SUPPORTING STATEMENT
LABOR CONDITION APPLICATION FOR H-1B, H-1B1, and E-3 NONIMMIGRANTS and the NONIMMIGRANT WORKER INFORMATION FORM
OMB Control Number 1205-0310

This Information Collection Request (ICR) seeks approval under the Paperwork Reduction Act of 1995 (PRA) for revisions to the Labor Condition Application for H-1B, H-1B1, and E-3 Nonimmigrants information collection. More specifically, the Department of Labor (DOL or Department) is proposing changes to Form ETA-9035, *Labor Condition Application for Nonimmigrant Workers*—the Labor Condition Application (LCA) for H-1B, H-1B1, and E-3 Nonimmigrants; Form WH-4, *Nonimmigrant Worker Information Form*; and all applicable instructions and electronic versions. Forms ETA-9035/9035E are used in the DOL employment-based temporary immigration program by employers to request permission to bring foreign workers to the United States as nonimmigrants to perform certain work in specialty occupations or as fashion models of distinguished merit and ability. Form WH-4 is used to request that DOL's Wage and Hour Division (WHD) initiate an investigation related to alleged violations of H-1B, H-1B1, and E-3 program requirements. This ICR also seeks approval for other information collection requirements as specified in this supporting statement.

A. Justification.

A1. 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.

Under the Immigration and Nationality Act of 1990 (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 visa is required to file an LCA with, and receive certification from, DOL before the Department of Homeland Security's (DHS) United States Citizenship and Immigration Services may approve a petition for a foreign worker authorizing admission of the foreign worker under the H-1B visa classification. The LCA process is administered by the Office of Foreign Labor Certification (OFLC) within DOL's Employment and Training Administration (ETA).

Congress amended the INA and created the H-1B1 visa classification as part of its approval of the United States-Chile Free Trade Agreement and United States-Singapore Free Trade Agreement, which took effect January 1, 2004. On May 11, 2005, Congress enacted Section 501 of title V of the REAL ID Act of 2005 (Division B) in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (Pub. L. 109–13, § 501, 119 Stat. 231, 278 (2005)), amending section 101(a)(15)(E) of the INA by establishing the E-3 visa classification for Australian nationals who enter solely to perform services in specialty occupations in the United States. Under these INA amendments, DOL is required to implement the H–1B1 and E-3 visa programs using a similar LCA process to that administered for the H-1B visa program.

WHD enforces employer compliance with the LCA. It may conduct investigations in four circumstances: (1) when it receives a complaint from an aggrieved party that is adversely affected by the employer's alleged non-compliance that provides reasonable cause to believe an H-1B program violation has occurred; (2) when it receives information from a known credible source that is likely to have knowledge of the employer's employment practices or its compliance with H-1B requirements that provides reasonable cause to believe specified H-1B program violations have occurred; (3) when the Secretary of Labor (Secretary) personally certifies that there is reasonable cause to believe that the employer is not in compliance (Secretary-certified); and (4) when it identifies certain willful violators for random investigations. *See* 8 U.S.C. 1182(n)(2)(A), (F), (G). Virtually all WHD investigations to date have originated from aggrieved party complaints. WHD has never conducted a Secretary-certified investigation and has rarely conducted credible source investigations.

To administer these programs, ETA and WHD rely on the following forms: ETA-9035 *Labor Condition Application for Nonimmigrant Workers* (a pdf fillable and printable form); ETA-9035E *Labor Condition Application for Nonimmigrant Workers* (an electronic fillable ETA 9035 form); ETA-9035CP *General Instructions for the 9035 & 9035E*; and the WH-4 *Nonimmigrant Worker Information Form*.

The Department is respectfully requesting the Office of Management and Budget (OMB) to grant a delayed implementation period for the Department to perform updates to the electronic filing system resulting from the proposed changes to the ETA-9035/9035E forms, including Appendix A. During the period of delayed implementation, the existing forms would remain valid for use, and the public would be able continue to submit applications in the current manner using the existing forms, without Appendix A.

Statutory Authority: 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).

Regulatory Authority:
a. Labor Condition Application (LCA) – 20 CFR 655.700, 655.705, 655.720, 655.730, 655.731, 655.732, 655.733, 655.734, 655.735, 655.736, 655.737, 655.738, 655.739, and 655.760

Under the INA, 8 U.S.C. 1182(n), an employer must submit to DOL an LCA (Form ETA-9035/9035E) stating that it agrees to certain conditions related to the employment of a foreign worker. The employer must provide a copy of the LCA to the foreign worker beneficiary. Employers must include basic information on the LCA,, including information about their business and, if applicable, authorized representation; the number of foreign workers sought in the visa classification; position details; the occupational classification in which the workers will be employed; the prevailing wage rate and rate of pay to the nonimmigrant worker(s); the intended place(s) of employment; and the conditions under which the nonimmigrant worker(s) will be employed. Employers who meet the statutory criteria for H-1B dependency or willful violators must generally make additional attestations that U.S. workers will not be displaced and that the employer will make good faith recruitment efforts of U.S. workers prior to filing the

LCA.[1] Through the LCA, the employer attests that it has met the statutory requirements in 8 U.S.C. 1182(n)(1)(A), (B), and (C), as well as the special requirements for willful violators and dependent employers (if applicable), as those requirements are explained in the Department's regulations.

b. Documentation of Corporate Identity – 20 CFR 655.730(e)(3)

DOL's regulation at 20 CFR 655.730(e)(3) provides 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 Federal Employer Identification Number of the new employing entity. 20 CFR 655.730(e)(1). These documents are to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the LCA expired or was withdrawn.

c. H-1B Employers Only: Determination of H-1B Dependency – 20 CFR 655.736

INA provisions for H-1B employers generally make additional recruitment and non-displacement requirements applicable to willful violators and H-1B dependent employers. H-1B dependency is based on the ratio between the employer's total work force employed in the U.S. (including both U.S. workers and nonimmigrant workers, and measured according to full-time equivalent employees) and the employer's H-1B nonimmigrant employees (a "head count" including both full-time and part-time H-1B employees).

