

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

**TABLE OF CONTENTS**

---

<b>A. Justification.....</b>	<b>2</b>
A.1. <i>Circumstances that make the collection of information necessary.....</i>	<i>3</i>
A.2. <i>Purpose of information collected, how collected, and by whom.....</i>	<i>3</i>
A.3. <i>Extent to which collection is automated.....</i>	<i>4</i>
A.4. <i>Efforts to identify duplication .....</i>	<i>4</i>
A.5. <i>Efforts to minimize burden on small businesses.....</i>	<i>4</i>
A.6. <i>Consequences to Federal program if collection not done or done less frequently.....</i>	<i>4</i>
A.7. <i>Special circumstances for conducting information collection.....</i>	<i>5</i>
A.8. <i>Summary of public comments.....</i>	<i>5</i>
A.9. <i>Explanation of decision to provide any payment or gift to respondents.....</i>	<i>5</i>
A.10. <i>Assurance of confidentiality provided to respondents.....</i>	<i>5</i>
A.11. <i>Justification for any sensitive questions.....</i>	<i>6</i>
A.12. <i>Estimated hourly burden.....</i>	<i>6</i>
A.13. <i>Estimated cost burden to respondents.....</i>	<i>7</i>
A.14. <i>Estimated cost burden to the Federal government.....</i>	<i>7</i>
A.15. <i>Reasons for any program changes reported in Items 13 or 14 .....</i>	<i>7</i>
A.16. <i>Method for publishing results.....</i>	<i>7</i>
A.17. <i>If seeking approval not to display the expiration date.....</i>	<i>7</i>
A.18. <i>Explanation of each exception in the certification statement .....</i>	<i>8</i>
<b>B. Collection of Information Employing Statistical Methods.....</b>	<b>8</b>

**SUPPORTING STATEMENT**  
**ATTESTATION FOR EMPLOYERS SEEKING TO EMPLOY H-2B NONIMMIGRANT WORKERS UNDER SECTION 543 OF THE CONSOLIDATED APPROPRIATIONS ACT, 2017**  
**OMB Control Number: 1205-0530**

---

This Information Collection Request (ICR) is seeking an 18-month reinstatement with changes. The proposed burden to respondents associated with this ICR reflect the following changes in the program: (1) elimination of the requirement for respondents to file the attestation form associated with this information collection; and (2) continued retention of the attestation Form ETA-9142-B-CAA – *Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 543 of the Consolidated Appropriations Act, 2017*, and all supporting documentation submitted by employers to the Department of Homeland Security (DHS).

**A. Justification.**

The Department of Labor (DOL or Department), as part of its effort to streamline information collection, clarify statutory and regulatory requirements, and provide greater transparency and oversight in the H-2B nonimmigrant visa application processes, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Clearance for this ICR was initially sought using PRA emergency procedures outlined in regulations at 5 CFR 1320.13. Section 543 of the Consolidated Appropriations Act, 2017, Public Law 115–31 (May 5, 2017) (2017 Act), authorized the Secretary of the Department Homeland Security, in consultation with the Secretary of Labor, to increase the number of H-2B visas available to U.S. employers in Fiscal Year (FY) 2017, notwithstanding the otherwise established statutory numerical limitation. In consultation with the Secretary of Labor, the Secretary of Homeland Security increased the H-2B visa cap for FY 2017 by up to 15,000 additional visas for American businesses that were likely to suffer irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H-2B workers requested on their petition before the end of FY 2017. As set forth in the Temporary Rule: Exercise of Time-Limited Authority to Increase the Fiscal Year 2017 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program, 82 FR 32987 (July 19, 2017), which implemented the 2017 Act, employers seeking authorization to employ workers under this time-limited authority were required to complete and submit Form ETA-9142-B-CAA. The authority to issue any new visas under the 2017 Act has expired, and employers are no longer permitted to submit Form ETA-9142-B-CAA. However, the Department currently seeks public comment to revise this information collection of Office of Management and Budget (OMB) Control Number 1205-0530 for the continued record retention requirements related to the form, containing Form ETA-9142-B-CAA – *Attestation for*

*Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 543 of the Consolidated Appropriations Act, 2017*, Public Law 115-31 (May 5, 2017), under 20 CFR 655.65, which expire on October 1, 2020. This information collection package requests comments on the burden associated with retaining the form and underlying documentation supporting the form, and does not seek comment on the form itself because the form is no longer in use. The instructions to the form provide supplemental information for the employer's reference only; they contain guidance on how to comply with the record keeping requirements (e.g. the documentation that needs to be preserved; retention period).

*A.1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

The retention of the Form ETA-9142-B-CAA and supporting documentation is required by regulations at 8 CFR part 214 and 20 CFR part 655 exercising authority delegated to the Secretary of Homeland Security under section 543 of Public Law 115-31, and DOL's role under that authority. Those regulations required a new form (*Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 543 of the Consolidated Appropriations Act, 2017*, Form ETA-9042-B-CAA) for employers to submit in FY 2017 to DHS. Employers used the form to attest that their businesses were likely to suffer irreparable harm without the ability to employ all of the H-2B workers requested on the Form I-129 petitions and that they would meet other program requirements. As discussed above, the form is no longer in use but employers must continue to retain the signed attestation form and supporting documentation to prove compliance with the implementing regulation, and must provide the documents and records to DOL or DHS staff upon request. See 20 CFR § 655.65. Section F on the form, as well as the instructions to the form, informed employers about this requirement and specified the documentation that must be retained for three (3) years from the date of the certification.

*A.2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

As noted above, the information collection was necessary to implement the temporary visa cap increase authorized by Public Law 115-31. As previously stated, employers that obtained a temporary labor certification (TLC) must retain the signed attestation form and supporting documentation for three (3) years from the date the TLC was issued. Retaining these records for the specified period of time allows Federal agencies and employers to comply with applicable regulatory standards.

