

**SUPPORTING STATEMENT
EMPLOYMENT INFORMATION
FORMS WH-3 AND WH-3 SP
OMB Control No.: 1235-0021**

This ICR was previously submitted for renewal in 2013 and was approved for a three year extension with a current expiration date of September 2016. This ICR is now being submitted in coordination with a Notice of Proposed Rulemaking: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees. While the information collection will fundamentally remain the same as it is now, adoption of the standards in the proposed rule could result in additional complaints being filed by employees who believe their employers have misclassified them as exempt from Federal minimum wage and overtime protections. The Department expects public will offer suggestions that could affect this ICR and asks OMB to conclude this review by filing a comment to consider them.

A. Justification

1. Circumstances Necessitating Information Collection

This information collection provides a method for the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) to obtain information from complainants regarding alleged violations of the labor standards the agency administers and enforces. The law of most general application regarding wages and hours of work is the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et. seq.* FLSA section 11(a) provides that the Secretary of Labor may investigate and gather data regarding the wages, hours, or other conditions and practices of employment in any industry subject to the FLSA, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters deemed necessary or appropriate to determine whether any person has violated any provision of the FLSA. 29 U.S.C. § 211(a).

Other Federal laws the WHD administers provide similar authority. These Acts include the: Walsh-Healey Public Contracts Act (41 U.S.C. § 38); McNamara-O'Hara Service Contract Act (41 U.S.C. § 353(a)); Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*, pursuant to Reorganization Plan No. 14 of 1950, and Related Acts); Consumer Credit Protection Act (15 U.S.C. § 1676); Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. § 1862(a)); Employee Polygraph Protection Act (29 U.S.C. § 2004(a)(3)); Family and Medical Leave Act (29 U.S.C. § 2616(a)); Immigration and Nationality Act H-2A program (8 U.S.C. § 1188(g)); the Immigration and Nationality Act H-2B program (8 U.S.C. 1184(c)(14)(B) and the Immigration and Nationality Act H-1C program (8 U.S.C. § 1182(m)(2)(E)(ii)). The regulatory provisions authorizing the filing of complaints under

these laws and how the agency acts upon the concerns can be found at 29 C.F.R. §§ 4.191, 5.6, 10.41, 500.1(e), 501.1(c), 501.5, 801.7(a)(3), 825.401; 41 C.F.R. § 50-201.1202; and 20 C.F.R. § 655.1200(b).

On March 13, 2014, President Obama signed a Presidential Memorandum directing the Department to update the part 541 regulations defining which “white collar” workers are protected by the FLSA’s minimum wage and overtime standards. The memorandum instructed the Department to look for ways to modernize and simplify the regulations while ensuring that the FLSA’s intended overtime protections are fully implemented. The Department published the Memorandum in the Federal Register on April 3, 2014. 79 FR 18737.

2. Use

WHD staff use Form WH-3 as a guide for obtaining optional information from complainants (e.g., current and former employees, unions, and competitor employers) about alleged employer violations of the labor standards provisions of the above-cited Acts. Complainants generally provide the optional information requested on the form to WHD staff over the telephone or in-person. Where the information provided does not support a potential WHD enforcement action, complainants are advised and referred to the appropriate agency for further assistance. When the WHD schedules a complaint-based investigation, the agency makes the completed Form WH-3 part of the investigation case file. The form is printed in both English and Spanish.

3. Technology

The DOL has considered developing an automated complaint system or making Form WH-3 available on the Internet and determined it would have a negative effect on the ability of the WHD to provide quality, timely service to potential complainants and be impractical to implement. 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 the WHD complain of problems that the WHD cannot resolve for a variety of reasons. These reasons include lack of a federal Wage Hour law covering their complaint, an employer not covered by federal Wage Hour laws, an employee exempt from otherwise applicable Wage Hour law provisions, violation(s) past the statute of limitations for WHD action, or the issues involved are better serviced by another federal or state agency.

Making the Form WH-3 available on the Internet and allowing submission of forms completed without WHD consultation would generate tens of thousands of complaints filed in the erroneous belief the WHD can help with a problem outside of WHD

jurisdiction. These non-actionable complaints will require extensive WHD follow-up to secure additional information, or notification of complainants that they should have contacted another federal or state agency, or that WHD is unable to assist them with their problem. These individuals are better and more timely served through an initial, personal (by phone or in-person) consultation with the WHD. Potential complainants are encouraged to call (using a toll-free number) or visit the nearest WHD office in virtually all WHD compliance assistance materials, Web site programs, and guides.

Implementation of an automated complaint system using the WH-3 would be impractical given available technology and agency resources. An automated system would greatly decrease the quality of customer service provided to potential complainants while increasing the burden on the public (i.e., providing information where the WHD can provide no assistance).

4. Duplication

This information collection does not duplicate existing WHD requirements. No similar information is available from any other source, since the WHD has enforcement authority over the various labor standards laws previously identified. A separate statutorily mandated information collection, OMB Control No. 1205-0310, covers the filing of complaints under the H-1B program of the Immigration and Nationality Act, and this information collection does not duplicate that data.