DOL's regulations at 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 "snap shot" test to determine whether a calculation of dependency is necessary and must retain a copy of the documents that allow WHD to verify the snap shot test. 20 CFR 655.736(c)(2). The employer must retain a copy of the full computation in specified circumstances that the Department believes will very rarely occur. 20 CFR 655.736 (d)(4). 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).

1 The special requirements for willful violators and H-1B dependent employers apply unless those employers are hiring only exempt H-1B nonimmigrants. Throughout this supporting statement, where we refer to general requirements for willful violators and dependent employers, we refer to those employers who are not hiring only exempt H-1B non-immigrants and claiming that exemption on the LCA.

All records supporting the employer's H-1B dependency status at the time of filing the LCA are to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the LCA expired or was withdrawn. 20 CFR 655.760.

d. H-1B Employers Only: List of Exempt H-1B Employees in Public Access File – 20 CFR 655.737(e)(1)

An employer that is H-1B dependent or found to be in willful violation of H-1B program requirements in the prior five years (willful violator), as described at 20 CFR 655.736(f), may designate on the LCA that the LCA will only be used 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. These records are to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the LCA expired or was withdrawn. 20 CFR 655.760(c).

In accordance with regulatory requirements, the Form ETA-9035 permits an H-1B dependent and/or willful violator employer to designate that the LCA will be used only to support "exempt" H-1B nonimmigrant workers and identify the statutory basis (i.e., $60,000 or higher in annual wages, attainment of Master's degree or higher) of the exemption. For those H-1B dependent and/or willful violator employers designating an exemption based only on attainment of a Master's degree or higher, the employer must identify on the Form ETA-9035, Appendix A, the academic and degree information for the exempt H-1B nonimmigrant worker(s) and provide a translated copy of the educational credential or alternative permissible documentation to the Department. This information is being collected pursuant to 20 CFR 655.737(d) and (e) to ensure the education-based exemption designation is complete and without obvious errors or inaccuracies on the LCA, before a certification decision is issued and the employer files the H-1B petition with DHS. DHS is responsible for determining, upon request at the petition stage, whether the degree was attained in a specialty related to the occupation and, if obtained from a foreign academic institution, whether it is equivalent to a Master's or higher degree issued by a U.S. academic institution.

e. H-1B Employers Only: 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 direct displacement of U.S. workers in the employer's own workforce 90 days before and 90 days after the filing of an H-1B visa petition and from placement of an H-1B worker with a secondary employer unless it has first inquired of the second employer whether it will displace a U.S. worker in the period of 90 days before to 90 days after the date of the H-1B worker's placement with the other employer (secondary displacement). 8 U.S.C. 1182(n)(1)(E), (F). DOL's regulation at 20 CFR 655.738(e) requires such employers that seek 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 secondary employer. 20 CFR 655.738(e)(2), (d)(5)(i). These records are to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the LCA expired or was withdrawn. 20 CFR 655.760.

f. H-1B Employers Only: Offers of Employment to Displaced U.S. Workers – 20 CFR 655.738(e)

The INA generally prohibits H-1B dependent employers and willful violators from hiring an H-1B nonimmigrant if doing so would displace a U.S. worker from an essentially equivalent job in the same area of employment. 8 U.S.C. 1182(n)(1)(E), (F). DOL's regulations, 20 CFR 655.738(e), generally 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. The employer must maintain the name, last-known mailing address, occupational title and job description, any documentation concerning the employee's experience and qualifications, and principal assignments, as well as all documents concerning the departure of such employee, and evaluations of his/her job performance. The employer is also required to maintain a record of the terms of any offers of similar employment to such U.S. workers and the 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 nonimmigrant workers. These records are to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the LCA expired or was withdrawn. 20 CFR 655.760.

g. H-1B Employers Only: Documentation of U.S Worker Recruitment – 20 CFR 655.739(i)

The INA establishes that H-1B dependent employers and willful violator employers are generally 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), those 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 timeframe 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 in an investigation whether the employer has made a good faith effort to recruit U.S. workers and for the public to be aware of the recruitment methods used.

