

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT OF 1995**

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SUPPORTING STATEMENT

APPLICATION FOR PERMANENT EMPLOYMENT CERTIFICATION

ETA Form 9089

A. Justification

A.1. Circumstances that make the collection of information necessary.

The information collection is required by sections 203(b)(2) and (b)(3) and 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1153(b)(2) and (b)(3) and 1182(a)(5)(A)). The Department of Labor (Department) and the Department of Homeland Security (DHS) have promulgated regulations to implement these provisions of the INA at 20 CFR Part 656 and 8 CFR 204.5, respectively (the regulations). The INA mandates the Secretary of Labor to certify that any foreign worker seeking to enter the United States for the purpose of performing skilled or unskilled labor is not adversely affecting wages and working conditions of U.S. workers similarly employed and that there are not sufficient U.S. workers able, willing, qualified, and available to perform such skilled or unskilled labor. Before an employer may request any skilled or unskilled foreign labor, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA and the regulations or, in limited circumstances, apply for a waiver thereof with DHS. The regulations require employers to document their recruitment efforts and substantiate the reasons no U.S. workers were hired.

The Department collects the necessary information in order to make the certification on the ETA Form 9089. The form can be found on-line at <http://www.foreignlaborcert.doleta.gov/pdf/9089form.pdf>.

The Department is requesting an extension of the currently approved information collection containing the ETA Form 9089, *Application for Permanent Employment Certification* (OMB control number 1205-0451).

A.2. How, by whom, and for what purpose the information is to be used.

By the Federal Government

In order to meet its statutory responsibilities under the INA, the Department needs to extend the approval of an existing information collection pertaining to employers seeking to import foreign labor. The ETA Form 9089 collects this information and is used not only by the Department, but also by other federal agencies in furtherance of meeting the requirements of the INA.

The Department uses the information collected to adjudicate labor certifications for permanent residency applications of foreign workers seeking to enter the U.S. through employment. An employer that is seeking a labor certification to employ an intending immigrant must submit the ETA Form 9089 to the Department. Once the ETA Form 9089 is submitted, either electronically or manually, an analyst will make the final determination on whether the employer adequately sought available and willing U.S. workers qualified for the opportunity as required under the regulations and whether any U.S. workers who applied were rejected for lawful, job related reasons. If the Certifying Officer denies certification, the regulations provide the employer with the ability to request reconsideration of the decision or appeal the denial. The information previously collected is made part of the record on reconsideration or appeal. If the employer appeals to the Board of Alien Labor Certification Appeals (BALCA), the request must be in writing, must clearly identify the case number from which review is sought, must set forth the particular grounds for the request, and must include all documents which accompanied the Final Determination issued by the Certifying Officer. The request for review, statements, briefs and other submissions of the parties and amicus curiae must contain only legal arguments and only such evidence which was collected to complete the ETA Form 9089.

DHS also utilizes the ETA Form 9089 for its National Interest Waiver of the Job Offer Requirement application process (NIW), which exempts foreign workers from the job offer requirement if their expertise is in the national interest. Under the Department's regulation, 20 CFR 656.15, employers of foreign workers who are in occupations that meet the DOL regulatory requirements for being designated as "Schedule A -shortage occupations" must apply for a labor certification using the ETA Form 9089 and submit an uncertified form directly to DHS. Similarly, under the Department's regulation, 20 CFR 656.16, employers of foreign workers who are shepherders must apply for a labor certification using the ETA Form 9089 and submit an uncertified form directly to DHS. When the ETA Form 9089 is submitted to DHS directly, DHS will utilize the form to analyze the foreign worker's background and experience for the NIW, Schedule A occupations, and shepherders.

By the Employer

The employer is required to submit attestations regarding the types and dates of its recruitment efforts to recruit U.S. workers. The Department has codified at 20 CFR 656.17(e) and (f) the type of recruitment that should be performed to test the U.S. market. The regulations require employers to recruit for able, willing, qualified and available U.S. workers at prevailing wages and working conditions. Without such a test of the labor market the Secretary would not be in a position to issue the certification of U.S. worker unavailability required under the law. Pursuant to regulation, employers are required to test the labor market during the 180 days preceding the filing of the ETA Form 9089.

Employers are required to prepare a report of their recruitment activities. The regulations state that the employer must prepare a report signed by the employer

describing the recruitment steps undertaken and the results achieved, including the number of U.S. workers who applied for the job opportunity, the number of hires, and, if applicable, the number of U.S. workers rejected, summarized by the lawful job-related reasons for such rejections. This documentation must be maintained by the employer for 5 years. Upon review of the attestation-based form, the Certifying Office may request the recruitment documentation and recruitment report, which is called Audit Review. The Certifying Officer, after reviewing the employer's recruitment report, may request the U.S. workers' resumes sorted by the reasons they were rejected.

In any case where the Certifying Officer determines it to be appropriate, post-filing supervised recruitment may be ordered. This includes cases selected for audit and cases where serious questions arise about the adequacy of the employer's test of the labor market. At the completion of the supervised recruitment efforts, the employer is required to document that its efforts were unsuccessful, including documenting the lawful job-related reasons for not hiring any U.S. workers who applied for the position.

