

Non-Substantive Change Request Justification for OMB Control No. 1205-0466

Summary: OMB Control No. 1205-0466 currently applies to job orders that must be posted to prioritize hiring of U.S. workers throughout the United States, including the territories; however, it was not contemplated to include Guam, because the Department's H-2B procedures excludes Guam from the job posting and report requirements. The National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Public Law 111-84, enacted October 28, 2009), pertaining to the realignment of some military forces from Okinawa to Guam, prioritizes the hiring of U.S. workers for this project. In so doing, the NDAA specified recruitment efforts to recruit U.S. workers for employment in the military bases on Guam that face a six-year realignment construction effort. The DOL seeks this non-substantive change request to apply H-2B recruitment information collection requirements to Guam.

The U. S. Department of Labor requires contractors seeking construction workers to post jobs for U.S. workers and report the results of the job postings to the state-level Department of Labor before recruiting H-2B foreign workers. This process is stipulated by the Department of Labor's Foreign Labor Certification H-2B procedures. Given that relatively few U.S. workers live on Guam, the job postings will also be advertised in American Samoa, the Commonwealth of the Northern Marianas Islands, Alaska, California, Hawaii, Oregon, and Washington and on an Internet job bank site with national scope.

Background: The National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Public Law 111-84, enacted October 28, 2009), pertaining to the realignment of some military forces from Okinawa to Guam, prioritizes the hiring of U.S. workers for this project. Section 2834(a) of the NDAA amended Section 2824(c) of the Military Construction Authorization Act (Public Law 110-417, Division B) by adding a new subsection (6) which requires the U.S. Department of Labor (DOL) to approve contractor recruitment plans as follows. DOL intends to delegate some of its responsibility to the Guam Department of Labor as noted in the NDAA required DOL Report to Congress.

(D) SOLICITATION OF WORKERS.—In order to ensure compliance with subparagraph (A), as a condition of a contract covered by such subparagraph, the contractor shall be required to advertise and solicit for construction workers in the United States, including Guam, the Commonwealth of the Northern Mariana

Islands, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico, in accordance with a recruitment plan approved by the Secretary of Labor. The contractor shall submit a copy of the employment offer, including a description of wages and other terms and conditions of employment, to the Secretary of Labor at least 60 days before the start date of the workers under a contract. The contractor shall authorize the Secretary of Labor to post a notice of the employment offer on a website, with State, territorial and local job banks, with State and territorial workforce agencies, and with any other referral and recruitment sources the Secretary of Labor determines may be pertinent to the employment opportunity.

(E) RECRUITMENT PERIOD.—The Secretary of Labor shall ensure that a contractor’s recruitment of construction workers complies with the recruitment plan required by subparagraph (D) for a period beginning 60 days before the start date of workers under a contract and continuing for the next 28 days. During the recruitment period, the contractor shall interview all qualified and available United States construction workers who have applied for the employment opportunity, and, at the close of the recruitment period, the contractor shall provide the Secretary of Labor with a recruitment report providing any reasons for which the contractor did not hire an applicant who is a qualified United States construction worker. Not later than 21 days before the start date of the workers under a contract, the Secretary of Labor shall certify to the Governor of Guam whether the contractor has satisfied the recruitment plan created under subparagraph (D).

DOL Recruitment Plan Requirements: To fulfill the above provisions of the NDAA, Guam military base realignment contractors must take the actions described below to recruit U.S. construction workers, in addition to complying with other statutory and regulatory requirements governing the employment of their workers.

1. At least 60 days prior to the start date of workers under a base realignment contract, contractors shall:
 - a. Submit a job posting with Guam DOL at http://dol.guam.gov/index.php?option=com_jobline&Itemid=0&task=add or by submitting a completed Job Order (Form GES 514) in person at the Guam Employment Service office. The job posting must be posted on the Guam DOL Job Bank for at least 21 consecutive days;
 - b. Post the job opportunity with the state workforce agency’s (SWA) Internet job bank in American Samoa at

www.usworks.com/americansamoa/) , the Commonwealth of the Northern Mariana Islands at <https://marianaslabor.net/employer.asp> , and in the following states:

- i. Alaska (www.jobs.state.ak.us);
- ii. California (www.caljobs.ca.gov);
- iii. Hawaii (www.hirenethawaii.com);
- iv. Oregon(www.emp.state.or.us/jobs); and
- v. Washington (<https://fortress.wa.gov/esd/worksource/Employment.aspx>).

The job listing must be posted with for at least 21 consecutive days. If for any reason the Internet job bank in American Samoa is not available, the contractor must place an advertisement on two Sundays in a newspaper that is; 1) of general circulation in that state or territory, 2) has a reasonable distribution and is appropriate to the occupation, and 3) that workers likely to apply for construction jobs will have the opportunity to see the job listing.

- c. Post the job opportunity with an Internet-based job bank that is;
 - i. national in scope, including the entire United States, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico,
 - ii. allows job postings for all occupations, and is
 - iii. free for job seekers and their intermediaries in One-Stop Career Centers and the U.S. employment service delivery system nationwide.
 - d. Where the occupation or industry is customarily unionized, contact the local union in Guam in writing to seek U.S. workers who are qualified and who will be available for the job opportunity.
2. The job postings in (1)(a) through (c) must include, at a minimum:
- (a) The contractor's name and appropriate contact information for applicants to inquire about the job opportunity or to send applications and/or résumés directly to the employer;
 - (b) The geographic area of employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;
 - (c) If applicable, a statement that daily transportation to and from the worksite(s) will be provided by the employer;

- (d) A description of the job opportunity with sufficient information to apprise U.S. workers of services or labor to be performed, including the duties, the minimum education and experience requirements, the work hours and days, and the anticipated start and end dates of the job opportunity;
- (e) If applicable, a statement that on-the-job training will be provided to the worker;
- (f) If applicable, a statement that overtime will be available to the worker and the wage offer(s) for working any overtime hours;
- (g) The wage offer, or in the event that there are multiple wage offers, the range of applicable wage offers; and
- (h) A statement that the position is temporary and the total number of job openings the employer intends to fill.