With the exception of the list to be included in the public access file (where 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 the regulations is that the public disclosure files contain a summary of the principal recruitment methods used and the timeframes in which they were used. Creating a memorandum to the file or the filing of pertinent documents may satisfy this recordkeeping requirement. All records under this section are to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the LCA expired or was withdrawn. 20 CFR 655.760.

h. Documentation of Benefits – 20 CFR 655.731(b)

Pursuant to the INA, 8 U.S.C. 1182(n)(2)(C)(viii) and 8 U.S.C. 1182(t)(1)(C)(viii), all employers of H-1B, H-1B1, and E-3 nonimmigrant workers 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. 20 CFR 655.731(c)(3). Employers are required to make and retain copies of all benefit plans and any summary plan descriptions. 20 CFR 655.731(b). 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 to be maintained in the employer's public access file for a period of one year beyond the last date on which any nonimmigrant is employed under the LCA or, if no nonimmigrants were employed under the LCA, one year from the date the LCA expired or was withdrawn. 20 CFR 655.760.

i. Employer Wage Record Keeping Requirements – 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 nonimmigrant worker(s), the required wage rate will be paid to the nonimmigrant workers, that is, that the wage paid shall be the greater of the actual wage rate or the prevailing wage. 20 CFR 655.731(a). The regulations require that all H-1B, H-1B1, and E-3 employers document the basis used to establish the actual wages for their U.S. workers and how it relates to the H-1B nonimmigrant worker'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. 20 CFR 655.731(b).

Employers are required to keep records of the hours worked by employees not paid on a salary basis and for part-time nonimmigrant workers, regardless of how they are paid. The additional recordkeeping burden over and above that required by the FLSA, and approved under OMB Approval No.1235-0018, is for keeping records of hours worked by part-time, salaried nonimmigrant workers who are exempt from the FLSA. Required payroll records for the H-1B employees and other employees in the occupational classification shall be retained at the employer's principal place of business in the U.S. or at the place of employment for a period of three years from the date(s) of the creation of the record(s), except that if an enforcement action

is commenced, all payroll records shall be retained until the enforcement proceeding is completed through the procedures set forth in 20 CFR 655 Subpart I. 20 CFR 655.760.

Employers are required to keep records for the determination of the prevailing wage. 20 CFR 655.731(b)(3). The prevailing wage documentation shall be retained at the employer's place of business for a period of one year beyond the last date on which any H-1B employee is employed under the LCA, or one year from the date the LCA expired or was withdrawn if H-1B nonimmigrant workers were not employed. 20 CFR 655.760.

j. Nonimmigrant Worker Information Form (WH-4)

The INA requires DOL to establish processes to allow individuals or entities to provide information alleging H-1B program violations. 8 U.S.C. 1182(n)(2)(A), (n)(2)(G)(iii), (t)(3)(A). DOL uses Form WH-4 to meet these statutory requirements.

A2. 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.

DOL's OFLC relies on Forms ETA-9035, ETA-9035E, and ETA-9035CP to collect the necessary information from employers to adjudicate LCAs.

The INA, 8 U.S.C. 1182(n)(1)(G), provides that unless the LCA is incomplete or appears obviously inaccurate, the Secretary shall certify the application and return it to the employer within seven days.[2] 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. 8 U.S.C. 1182(n)(1)(G). 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 a form anyone may use to allege violations of the INA provisions enforced by the WHD. WHD uses the information listed on the form to determine whether it has reasonable cause to commence an investigation.

A3. 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.

2 The Department processes LCAs within seven business days. The Department's regulation at 20 CFR 655.740(a)(1) specifies the processing timeframe as seven "working" days.

Since December 2005, the Department has mandated that the LCA (Form-ETA 9035E) be filed electronically unless the employer has a disability or lacks internet access. Employers with a disability that prevents them from filing electronic applications or employers without internet access can file the LCA by U.S. mail. The electronic filing of Form ETA-9035E is supported by the Department's iCERT Visa Portal System (iCERT System), which is accessible at http://icert.doleta.gov.

The iCERT System permits an employer or, if applicable, its authorized attorney or agent to efficiently prepare and submit LCAs for processing by the OFLC. Since the Department's review of LCAs under the INA sections 212(n)(1)(G) and 212(t)(2)(c) is limited to only completeness and obvious inaccuracies, the iCERT System provides employers with a series of electronic data checks and prompts to provide that each required field on Form ETA-9035E is completed and values entered on the form are consistent with regulatory requirements. The OFLC website and the iCERT System's Form ETA-9035E Case Preparation Module include detailed instructions designed to help employers understand what each form collection item means and what kind of entries are required. When the employer or, if applicable, its authorized attorney or agent, initially enters contact information and establishes an iCERT System Account, the Form ETA-9035E Case Preparation Module automatically pre-populates all contact information on the draft application, significantly reducing the time and burden for repeated online data entry. Additionally, the Form ETA-9035E Case Preparation Module provides employers with an option to "reuse" previously filed LCAs, which automatically copies information into a new draft application. Under this option, employers only have to change a limited set of information on the new LCA to accommodate the job opportunity, such as the number of workers being requested for certification, period of employment, and the intended place(s) of employment. This option significantly reduces the time and burden for online data entry, particularly for those employers who need to access the program to hire nonimmigrant workers in a common set of occupational classifications. This process is designed to help employers enter the H-1B, H-1B1, or E-3 program based on accurate LCA information and with explicit, immediate notice of the obligations. This collection is in full compliance with the Government Paperwork Elimination Act.

The Department previously considered developing an automated complaint system for H-1B, H-1B1, and E-3 complaints, and determined at the time that it was not feasible. However, due to technological advances and customer preference, the Department is currently reviewing options for electronic submission of the information collection. The Department recognizes the value of technology in reducing burden on respondents in completing these forms and is seeking to provide better customer service in the H-1B program.

The substance of the electronic forms will be substantially the same, with minor word changes to accommodate the type of submission (electronic versus paper). The Department intends to submit a non-material change request for this collection upon completion of the electronic submission platform.

