SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL UNDER THE PAPERWORK REDUCTION ACT OF 1995: 1205-0310

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SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSIONS
LABOR CONDITION APPLICATION FOR H-1B, H-1B1, and E-3 NONIMMIGRANTS and the NONIMMIGRANT WORKER INFORMATION FORM

A. Justification

A.1 Circumstances Necessitating Data Collection

The Employment and Training Administration (ETA) and the Wage Hour Division (WHD) of the Department of Labor (DOL or Department) are responsible for administering the H-1B, H-1B1, and E-3 programs which provide for the filing and enforcement of labor condition applications by employers that seek to use aliens in specialty occupations and as fashion models of distinguished merit and ability.

Under the Immigration and Nationality Act (INA) an employer seeking to employ a foreign worker in a specialty occupation or as a fashion model of distinguished merit and ability on an H-1B, H-1B1, or E-3 visa is required to file a labor condition application with and receive certification from DOL as the first step in the visa process. The labor condition application process is administered by ETA; complaints and investigations regarding labor condition applications are the responsibility of the WHD. 8 U.S.C. §§ 1101(a)(15)(H)(l)(B), 1101(a)(15)(H)(i)(B)(1), 1101(a)(15)(E)(iii), 1182(n) and (t), 1184(c).

This information collection request no longer includes the following information collection instruments: ETA 9035 & 9035E Appendix A: Additional Attestations; ETA Form 9035CP – General Instructions for the 9035 & 9035E Appendix I: Mapping of 3-Digit DOT Codes to SOC/O*NET Job Titles; ETA Form 9035CP – General Instructions for the 9035 & 9035E Appendix II: Sample of Acceptable Wage Survey Sources. These appendices have been removed from ROCIS for the following reasons: Appendix I contains obsolete information and is no longer being used in the program; Appendix II has been replaced by program guidance and is no longer in use; Appendix A is no longer used due to the expiration of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, section 1611(b) which made it unlawful for any recipient of funding under title I of the Emergency Economic Stabilization Act of 2008 (Public Law 110-343) or section 13 of the Federal Reserve Act (12 U.S.C. 342 et seq.) to hire any nonimmigrant described in section 101(a)(15)(h)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(h)(i)(b) unless the recipient is in compliance with the requirements for an H-1B dependent employers.,

A. Labor Condition Application (LCA) -- 20 CFR 655.700, 655.705, 655.720, 655.730, 655.731, 655.732, 655.733, 655.734, and 655.760

The process of protecting U.S. workers begins with a requirement that employers file a labor condition application (LCA) (Form ETA 9035) with the Department. In this application the employer is required to attest: (1) that it will pay foreign workers prevailing wages or actual wages whichever are greater -- including, pursuant to the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), the requirement to pay for certain nonproductive time and to provide benefits on the same basis as they are provided to U.S. workers; (2) that it will provide working conditions that will not adversely affect the working conditions of U.S. workers similarly employed; (3) that there is no strike or lockout at the place of employment; and (4) that it has publicly notified the bargaining representative or, if there is no bargaining representative, the employees, by posting at the place of employment or by electronic notification - and will provide copies of the LCA to each nonimmigrant employed under the LCA. In addition, the employer must provide the information required on the application about the number of foreign workers sought, the occupational classification, the wage rate, the prevailing wage rate and the source of the wage rate, and the period of employment so that the Secretary of Labor (Secretary) can meet her statutory obligations. Pursuant to the INA, additional recruitment and non-displacement requirements are applicable to H-1B dependent employers.

B. Documentation of Corporate Identity -- 20 CFR 655.760

Title 20 of the Code of Federal Regulations (CFR) section 655.760 provides that a new LCA is not required merely because a corporate reorganization results in a change of corporate identity, regardless of whether there is a change in the EIN and regardless of whether the IRS definition of single employer is satisfied, provided that the successor entity, prior to the continued employment of the nonimmigrant, agrees to assume the predecessor entity's obligations and liabilities under the LCA. The agreement to comply with the LCA for the future and to any liability of the predecessor under the LCA must be documented with a sworn statement in the public access file.

