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

TABLE OF CONTENTS

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 and Retention

The Employment and Training Administration (ETA) and the Wage Hour Division (WHD) of the Department of Labor (DOL or Department) are responsible for administering and enforcing parts of the H-1B, H-1B1, and E-3 visa programs that permit employers to submit labor condition applications seeking to use foreign workers 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)(I)(B), 1101(a)(15)(H)(i)(B)(1), 1101(a)(15)(E)(iii), 1182(n) and (t), and 1184(c).

This information collection includes the ETA-9035 *Labor Condition Application for Nonimmigrant Workers* (a pdf fillable and printable form), the ETA-9035E *Labor Condition Application for Nonimmigrant Workers* (an electronic fillable and fileable form), the ETA-9089CP *General Instructions for the 9035 & 9035E*, the WH-4 *Nonimmigrant Worker Information Form,* and other statutory and regulatory H-1B related information collection and retention requirements.

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

Under the INA, 8 U.S.C. 1182(n), an employer must submit to DOL a labor condition application (LCA) (Form ETA 9035) stating that it agrees to certain conditions related to the employment of a foreign worker. In this application the employer is required to attest that: (1) it will pay foreign workers the higher of the prevailing wage for the job in the area of intended employment or the actual wage paid to the employer's other employees in the specific job who have similar experience and qualifications; (2) it will provide working conditions that will not adversely affect the working conditions of U.S. workers similarly employed; (3) there is no strike or lockout at the place of employment; and (4) it has notified the bargaining representative or, if there is no bargaining representative, it has notified its employees by posting notices at the place of employment or by electronic means. The employer must provide in the application the number of foreign workers

sought, the occupational classification in which the workers will be employed, the wage rate, and the conditions under which the foreign workers will be employed.

B. Documentation of Corporate Identity -- 20 CFR 655.760

DOL's regulations, 20 CFR 655.760, provide that where an employer undergoes a change in corporate structure, the employer must make and maintain a sworn statement by a responsible official of the new employing entity that it accepts all obligations, liabilities and undertakings under the LCAs filed by the predecessor employing entity, together with a list of each affected LCA and its date of certification, and a description of the actual wage system and FEIN of the new employing entity. These documents are to be maintained in the employer's public access file.

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

Pursuant to the INA, additional recruitment and non-displacement requirements are applicable to H-1B dependent employers, which is based on the ratio between the number of H-1B workers employed and the number of full-time equivalent employees (FTEs) employed in the U.S. 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.

DOL's regulations, 20 CFR 655.736(c)(1), note that most employers need not calculate their dependency status as it is readily apparent. Employers with borderline H-1B dependency status are permitted to use a snapshot test to determine whether calculation of dependency is necessary. 20 CFR 655.736(c)(2). The regulations require a full computation, the specifics of which are dependent upon its size, only where the dependency status is not readily apparent. 20 CFR 655.736(d)(4). The employer must retain a copy of the full computation in specified circumstances that the Department believes will very rarely occur. *Id.* The full computation must be maintained if the employer changes status from dependent to non-dependent. 20 CFR 655.736(d)(5)(ii). If the employer uses the Internal Revenue Service Code's single-employer test to determine dependency, it must maintain records documenting which 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. 20 CFR 655.736(d)(7). Finally, if the employer includes workers who do not appear on the payroll, a record of computation must be kept. 20 CFR 655.736(a)(2)(ii)(B).

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

An employer that is H-1B-dependent or a willful violator (as described in section 655.736) may designate on the LCA that the LCA will be used only to support H-1B petitions and/or requests for extension of status for "exempt" H-1B nonimmigrants. Employers are required to include in their public access file a list of the H-1B nonimmigrants whose petitions and/or requests are supported by LCAs that the employer has attested will be used only for exempt H-1B nonimmigrants.

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

The INA generally prohibits an H-1B dependent employer or willful violator from placing an H-1B nonimmigrant with another employer unless it has first inquired of the other employer whether it will displace a U.S. worker in the period from 90 days before to 90 days after the date of the nonimmigrant's placement with the other employer. 8 U.S.C. 1182(n)(1)(F). DOL's regulations,20 CFR 655.738(e), 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 of displacement in the contract between the H-1B employer and the second employer. 20 CFR 655.738(e)(2), 738(d)(5)(1).

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

The INA 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. 8 U.S.C. 1182(n)(1)(E). DOL's regulations, 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 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, evaluations of the employee's job performance, 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.

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

Pursuant to the INA, H-1B dependent employers are required to make good faith efforts to recruit U.S. workers before hiring H-1B workers. 8 U.S.C. 1182(n)(1)(G). Under 20 CFR 655.739(i)(1), 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 and 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. 20 CFR 655.739(i)(4) 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. 20 CFR

655.739(i)(2). 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 related to U.S. worker recruitment, 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, 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 make and 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, is for keeping records of hours worked by part-time, salaried nonimmigrant workers who are exempt from FLSA.