A4. 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 information required on Form ETA-9035 is not identified from any other source at the time of filing. Collection of the prevailing wage tracking number is necessary to identify the prevailing wage determination, if any, and associate the prevailing wage determination with the LCA.

DOL's regulations require the employer to place in its public access file a list of "exempt" H-1B nonimmigrants within one working day of filing the LCA if the employer is claiming the exemption. 20 CFR 655.760(a). This means that the employer must have identified the H-1B nonimmigrant(s) subject to the education-based exemption and collected all credential information justifying the basis of such exemption(s) at the time of filing the LCA. The Department is proposing to require submission of these educational credential documents to ensure the education-based exemption designation(s) on the LCA is complete and without obvious errors or inaccuracies before a certification decision is issued and the H-1B petition is submitted to DHS.

Many of the records required to be kept by the regulations are also required under the FLSA, administered by WHD, and by the Equal Employment Opportunity Commission, the Employee Benefits Security 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. The Department is not aware of any duplication of data collection for the WH-4 form. Further, efficient electronic processing reduces the need for duplicate filings of LCAs by employers.

A5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The burden on small businesses is minimal. Even though the information collection is required of small businesses who want to hire foreign workers, the recordkeeping requirements largely involve information that already exists in payroll and other records kept by most employers for other purposes. As previously noted, the Department accepts applicable records normally maintained for other purposes to document compliance during an investigation conducted under the H-1B and related programs.

A6. 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.

This data collection is only conducted at the time an employer seeks an H-1B, H-1B1, or E-3 visa to employ a foreign workers. The Department would be in direct violation of Federal law and regulations without this information collection.

With respect to the WH-4 form, the consequences of less frequent collection would undermine the Department's ability to identify possible violations, such as whether the employee is being paid the proper wage and whether the employee is working in the intended area of employment. Further, the WH-4 form initiates the compliance review of a specific employer and facilitates aggrieved parties' ability to complete the process in order to file a complaint.

A7. 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(d)(2).

There are no special circumstances that would require the information to be collected or kept in a manner that requires further explanation pursuant to the regulations set forth at 5 CFR 1320.5(d)(2).

A8. 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 PRA, the Department solicited comments on this proposed collection for 60 days. The Department published the 60-day notice in the *Federal Register* on August 3, 2017 (82 FR 36158), and the comment period expired October 2, 2017. The Department received public comments from 11 commenters. In response to the public comments received, the Department made additional revisions to the Form ETA-9035/9035E proposal. The revisions are provided in the Appendix B to this supporting statement. The Department has also uploaded the comments into the reginfo.gov database.

The Department is respectfully requesting OMB to grant a delayed implementation period to perform updates and revisions to the electronic filing system resulting from the proposed changes to for the ETA-9035/9035E forms including Appendix A. During the period of delayed implementation, the existing forms will remain valid for use, and the public will be able continue to submit applications in the current manner using the existing forms, without Appendix A. .

A9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts are made to respondents in exchange for the information provided through these information collection tools.

A10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

LCA collection activities are covered under the Statement of Records Notice (SORN) (DOL/ETA-7; *Foreign Labor Certification System and Employer Application Case Files*) at 81 FR 25765, published on April 29, 2016. This SORN identifies the categories of records in the system containing OFLC records, including records of a sensitive nature. OFLC's Case Files are retained for a period of 5 years after close in accordance with Records Schedule Number DAA-0369-2013-0002. Paper files are retained on-site at national processing centers for six months from the date of final determination. OFLC will continuously scan or convert paper records into OFLC Archive and Scan database(s). Paper copies of employer applications that are scanned will be destroyed once converted to an electronic medium and verified, or when no longer needed for legal or audit purposes in accordance with the records schedule. Paper copies of case files that are not scanned are retained on-site for six months after close, and then transferred to Federal Records Center for duration of 5 year retention period.

In terms of the LCA and its component documents, employers who file LCAs for the temporary employment of foreign workers are covered by this SORN. The foreign worker is not identified on the LCA. The attachments to the LCA Appendix A will not be publicly disclosed. Authority to maintain this system is derived from the INA, as amended, 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), Section 122 of Pub. L. 101 - 649. 8 CFR 214.2(h). 20 CFR 655 Subpart H.
ETA has also conducted a Privacy Impact Assessment of the system through which applications for labor certifications are processed, and determined that existing safeguards and controls in place adequately protect the information system; it also concluded that OFLC is collecting the minimum necessary information for the proper performance of a documented agency function. *See* https://www.dol.gov/oasam/ocio/programs/PIA/ETA/ETA-FLCS.htm

With respect to the WH-4 form, WHD will keep the respondent's identity private to the extent possible under existing law. As a practical matter, 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).

In accordance with the Privacy Act, 5 U.S.C. 552a; and its respective regulations, the authority for this collection of information is derived 8 U.S.C. section 1182. DOL will use this

information to enforce employer compliance with the LCA. The information provided on this form will assist the DOL in determining whether the named employer of H-1B, H-1B1 or E-3 nonimmigrant(s) has committed a violation of provisions of the applicable nonimmigrant program. With respect to routine uses, the information will be used by and disclosed to DOL personnel and contractors or other agents who need the information to assist in activities related to employer compliance with the LCA and law enforcement. Additionally, DOL may share the information pursuant to its published Privacy Act system of records notice. Furnishing this information is voluntary; however, failure to furnish the requested information may result in an inability to initiate compliance review and/or identify potential violations

A11. 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.

