

SUPPORTING STATEMENT
Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation
Form
OMB Control Number 1205-0039

This Information Collection Request (ICR) relates to the Wagner-Peyser Act Staffing Flexibility final rule (final rule), published January 6, 2020. This final rule gives States increased flexibility in their administration of Employment Service (ES) activities funded under the Wagner-Peyser Act. The final rule modernizes the regulations to align them with the flexibility allowed under the Workforce Innovation and Opportunity Act (WIOA). The changes give States the freedom to staff employment and farmworker-outreach services in the most effective and efficient way, using a combination of State employees, local government employees, contracted services, and other staffing models in the way that makes the most sense for them. This in turn leaves more resources to help employers find employees, and to help employees find the work they need.

More specific to this ICR, reporting provisions remain largely unchanged from the most recently approved ICR (approved Dec. 21, 2019). The final rule eliminates language relating to the “compensation approved by the civil service classification system” at 20 CFR 653.108 (c) and the affirmative action language at 20 CFR 653.111. Accordingly, ETA is proposing to delete the same affirmative action language from the ETA Form 5148. These changes are not expected to affect the burden to the states.

A. JUSTIFICATION

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.

This ICR supports 20 CFR §§ 653.107 (a)–(h), 653.107, 653.103(g)(6), 653.108(s), 653.108(i), 653.108(m), 653.109, 658.401, 658.410, and 658.601. These regulations are codified in the WIOA Final Rule sections containing information collections approved under this control number.

This ICR is being submitted in association with the Wagner-Peyser Act Staffing Flexibility final rule, published January 6, 2020. This ICR updates the ICR as published in December 21, 2019, to reflect the changes to the Wagner-Peyser Act regulations that allow greater flexibility in staffing for the provision of Wagner-Peyser Act-funded activities and services.

a. Services to Migrant and Seasonal Farmworkers Report, ETA Form 5148

Employment and Training Administration (ETA) regulations at 20 CFR 651, 653, and 658 set forth the requirements to ensure that Migrant and Seasonal Farmworkers (MSFW) receive services that are qualitatively equivalent and quantitatively proportionate to the services provided

to non-MSFWs. 20 CFR 653.108 (p) mandates State Workforce Agencies (SWA) review their performance on a quarterly basis to ensure compliance with 20 CFR 653 Subparts B and F. The data collected represents the minimum information necessary to ensure SWA compliance with Federal regulations. (See 20 CFR 653.100 through 653.503).

b. Complaint/Apparent Violation Form, ETA Form 8429

The regulations at 20 CFR 658 Subpart E ensure SWAs handle complaints appropriately and uniformly. Pursuant to 20 CFR 658.411, SWAs are required to use the Complaint/Referral Form prescribed by the Department, unless another form is approved by the Department (20 CFR 658.411(a)(3)). 20 CFR 658.419 also requires SWAs to document and process information regarding suspected violations of employment-related laws or Wagner-Peyser Act Employment Service (ES) regulations by employers, which is not received as a complaint, as apparent violations. SWAs must document and process apparent violations as provided at 20 CFR 658.419. The Department developed ETA Form 8429 for SWAs to use to process complaints and apparent violations.

- 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.*

Pursuant to 20 CFR 653.109, SWAs use ETA Form 5148 to submit quarterly data to ETA on the services they provide to MSFWs. ETA uses that data to monitor and measure the extent and effectiveness of SWA service delivery to MSFWs and overall compliance with 20 CFR 651, 653, and 658. Additionally, 20 CFR 658.602(e) requires the ETA National Office to develop tools and techniques for reviewing and assessing SWA performance and compliance with ES regulations; and 20 CFR 658.602(f)(2) requires the National Monitor Advocate to review the performance of SWAs in providing the full range of employment services to MSFWs. The collection of data through ETA Form 5148 allows ETA to comply with these regulations and monitor SWA performance.

The regulations at 658.411(a)(3) require that staff must ensure the complainant (or his/her representative) submits the complaint on the Complaint/Apparent Violation Form or another complaint form prescribed or approved by the Department or submits complaint information which satisfies paragraph (a)(4) of this section. The Complaint/Apparent Violation Form must be used for all complaints, including complaints about unlawful discrimination, except as provided in paragraph (a)(4) of this section. Pursuant to 20 CFR 658.410(i), "State agencies must ensure any action taken by the Complaint System representative, including referral on a complaint from an MSFW is fully documented containing all relevant information, including a notation of the type of each complaint pursuant to Department guidance, a copy of the original complaint form, a copy of any ES-related reports, any relevant correspondence, a list of actions taken, a record of pertinent telephone calls and all correspondence relating thereto." Therefore, SWAs use the ETA Form 8429 to record and process complaints. Additionally, ETA Form 8429 is helpful because it identifies whether a complainant is an MSFW which implicates additional actions that must be taken by the SWA (i.e. 20 CFR 658.410(m) requires that the State Monitor Advocate follow-up monthly on unresolved complaints submitted by MSFWs). SWAs may also

use ETA Form 8429 to meet the 20 CFR 658.419 documentation requirements for apparent violations.

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.

For the past several years, the ETA Form 5148 reports have been available electronically through ETA's Enterprise Business Support System (EBSS), which SWAs access via the Internet. However, ETA recently developed the Workforce Integrated Performance System (WIPS) to electronically capture performance reporting for the Department's employment and training grants. Therefore, SWAs will now report the career services (Part 3 and Part 4) provided to MSFWs and non-MSFWs through WIPS. This means Part 3 and some elements of Part 4 of the ETA Form 5148 will be eliminated. This lessens the reporting burden on the SWAs for this Information Collection Request (ICR.) WIPS will produce the Quarterly Performance Reporting (QPR) to adhere to the Workforce Innovation and Opportunity Act (WIOA) reporting requirements.