By the Public

The anti-fraud measures in the regulations allow any person to submit documentary evidence bearing on any allegation of misrepresentation or fraud committed by the employer. The information can include proof of discrepancies between what was filed with the Department or DHS and what was attested to on ETA Form 9089 such as the actual number of available U.S. workers, information on wages and working conditions, and information on the failure to meet terms and conditions with respect to the employment of foreign workers and domestic co-workers. The statutory requirement concerning submission of documentary evidence contained in the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978, Sec. 122(b)(2) (November 29, 1990) is reflected in 20 CFR 656.10(e)(1) and (2). The Department uses this information to investigate the employer and, if necessary, debar the employer from the ability to apply for labor certification in the future.

A.3. Extent to which collection is automated, reasons for automation, and considerations for reducing impact on burden.

In compliance with the Government Paperwork Elimination Act, a fillable version of the form can be found on-line at <http://www.foreignlaborcert.doleta.gov/pdf/9089form.pdf> for manual submissions or fillable and fileable form can be filled in and submitted on-line at <http://www.plc.doleta.gov>.

The regulation provides employers with the option to utilize an electronic filing system that permits employers to fill out their applications for permanent employment certification on a Department of Labor website and submit them electronically to the Department's Employment and Training Administration (ETA). Because the electronic filing system includes guidance to employers completing their applications on-line, there are fewer incomplete or inaccurate entries. The website includes detailed instructions,

prompts, and checks to help employers fill out *the Application for Permanent Employment Certification*. In order to file electronically, the employer must become a “registered user” by creating an account that contains secure files within the ETA electronic filing system that can be accessed by password. Each time a registered user accesses the website to file an application, the information common to all its applications is entered automatically by the electronic filing system, thereby reducing the burden. For purposes of this ICR, The Department is submitting a track changes version of the screenshots that respondents will see once edits are made to the Web application following OMB approval of this request. The DOL will submit a non-material change showing screen shots of the final system, in order to have the reginfo.gov database mirror the approved collection.

A.4. Efforts to identify duplication – why similar information already available cannot be used for purpose described in A.2.

The procedures and documentation requirements are sufficiently specific to avoid duplication of activities.

A.5. Efforts to minimize burden on small businesses.

The information collection is required of small businesses who want to import foreign labor. However, the recordkeeping requirements largely involve information that already exists in payroll and other records kept by most employers for other purposes. The Department submits that the recruitment requirements are those that any business would utilize to legitimately recruit workers. The only difference is that the employer must keep proof of such recruitment for a period of 5 years after submitting the form to the Department, while the recordkeeping retention requirements for other purposes vary.

There are questions on the form that require the employer to perform some research in order to respond, but the Department has eased the burden on the employer by making links to the appropriate websites easily accessible from the Department’s website at <http://www.foreignlaborcert.doleta.gov>. For example, the employer must:

- categorize its business utilizing the NAICS code system;
- obtain a formal determination of the prevailing wage in the area of employment;
- understand and list the Metropolitan Statistical Area of the job opportunity; and
- understand and answer questions about job requirements based on O*Net job descriptions.

Information about these sources and instructions for utilizing them are made

available on the website listed above.

A.6. Consequences to Federal program if collection not done or done less frequently and any technical or legal obstacles to reducing the burden.

DOL would be unable to meet its statutory and regulatory mandates if this information was not collected. The information must be collected to enable DOL to meet its permanent labor certification obligation by determining whether or not an employer and foreign worker meet the criteria necessary to be issued a labor certification and whether employment of the foreign worker will adversely affect the wages or working conditions of U.S. workers similarly employed. In addition, DHS must use the form to determine the qualifications of an applicant for a NIW of the job offer requirement.

A.7. Special circumstances for conducting information 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, except that the Department's regulations require that employers retain applications for permanent employment certifications and all supporting documentation for 5 years after submission. (20 CFR 656.10(f).) The Department requires that employers maintain supporting documentation because the Certifying Officer (CO) may decide that it is necessary to conduct an Audit Review of the application, and DHS may decide it is necessary to review the employer's supporting documentation in the course of processing the Form I-140 petition to which the ETA Form 9089 is attached. Either Department may want to review the information for the purpose of investigating possible violations of the Immigration and Nationality Act.

A.8. Summary of public comments.

In accordance with the Paperwork Reduction Act of 1995, the public was given 60 days to comment. See 79 FR 25621 (May 5, 2014). The Department received three substantive comments. The comments are organized by category below along with the Department's response. The Department has reviewed the comments and, where possible, has made adjustments to the ETA-Form 9089 based on those comments.