C. Determination of H-1B Dependency -- 20 CFR 655.736

An H-1B employer must calculate the ratio between the number of H-1B workers it employs and the number of full-time equivalent employees (FTEs) to determine whether it meets the statutory definition of an H-1B dependent employer. (8 U.S.C. § 1182(n)(3)(A)). All employers must keep copies of the I-129 petitions or requests for extension of status filed with the U.S. Citizenship and Immigration Service (USCIS). Additional documentation is required only in limited circumstances.

The regulations at 20 CFR 655.736(c)(2) permit employers to use a snapshot test to determine if dependency status is readily apparent and requires a full computation only if the number of H-1B workers exceeds 15 percent of the total number of full-time workers of the employer. The employer must retain a copy of

the full computation in specified circumstances that the Department believes will very rarely occur. The full computation must be maintained if the employer changes status from dependent to non-dependent. If the employer uses the Internal Revenue Service Code's single-employer test to determine dependency, it must maintain records documenting what entities are included in the single employer, as well as the computation performed, showing the number of workers employed by each entity that is included in the calculation. Finally, if the employer includes workers who do not appear on the payroll, a record of computation must be kept.

D. List of Exempt H-1B Employees in Public Access File -- 20 CFR 655.737(e)(1)

Employers are required to include in their public access file a list of the H-1B nonimmigrants supported by any LCA attesting that it will be used only for exempt workers, or in the alternative, a statement that the employer employs only exempt H-1B workers.

E. Record of Assurance of Non-displacement of U.S Workers at Second Employers Worksite -- 20 CFR 655.738(e)

The INA at 8 U.S.C § 1182(n)(1)(F)(ii) generally prohibits an H-1B dependent employer from placing an H-1B nonimmigrant with another employer unless it has first inquired as to whether the other employer will displace a U.S. worker. The regulations require an employer seeking to place an H-1B nonimmigrant with another employer to secure and retain either a written assurance from the second employer, a contemporaneous written record of the second employer's oral statements regarding non-displacement, or a prohibition in the contract between the H-1B employer and the second employer.

F. Offers of Employment to Displaced U.S. Workers -- 20 CFR 655.738(e)

The INA at 8 U.S.C. § 1182(n)(1)(E) prohibits H-1B dependent employers and willful violators from hiring an H-1B nonimmigrant if their doing so would displace a U.S. worker form an essentially equivalent job in the same area of employment. The regulations under 20 CFR 655.738(e) require H-1B dependent employers to keep certain documentation with respect to each former worker in the same locality and same occupation as any H-1B worker, who left its employ 90 days before or after an employer's petition for an H-1B worker. For all such employees, the Department requires that covered H-1B employers maintain the name, last-known mailing address, occupational title and job description, and any documentation concerning the employee's experience and qualifications, and principal assignments. Further, the employer is required to keep all documents concerning the departure of such employees and the terms of any offers of similar employment to such U.S. workers and responses to those offers. These records are necessary for the Department to determine whether the H-1B employer has displaced similar

U.S. workers with H-1B nonimmigrants and are already required, for the most part, by Equal Employment Opportunity Commission (EEOC) regulations.

DOL does not require employers to create any documents other than basic payroll information, with one noted exception. If the employer offers the U.S. worker another employment opportunity, but does not so in writing, pursuant to 20 CFR 655.738(e)(1), the employer must somehow document and retain the offer and the response to such an offer.