These information collections do not involve sensitive matters.

A12. Provide estimates of the hour burden of the collection of information.

In addition to the footnotes, supplemental information regarding these burden estimates may be found in Appendix A to this supporting statement.

Table 1

BURDEN HOURS AND ANNUAL COST TO RESPONDENTS ESTIMATES

FORM ETA-9035/9035E BURDEN HOURS AND ANNUAL COST TO RESPONDENTS ESTIMATES

Type of Respondent	Information Collection Activity	No. of Respondents[3]	No. of Annual Responses per Respondent	Total Annual Responses	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate[4]	Total Annual Respondent Cost
Private Sector-Business or other for-profit; Not-for-profit organizations	Labor Condition Application (LCA; ETA-9035/9035E)	569,260	1	569,260	1.25[5]	711,575	$82.78 ~	$58,904,179

3 *DOL estimates are based on OFLC's LCA data from fiscal years 2014, 2015, and 2016.*

4 *DOL believes that in most companies, a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the national cross-industry mean hourly wage rate for a Human Resources Manager ($57.79), as published by DOL's Occupational Employment Statistics survey, and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $82.78. Occupational Employment and Wages, May 2017: 11-3121 Human Resources Managers, DOL, BLS, https://www.bls.gov/oes/current/oes113121.htm.*

5 *DOL estimates that the completion and submission of an LCA takes 45 minutes for most employers, due to the reduced burden for completion of the prevailing wage section of the form, with an additional 20 minutes estimated for H-1B dependent employers or willful violator employers claiming degree-based exemptions; complying with recordkeeping requirements of creating a PRA file takes five minutes; and posting the LCA in a conspicuous place and providing a copy to each nonimmigrant worker takes five minutes; for a total of 75 minutes per application. The estimate for Appendix A is separate from the LCA estimate of 75 minutes per application and is estimated as an additional 20 minutes for most employers who will need to complete the appendix. See the table for the additional burden hours and annual cost to respondents.*

Table 2

ADDITIONAL BURDEN HOURS AND ANNUAL COST TO RESPONDENTS

ESTIMATES FOR ACTIVITIES RELATED TO FORM ETA-9035/9035E

Type of Respondent	Information Collection Activity	No. of Respondents[6]	No. of Annual Responses per Respondent	Total Annual Responses	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate[7]	Total Annual Respondent Cost
Private Sector-Business or other for-profit; Not-for-profit organizations	Documentation of Corporate Identity*	1,000	1	1,000	1	1,000	$82.78	$82,780
Private Sector-Business or other for-profit; Not-for-profit organizations	H-1B Employers Only-Determination of H-1B Dependency*	7,644	2	15,288	0.5	7,644	$82.78	$632,770
Private Sector-Business or other for-profit; Not-for-profit organizations	H-1B Employers Only-Determination of H-1B Dependency-Document Retention*	3,077	1	3,077	0.05	154	$82.78	$12,748

6 *DOL estimates are based on OFLC's LCA data from fiscal years 2014, 2015 and 2016.*
7 *DOL believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the national cross-industry mean hourly wage rate for a Human Resources Manager ($57.79), as published by DOL's Occupational Employment Statistics survey, and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $82.78. Occupational Employment and Wages, May 2017: 11-3121 Human Resources Managers*, DOL, BLS, https://www.bls.gov/oes/current/oes113121.htm.

Private Sector-Business or other for-profit; Not-for-profit organizations	List of Exempt H-1B Employees in Public Access File*	3,259	1	3,259	0.25	815	$82.78	$67,466

Table 2 Continued

Type of Respondent	**Information Collection Activity**	**No. of Respondents**[8]	**No. of Annual Responses per Respondent**	**Total Annual Responses**	**Avg. Burden per Response (in hours)**	**Total Annual Burden (in hours)**	**Avg. Hourly Wage Rate**[9]	**Total Annual Respondent Cost**
Private Sector-Business or other for-profit; Not-for-profit organizations	Appendix A Completion and Documentation: Educational Degree Attainment for Exempt H-1B Nonimmigrants	11,337[10]	1	11,377	0.3333	3,792	$82.78	$313,902
Private Sector-Business or other for-profit; Not-for-profit organizations	Record of Assurances of Non-displacement of U.S. Workers at Second Employer's Worksite*	200	5	1,000	0.1667	167	$82.78	$13,824
Private Sector-Business or other for-profit; Not-for-profit organizations	Offers of Employment to Displaced U.S. Workers*							

8 *DOL estimates are based on OFLC's LCA data from fiscal years 2014, 2015 and 2016.*

9 *DOL believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the national cross-industry mean hourly wage rate for a Human Resources Manager ($57.79), as published by DOL's Occupational Employment Statistics survey, and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $82.78. Occupational Employment and Wages, May 2017: 11-3121 Human Resources Managers*, DOL, BLS, https://www.bls.gov/oes/current/oes113121.htm.