J. Nonimmigrant Worker Information Form (WH-4)

The INA requires 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). 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, 8 U.S.C. 1182(n)(1)(G), provides that unless the LCA is incomplete or appears obviously inaccurate on its face, the Secretary shall certify the application and return it to the employer within 7 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. *Id.* 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 WHD. 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 has for over a decade mandated that all employers, except those with disabilities or without internet access (and only upon prior approval), use an 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 Department's iCERT online visa portal system is convenient and less burdensome for employers since it allows the filing of an application without the submission or review 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 has been 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 that 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, WHD must 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 substantially reduces 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. Even though the information collection is required of small businesses who want to hire and import foreign labor, the recordkeeping requirements largely involve information that already exists in payroll and other records kept by most employers for other purposes.

A.6 Consequences of Less Frequent Data Collection

This data collection is only collected at the time an employer seeks an H-1B, H-1B1, or E3 visa to employ a foreign worker in a specialty occupation or as a fashion model of distinguished merit and ability. 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 was given 60 days to comment on this information collection. (79 FR 78910, December 31, 2014.) The Department received two comments. One comment was out of scope. The other comment is summarized below along with the Department's response.

Section/ Item	Published Instructions	Comment Received	Recommended Resolution
B-2 SOC Code	Requesting a 4	Commenter would	The Department will maintain collection of this

	to 6 digit SOC code	like 8 digit SOC subcategories with greater specificity to be included in the list of classifications in Item B.2	information as proposed. The Department has assured the stakeholder community that it remains committed to amending the LCA 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 LCA 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. The Department will take this proposed change under advisement. At the time a revised form is proposed, all stakeholders will have an opportunity to submit comments in direct response to all proposed changes. We will accompany form modifications with corresponding operating system changes.
B-7 Worker Positions	Requesting total number of worker positions needed for 6 categories.	Commenter would like the removal of the visa classification boxes in B-7 indicating that the information is unnecessary, redundant to USCIS' collection, worker beneficiaries are unknown at the time of LCA filing and the collection may result in employers submitting multiple LCAs	The Department will maintain the collection of this information as proposed. The USCIS I-129 petition specifically states that only 1 box (i.e., uses the term "Check One") may be checked when completing the I-129 petition based on a certified LCA. However, the LCA allows for multiple entries. LCAs should always be filed for known beneficiaries. Therefore, the Department declines to make this change.
C-3 & C-4 Street Address as the Work Location	Requesting the Street Address for the Employer	Commenter would like the removal of the street address for the work location and instead would like for the Department to collect only the worksite city and state. Commenter states the collection of street address may create confusion because an employer relying on an LCA listing a specific street address may not understand that the LCA would also	The Department will maintain the collection of this information as proposed. The information collected in items C-3 and C-4 pertains to the employer's business location and street address. The collection in Section G for the worksite location address and physical location is for enforcement purposes. The collection in Section G does not require the filing of a new LCA for a new work location within the same area of intended employment and is not inconsistent with the regulatory provisions. Also, changes to the form would require a substantial financial investment to make corresponding changes in the case management system with which we process the LCA electronically, system changes that cannot be funded at this time. The Department will take this proposed change under advisement. At the time a revised form is proposed, all stakeholders will have an opportunity to submit comments in direct response to all proposed changes. We will accompany form modifications with corresponding

		cover another street address in the same area of intended employment.	operating system changes.
C-12 Federal Employer Identification Number		Commenter would like the Department to consider a technology update to allow employers to upload FEIN documentation at the time an LCA is filed	This particular suggestion by the commenter is not something subject to the Paperwork Reduction Act, but rather a suggestion for improving efficiencies in our operations, which also require a change to our case management system with which we process the LCA electronically. As we have advised stakeholders, certain changes to the electronic system would require a substantial financial investment that cannot be funded at this time. The Department will take this suggestion under advisement, but for the time being will not implement this suggested change.

A.9 Payment of Gifts to Respondents

No payments or gifts are made to respondents.

A.10 Confidentiality Assurances

There are no assurances of keeping information provided by respondents private except for Form WH-4. With respect to Form WH-4, WHD 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. One hundred percent of employers file LCAs using the online system. Based on program experience, ETA estimates that it will receive approximately 398,000 LCAs each year from approximately 57,589 employers.

The regulations provide that copies of the LCAs and associated 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. 20 CFR 655.760(c). 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. *Id.*

ETA estimates that the completion and submission of an LCA takes 50 minutes; complying with recordkeeping requirements of creating a PRA file 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 1 hour per application. The total burden for this item is estimated to be 398,000 hours apportioned among 331,666 reporting hours (398,000 x 50 minutes ÷ 60), 33,167 recordkeeping hours (398,000 x 5 minutes ÷ 60), and 33,167 third party disclosure hours (398,000 x 5 minutes ÷ 60).[1]

B. Documentation of Corporate Identity -- 20 CFR 655.760

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

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.