G. Documentation of U.S Worker Recruitment -- 20 CFR 655.739(i)

Pursuant to the INA at 8 U.S.C. § 1182(n)(1)(G), H-1B dependent employers are required to make good faith efforts to recruit U.S. workers before hiring H-1B workers. Under 20 CFR 655.739(i), H-1B dependent employers are required to retain documentation of the recruiting methods used, including the places and dates of the advertisements and postings or other recruitment method used, the content of the advertisements or postings, and the compensation terms. Further, the employer must retain documentation or a simple summary of the principal recruitment methods used and the time frame of the recruitment in the public access file. In addition, the employer must retain any documentation concerning consideration of applications of U.S. workers, such as copies of applications and related documents, rating forms, job offers, etc. This documentation is necessary for the Department to determine whether the employer has made a good faith effort to recruit U.S. workers and for the public to be aware of the recruiting methods used. Retention of the records regarding consideration of applications from U.S. workers is already required by EEOC regulations.

With the exception of the list to be included in the public access file (and here employers have the option of putting the actual records in the file), DOL is not requiring employers to create any documents, but rather to preserve those documents, which are created or received. The only additional recordkeeping burden required by these regulations is that the public disclosure files contain a summary of the principal recruitment methods used and the time frames in which they were used. Creating a memorandum to the file or the filing of pertinent documents may satisfy this recordkeeping requirement.

H. Documentation of Fringe Benefits -- 20 CFR 655.731(b)

Pursuant to the INA at 8 U.S.C. § 1182(n)(2)(C)(viii), all employers of H-1B, H-1B1, and E-3 nonimmigrants are required to offer benefits to these workers on the same basis and under the same terms as offered to similarly employed U.S. workers. Under 20 CFR 655.731(b), employers are required to retain copies of all fringe benefit plans and any summary plan descriptions, including all rules regarding eligibility and benefits, evidence of what benefits are actually provided to individual workers and how costs are shared between employers and employees. The public

access file must contain a summary of the benefits offered, usually set forth in the employee handbook or summary plan description. If the employer is providing home country benefits, the public access file need only contain a notation to that effect. These records are necessary for the Department to determine whether the nonimmigrant is offered the same fringe benefits as similarly employed U.S. workers.

I. Wage Record keeping Requirements Applicable to Employers of H-1B Nonimmigrants -- 20 CFR 655.731

As part of the LCA, the employer attests that for the entire period of authorized employment of the H-1B, H-1B1, or E-3 nonimmigrants, the required wage rate will be paid to the nonimmigrants; that is, that the wage paid shall be the greater of the actual wage rate or the prevailing wage as defined in 20 CFR 655.731(a) of the regulations.

The regulations require all H-1B, H-1B1, and E-3 employers to document the basis used to establish the actual wages for their U.S. workers and how it relates to the H-1B nonimmigrant's wage and to keep payroll records for workers that are not exempt under the Fair Labor Standards Act (FLSA), whether nonimmigrant workers or employees for the specific employment in question.

Employers are required to keep records of the hours worked for employees not paid on a salary basis and for part-time nonimmigrant workers, regardless of how they are paid. The only additional recordkeeping burden over and above those required by the FLSA, and approved under OMB Approval No. 1215-0017, are for keeping records of hours worked by part-time, salaried nonimmigrant workers who are exempt from FLSA.

J. Nonimmigrant Worker Information Form (WH-4)

ACWIA amended the INA to require DOL to develop a procedure so that any individual can provide information alleging H-1B program violations in writing on a form developed by DOL. 8 U.S.C. § 1182(n)(2)(G)(iii). Subsequent INA amendments applied the same requirement to the H-1B1, and E-3 visa programs. DOL uses Form WH-4 to meet the statutory requirement. 8 U.S.C. § 1182(t)(3)(A).

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

The INA provides that unless the labor condition application is incomplete or appears obviously inaccurate on its face, the Secretary shall certify the application and return it to the employer within 7 working days. The INA further requires the Department to make available for public examination on a current basis a list (by employer and by occupational classification) of LCAs filed by employers. The

records and information supporting the LCA attestations are reviewed by the WHD to determine employer compliance. The public access file is required by the INA so that the public has access to information to file complaints about violations.