10 *DOL believes that of the average 569,260 total LCA filings from DOL data from fiscal years 2014, 2015, and 2016, approximately 11,337 LCAs are estimated to be degree based exemptions requiring completion of Appendix A and provision of educational degree information. The estimate for Appendix A is separate from the LCA estimate of 75 minutes per application and is estimated as an additional 20 minutes for most employers who will need to complete the appendix. The estimated number of filings was updated from 50,000 LCAs to 11,337 based on DOL's revised intent to collect Appendix A only for H-1B nonimmigrant workers for whom an exemption is only based on a Master's or higher degree, not the annual salary of $60,000.*

		665	5	3,325	0.3333	1,108	$82.78	$91,720

<u>Table 2 Continued</u>

Type of Respondent	**Labor Condition Application Form Provision**	**No. of Respondents[11]**	**No. of Annual Responses per Respondent**	**Total Annual Responses**	**Avg. Burden per Response (in hours)**	**Total Annual Burden (in hours)**	**Avg. Hourly Wage Rate[12]**	**Total Annual Respondent Cost**
Private Sector-Business or other for-profit; Not-for-profit organizations	Documentation of U.S. Worker Recruitment*	665	1	3,325	0.3333	1,108	$82.78	$91,720
Private Sector-Business or other for-profit; Not-for-profit organizations	Documentation of Fringe Benefits*	6,154	1	6,154	1.5	9,231	$82.78	$764,142
Private Sector-Business or other for-profit; Not-for-profit organizations	Documentation of Fringe Benefits for Multinational Employers*	15,385	1	15,385	0.5	7,693	$82.78	$636,827
Private Sector-Business or other for-profit; Not-for-profit organizations	Wage Recordkeeping requirements Applicable to Employers of H-1B Nonimmigrants	61,540	1	61,540	2.5	153,850	$82.78	$12,735,703
Unduplicated		110,926		124,730		186,562		$15,443,601

11 *DOL estimates are based on OFLC's LCA data from fiscal years 2014, 2015 and 2016.*

12 *DOL believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the national cross-industry mean hourly wage rate for a Human Resources Manager ($57.79), as published by DOL's Occupational Employment Statistics survey, and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $82.78. Occupational Employment and Wages, May 2017: 11-3121 Human Resources Managers*, DOL, BLS, https://www.bls.gov/oes/current/oes113121.htm.

Totals								

Table 3

FORM WH-4 BURDEN HOURS AND ANNUAL COST TO RESPONDENTS ESTIMATES

Type of Respondent	Information Collection Activity	No. of Respondents[13]	No. of Annual Responses per Respondent	Total Annual Responses	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate[14]	Total Annual Respondent Cost
Individuals or Households	Information Form Alleging H-1B Violations (WH-4)**	225	1	225	0.3333	75	$82.78	$6,209

** This type of burden is not incurred by all employers. This specific burden hours estimate has been added to the total burden hours estimate. The total burden hours estimate reflects the burden incurred by all employers that file requests for labor certification applications.*

*** This burden estimate is not associated with the employers' filings of labor certification applications. Aggrieved parties who choose to file complaints incur this type of burden. This estimate, however, is part of the total burden hours estimate associated with this program.*

~ 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 national cross-industry mean hourly wage rate for a Human Resources Manager ($57.79), as published by DOL's Occupational Employment Statistics survey,[15] and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $82.78.

13 *DOL estimates are based on WHD's WH-4 data from fiscal years 2014, 2015, and 2016.*

14 *DOL believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the national cross-industry mean hourly wage rate for a Human Resources Manager ($57.79), as published by DOL's Occupational Employment Statistics survey, and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $82.78. Occupational Employment and Wages, May 2017: 11-3121 Human Resources Managers, DOL, BLS, https://www.bls.gov/oes/current/oes113121.htm.*

15 *Source: Bureau of Labor Statistics May 2016 National Occupational Employment and Wage Estimates; Management Occupations.*

Table 4

OVERALL TOTAL BURDEN HOURS AND ANNUAL COST TO RESPONDENTS ESTIMATES

Type of Respondent	Information Collection Activity	No. of Respondents	No. of Annual Responses per Respondent	Total Annual Responses	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate[16]	Total Annual Respondent Cost
Private Sector- Business or other for-profit; Not-for-profit organizations	Labor Condition Application (ETA 9035/9035E)	569,260	1	569,260	1.25	711,575	$82.78	$58,904,179
Private Sector- Business or other for-profit; Not-for-profit organizations	Related Activities	110,926	Varies	124,730	Varies	186,562	$82.78	$15,443,601
Individuals or Households	Information Form Alleging H-1B Violations (WHD WH-4)	225	1	225	0.3333	75	$82.78	$6,209
Unduplicated Totals		**680,411**	**Varies**	**694,215**	**Varies**	**898,212**	**$82.78**	**$74,353,989**

16 *DOL believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the national cross-industry mean hourly wage rate for a Human Resources Manager ($57.79), as published by DOL's Occupational Employment Statistics survey, and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $82.78. Occupational Employment and Wages, May 2017: 11-3121 Human Resources Managers*, DOL, BLS, https://www.bls.gov/oes/current/oes113121.htm.

A13. 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, as ETA provides a free, web-based data collection and reporting system to collect and maintain participant data.

2. *Annual costs*: The Department estimates that the cost for translation will vary, based on a range of factors, including free access to a translator, free translation tools, or paid translations, which the Department estimates may cost up to $160. Therefore, the average estimated cost is $80 for translation and an annual estimated cost of $906,960.00 ($80.00 x 11,337[17] = $906,960.00). The public may evaluate and provide feedback on the burden for translation of the Form ETA-9035/9035E Appendix A educational credential documentation.