The postings are separate and distinct requirements - i.e., a posting under Section 1(b) cannot be used to satisfy the posting requirement under Section 1(c).

3. During the minimum 28-day recruitment period, contractors shall interview all qualified and available Guam and U.S. construction workers who have applied for the employment opportunity.
4. At the close of the recruitment period (not fewer than 32 days before the start date of workers under a contract), for each job listing, the contractor shall provide a report including the following information via e-mail to Guam DOL at ndaa.recruitment@dol.guam.gov documenting efforts to recruit U.S. workers from the United States and all U.S. territories, including:
 - a. A description of all the recruitment approaches used to recruit realignment workers. The description must include the Internet job bank where the posting occurred, the occupation or trade, a description of wages and other terms and conditions of employment, the date of posting, and the job order or requisition number. If newspaper advertisements were used, the description must also include the dates that these ads appeared in the newspaper;
 - b. A copy of each job posting;
 - c. A detailed description of how each response to the job postings were handled including:
 - i. the number of job applications received,
 - ii. the name of the applicants,
 - iii. the position applied for,
 - iv. the final employment determination for each applicant or job candidate, and

- v. for each U.S. job applicant not hired, a description of the specific reason for rejecting the applicant for employment, which includes a comparison of the job applicant's skills and experience against the terms listed in the original job posting.

Burden Estimate: The burden estimates for OMB control number 1205-0466 states that annually 8717 H2B applications are submitted by businesses for the entire United States, requesting an average of 236,706 foreign workers. For each of the requests, the business interested in securing foreign labor certifications is required to post a job order with the state workforce agency and provide a report on the U.S. citizen worker recruitment.

Department of Defense reports indicate that over the course of the multi-year Guam base realignment of service members and their families, up to 20,000 workers may be needed for construction and related employment. The February 1, 2011, report from the Interagency Coordination Group of Inspector Generals for Guam Realignment indicates that the completion of the base realignment may be delayed until 2017.

To determine the hour burden associated with the NDAA Guam Base Realignment domestic workforce recruitment effort, ETA estimates that twenty thousand (20,000) workers would be needed over six years (2011 to 2017), or 3,333 workers per year. Job order postings are expected for multiple job openings that would range from 20 to 50 workers per job order. Using a middle ground estimate of 30 positions per job order, contractors would need to post an average of 111 job orders per year.

Recruitment activities described above, including advertising for U.S. workers and/or posting job orders, are a usual and customary activity for employers/contractors. Therefore, under OMB regulations at 5 CFR 1320.3(b)(2) and (3), the resources expended by employers for recruitment activities are excluded in compiling the public burden estimate. The Guam base realignment-related job order posting, and the recruitment results reporting requirement, on the other hand, are beyond the usual and customary level of activity and will increase the contractor's burden as follows:

After a job order is developed and posted on the Guam job bank site, contractors may need 15 minutes to post the same job order on an additional job bank. For the base realignment recruitment, jobs will need to be posted on seven additional workforce agency job banks (CNMI, American Samoa, HI, AK, CA, WA, and OR), as well as on an

Internet job bank site with a national scope. The additional burden is estimated to be **two hours per job order or 222 added annual burden hours. 111 job order posting x 8 job banks = 888 total responses. 888 responses x 15 minutes = 222 hours.**

The NDAA Guam base realignment recruitment standard requires contractors to develop and provide a report on the results of the domestic worker recruitment efforts. The U.S. Department of Labor estimated that the time needed to prepare recruitment reports for the Foreign Labor Certification program is an additional hour per job order for a total of 111 hours. 111 reports x 1 hour = 111 hours. **Therefore the currently approved 1205-0466 burden of would increase by 999 responses and 333 hours because of this particular need. Based on rates used in the July 29, 2011, justification for this information collection, the ETA estimates the value of respondent time for this additional burden to be \$20,452.86 (333 x \$61.42). ETA anticipates no other burden costs.**

Based on current ROCIS entries and the new requirements, the total burden for this information collection would become:

Responses: 694,901;
Time Burden: 513,343 hours;
Other Burden Costs: \$1,575,340.

DOL Recruitment Support Activities

DOL's Employment and Training Administration (ETA) will facilitate a nationwide outreach and recruitment effort to maximize hiring of U.S. construction workers, including outreach to the workforce investment system. ETA would do the following:

- develop and issue a Training and Employment Notice to generally inform the state workforce agencies, state and local workforce investment boards, and the nearly 3,000 One-Stop Career Centers of the anticipated construction employment opportunities on Guam and how they will be posted;
- develop Toll-Free Help Line telephone scripts directing job seekers to the Guam DOL job bank;
- hold a Webinar that will invite participation by the leadership of the Guam DOL, the Guam Alien Labor Certification Processing Center, the Department of Homeland Security and the Department of Defense (including the Naval Facilities Engineering Command, the Joint Guam Program Office, and the Office of Economic Adjustment) to describe the protocol and

- procedures for DoD contractors to submit job opportunities and for job seekers to apply for base build-up employment;
- ensure that DOL offices including Unemployment Insurance, Apprenticeship, Job Corps, Veterans' Employment and Training Service, and YouthBuild programs are informed of the construction employment opportunities; and
 - brief pertinent inter-governmental and labor organizations (including the building trades unions) so that they can participate in spreading information about the U.S. worker outreach effort.