Form WH-4 is an optional form anyone may use to allege violations of the INA provisions enforced by the Wage and Hour Division (WHD) of the U.S. Department of Labor. WHD uses the information listed on the form in deciding whether to commence an investigation of the employer.

A.3 Use of Technology to Reduce Burden

The Department now mandates all employers, except those with disabilities or without internet access (and only upon prior approval), to utilize the LCA online filing system which permits employers to fill out their LCAs via the Department's Web site and submit them electronically to the ETA. The electronic filing system is convenient and less burdensome for employers since, unlike the previous system based on filing applications by FAX or by mail, the new system allows the filing of an application without the submission of a hard copy version. As the scope of the Department's review of LCAs under sections 212(n)(1)(G) and 212(t)(2)(C) of the INA is limited to completeness and obvious inaccuracies, the filing and processing of LCAs is particularly amenable to an electronic filing system.

The LCA form is available at (http://icert.doleta.gov/) and can be accessed by employers who wish to electronically fill out and submit the Form ETA 9035E (the electronic version of the Form ETA 9035). The Web site includes detailed instructions, prompts and checks to help employers fill out the form. This process is designed to help ensure that employers enter the H-1B, H-1B1, or E-3 program based on accurate LCA information and with explicit, immediate notice of the obligations.

Additionally, the Department's Web site provides an option to permit employers that frequently file LCAs to set up secure files within the ETA electronic filing system containing information which is common to any LCA they may wish to file. Under this option, each time an employer files an LCA, the information common to all its LCAs would be entered automatically by the electronic filing system and the employer would only have to enter the data that are specific to the new LCA it wishes to file.

In compliance with the Government Paperwork Elimination Act (GPEA), WHD makes Form WH-4 available on the agency's Web site at http://www.dol.gov/whd/forms/wh-4.pdf . The DOL previously considered also developing an automated complaint system and determined it would have a negative effect on the ability of WHD to provide quality, timely service to potential complainants and be impractical to implement.

As a general matter, the ability to screen complaints during the intake process is critical to effectively meeting the potential complainants' needs. Long experience has shown that well over half of the potential complainants contacting WHD complain of problems that the agency cannot resolve for a variety of reasons. Specifically with respect to this information collection, it's necessary that WHD be able to assure that complaints under the H-1B and related programs are within the agency's authority to investigate. For this purpose, WHD must determine if the complainant is an aggrieved party, and if so, whether there is reason to believe that a violation has occurred. If the complainant is not an aggrieved party, WHD must determine whether the person likely has knowledge of the employer's practices, whether the information submitted is credible, and whether there is reason to believe that the employer has committed a violation that meets the specific INA criteria. Complainants are typically not familiar with the nuances of the INA or with the specific requirements that must be satisfied. Consequently, it is important that Form WH-4 be completed with the assistance of WHD staff, so the complainant provides the information necessary for WHD to determine whether the complaint can be investigated. Furthermore, if WHD staff speaks to the complainant before he or she completes Form WH-4, WHD will frequently be able to determine immediately whether the matter that is the subject of the alleged complaint is not within the enforcement jurisdiction of WHD and the agency may make a referral as appropriate. Otherwise, the public will submit information in situations where the enforcement program staff can provide no assistance. Thus allowing for electronic submission would create unnecessary burdens and increase the total burden hours imposed on the public, as in many cases insufficient information could be provided, and WHD would then need to contact the complainant to obtain additional information. In other instances, information could be provided unnecessarily if WHD lacks jurisdiction or an actionable cause to address a particular complaint. Based on these determinations, the Department has determined that it would be poor customer service and inefficient use of public time, inconsistent with GPEA principles, to allow for the submission of insufficient information, or unactionable complaints.

A.4 Efforts to Identify Duplication

The information required on the LCA is not available from any other source. The more efficient electronic processing will substantially reduce or eliminate the duplicate filings of LCAs by employers.