A14. 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.

The estimated Federal costs associated with Form ETA-9035/9035E and Form WH-4 are summarized in the table below. This estimate is based on the 2018 General Schedule hourly rates for the positions conducting the review and the average time required to perform each review and ensure compliance with applicable regulations. The average Federal government cost for a year of operation is estimated on an hourly basis multiplied by an index of 1.74 to account for employee benefits and proportional operating costs, otherwise known as Fully Loaded Full Time Equivalent. Additionally, the index is derived by Departmental analysis of current personnel and overhead cost data. In deriving costs associated with this ICR, the Department utilized the operational costs associated with the staff and Center facilities.

17 *DOL believes that of the average 569,260 total filings, approximately 11,337 LCAs are estimated to be degree based exemptions requiring completion of Appendix A and provision of educational degree information. The estimate for Appendix A is separate from the LCA estimate of 75 minutes per application and is estimated as an additional 20 minutes for most employers who will need to complete the appendix. The estimated number of filings was updated from 50,000 LCAs to 11,337 based on DOL's revised intent to collect Appendix A only for H-1B nonimmigrant workers for whom an exemption is only based on a Master's or higher degree, not the annual salary of $60,000.*

DOL incurs the following estimated annual costs to process these applications and ensure compliance with Federal regulations:

Category	Applications	Activity	Total Cost
Case-Processing Staff (GS 12/5)	569,260	Case-Processing	$1,687,970
National Office/Support Staff	N/A	Program/Administrative Support	$414,762
IT	N/A	IT Support	$2,131,227
Working Capital Fund, Rent, and Overhead Costs	N/A	Support	$778,641
DOL WHD (GS 11/4; GS 13/4)	225	Investigations/Enforcement	$3,656
Total estimated cost to the Federal government:			***$5,016,256***

Federal government cost estimates are based on experienced staffing charges for the case-processing activities associated with Form ETA-9035/9035E, as well as a prorated portion of support and overhead costs based on the percentage of total case-processing time attributed to the ETA 9035/9035E. The same methodology is used for estimating costs associated with form WH-4.

The hourly rate used to calculate cost is the average hourly rate for an employee in the Federal service (based on 2017 GS locality pay schedules for Chicago-Naperville, IL-IN-WI and the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA area). *See* relevant OPM GS Pay Scales at:

Chicago-Naperville, IL-IN-WI: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/17Tables/html/CHI.aspx, and

Washington-Baltimore-Arlington, DC-MD-VA-WV-PA: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/17Tables/html/DCB.aspx.

A15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

The Department projects that the annual burden for LCA information collections will increase from 567,627 burden hours to 898,212 burden hours. The Department makes this projection based on the steady surge of H-1B, H-1B1, and E-3 requests received during the economic upturn of the past three years and the new requirements of information from employers to improve program transparency. The increase is also a result of improvement to the methodology for reporting the burden in connection with this collection of information. (*See* the response to A12 for details.) The number of responses decreased from 1,299,841 to 569,260 due to better accounting methods in compliance with OMB requirements and revisions to this ICR.

The Department has proposed the following revisions, which create an increase in burden to Form ETA-9035/9035E, Form ETA- 9035CP, and Form WH-4.Proposed revisions to Forms ETA-9035/9035E and ETA-9035CP:

The Department has determined that additional information is required to be collected through the Form ETA-9035/9035E. This enhanced data collection will allow the Department to better track employer usage of the program and provide greater transparency to the public with respect to the employment of H-1B, H-1B1, and E-3 nonimmigrant workers in the United States. The Department has determined that the following major changes in information collection are necessary for the administration of the program and will promote compliance by clarifying existing statutory and regulatory requirements:

a. *Page 3, Section F, Employment and Wage Information*: The Department is proposing five revisions to clarify regulatory requirements and change the collection of employment and wage information by respondents.

   In its August 3, 2017 proposal, the Department clarified the existing regulatory requirement that the employer must identify all intended places of employment on the LCA. *See* 20 CFR 655.730(c)(5). It provided that a worksite location must be identified as an "intended place of employment" if the employer knows at the time of filing the LCA that it will place workers at the worksite, or should reasonably expect that it will place workers at the worksite based on: (1) an extant contract with a secondary employer or client, (2) past business experience, or (3) future business plans. The Department has retained this revision with the following modifications: It has changed the wording from "extant" to "existing," and it has clarified that the employer must identify all intended places of employment on the LCA, *including intended places of employment that qualify as short-term placements under 20 CFR 655.735*.

   Second, the Department's proposal permitted the employer to identify three (3) intended places of employment on the LCA, and, if the employer had more than three, required the employer to file as many additional LCAs as necessary to list all intended places of employment. In response to comments, the Department has amended its proposal to accommodate identification of up to ten (10) intended places of employment on one LCA.

   Third, the Department proposed merging *Section F, Rate of Pay* and *Section G, Employment and Prevailing Wage Information* on the current form into a new *Section F, Employment and Wage Information* in order to better align the collection of the wage rate paid to nonimmigrant workers with each intended place of employment on the LCA. The Department has retained this revision.