Comments on the ETA Form 9089 (2014)

Section	Comment	OFLC Response
Alien name	Add the foreign worker's name to the first field on the form to facilitate quick and easy identification of the form. Also display the name on the online system, not just the	Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form substantially in the future. However, as we have advised stakeholders,

Section	Comment	OFLC Response
	<p>case number.</p>	<p>certain changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the PERM application electronically, system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit comments in direct response to that form. We will accompany form modifications with corresponding operating system changes.</p>
<p>D. Employer Contact Info</p>	<p>An employer should be able to update this information at the time of filing an application, without going into its account settings.</p> <p>Commenter stated updating employer contact information takes time and requires redrafting applications that were partially complete when the contact information changed.</p>	<p>Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form substantially in the future. However, as we have advised stakeholders, certain changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the PERM application electronically, system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit comments in direct response to that form. We will accompany form modifications with corresponding</p>

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F. Prevailing Wage Info	<p>Add a drop-down menu for F.2 and F.3 that corresponds to the codes on the Online Wage Library and O*NET.</p> <p>Commenter stated that the answers to F.2 and F.3 must be taken from the codes on the prevailing wage determination, but the list of choices in the PERM system does not include all codes and occupation titles available in the Online wage library and O*NET, which is the source for the codes on the wage determination.</p>	<p>operating system changes.</p> <p>The options list has been recently updated and should be accurate now.</p>
H. Job Info – H.1	<p>Expand this field to allow employers to list multiple worksites.</p>	<p>Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form substantially in the future. However, as we have advised stakeholders, certain changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the PERM application electronically, system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit comments in direct response to that form. We will accompany form modifications with corresponding operating system changes.</p>
H. Job Info	<p>Expand this field to allow</p>	<p>Change not made. As explained</p>

Section	Comment	OFLC Response
– H.4	employers to list multiple degrees.	above, such a change would be cost prohibitive at this time. Until the Department has the opportunity to consider such a change in the context of other form modifications, we recommend employers consider listing such information in H-14 or any other free text field on the current form.
H. Job Info – H.5	Expand this field to allow employers to list multiple kinds of training. Also, rephrase question to ask “is training required <i>for</i> the job opportunity?”	We have revised question H.5 to read: “Is training required <i>for</i> the job opportunity?” DOL agrees that changing the current language of H.5 on the ETA Form 9089 from “[i]s training required in the job opportunity?” to “[i]s training required <i>for</i> the job opportunity?” will clarify the intent of the question, which is to determine whether the foreign worker must have training to qualify for the employer’s job opportunity. However the field cannot be expanded. Until the Department has the opportunity to consider such a change in the context of other form modifications, we recommend employers consider listing such information in H-14 or any other free text field on the current form.
H. Job Info – H.4 and H.7	Combine questions H.4-B and H.7/H.7-A because most employers consider all acceptable fields of study to be equally acceptable. In the alternative, reorder the three questions to make them consecutive. Also add more space to list acceptable fields of study.	Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form substantially in the future. However, as we have advised stakeholders, certain changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the PERM application electronically, system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is

Section	Comment	OFLC Response
		<p>considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit comments in direct response to that form. We will accompany form modifications with corresponding operating system changes.</p>
<p>H. Job Info - H.6 and H.10</p>	<p>Combine H.6 and H.10 so that the form simply asks “Is experience required for the job?”</p> <p>Commenters stated these questions are confusing, and recommended combining them. In the alternative, some commenters recommended reconfiguring or rewriting the questions and adding more space for a response. One commenter recommended adding an open text box following a consolidated question.</p> <p>One commenter asked that the Department amend the ETA 9089 instructions to clarify the relationship between H.6 and H.10.</p>	<p>Change not made. The Department does not believe these can be combined because H.6 asks whether experience is required in the occupation of the job offer while H.10 asks whether experience in a different occupation will be acceptable. H.10 is a follow-on to H.8, which asks if an alternate combination of education and experience is acceptable. The amount of experience required could differ considerably between H.6 and H.10. Therefore, the Department declines to combine them. The answers to the questions are yes and no; therefore, the Department does not believe an open text field is needed. There is also no need to clarify the relationship between them because they are mutually exclusive.</p>
<p>H. Job Info - H.8</p>	<p>This question should follow the combined H.6/H.10 question to make clear that it is an alternative to both. Add an additional question after H.C asking employer to identify the titles of the acceptable positions.</p>	<p>Change not made. The Department believes this would be too confusing. As explained above, H.6 and H.10 are mutually exclusive.</p>
<p>H. Job Info - H.8.C</p>	<p>Change H.8.C to ask for the number of months of experience required (consistent with H.6 and</p>	<p>Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form</p>

Section	Comment	OFLC Response
	<p>H.10), or update the electronic form to accept both years and months.</p> <p>One commented stated it is confusing to have H.6 and H.10 phrased in terms of months, while H.8 is phrased in terms of years. Another commented stated that having H.8-C accept only whole number entries and requires workarounds.</p>	<p>substantially in the future. However, as we have advised stakeholders, certain changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the PERM application electronically, system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit comments in direct response to that form. We will accompany form modifications with corresponding operating system changes.</p>
<p>H. Job Info - H.9</p>	<p>One commenter suggested that this question should immediately follow combined H.4 and H.7, the other questions about education.</p>	<p>Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form substantially in the future. However, as we have advised stakeholders, certain changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the PERM application electronically, system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit comments in direct response to that</p>