Many of the records required to be kept by the regulations are also required under the Fair Labor Standards Act, administered by WHD, and by the EEOC, Pension Welfare Benefits Administration and the Internal Revenue Service. In order not to duplicate burden, the Department accepts applicable records normally maintained for other purposes to document compliance during an investigation conducted under the H-1B and related programs.

A.5 Methods to Minimize Burden on Small Businesses

The burden on small business concerns is minimal.

A.6 Consequences of Less Frequent Data Collection

The Department would be in direct violation of law and regulations if this information was not collected.

A.7 Special Circumstances for Data Collection

There are no special circumstances that would require the information to be collected or kept in any manner other than those normally required under the Paperwork Reduction Act.

A.8 Summary of Public Comments

In accordance with the Paperwork Reduction Act of 1995, the public has been given 60 days to comment on this information collection. The 60-day notice soliciting comments on the Extension of a Currently Approved Information Collection was published in the *Federal Register* on October 17, 2011. See, 76 FR 64109. The Department received no substantive comments in response to this notice.

A.9 Payment of Gifts to Respondents

No payments or gifts are made to respondents.

A.10 Confidentiality Assurances

There are no assurances to keep information provided to respondents private except for Form WH-4. With respect to Form WH-4, WHD states that the agency will keep the respondent's identity private to the maximum extent possible under existing law. Information gathered during the course of an investigation of a complaint is disclosed in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C § 552; the Privacy Act, 5 U.S.C. § 552a; and related regulations, 29 CFR parts 70 and 71. Among other exclusions, the FOIA provides agencies an exemption from disclosing records or information compiled for law enforcement purposes, to the extent that the production of such

enforcement records or information could reasonably be expected to disclose the identity of a confidential source. 5 U.S.C. § 552(b)(7)(D).

A.11 Additional Justification for Sensitive Questions

These information collections do not involve sensitive matters.

A.12 Estimates of the Burden of Data Collection

A. Labor Condition Applications -- 20 CFR 655.760

Employers submit LCAs when they wish to employ an H-1B nonimmigrant worker. Ninety nine percent of employers file LCAs using the online system. Based on program experience, ETA estimates that it will receive approximately 340,000 LCAs each year from approximately 77,000 employers.

The regulations provide at 20 CFR 655.760 that copies of the LCAs and its documentation are to be kept for a period of one year beyond the end of the period of employment specified on the LCA or one year from the date the LCA was withdrawn, except that if an enforcement action is commenced, these records must be kept until the enforcement procedure is completed as set forth in 20 CFR Part 655, subpart I. The payroll records for the H-1B employees and other employees in the same occupational classification must be retained for a period of three years from the date(s) of the creation of the record(s), except that if an enforcement proceeding is commenced, all payroll records shall be retained until the enforcement proceeding is completed.

ETA estimates that the completion and submission of an LCA takes 35 minutes; complying with recordkeeping requirements takes 5 minutes; and posting the LCA in a conspicuous place and providing a copy to each H-1B nonimmigrant takes 5 minutes for a total of 45 minutes per application. The total burden for this item is estimated to be, 254,999 hours apportioned among 198,333 reporting hours (340,000 x 35 minutes ÷ 60), 28,333 recordkeeping hours (340,000 x 5 minutes ÷ 60 = 28,333), and 28,333 third party disclosure hours (340,000 x 5 minutes ÷ 60 = 28,333).[1]

B. Documentation of Corporate Identity -- 20 CFR 655.760

1 The ETA Form 9035/9035E now includes an acknowledgement sheet to be used in the context of electronic filing of an LCA. This change has not resulted in changes to the burden estimates for this information collection instrument.

Pursuant to 20 CFR 655.760, prior to the continued employment of the H-1B nonimmigrant when there is a corporate change and the new corporation agrees to assume the predecessor entity's obligations and liabilities under the LCA, the agreement to comply with the LCA for the future and to any liability of the predecessor under the LCA must be documented with a sworn statement in the public access file.