*A.3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of*

*information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.*

This form and its accompanying instructions are available via the internet and are fillable online through ETA's Office of Foreign Labor Certification website at <https://www.foreignlaborcert.doleta.gov/form.cfm>. Employers are no longer permitted to submit this form to file requests with DHS, as the law that allowed for these attestations to be filed expired on September 30, 2017. The Department, however, will continue to make the form and instructions available to the public as it will continue to provide information regarding the record keeping requirements associated with these attestations.

*A.4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

The procedures and documentation requirements are sufficiently specific to avoid duplication of activities. The information collections covered by this request apply only to employers who sought H-2B workers as authorized by Public Law 115-31; consequently, there is no duplication of the information collection requirements.

*A.5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

The retention requirements apply to some small businesses who sought to hire H-2B workers under the visa cap increase. Recordkeeping requirements, however, may be satisfied in part by using information that already exists in payroll and other records kept by most employers for other general employment purposes.

The Department considered the memorandum issued to all heads of departments and agencies by the Office of Budget and Management on June 22, 2012 about Reducing Reporting and Paperwork Burdens. It would not be appropriate to include exemptions for small entities (including small businesses) from the recordkeeping requirements. The recordkeeping requirements are not disproportionately more burdensome for small entities than large ones.

*A.6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

In the absence of this information collection, DOL would be unable to enforce compliance with the terms of the attestation.

*A.7. Explain any special circumstances that would cause an information collection to be conducted in a manner that requires further explanation pursuant to regulations 5 CFR 1320.5.*

These data collection efforts do not involve any special circumstances.

*A.8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

*Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.*

*Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years—even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.*

In accordance with the Paperwork Reduction Act of 1995, the public was allowed 60 days to comment through the *Federal Register* Notice on December 21, 2017 (82 FR 60629). No public comments were received in response to the notice. The Department sought public comment to revise the information collection as a result of continued record retention requirements following the expiration of Form ETA-9142-B-CAA, and elimination of the burden associated with the preparation and submission of the form, which is no longer required or accepted in connection with petitions for H-2B workers. The Department also updated burden estimates associated with the remaining requirements.

*A.9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

There is no payment or gifts to respondents involved with this information collection.

*A.10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

No assurances of confidentiality or privacy are provided.

*A.11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

This information collection does not involve sensitive matters.

*A.12. Provide estimates of the hour burden of the collection of information.*

The Department estimates the time burden for retaining the form supporting documentation is one hour.

The wages used for the analysis come from Department’s Bureau of Labor Statistics (BLS) Occupational Employment Survey for June 2017. From this survey, a mean hourly wage for a human resource specialist is \$31.20. The full cost to the employer includes all fringe benefits as well as the wage. From the BLS Employer Costs for Employee Compensation for June 2017, the average percentage of benefits in total is 31.7 percent. Given a base wage of \$31.20, this would suggest an additional markup of \$14.35 in fringe benefits for a total compensation of \$45.55 for an HR specialist. To calculate the cost for document retention obligations of the form, we multiplied the hourly compensation rate of a HR specialist (SOC: 13-1071) by the estimated time to retain the form and supporting documentation (1 hour). Therefore, the total cost of this ICR is \$104,674.00.

Based on the Department’s Office of Foreign Labor Certification’s certification data in FY 2017, the Department estimates there were a total of 2,298 certifications that DOL granted with an expected work start date occurring between April and September in FY 2017. This number of certifications can be used as a proxy for the number of employers who will need to retain the form and supporting documentation related to their filings.

The Department associates no PRA reporting burden with this collection, as responses would only be provided in response to an investigation conducted by the Wage and Hour Division to determine whether an employer has complied with specific requirements. See 5 CFR 1320.4(a)(2).

*The following table can be used as a guide to calculate the total burden of an information collection.*

Estimated Annualized Respondent Hour and Cost Burdens

Forms	Number of Respondents	No. of Responses per Respondent	Total Number of Responses	Time Per Response (In Hours)	Total Burden Hours	Hourly Wage Rate*	Total Burden Costs
Recordkeeping for Recruitment	2,298	1	2,298	1	2,298	\$45.55	\$104,674
<b>Duplicated Totals</b>	---	--	<b>2,298</b>	<b>1</b>	<b>2,298</b>	--	<b>\$104,674</b>

\* Bureau of Labor Statistics. Occupational Employment Statistics: June 2017 National Occupational Employment and Wage Estimates; Management Occupations. Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2016-17 Edition*, Human Resources Specialists, on the Internet at <https://www.bls.gov/ooh/business-and-financial/human-resources-specialists.htm>.

*A.13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).*

1. Start-up/capital costs: There are no start-up costs.
2. Maintenance and operations costs: There is no additional maintenance or operations cost.

*A.14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.*

There are no additional costs to the Government for the document retention requirements covered by this collection.

*A.15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.*

The additional rules related to the H-2B program which were supported by the form expired, so the Department no longer requires the attestation form to be filed. For that reason, the change in burden since the last approval of this ICR is directly related to the proposed elimination of the requirement for employers to file the attestation form with the H-2B petition to the DHS. Employers are required to maintain documents beyond the expiration of the form, so the burden associated with this information collection only reflects the retention of the attestation form that was submitted to the DHS and the required supporting documentation.

*A.16. For collections of information, whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

The information that employers are required to retain will not be published. However, the DHS may publicly disclose information regarding the H-2B program consistent with applicable law and regulations.

*A.17. If seeking approval not to display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

ETA displays the OMB approval number and expiration date.

*A.18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."*

There are no exceptions sought.

**B. Collection of Information Employing Statistical Methods**

This information collection does not employ statistical methods.