5. Minimizing Small Entity Burden

While this information collection does not have a significant economic impact on a substantial number of small entities, it does infrequently involve small businesses, as in the case of competitor complaints. Form WH-3 provides an easy way for the WHD to obtain the information necessary to determine whether it is likely that a violation of the law has occurred and to schedule an investigation.

6. Consequence of Failing to Collect and Obstacles to Reducing Burden

Complainants are asked to provide information relevant to this information collection only when they seek WHD assistance in addressing one or more alleged labor standards violation(s); consequently, there is no way to request the information less frequently and still collect it. Complaints provide the basis for the overwhelming majority of WHD compliance actions, and the agency would lose an efficient and reliable tool for assessing violations were there no means to obtain information from complainants.

7. Special Circumstances

There are no special circumstances involved in this information collection.

8. Public Comments

The Department has published an NPRM with respect to part 541 overtime regulations and has invited public comments on this ICR. The NPRM directs the public that comments on the PRA aspects of the rule may be filed with both OMB and the Department.

Contacts with complainants during the course of responding to the information collection have not indicated any substantive problems with providing the information required on the form.

9. Payment or Gifts to Respondents

The DOL offers no payments or gifts to respondents.

10. Assurances of Confidentiality

The DOL gives an assurance of confidentiality on the form, which provides that the agency will keep the respondent's identity confidential to the maximum extent possible under existing law. Information gathered during the course of an investigation of a complaint is disclosed only 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 attendant regulations, 29 C.F.R. parts 70 and 71. The FOIA provides an exception from its disclosure requirements for records or information compiled for law enforcement purposes to the extent that release of the information could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis. 5 U.S.C. § 552(b)(7)(D).

11. Sensitive Questions

These information collections ask no sensitive questions.

12. Estimated Annual Respondent Burden Hours

WHD estimates it annually receives about 35,350 complaints from the existing requirements (approximately .06% of those eligible for protection under the FLSA and

the Final Rule, Establishing a Minimum Wage for Contractors, October 7, 2014 (79 FR 60633)).

The Department has proposed a new salary level test figure which will be derived from the 40th percentile of weekly earnings for full-time salaried workers. Under this NPRM, the Department estimates 4,646,000 at the 40% range. The Department may see an increase in complaints received temporarily while employers adjust to the new regulations. As a result, at the 40% of weekly earnings for full-time salaried workers, the Department estimates receiving 2,788 new complaints ($4,646,000 \times .06\%$). The new complaint total utilizing the WH-3 form will be 38,138 complaints at the 40% salary level. The estimated burden hours will therefore increase to 12,713 burden hours (rounded). ($38,138 \times 20/60$).

Complainants alleging violations of WHD-enforced labor standards may be employees of any of a wide variety of businesses, from small farms or retail stores to large manufacturing plants. Absent specific wage data regarding complainants, the DOL has used the average hourly rate for all employees on private nonfarm payrolls for August 2014, of \$24.54 to estimate respondent costs. *See The Employment Situation, October 2014* at 32 (Table B-3), BLS, http://www.bls.gov/news.release/archives/empsit_11072014.pdf. The DOL estimates total monetized value of the burden hours to be \$311,977. ($12,713 \times \24.54).

13. Estimated Annual Respondent Capital/Start-Up/Operation/Maintenance Costs

Because the WHD orally obtains the relevant information from the complainant and fills out the Form WH-3, complainants incur no costs, other than the value of their time, in filing a complaint. *See* Item 12.

14. Estimated Annual Federal Costs

The information collected to file a complaint is almost always taken via phone and entered directly into the WHISARD case tracking system utilized by WHD. However, on occasion, a paper form is used when the e-system is unavailable or in the case of emergency such as during Hurricane Katrina in New Orleans where investigators would be in the field collecting the data.

The DOL annually prints approximately 1,000 copies of this information collection, at the cost of \$45. $1,000 \text{ copies} \times \0.045 per copy .

A GS 11, step 4 Investigator needs approximately 20 minutes to complete a Form WH-3 for the initial screening of the complaint, incurring a cost of \$360,099. $35,350 \text{ forms (online and paper)} \times 20 \text{ minutes} \times \$30.56 \text{ per hour (GS 11, step 4, Rest of U.S.)}$. *See*

Salary Table 2014, Office of Personnel Management at 33, <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/salhrl.pdf>.

Approximately 25,000 responses require additional evaluation. In those cases, a GS 13, step 4 supervisor needs about 15 minutes to analyze each to determine whether a potential violation of the law exists, producing a cost of \$272,250. 25,000 forms x 15 minutes x \$43.56 per hour (GS 13, step4, Rest of U.S). *Id.*

TOTAL ESTIMATED ANNUALIZED FEDERAL COSTS = \$632,394. (\$45 + \$360,099 + 272,250).

15. Reasons for Program Changes or Adjustments Affecting Public Burdens

The Department estimates a slight increase in burden of 2,788 complaints associated with this rulemaking.

16. Publishing Data From Information Collection

The DOL does not publish the results of this information collection.

17. Display of OMB Approval Expiration

The DOL does not seek an exception to the requirement to display the expiration date on this information collection.

18. Exceptions to Certification Statement

The DOL is not requesting an exception to any of the certification requirements for this information collection. This request complies with 5 C.F.R. § 1320.9.

B. Employing Statistical Methods

This information does not employ statistical methods.