It is estimated that 1,000 H-1B employers will be required to file the documentation annually and that the recording and filing of each such document will take approximately 1 hour for a total annual burden of 1,000 recordkeeping hours.

C. Determination of H-1B Dependency -- 20 CFR 655.736

DOL estimates an average burden of 30 minutes, twice annually, for each employer that must document the dependency determination as outlined in 20 CFR 655.736. The Department estimates that 1,000 employers will make this determination for an annual burden of 1,000 recordkeeping hours (1000 x 0.50 hrs x 2 times annually = 1000).

The Department also estimates that no more than 5 percent of the total estimated 77,000 H-1B employers will be required to retain copies of H-1B petitions and extensions who do not currently retain these documents, for an average of 3 minutes per petition, for a total of 193 hours (3,850 x 0.05 hrs. = 193).

The total burden for this item is estimated to be 1,193 recordkeeping hours (1000 + 193 = 1,193).

D. List of Exempt H-1B Employees in Public Access File -- 20 CFR 655.737(e)(1)

Under 20 CFR 655.737(e)(1), employers are required to include in their public access file a list of the H-1B nonimmigrants supported by any LCA attesting that it will be used only for exempt workers, or in the alternative, a statement that the employer employs only exempt H-1B workers. DOL estimates that each list or statement will take approximately 15 minutes to prepare and that 2,500 H-1B employers will prepare such a list or statement annually for a total burden of 625 recordkeeping hours (2,500 x 0.25 hrs.).

E. Record of Assurances of Non-displacement of U.S. Workers at Second Employer's Worksite

Willful violators, as described in 8 U.S.C. § 1182(n)(1)(F), must attest that they will not place H-1B employees with other employers unless the willful violators have inquired about the displacement of U.S. workers at the second employer's place of

business. DOL estimates an average burden of 10 minutes per attestation or statement, and that 1,500 H-1B employers will document such assurance 5 times annually, for a total annual burden of 1,250 recordkeeping hours (1,500 x 10 minutes ÷ 60 x 5 times annually).

F. Offers of Employment to Displaced U.S. Workers -- 20 CFR 655.738(e)

It is estimated that 150 H-1B employers will make offers of employment as prescribed by 20 CFR 655.738(e) 5 times annually (750) and that 75 of those offers and responses would not otherwise be committed to writing without this paperwork requirement. Each such document is estimated to take 30 minutes for a total annual burden of 38 recordkeeping hours (75 x 0.5 hrs = 38).

G. Documentation of U.S. Worker Recruitment -- 20 CFR 655.739(i)

Pursuant to the INA at 8 U.S.C. 1182(n)(1)(G), H-1B dependents employers are required to make good faith efforts to recruit U.S. workers before hiring H-1B workers. Under the regulations, H-1B dependent employers are required to retain documentation of U.S. worker recruitment. This recordkeeping requirement under 20 CFR 655.739(i) may be satisfied either by creating a memorandum to the file or filing the actual pertinent documents. It is estimated that 2,000 H-1B employers will file such documents or memoranda 5 times annually and that each recordkeeping will take 20 minutes, for an annual burden of approximately 3,333 recordkeeping hours (2,000 x 20 minutes ÷ 60 x 5 times annually).

In addition, the employer must retain any documentation concerning consideration of applications of U.S. workers, such as copies of applications and related documents, such as rating forms, job offers, etc. This documentation is necessary for the Department of Labor to determine whether the employer has made a good faith effort to recruit U.S. workers and for the public to be aware of the recruiting methods used. Retention of the records regarding consideration of applications from U.S. workers is already required by EEOC regulations and thus the employer is not required to create or retain any new records. Therefore, no additional burden is assessed for this aspect of the requirement.