At this time, ETA does not believe that automation of the Complaint/Apparent Violation– ETA Form 8429 is beneficial or cost effective. This form is available electronically and can be accessed via the Internet at

https://doleta.gov/mas/resources/docs/Complaint_Apparent_Violation_Form_8429.docx.

This allows complainants and SWA staff assisting complainants to access the electronic version for downloading, faxing, or e-mailing to SWAs for review and processing.

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.

Efforts are continually underway to identify duplication. To the best of the agency's knowledge, none of the information recorded on ETA Form 5148 is duplicative of any other information collected anywhere else. This ICR eliminates language relating to the "compensation approved by the civil service classification system" at 20 CFR 653.108 (c) and the affirmative action language at 20 CFR 653.111. Accordingly, ETA is proposing to delete the same affirmative action language from the ETA Form 5148. These changes are not expected to affect the burden to the states.

To the best of the agency's knowledge, none of the information recorded on the Complaint/Apparent Violation Form, ETA Form 8429, is duplicative of any other information that is already captured by the SWAs. No changes were made to the 8429 as approved by OMB on December 21, 2019.

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

There is no impact to small businesses or other small entities.

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.

If data were not collected quarterly, SWAs and DOL would not comply with Federal regulations at 20 CFR 653.100 *et. seq.*

The public needs an instrument to file Employment Service complaints with the SWAs. Also, SWAs would not be in compliance with 20 CFR 658 Subpart E.

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.

There are no special circumstances concerning the information collection process.

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 is being provided 30 days to comment on the information collections contained in this proposed rule directly to OMB. The Department will address comments directed to either the agency or OMB in an ICR to be submitted at the final rule.

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

There is no payment or gift to respondents.

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

There is no assurance of confidentiality of the information collected. There are no individuals identifiers on the report submitted to the National Office.

Pursuant to 20 CFR 658.411(a)(3), the following language is on the ETA Form 8429, “the identity of the complainant(s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint must be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint.”

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.

There are no questions of a sensitive nature.

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

a. ETA Form 8429

From PY 2013 to PY 2016, 3,082 complaints were filed on average per year. We estimate that it takes a complainant 30 minutes to complete the ETA Form 8429 and two hours for the SWA to process the complaint.

*Not all complaints that are logged utilize the Complaint/Apparent Violation Form, ETA Form 8429. The SWAs are only required to use this form for Employment Service and Employment-related law complaints (as defined at 20 CFR 651.10).

b. ETA Form 5148

Estimates of the following burden hours for the collection of information were derived after consultations with State Monitor Advocates (SMA) who are closely involved with these activities. SMAs have determined from years of experience that they spend 4.43 hours quarterly doing the recordkeeping involved for ETA Form 5148, and one hour quarterly for the reporting.

Any differences in ROCIS are due to rounding off to whole numbers.

Total burden hours for ETA Form 5148 and ETA Form 8429

Estimated total Burden Hours for ETA Form 5148 = 1,108 (904 + 204)
Estimated total Burden Hours for ETA Form 8429 = 7,705 (1,541 + 6,164)

Estimated total for both: **1,108 + 7,705= 8,813**

The following table is used as a guide to calculate the total burden of an information collection:

Activity	Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Time Per Response (in hours)	Total Burden Hours	Hourly Wage Rate*	Total Cost Burden
ETA Form 8429, Third Party Disclosure	3,082	1	3,082	.50	1,541	\$41.07	\$63,289
ETA Form 8429, Reporting	3082	1	3,082	2	6,164	\$41.07	\$253,155
<i>Form Subtotal</i>	<i>3,082</i>	<i>--</i>	<i>6,164</i>	<i>--</i>	<i>7,705</i>	<i>\$41.07</i>	<i>\$316,444</i>
ETA Form 5148, Record Keeping	51	4	204	3.43	700	\$41.07	\$37,127
ETA Form 5148, Reporting	51	4	204	1	204	\$ 41.07	\$8,378
<i>Form Subtotal</i>	<i>51</i>	<i>4</i>	<i>204</i>	<i>4.43</i>	<i>904</i>	<i>\$41.07</i>	<i>\$45,505</i>
<i>Unduplicated Totals</i>	<i>3082</i>	<i>--</i>	<i>6,572</i>	<i>--</i>	<i>8,813</i>	<i>\$41.07</i>	<i>\$361,949</i>

SMA's and SWA's are estimated at the average hourly pay level of GS 13 step 5, or \$41.07.
[\(https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/\)](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/)

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information.

There are no annual reporting and recordkeeping cost burdens under this collection.

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.

Based on the basic hourly rate of Regional Monitor Advocates at the GS-13 step 5 level in each region (computed for GS-13 step 5, \$40.50 in 2017), who spend approximately 40 hours or 40 x \$40.50 (\$1,620) per year to review ETA Form 5148, the average Federal cost of \$1,620 x 6 regions = \$9,720. (<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2017/general-schedule/>)

Based on the basic hourly rate of the National Monitor Advocate at the GS-14 step 5 level (computed for GS-14 step 5, \$66.13 in 2018), who spends approximately 80 hours or 80 x \$66.13 (\$5,290) per year to review ETA Form 5148. (<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2017/general-schedule/>).

Regional cost burden = \$9,720

National cost burden = \$5,290

Total Federal burden (\$9,720 + \$5,290) = \$15,010

In the past few years, no complaints have been handled at the Federal level. Therefore, there is no cost to the Federal government in the processing of the complaint forms.

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

The annual burden for this ICR does not change from the one approved on 12/21/2019.

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.

There are no plans to publish this data at this time.

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 control number and expiration date on the forms.

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

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methodologies.