14(b), 519.16(a). Less frequent application would make it difficult for the WHD to ensure employers do not exceed the allowances for employing full-time students at subminimum wages established under the FLSA. 29 U.S.C. § 214(b)(4). The purpose of the statutory limitation on the employment of full-time students at subminimum wages is to

prevent the reduction of employment opportunities for persons other than students employed under full-time student certificates.

7. There are no special circumstances required in the conduct of these information collections.
8. The DOL published a notice in the Federal Register inviting public comments about these information collections on May 29, 2008. 73 Fed. Reg. 30980. The agency received no comments in response to the Notice, and regular contacts with respondents during the application process have not raised any substantive problems or undue burdens.
9. The DOL offers no payments or gifts to respondents in connection with these information collections.
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. These information collections ask no sensitive questions.
12. Based on the number of submissions received during the past three years, the DOL estimates 389 employers annually submit applications for authority to employ full-time students at subminimum wages. Approximately 286 retail, service, or agricultural employers seek authority to employ more than six full-time students (Form WH-200); 19 institutions of higher education seek authority to employ their own full-time students (Form WH-201); and 84 retail, service, or agricultural employers seek authority to employ six or fewer full-time students (Form WH-202).

A. Form WH-200

- i. The WHD receives about 44 initial applications annually. An employer must complete the required information requested on Form WH-200 during the initial application. The DOL estimates it takes 30 minutes to complete this information collection.

44 initial applications x 30 minutes 22
hours.

- ii. The WHD receives approximately 242 renewal applications annually. A renewal applicant need only make necessary corrections in the preprinted information, record the total hours of employment under the certificate in the most recent twelve months, and sign the form. The DOL estimates it takes 10 minutes to complete a renewal application.

242 renewal applications x 10 minutes40 hours, rounded.

iii. Filing a copy of Form WH-200 takes about one minute.

286 applications (initial and renewal) x 1 minute5 hours, rounded.

Form WH-200 Total Annual Burden Hours 67
Hours.

B. Form WH-201

i. The WHD annually receives approximately seven initial applications requiring the employer to complete all of Form WH-201. The DOL estimates it takes 30 minutes to complete the information collection and post the notice to employees providing temporary authority to pay full-time students at subminimum wages.

7 initial applications x 30 minutes 4 hours,
rounded.

ii. The WHD annually receives approximately 12 renewal applications. The institution makes necessary corrections in the preprinted information, lists the number of full-time students employed at subminimum wages at that campus during the current and most recent 12- month periods, and signs the form. The DOL estimates it takes 15 minutes to complete a renewal application.

12 renewal applications x 15 minutes 3 hours.

iii. Filing each certificate copy of Form WH-201 takes about one minute.

19 applications (initial and renewal) x 1 minute 1 hour, rounded.

Form WH-201 Total Annual Reporting and Recordkeeping Burden . . 8
Hours.

C. Form WH-202

i. The WHD annually receives approximately 38 initial applications requiring the employer to complete all of Form WH-202. The DOL estimates it takes 20 minutes to complete an initial Form WH-202.

38 initial applications x 20 minutes 13 hours,
rounded.

ii. The WHD annually receives approximately 46 renewal applications. The employer need only make necessary corrections in the preprinted

information, record the total hours of employment under the certificate in the most recent twelve months, and sign the form. The DOL estimates it takes 10 minutes to complete a renewal application.

46 renewal applications x 10 minutes 8 hours, rounded.

iii. Filing a copy of Form WH-202 takes about one minute.

84 applications (initial and renewal) x 1 minute. 1 hour, rounded.

Form WH-202 Total Annual Burden 22 Hours.

TOTAL BURDEN FOR FORMS WH-200, WH-201, AND WH-202 389 RESPONSES AND 97 HOURS.

Without the availability of specific data for employers completing these information collections, the DOL has used the November 2007 average hourly rate for production or non-supervisory workers on nonfarm payrolls of \$17.63. (See DOL, Bureau of Labor Statistics, January 2008 Employment Situation, Table B-3, http://www.bls.gov/news.release/archives/empisit_02012008.pdf).

TOTAL ANNUAL RESPONDENT HOUR COST 97 HOURS X \$17.63 \$1,710.

13. The data necessary to complete the subject application forms are readily accessible from the employer’s own records. No system or technology acquisition is required. The only operations and maintenance costs relate to mailing the forms to the WHD.

TOTAL ANNUAL OPERATIONS AND MAINTENANCE COSTS: 389 mailings x (\$.42 postage + \$.03 per envelop) \$175.05.

14. Annual federal costs for these information collections include printing, mailing, processing, and filing approximately 389 applications. Mailing and filing each require about one minute per form. Processing the forms takes approximately 10 minutes per initial application and 5 minutes per renewal application. A GS-9 federal employee in Chicago, Illinois performs this work. A GS-9, Step 4 employee in Chicago earns \$25.83 per hour.

Printing: 389 forms x 2 pages x \$.03 per page \$23.34.

Mail Postage Cost: 389 mailings x (\$.42 postage + \$.03 per envelope) . . \$175.05.

Mail Processing: 1 minute x 389 forms x \$25.83 per hour \$167.46.

Filing: 1 minute x 389 forms x \$25.83 per hour \$167.46.

Processing Forms:

10 minutes x 89 initial applications x \$25.83 per hour \$383.15.

5 minutes x 300 renewal applications x \$25.83 per hour \$645.75.

TOTAL ANNUAL FEDERAL COST \$1,562,
rounded.

15. In this submission of the 1215-0032 information collection, the DOL is merging related information collections previously cleared under two OMB Control Numbers. Heretofore, Information Collection Control Number 1215-0032 has related only to Forms WH-200 and WH-202, while Control Number 1215-0080 has applied to Form WH-201. Upon clearance of this Information Collection Request, the DOL will suspend use of the 1215-0080 Control Number. In addition, the agency has noticed an increase in the number of full-time student subminimum wage certificates. Consequently, this submission reflects a burden hour increase for the 1215-0032 information collection, up from 43 hours to 97 hours. The number of respondents has increased from 240 to 389 for the same reasons. In addition, the estimated respondent mailing costs have increased from \$96.00 to \$175.05 due to the increase in the number of respondents and higher postage costs. The annual federal cost has increased from \$350.08 to \$1,562, again for the same reasons and the fact that the WHD has restructured the way in which the agency processes certificate applications.
16. The DOL does not publish the results of this information collection.
17. The DOL does not seek an exception to the requirement to display the expiration date on these information collections.
18. The DOL is not requesting an exception to the certification requirements for this information collection.