Section	Comment	OFLC Response
		form. We will accompany form modifications with corresponding operating system changes.
H. Job Info - H.12 – job requirements normal?	If the intended purpose of H.12 is to consider whether the requirements for the job opportunity fall within the Specific Vocational Preparation, rephrase question to state: Do the job opportunity's requirements fall within the Specific Vocational Preparation (SVP)?	Change not made. DOL does not use SVP to determine whether an employer's job requirements are normal to an occupation. We review the duties listed in O*Net.
H. Job Info - H.12, 13, and 15	<p>One commenter suggested that DOL allow employers to skip questions H.12, 13, and 15 for college and university teacher competitive recruitment and selection cases, since these questions relate to requirements that are "normal" to the occupation and require a showing of "business necessity, and those concepts do not necessarily apply to college and university teacher recruitment cases.</p> <p>Another commenter suggested that DOL ask for occupation type (i.a.) as an introductory question (perhaps after section B,) then grey out questions H12, H13 and H15 for Special Handling cases</p>	Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form substantially in the future. However, as we have advised stakeholders, certain changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the PERM application electronically, system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit comments in direct response to that form. We will accompany form modifications with corresponding operating system changes. The existing form requires employers to provide a response to all three questions. Leaving any of these blank will trigger an automatic denial

Section	Comment	OFLC Response
H. Job Info – Kellogg language	<p>One commenter stated that although BALCA has held that DOL may not deny permanent labor certification based on lack of the Kellogg language on the application form, DOL’s FAQ indicates the language must be included in some circumstances. The commenter stated that, if the form must include Kellogg language under any circumstances, the form should have a field for the language.</p> <p>The same commenter suggested that the form’s instructions be revised to explain the necessity of the attestation.</p> <p>Another commenter suggested that the Kellogg language be formalized as a question: Will the employer accept any suitable combination of training, education, and experience?: Yes/No/NA</p>	<p>by the system.</p> <p>Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form substantially in the future. However, as we have advised stakeholders, certain changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the PERM application electronically, system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit comments in direct response to that form. We will accompany form modifications with corresponding operating system changes. The Department has no plans to change the instructions, as use of the Kellogg language by employers is already addressed in FAQs and case law.</p>
I. Recruitment Info – I.b.4	<p>This question should be updated to allow for start and end dates of ads placed in a national professional journal since employers often post online for 30 days with a journal website. Should also be changed to read “additional <i>verifiable</i> recruitment”. Suggest eliminating 20 CFR 656.18(b) (4) since it serves no practical purpose, as the same</p>	<p>This is a regulatory requirement; therefore, a form change requires a regulatory change. However, those employers who wish to add publication dates may do so in I.b.5 as free text.</p>

Section	Comment	OFLC Response
	regulation (§ 656.18(b)(3)) only requires one advertisement.	
J. Alien Info – J.8 Class of Admission	Suggest changing question to ask “current status” instead of “class of admission” since the Alien’s status may change following his initial admission into the US.	Change not made. Making this change in the PERM system has significant implications beyond the technical change to the verbiage of the question, and would affect every pending application, causing responses to be incorrect or in need of confirmation. Thus, a change such as this could require either separate case processing systems or systematic audits of applications to confirm the correct response to a question that has been revised in this significant a manner, Neither option is feasible.
J. Alien Info – J.11 Alien Education	<p>One commenter suggested that DOL change the question to read “Education: highest level achieved <i>required by the requested job opportunity.</i>” The commenter stated this change would make it clear that the employer must provide the educational level that meets the requirements of H.4, and would be consistent with J.17, J.18, and J.21.</p> <p>Another commenter suggested that this field be expanded to allow employers to list multiple degrees.</p>	DOL agrees that changing the current language of J.11 on the ETA Form 9089 in CMS from “Education: highest level achieved relevant to the requested occupation” to “Education: highest level achieved as required by the requested job opportunity” clarifies the fact that the form is requesting the highest degree obtained by the foreign worker for the purposes of the job opportunity stated on the application. However, the fields cannot be expanded to accept more than one degree at this time due to cost concerns of rebuilding the system.
J. Alien Info – J.13 – Year relevant education completed	Change question to: “Date required education completed” to allow employer to input the actual month and year. The commenter suggested this would obviate the need on audit to determine if the required degree was achieved prior to	Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form substantially in the future. However, as we have advised stakeholders, certain changes to the form would require a substantial financial investment to make corresponding

Section	Comment	OFLC Response
	hire/ date of selection.	changes in the case management system with which we process the PERM application electronically, system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit comments in direct response to that form. We will accompany form modifications with corresponding operating system changes.
J. Alien Info – J.18 and J.20	Combine questions to ask “Does the alien have the experience required for the requested job opportunity?”	These questions cannot be combined as each is a separate requirement. See the response above to the suggestion of combining H.6 and H.10
K. Alien Work Experience	<p>One commenter suggested that DOL add a question to this section, K.1, stating: “Please list the date the beneficiary acquired each requirement for the job, excluding experience and skills acquired on the job, which should be enumerated below in the Job History part of this section. Such requirements may include licensure, post graduate diplomas, certifications, board certifications, knowledge gained in an academic program, the required degree if not indicated at J.11, and the like.”</p> <p>Another commenter suggested DOL expand the</p>	Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form substantially in the future. However, as we have advised stakeholders, certain changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the PERM application electronically, system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit

