

## Center for Regulatory Effectiveness

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May 20, 2014

Attn: OMB Desk Officer for DOL–ETA  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
Room 10235  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

**Attention: PRA Comments on Proposed Revision to OMB Control No:  
1205-0015/Application for Alien Employment Certification**

Dear OIRA:

The Center for Regulatory Effectiveness (CRE) is submitting the following comments in response to the Department of Labor/Employment and Training Administration *Federal Register* notice of April 21, 2014 (79 FR 22159).

The revised forms under OIRA review are used by aliens in the United States to apply for residency under the Immigration and Naturalization Act. DOL/ETA published a final rule specifying the revised requirements that an employer would need to adhere to in filing a Labor Certification for the Permanent Employment of Aliens in 2007. [72 FR 27904]

DOL/ETA's final rule, in § 656.11(b), eliminated the ability of employers to modify applications in order to reduce the incentive and opportunities for fraud and abuse, a reform that CRE applauds. CRE does, however, note that the new application system contains complexities which can challenge the ability of aliens with limited resources to effectively navigate the system—complexities which are illustrated by DOL/ETA's inadvertent errors described below.

DOL/ETA errors include an error in the agency's previous ICR submission from three years ago which the agency is now, retrospectively, correcting. DOL also created new and pointless confusion for aliens and their employers in above-captioned ICR submission by stating that it would not be economically viable for the forms, already in electronic format, to be filed electronically.

### **Retrospective Correction: DOL Waited Three Years to Correct their ICR**

DOL/ETA's Supporting Statement (pp 6-7) states:

*The Department is correcting an inadvertent error in earlier submissions under this control number. Those earlier requests erroneously included the monetized value of respondents' time as an operations cost, and that cost has been removed.*

The Supporting Statement does not explain why DOL/ETA waited three years to correct their ICR until the issue became moot with the imminent expiration of the approved control number. Moreover, DOL's inadvertent error and their refusal to acknowledge their error needs to be viewed by the metric of the agency's own standards for inadvertent errors by employers in completing the forms, "Nothing in the streamlined regulation contemplates allowing or permits employers to make changes to applications after filing." [71 Fed Reg 7659, col. 3]

### **DOL's New Supporting Statement Contains Self-Contradictory and Confusing Answers**

CRE's concerns that the error in their ICR that DOL/ETA waited three years to inform OMB and the public about is symptomatic of deeper problems in DOL/ETA's ICR process is amplified by the agency's contradictory statements regarding the electronic availability of Form ETA-750 Part A and ETA-750 Part B. More specifically, the agency's Supporting Statement, in response to Question 3, "Extent to which collection is automated, reasons for automation, and considerations for reducing impact on burden" states:

*In compliance with the Government Paperwork Elimination Act, this form is available via the Internet and is fillable on-line through DOL's Employment and Training Administration (ETA) home page at <http://www.foreignlaborcert.doleta.gov/pdf/eta750a.pdf> or <http://www.foreignlaborcert.doleta.gov/pdf/eta750b1.pdf>. DOL receives so few of these forms that it is not economically viable to spend taxpayer funded government resources making them fileable electronically. [Emphasis added]*

Thus, DOL is simultaneously providing the internet location of the two forms and claiming that allowing the forms to be emailed to the agency is not "economically viable." **The result of DOL/ETA's response to Question 3 in the Supporting Statement is to imply that there is something about the forms that make emailing too expensive to be viable, a statement which can only confuse employers, aliens and their representatives.**

DOL/ETA's errors in this ICR undermine the ability of employers and the legal representatives to correctly complete the application even though DOL/ETA adopted a zero-tolerance for error policy in their 2007 final rule.

According, CRE request that OIRA:

1. Require DOL/ETA to submit a corrected version of this ICR package to the public for comment prior to be granted a three year extension of the control number; and

2. Require DOL/ETA, in the Terms of Clearance, to develop and submit to OIRA an annual report on the volume and nature of errors made by applicants in completing Forms ETA-750 Parts A and B so that the effects of the complexity of the DOL/ETA forms and filing process may be assessed.

Sincerely,

/s/

Jim Tozzi  
Member, Board of Advisors

cc:

Department of Labor-OSAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program