H. Documentation of Fringe Benefits -- 20 CFR 655.731(b)

There are an estimated 10 percent of H-1B employers (7,700) that provide fringe benefits, such as bonuses, vacations and holidays, not required by ERISA regulations to be documented. It is estimated to document these plans outlined in 20 CFR 655.731(b) would take 1.5 hours per employer, for an annual burden of 11,550 hours (7,700 employers x 1.5 hours = 11,550). It is further estimated that 25 percent of H-1B employers (19,250) are multinational employers and that a note

to the file that these workers receive home country benefits would take 30 minutes per employer for an annual burden of 9,625 hours (19,250 x 0.5 hrs = 9,625 hours).

The total estimated burden for this item is 21,175 recordkeeping hours (11,550 + 9,625 = 21,175).

I. Wage Recordkeeping requirements Applicable to Employers of H-1B Nonimmigrants -- 20 CFR 655.731(b)

The additional burden of keeping records for salaried H-1B workers who are exempt from the FLSA pursuant to 20 CFR 655.731(b) is estimated at 2.5 hours per worker for 10,500 workers for a total annual burden of 26,250 recordkeeping hours (10,500 x 2.5 hours = 26,250).

J. Information Form Alleging H-1B Violations (WH-4)

Based on the actual number of Forms WH-4 filed during the past three fiscal years, it is estimated that 425 such responses will be received annually and that each response will take approximately 20 minutes, for a total burden of 142 reporting hours, rounded (425 x 20 minutes ÷ 60 = 142 hours).

Burden hours are estimated based on workload data and program experience.

Annual Burden Hours for LCA Information Collections:

ETA Form 9035/9035E –	198,333 Reporting Hours; 83,197 Recordkeeping Hours 28,333 Third Party Disclosure Hours
Subtotal for ETA Form 9035/9035E	**309,863 Hours**
WH-4	142 Reporting Hours
TOTAL	**310,005 Hours**

Average Time Per Application Process

ETA Form 9035 – 1 hour (340,000 Responses)[2]
WH-4 - 20 minutes (425 Responses)

2 This estimate takes into account the time required to review instructions, search existing data sources (for example, review the prevailing wage determination and consult information regarding H-1B dependency), gather and maintain the data needed, and complete and review the collection of information. It also takes into account that some applicants may file a single LCA for more than one beneficiary. This estimate is included in the public burden statement on the ETA 9035/ETA 9035E and ETA 9035CP.

TOTAL ANNUAL HOURS BURDEN FOR ALL INFORMATION COLLECTIONS – 310,005 HOURS

H-1B employers may be from a wide variety of industries. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required by this regulation may range from several hundred dollars to several hundred thousand dollars where the corporate executive office of a large company performs some or all of these functions themselves. Absent specific wage data regarding such employers and employees, respondent costs were estimated at $25 an hour. Total annual respondent hour costs for all information collections are estimated at $7,750,125 ($25.00 x 310,005)

Type of Collection	Hourly Burden	Cost Burden
Reporting	198,475	$4,961,875
Record Keeping	83,197	$2,079,925
Third Party Disclosure	28,333	$708,325

A.13 Estimated Cost to Respondents

1. Start-up/capital costs: There are no start-up costs, as ETA provides a free, web-based data collection and reporting system to collect and maintain participant data.
2. Annual costs: There are no annual costs to respondents, as ETA is responsible for the annual maintenance costs for the free, web-based, data collection and reporting system.

A.14 Estimates of Annualized Costs to Federal Government

The average Federal Government cost for a year of operation, where salaries are involved, is estimated on an hourly basis multiplied by an index of 1.69 to account for employee benefits and proportional operating costs, otherwise known as Fully Loaded Full Time Equivalent (FLFTE)[3]. The index is derived by using the Bureau of Labor Statistics' index for salary plus benefits and the Department's internal analysis of overhead costs averaged over all employees of OFLC and WHD. The total cost to the Federal Government is estimated at $1,126,408, calculated as follows:

3 The Federal Government cost estimate for the staff adjudication of LCAs is based on the U.S. Office of Personnel Management 2012 locality pay schedule for the Chicago-Naperville-Michigan City, IL-IN-WI area to reflect the locations of Chicago National Processing Center which carries the responsibility for the processing of LCAs. .Please see: http://www.opm.gov/oca/12tables/pdf/chi_h.pdf . The Federal Government estimate for the staff processing of the WH-4 form is based on the 2012 general schedule base. Please see: http://www.opm.gov/oca/12tables/pdf/gs_h.pdf.