Department estimates that 2,888 employers will make this determination for an annual burden of 2,888 recordkeeping hours (2,888 x 0.50 hours x 2 times annually).

The Department also estimates that no more than 5 percent of the total estimated 57,589 H-1B employers will be required to retain copies of H-1B petitions and extensions which do not currently retain these documents, for an average of 3 minutes per petition, for a total of 144 hours (2,880 x 0.05 hrs. = 144).

The total burden for this item is estimated to be 3,032 recordkeeping hours (2,888 + 144 = 3,032).

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 200 H-1B employers will document such assurance 5 times annually, for a total annual burden of 167 recordkeeping hours (200 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 hours = 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 2,888 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 4,813 recordkeeping hours (2,888 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)(1)(viii)

There are an estimated 10 percent of H-1B employers (5,759) 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 8,639 hours (5,759 employers x 1.5 hours = 8,639). It is further estimated that 25 percent of H-1B employers (14,397) 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 7,199 hours (14,397 x 0.5 hours = 7,199 hours).

The total estimated burden for this item is 15,838 recordkeeping hours (8,639 + 7,199 = 15,838).

I. Actual Wage Recordkeeping requirements Applicable to Employers of H-1B Nonimmigrants -- 20 CFR 655.731(b)(2)

The additional burden of keeping records documenting the determination of the actual wage as defined in 20 CFR 655.731(a)(1) is estimated at 2.5 hours per employer for 57,589 employers for a total annual burden of 143,973 recordkeeping hours (57,589 x 2.5 hours = 143,973).

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

Based on program experience the number of Forms WH-4 filed is estimated to be 425 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 – 331,666 Reporting Hours;

	202,652 Recordkeeping Hours
	33,167 Third Party Disclosure Hours
Subtotal for ETA Form 9035/9035E	567,485 Hours
WH-4	142 Reporting Hours
TOTAL	**567,627 Hours**

Average Time Per Application Process

ETA Form 9035 – 1 hour
1,299,416 Responses[2] (Average time per response is 26 minutes)
57,589 Respondents
WH-4 - 20 minutes
425 Responses
425 Respondents

TOTAL ANNUAL HOURS BURDEN FOR ALL INFORMATION COLLECTIONS – 567,627 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 ($48.46), as published by DOL's Occupational Employment Statistics OnLine,[3] and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $69.30.

Total annual respondent hour costs for all information collections are estimated at $39,336,551 ($69.30 x 567,627)

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. There is also no filing fee involved with filing an ETA 9035. However,

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

there are other costs involved with preparation of the form and filing fees charged by DHS for the principal application to which the ETA 9035 is attached as supporting documentation, but that those costs are accounted for by DHS.

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)[4]. 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 $1,948,540, calculated as follows:

Network costs	
Application Support	$522,000
Infrastructure/Hardware Support Services	$121,600
Annual Licenses	$86,200
Government FTE Costs	$54,500
Subtotal	$784,300
OFLC Staff Time	
Adjudication of ETA Forms 9035, and 9035E that are not automatically certified	
Analyst (91,500 applications a year at 10 minutes per LCA $41.36 (GS-12, Step 5)[5] x 1.69)	$1,065,951
Review by Certifying Officer (91,500 applications a year at 2 minutes per LCA $58.11 (GS-14, Step 5) x 1.69)	$ 299,528
Subtotal	$1,365,479

4 The Federal Government cost estimate for the staff adjudication of LCAs is based on the U.S. Office of Personnel Management 2014 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/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/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/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/RUS_h.pdf.

5 Based on the 2014 General Schedule Salaries for the Chicago metropolitan area.

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 $151, rounded. [128 forms x ($0.49 postage + $.10 per envelope) X 2 directions]	$151
Staff - It is estimated a Wage-Hour Compliance Specialist needs about 15 minutes to analyze each form submitted by mail. [$44.88 (GS 13, Step 5)[6] x 1.69 x .25 hours x 128 forms]	$2,427
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 $30.56 (GS-11, Step 4)[6] x 1.69]	$5,130
Subtotal	$7,729
Total annual cost	**$2,157,508**

A.15 Changes in Burden

The annual burden for these information collections has increased from 310,005 burden hours to 567,627 burden hours due to an increase in usage of the H-1B, H-1B1, and E-3 programs during the economic upturn of the last three years and due to agency oversight, which has been rectified by adding the calculation of the burden in section 12, paragraph I for all employers to document their "actual wage." The number of responses increased from 340,425 to 1,299,841 due to better accounting methods and compliance with OMB requirements.

The Federal Government burden estimate increased due to integrity measures that require the analysis of 23 percent of all applications by analysts.

A.16 Publication of Results

No collection of information will be published.

6 Based on the 2014 General Schedule Salaries for the Rest of the United States.

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.