   Fourth, the Department's proposal expanded information collection by requiring that employers estimate the number of workers that will perform work at the intended place of employment; disclose whether the nonimmigrant worker(s) will be placed with a

secondary employer at an intended place of employment; and, where placement with a secondary employer occurred, disclose the legal business name of the secondary employer. These revisions were made to improve transparency about the number of H-1B workers being sent to worksites, the locations at which H-1B workers will be placed, and the entities with which H-1B workers will be placed. They will provide transparency for U.S. workers who may be displaced. The Department has retained these revisions with one modification: In response to comments, the Department has changed the term "secondary employer" to the term "secondary entity."

Finally, the Department proposed standardizing and streamlining the collection of prevailing wage information on the LCA. Specifically, the Department reorganized this section of the information collection into a set of three prevailing wage disclosure options, which is easier for employers and workers to understand. The Department has retained these revisions.

b. *Page 4, Section H, Additional Employer Labor Condition Statements:* Information Related to Statutory Exemptions for H-1B Nonimmigrant Workers: In its August 3, 2017 proposal, the Department clarified and expanded the collection of information for H-1B dependent and/or willful violator employers seeking to use the LCA to support H-1B petitions or extensions of status for exempt H-1B nonimmigrant workers. Specifically, under subsection 1 of the newly labeled *Section H, Additional Employer Labor Condition Statements – H-1B Employers ONLY*, H-1B dependent and willful violator employers claiming the exemption for hiring only exempt H-1B workers had to identify (1) the specific statutory basis for the exemption request (i.e., $60,000 or higher annual wage, Master's Degree or higher in related specialty, or both); and (2) where the exemption will be based upon educational attainment, complete a new Appendix A by disclosing the name of the accredited or recognized institution that awarded the degree, the field of study, the date the academic degree was awarded, and the number of H-1B nonimmigrant workers associated with the educational attainment information. The Department has retained the proposed revision seeking identification of the statutory basis for exemption and the proposed addition of Appendix A. In terms of Appendix A collection, the Department has revised its proposal to require Appendix A from an H-1B dependent or willful violator employer only in instances in which an employer claims an exemption for a nonimmigrant worker based only on the Master's or higher degree. Due to the addition of Appendix A and its translation requirement within this ICR, the estimated burden has increased by an annual estimated cost of $906,960.00 ($80.00 x 11,337 = $906,960.00). Appendix A and its requirements are new to this ICR.

c. *Page 5, Section J, Notice of Obligations*: The Department's original proposal eliminated the current cover page completed by employers for each electronically filed LCA and integrated the regulatory obligation statements on that cover page into a new *Section J, Notice of Obligations*, which employers will continue to sign and date upon receipt of the certified LCA. These existing obligation statements included (1) the requirement to maintain the original signed and certified LCA and to make a copy of the LCA, as well as

all necessary supporting documentation, available for public examination in a public access file; (2) the requirement to develop sufficient documentation demonstrating the validity of statements made in the certified LCA and the accuracy of information provided; and (3) the requirement to make all supporting documentation available to officials of the Department. The Department has retained these revisions.

d. *Additional Revisions Made in Response to Public Comments*: The Department is proposing two additional revisions as a result of comments received in response to its August 3, 2017 *Federal Register Notice*.

First, in response to comments seeking further clarification of instructions for completing page 1, *Section B, Temporary Need Information*, the Department has indicated that in item B.7, which requests the total number of worker positions being requested for certification, the employer should count each worker only once. Additionally, the Department has clarified that in items B.7(a) through (f), which request the total number of workers in each visa category, if an individual worker fits into more than one category, employers should indicate that.

Second, in response to comments seeking clarification of instructions for completing page 5, *Section I, Public Disclosure Information*, the Department has indicated that employers may select one or both of the options provided for the storage of the public access file. The Department has also clarified that if the employer elects to store the public access file electronically, the employer must make the file available and accessible for inspection upon request at the particular location(s) selected in Section I. In response to the 30-day comments, the Department has added clarification to its form instructions in the Form ETA-9035CP instructions regarding the filing of Appendix A.

Proposed revisions to Form WH-4:

In its August 3, 2017 proposal, the Department proposed to revise Form WH-4 to fully comply with Section 508 requirements and add additional fields to better facilitate communication and contact with the complainant.

The form was converted from a Microsoft WORD document to an Adobe LIVECYCLE document to improve accessibility. The software improves the ability of screen reader software to navigate through the form. Additionally, naming conventions for certain data fields were modified to align with the Department's current data systems.

The Department proposed general formatting changes and line edits to allow for better usability and understanding. General data field instructions were expanded, offering clearer explanation about the information that is being requested. The WH-4 form instructions were updated to include information on how to submit the form to the Department when the form is completed. The list of violations involving the displacement of U.S. workers in Section 4 was edited to help the complainant better understand the possible violations. The Department also proposed the insertion of a note regarding the Department of Justice's enforcement jurisdiction and updating

its contact information, as well as the inclusion of other fields to collect personal information from the complainant to facilitate communication between the investigator and the complainant.

Lastly, in its August 3, 2017 proposal, the Department proposed adding additional spaces to identify dates of employment and Job/Title Occupation; a data field to identify the LCA associated with the complaint; and language to help identify if a class of workers is affected as well as whether the complaint involves the placement of nonimmigrant workers with a secondary employer.

The Department did not receive any comments on the proposed revisions to the WH-4 form. Therefore, the WH-4 was not altered beyond the original proposal.

A16. 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.

No collection of information will be published.

A17. If seeking approval not to display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The Department will display the expiration date for OMB approval on the form and instructions or opening page of the website for electronic filing.

A18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

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

B. Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.