Network costs		
Application Support		$261,333
Configuration Management and Quality Assurance		$154,333
Program Support		$58,333
Technical Operations		$101,333
	Subtotal	$575,332
OFLC Staff Time		
Adjudication of ETA Forms 9035, and 9035E that are not automatically certified (1,560 applications a year at 15 minutes per LCA) Analyst $37.33 (GS-12, Step 2) x 1.69]		$24,604
	Subtotal	$24,604
Form WH-4		
Printing - It is estimated WHD will annually print approximately 425 Forms WH-4. (425 forms x $0.05).		$21
Mailing - Of this number, WHD mails approximately 30 percent to complainants. The agency also provides a preaddressed, postage paid envelope for returning the completed Form WH-4 to the WHD. Mailing costs are estimated to be $138, rounded. [128 forms x ($0.44 postage + $.10 per envelope) X 2 directions]		$138
Staff - It is estimated a Wage-Hour Compliance Specialist needs about 15 minutes to analyze each form submitted by mail. [$38.92 (GS 13, Step 5) x 1.69 x .25 hours x 128 forms]		$2,105
It is further estimated WHD staff complete Form WH-4 about 70 percent of the time and each form takes approximately 20 minutes to complete and review. [298 forms x 20 minutes ÷ 60 x $26.50 (GS-11, Step 4) x 1.69]		$4,449
	Subtotal	$6,713
Total annual cost		**$606,649**

A.15 Changes in Burden

The annual burden for these information collections has decreased overall due to a decrease in usage of the H-1B, H-1B1, and E-3 programs during the economic downturn of the last three years.

During the past three fiscal years WHD, however, has noticed an increase in the number of Forms WH-4 filed with the agency. The Department has correspondingly increased the estimates for the information collection.

The Federal Government burden estimate decreased due to an adjustment in the Network Costs, i.e. the removal of one-time Application Development costs, better calculations of all other cost estimates, and the updated data on program usage.

ETA has included in the ETA 9035/ETA 9035E an acknowledgement sheet to be used in the context of electronic filing of an LCA. This change has not altered the burden estimates.

As indicated in section A.1 of this Supporting Statement, this information collection request no longer includes the ETA 9035 & 9035E Appendix A: Additional Attestations; ETA Form 9035CP 2) General Instructions for the 9035 & 9035E; Appendix I: Mapping of 3-Digit DOT 3) Codes to SOC/O*NET Job Titles; ETA Form 9035CP – General Instructions for the 9035 & 9035E Appendix II: Sample of Acceptable Wage Survey Sources. The removal of these appendices, however, has not resulted in any changes in the overall burden for the ETA Form 9035/9035E information collection.

Finally, we have revised the "time per application process" in this Supporting Statement to accurately reflect the public burden disclosure which is already reflected on the currently approved ETA 9035/9035E and 9035CP, from "ETA Form 9035 – 45 minutes (340,000 Responses) and WH-4 - 20 minutes (425 Responses)" to "ETA Form 9035 – 1 hour (340,000 Responses) and WH-4 - 20 minutes (425 Responses)." As indicated, the time per application for form WH-4 has remained the same and continues to be reflected in the public burden disclosure on that instrument.

A.16 Publication of Results

No collection of information will be published.

A.17 Approval Not to Display OMB Expiration Date

The Department will display the expiration date for OMB approval on the form and instructions or opening page of the website for electronic filing.

A.18 Exceptions to OMB Form 83-I

The Department is not seeking any exception to the certification requirements.

B. Collection of Information Employment Statistical Methods

There are no statistical methods employed.