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	<p>section to allow employers to demonstrate how all requirements have been met. The commenter noted that special qualifications such as licenses and certifications are not always earned in connection with a specific past job. The commenter recommended dividing this section into 3 sub-sections: one for work experience, one for training, and one for special skills and other requirements.</p> <p>–Another commenter suggested that DOL add a place to include licenses that were not necessarily obtained as part of a job experience (or clear instructions of how to include the license information in section K).</p>	<p>comments in direct response to that form. We will accompany form modifications with corresponding operating system changes.</p> <p>The Department is working on guidance to clarify this issue.</p>
<p>K. Alien Work Experience – box 9</p>	<p>Rather than requiring the name and phone number of the Alien's supervisor in box 9, DOL should add a separate field for these items. This will ensure an employer doesn't inadvertently forget to include this information.</p>	<p>Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form substantially in the future. However, as we have advised stakeholders, certain changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the PERM application electronically, system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit</p>

Section	Comment	OFLC Response
		<p>comments in direct response to that form. We will accompany form modifications with corresponding operating system changes.</p>
<p>K. Alien Work Experience – K.a.7 end of most recent job</p>	<p>System should be reprogrammed so one can type “to the present” for this field.</p>	<p>Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form substantially in the future. However, as we have advised stakeholders, certain changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the PERM application electronically, system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit comments in direct response to that form. We will accompany form modifications with corresponding operating system changes. In the meantime, employers should fill in the date with the date of filing the application or leave blank.</p>
<p>General</p>	<p>Allow the size of the boxes in H.11, H.14, and K.9 to expand to match the length of the text so that the information is not routinely turned into an Addendum. It is difficult to follow the flow of the information when one has to regularly refer to addenda and then back again to the main part of the Form.</p>	<p>Change not made. The Department has assured the stakeholder community that it remains committed to amending the PERM form substantially in the future. However, as we have advised stakeholders, certain changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the PERM application electronically,</p>

Section	Comment	OFLC Response
		<p>system changes that cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. DOL will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit comments in direct response to that form. We will accompany form modifications with corresponding operating system changes.</p>
General	<p>DOL should define the job terms it uses in the instructions, or simplify the terms it uses. The form currently uses “job opportunity,” “job offered,” “job title,” “position,” “job,” and “occupation,” throughout section H.</p>	<p>The commenter did not explain why these terms cause confusion. DOL believes these terms are used as defined in many standard dictionaries; therefore, DOL will not be amending the instructions to add definitions.</p>
General	<p>Improve website to make crucial information necessary to complete Form ETA-9089 easier to find. OFLC’s web page should contain a distinct section with a list of information and links that applicants need in order to properly complete the form.</p>	<p>DOL believes that the instructions, which can be accessed through its forms page and located at http://www.foreignlaborcert.doleta.gov/pdf/9089inst.pdf, do explain how to fill out the form and provide helpful links. Without more specific information from the commenter on needed changes to the instructions, DOL is unable to identify and rectify specific problems the commenter believes exist with the instructions.</p>
General	<p>Extend 9089, as planned, and begin work on revised form.</p>	<p>DOL remains committed to amending the PERM form substantially in the future.</p>

As described above, the Department has decided to implement some of the changes requested by the commenters that are limited and fundable. Because a task order is being placed for the programming changes needed to the electronic version of the form ETA-9089, the Department is also making an additional change to correct a typographical error that has been present in the form since its inception and has caused

confusion among stakeholders. The change is in section C.9 of the form, which corresponds to the language in the regulation at 20 CFR 656.17(l), which relates to “alien influence and control over [the] job opportunity.” Because the regulatory text is in the disjunctive (that is, it lists *alternative* conditions under which an employer may be required to demonstrate the existence of a bona fide job opportunity), the question in C.9 will now read: “Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, corporate officers, incorporators, or partners, and the alien?” The “or” replaces the current “and” between “officers” and “incorporators.”

Modifying section C.9 to the proposed language will allow the question to mirror the wording of the corresponding regulation. This erroneous wording has led to the argument that the employer need only check “yes” to C.9 if there is a familial relationship between the foreign worker and each owner, stockholder, partner, corporate officer, and incorporator. The recommended simple change on the form will accurately reflect the regulation and clarify the requirement to disclose familial relationships.

A.9. Explanation of decision to provide any payment or gift to respondents.

No payments or gifts will be made to respondents.

A.10. Assurance of confidentiality provided to respondents.

The information collected is not exempt from disclosure under the Freedom of Information Act. In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the information provided is protected under the Privacy Act. The extent of privacy that applicants can expect is delineated on ETA Form 9089. The Department maintains a System of Records titled Employer Application and Attestation File for Permanent and Temporary Alien Workers (DOL/ETA-7) that includes this record.

Under routine uses for this system of records, case files developed in processing labor certification applications, labor condition applications, or labor attestations may be released as follows: in connection with appeals of denials before the DOL Office of Administrative Law Judges and Federal courts, records may be released to the employers that filed such applications, their representatives, to named foreign workers or their representatives, and to the DOL Office of Administrative Law Judges and Federal courts; and in connection with administering and enforcing immigration laws and regulations, records may be released to such agencies as the DOL Office of Inspector General, Employment Standards Administration, the Department of Homeland Security, and the Department of State.

A.11. Justification for any sensitive questions.

The information collections do not involve sensitive matters.

A.12. Estimated hourly burden.

The Department is revising its hourly burden for the current version of the form. The Department previously estimated that it would receive 86,000 applications per year to ETA for the PERM program; and DHS estimated that 4,400 would be submitted to DHS for its NIW application process and 4,200 for Schedule A and Shepherdder applications. However, program experience during the last 3 years has shown that approximately 73,400 submissions a year are submitted either to the Department or to DHS. The Department estimates that 67,900 applications will be submitted per year to ETA for the PERM program; and DHS has estimated that approximately 1,300 will be submitted to DHS for its NIW application process and 4,200 for Schedule A and Shepherdder applications.

A. Application for Permanent Employment Certification (ETA Form 9089)

Employers submit an *Application for Permanent Employment Certification* when they wish to employ an immigrant worker. The current form takes approximately 1.25 hours to complete. The Department now estimates, based on its operating experience, that in the upcoming year employers will file approximately 67,900 applications for basic employment certification with the Department and an estimated 5,500 applications will be filed with the DHS on behalf of foreign workers who qualify for NIW, Schedule A, or who are immigrating to work as shepherders for a total burden of 91,750 reporting hours (73,400 applications x 1.25 hours = 91,750 hours).

B. Notice Requirements – 20 CFR 656.10(d)

Employers must provide notice of the filing of the *Application for Permanent Employment Certification* to either their employees directly or to their employees' bargaining representative in a manner specified in 20 CFR 656.10(d). The notice must be posted in a conspicuous place for 10 business days. Producing a notice, posting it, and documenting the dates of posting takes approximately 30 minutes for a total of 36,700 third party disclosure hours (73,400 applications x .5 hours = 36,700).

C. Submission of Evidence to the Department -- 20 CFR 656.10(e)

The regulations allow any person to submit to the Certifying Officer documentary evidence bearing on an application for permanent labor certification that is filed with the Department of Labor. The Department estimates that 50 individuals or

organizations will avail themselves of the opportunity to provide such evidence and each filing of documentary evidence will take approximately 1 hour for a total annual burden of 50 hours.

Individuals or organizations may provide to the appropriate DHS office documentary evidence of fraud or willful misrepresentation in a Schedule A application filed under 20 CFR 656.15 or a shepherder application filed under § 656.16. The Department estimates 15 individuals or organizations will avail themselves of the opportunity to provide such evidence and each filing of documentary evidence will take approximately 1 hour for a total annual burden of 15 hours.

The total annual burden for submission of evidence to Certifying Officers and DHS offices would come to 65 reporting hours.

D. Recruitment -- 20 CFR 656.17(d) and (f)

Recruitment activities, including advertising for workers and placing job orders, is a usual and customary activity of employers. Therefore, under the regulations of the Office of Management and Budget at 5 CFR 1320.3(b)(2), the resources expended by employers to comply with the recruitment provisions at 20 CFR 656.17 are excluded in compiling the paperwork burden estimates under the proposed rule. However, the requirements at 656.10(d)(1) and 656.20(d) for posting a notice and supervised recruitment are not excluded and neither is the recruitment report requirement under 656.17(g). The notice requirement burden hours are discussed in 12B above and supervised recruitment burden hours are discussed in 12G below.

All employers that file applications under the basic process at 20 CFR 656.17 must prepare a summary report under § 656.17(g) signed by the employer describing the recruitment steps undertaken and the results achieved, including the number of hires, and if applicable the number of U.S. workers rejected, summarized by the lawful job related reasons. Further, the Certifying Officer, after reviewing the employer's recruitment report, may request the resumes or applications of U.S. workers sorted by the reasons they were rejected. The Department estimates that it will take an average of 1 hour for an employer to prepare a recruitment report for each application it files, and, if requested by the Certifying Officer, sort the resumes or applications it received by the reasons they were rejected. Since the Department anticipates that 67,900 applications for permanent labor certification will be filed under the basic process, which requires advertising, with the Department of Labor, the total annual burden for preparing recruitment reports is estimated to amount to 67,900 recordkeeping hours (67,900 applications x 1 hour).

E. Retention of Supporting Documentation

The records required to be kept by the employer to demonstrate compliance with the advertising requirements or to prepare the required recruitment report must be retained by employers under the regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR 1602.14 (OMB Control No. 3046 -- 0040), promulgated pursuant to Title VII of the Civil Rights Act, the American With Disabilities Act, and the Genetic Information Nondisclosure Act; and at 29 CFR 1627.3(b) (OMB Control No. 3046 -- 0018), promulgated pursuant to the Age Discrimination in Employment Act, the burden to maintain such records can be excluded in compiling the paperwork burden under the proposed rule. For example, § 1602.14 requires the employer to keep “(a)ny personnel or employment record made or kept by an employer (including but not necessarily limited to requests for reasonable accommodation, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be kept for a period of one year from the date of making of the record or the personnel action involved, whichever occurs later.”

The records that employers must maintain pursuant to 29 CFR 1627.3 (b) that was promulgated pursuant to the Age Discrimination in Employment Act, include but are not limited to the following:

- o Job applications, resumes or any other form of employment inquiry whenever submitted to the employer in response to his advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual;
- o Promotion, demotion, transfer, selection for training, layoff, recall or discharge of any employee;
- o Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; and
- o Any advertisement or notice to the public or to employees relating to job openings, promotions, training programs, or to opportunities for overtime work.

As noted, employers are already required to keep recruitment and hiring documents for one year under various equal opportunity federal laws, and the Department’s regulations require that they be kept for five years. Therefore, the Department estimates that employers will spend about 5 minutes per year per application to retain an application and required supporting documentation in the 4 years required for retention beyond the mandated retention under Title VII and other equal employment opportunity laws noted above. This results in an annual burden of 5,658 recordkeeping hours (67,900 applications x 5 minutes ÷ 60 minutes = 5,658 hours).

F. Optional Special Recruitment and Documentation Retention Procedures for College and University Teachers – 20 CFR 656.18

Information available to the Department via consultation with universities indicates colleges and universities customarily advertise for faculty positions. Therefore, placement of such advertisements can be considered usual and customary under OMB regulations at 5 CFR 1320.3(b)(2). Accordingly, the resources expended by employers to prepare and place the required advertisements in professional journals are excluded in compiling the burden required by 20 CFR 656.18 of the regulation. Additionally, colleges and universities are required to maintain the records and documents received pursuant to their recruitment activities under the EEOC regulations cited above at 5 CFR 1602.14 and 1627.3(b). The hourly burden for the recruitment report and other retention requirements are included in 12D and E of this supporting statement.

G. Supervised Recruitment – 20 CFR 656.21

In a case where the Certifying Officer determines it to be appropriate, post-filing recruitment may be required of the employer. The Department estimates that employers will be required to conduct supervised recruitment with respect to 934 applications and the time required to conduct such recruitment will average 3 hours per application to place the advertisement, receive and analyze resumes and interview candidates for an annual burden of 2,802 third-party disclosure hours. Employers will also be required to provide a recruitment report to the certifying officer that on average will take about 1 hour to prepare for an annual burden of 934 reporting hours.

H. Labor certification denial reconsiderations -- 20 CFR 656.24 and Board of Alien Labor Certification Appeals -- 20 CFR 656.24

Employers may request reconsideration of a denial by the Certifying Officer of an application for permanent labor certification. If the reconsideration is denied, they may appeal to the Board of Alien Labor Certification Appeals. Due to program experience the Department estimates that 10,939 employers will request reconsideration and/or appeals and that it will take 2 hours on average to prepare the requests for an annual burden of 21,878 reporting hours.

I. Audits – 20 CFR 656.20

The Department has the authority to audit applications under 20 CFR 656.20. However, because each audit is tailored to the individual employer and the specific application, it is not subject to the Paperwork Reduction Act burden calculations.

J. Prevailing Wages – 20 CFR 656.40 and 656.41

The regulations at 20 CFR 656.40 and 656.41 require an employer to obtain a prevailing wage to participate in the permanent employment certification process. The process of obtaining the prevailing wage is subject to the Paperwork Reduction Act. However, the burdens associated with this process are accounted for under OMB Control Number 1205-0508 and do not need to be calculated here.

Based on the analyses compiled in Sections A.2.A. through J. above, the Department has calculated the following estimates of the burden of data collection:

Total Respondents:	73,400	
Total Responses:	295,472	
Total Reporting Hours		=114,627
Total Recordkeeping Hours		= 73,558
Total Third Party Disclosure Hours		= 39,502
		=====
Total Burden Hours		227,687

Total Annual Burden Hours for All Information Collections associated with the Current Form – 227,687 Hours

It is difficult to estimate the costs involved in completing and maintaining the attestation form. Each individual employer that files an attestation may have a salary range that could be from several hundred dollars to several hundred thousand dollars for a CEO of a business. However, DOL believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the hourly wage rate for a Human Resources Manager (\$47.94), as published by DOL's Occupational Employment Statistics On-Line,¹ and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of \$68.55.

Total annual respondent hourly costs for the ETA-9089 and associated information collections are 227,687 hours x \$68.55 = \$15,607,943.

A.13. Estimated cost burden to respondents.

- a) Start-up/capital costs: There are no start-up costs. There is no obligation to own a computer to participate in the program. Anyone without computer access can request the form from OFLC.

¹ Source: Bureau of Labor Statistics 2013 O*NET wage data.

b) Annual costs: There are no annual costs involved with operation and maintenance because ETA will be responsible for the annual maintenance costs for the free downloadable forms. There is also no filing fee involved with filing an ETA Form 9089. However, there are other costs involved with preparation of the form and filing fees charged by DHS for the principal application to which the ETA Form 9089 is attached as supporting documentation, but that those costs are accounted for by DHS. The Department assumes that employers would incur the preliminary costs such as advertising even if they were not filing applications for labor certification because they are required to make good faith efforts to recruit U.S. workers and it is assumed that advertising their job openings is a normal cost of doing business. Therefore, the Department is not including any out-of-pocket expenses as part of its burden estimates for the majority of cases. However, as indicated in item 12G above, the Department estimates that 934 employers will be required to conduct supervised recruitment. The Department estimates that the cost of an advertisement over all types of publications and geographic locations will average \$500.00 for a total annual burden of \$467,000.

A.14. Estimated cost burden to the Federal government.

The average Federal Government cost for a year of operation 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). 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. The total cost to the Federal Government is estimated at \$12,754,062 calculated as follows:

The Department estimates State Workforce Agency (SWA) staff spend one hour on average to process job orders. The average hourly rate for SWA staff is estimated to be \$28.41² per hour for a total cost burden of \$3,260,075 ($\$28.41 \times 1.69 \times 1 \times 67,900$).

Based on program experience, the Department estimates that approximately 70 percent of the applications do not raise any audit issues.. These applications require 0.50 hours of DOL staff time in Atlanta, Georgia. The average hourly wage of the reviewer is estimated to be \$39.44 (GS 12, Step 5) for a total cost burden of \$1,584,022 ($\$39.44 \times 1.69 \times .50 \times 67,900 \times 70\%$).

The Department estimates that approximately 30 percent of the applications will be audited and will require, on average, four hours of DOL staff time. An analyst will spend three hours reviewing an application that is being audited and a manager will be spend

² Based on the average hourly rate of \$28.41 for Compensation, Benefits, and Job Analysis Specialists based on the median national wage as published by the Bureau of Labor Statistics in O*Net Online at <http://www.onetonline.org/link/summary/13-1141.00>

an hour. The average hourly wage of an analyst is estimated to be \$39.44 (GS 12, Step 5) and for a manager is estimated to be \$55.41 (GS 14, Step 5) for a total cost of \$5,980,707 [(\$39.44 x 1.69 x 3 x 67,900 x 30%) + (\$55.41 x 1.69 x 1 x 67,900 x 30%)]

The Department estimates DOL staff spends 1.50 hours on average to analyze a request for reconsideration of a denial. An Analyst will spend one hour reviewing a request and a manager will spend 30 minutes. The average hourly rate for an analyst is estimated to be \$39.44 per hour (GS-12 Step 5) and for a manager is estimated to be \$55.41 (GS 14, Step 5) for a total cost burden of \$1,241,303 [(\$39.44 x 1.69 x 1 x 10,939) + (\$55.41 x 1.69 x .50 x 10,939)].

The Department estimates DOL staff spends three hours on average to prepare a case for transfer to BALCA. The average hourly rate for DOL staff is estimated to be \$18.64 per hour (GS-6 Step 3) for a total cost burden of \$601,640 (\$18.83 x 1.69 x 3 x 6,302).

The Department estimates DOL staff spends three hours on average to analyze the evidence received under 20 CFR 656.10(e). The average hourly rate for DOL staff is estimated to be \$39.44 per hour (GS-12 Step 5) for a total cost burden of \$12,997 (\$39.44 x 1.69 x 3 x 65).

The Department estimates USCIS staff spends twelve minutes (.2 hours) on average to read and analyze the information contained in the form, which will be attached to applications for permanent residency. The average hourly rate for USCIS staff is estimated to be \$39.44 per hour (GS-12 Step 5) for a total cost burden of \$73,319 (\$39.44 x 1.69 x .2 x 5,500).

Total Cost to the Federal Government: \$12,754,062.

A.15. Reasons for any program changes reported in Items 13 or 14 of the OMB Form 83-1.

The annual burden for these information collections increased from 223,331 to 227,687 hours resulting in an increase of 4,356 hours over ETA's previous estimate. The burden hours have increased due to ETA's re-evaluation of the hourly burden for appeals. The number of employers being placed into supervised recruitment has decreased; therefore the annual cost burden has decreased from \$750,000 to \$467,000. The decrease in cost is due to the economic downturn of the last several years in which U.S. workers were unemployed and available for work thereby requiring fewer foreign workers to be brought in to the U.S and fewer applications being filed.

A.16. Method for publishing results.

No collection of information will be published.

A.17. If seeking approval not to display the expiration date for OMB approval, explain why display would be inappropriate.

The Department will display the expiration date for OMB approval on the form and instructions.

A.18. Explanation of each exception in the certification statement identified in Item 19 "Certification for Paperwork Reduction Act Submissions" on OMB Form 83-1.

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

B. Collection of Information Employing Statistical Methods

No statistical methods are employed.