

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

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SUPPORTING STATEMENT
APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION
OMB Control No. 1205-0015

A. Justification

The Department of Labor (DOL or the Department) is seeking a 3-year extension, without change, of the Application for Alien Employment Certification, Form ETA-750A and Form ETA-750B (OMB Control Number 1205-0015). The current validity period to conduct information collection activities under OMB Control Number 1205-0015 expires on August 31, 2020.

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.

This information collection is required by sections 203(b)(2)(B)(i) and 212(a)(5)(A) of the Immigration and Nationality Act (INA), (8 U.S.C. §§ 1153(b)(2)(B)(i) and § 1182(a)(5)(A)), and 8 CFR 204.5(k)(4)(ii), 8 CFR 214.2(h)(5) and (6), and 20 CFR 655 subparts A, B, and C.

The Secretary of Labor (Secretary) must certify that an alien seeking to enter the United States, permanently, to perform skilled or unskilled labor under an employment-based visa, will not adversely affect the wages and working conditions of U.S. workers similarly employed. The Secretary must also certify that there are not sufficient U.S. workers able, willing, qualified, and available at the time of application. *See* INA § 212(a)(5)(A). Before an employer petitions for any skilled or unskilled alien worker under this section, it must request certification from the Secretary. Under limited circumstances, a foreign national without an employer sponsor may apply for a waiver of the job offer requirement with the Department of Homeland Security (DHS), as provided in INA § 203(b)(2)(B)(i), on the grounds of national interest, which allows aliens to self-petition and, when eligible, seek admission into the United States without a labor certification.

DOL's Office of Foreign Labor Certification (OFLC) relies on Form ETA-750, part A, *Application for Alien Employment Certification* (Form ETA-750, part A) (OMB Control Number 1205-0015) to process certain applications for permanent employment certification. Form ETA-750, part A collects information that, when all requirements are met, permits OFLC to certify that the admission of a foreign professional athlete meets the requirements of Section 212(a)(5)(A), which deals specifically with professional athletes coming to the United States on a permanent basis as immigrants.

Through Form ETA-750, part B, DOL collects detailed information about a professional athlete's education and work history, on whose behalf an employer submits an application for permanent labor certification. The regulations at 8 CFR 204.5(k)(4)(ii) require foreign

nationals applying for a National Interest Waiver (NIW) of the job offer requirement, under INA § 203(b)(2)(B)(i), to file Form ETA-750, part B with DHS.

Authority: Sections 203(b)(2)(B)(i) and 212(a)(5)(A) of the Immigration and Nationality Act (INA); (8 U.S.C. § 1153(b)(2)(B)(i) and § 1182(a)(5)(A)); 8 CFR 204.5(k)(4)(ii).

8 USC § 1182. Inadmissible aliens

(A) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(5) LABOR CERTIFICATION AND QUALIFICATIONS FOR CERTAIN IMMIGRANTS

(A) LABOR CERTIFICATION

(i) IN GENERAL

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

...

(iii) PROFESSIONAL ATHLETES

(I) IN GENERAL

A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for the certification.

(II) “PROFESSIONAL ATHLETE” DEFINED

For purposes of subclause (I), the term “professional athlete” means an individual who is employed as an athlete by—

(aa) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(bb) any minor league team that is affiliated with such an association....

(D) APPLICATION OF GROUNDS

The grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 1153(b) of this title.

8 USC § 1153. Allocation of immigrant visas

(B) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS

Aliens subject to the worldwide level specified in section 1151(d) of this title for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(2) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ALIENS OF EXCEPTIONAL ABILITY....

(B) WAIVER OF JOB OFFER

(i) NATIONAL INTEREST WAIVER

Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

8 CFR § 204.5 Petitions for employment-based immigrants:

(k) *Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability....*

(4) *Labor certification or evidence that alien qualifies for Labor Market Information Pilot Program—....*

(ii) *Exemption from job offer.* The director may exempt the requirement of a job offer, and thus of a labor certification, for aliens of exceptional ability in the sciences, arts, or business if exemption would be in the national interest. To apply for the exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate, as well as evidence to support the claim that such exemption would be in the national interest.

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.

To meet its statutory and regulatory responsibilities under the INA, DOL needs to extend this IC covered under OMB Control Number 1205-0015. The information collected through Form ETA-750, part A and ETA-750, part B, allows DOL to process applications for permanent labor certification filed by employers seeking to hire foreign professional athletes on a permanent-basis. These forms are currently used not only by DOL, but also by DHS in furtherance of meeting the requirements of the INA. DOL uses the information collected to implement its permanent certification program for professional athletes. DHS's U.S. Citizenship and Immigration Services (USCIS) uses Form ETA-750, part B for the NIW program for employment-based immigration. DHS reviews the information regarding the alien's background and experience to determine whether an NIW is appropriate.

Employers or other individuals wishing to use one of the above-mentioned programs complete and file the applicable “part(s)” of Form ETA-750 and submit it/them to the appropriate office of DOL (i.e., OFLC) or DHS (i.e., USCIS), as applicable. Employers wishing to hire foreign professional athletes on a permanent basis must submit parts A and B to OFLC. Individuals applying for an NIW must submit part B directly to USCIS with their application.

The Department and DHS will review the applications to make sure they are properly signed and completed and are not, on their face, inconsistent with the documentation submitted in support of the application.

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.

In compliance with the Government Paperwork Elimination Act, these forms are available via the Internet and are fillable online through ETA’s home page at https://foreignlaborcert.doleta.gov/pdf/ETA-Form_750-PartA_508_Compliant.pdf and https://foreignlaborcert.doleta.gov/pdf/ETA-Form_750-PartB_508_Compliant.pdf. The Department receives a low volume of requests for labor certifications filed using Form ETA-750, part A; this low volume of applications does not render online filing an economically viable option.

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 covered under OMB Control Number 1205-0015 are sufficiently specific to avoid duplication of information collection activities.

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

The information collection is required of small businesses that seek to hire foreign professional athletes on a permanent-basis, and must file applications for permanent employment certification with the Department. However, the recordkeeping requirements largely involve information that already exists in payroll and other records kept by most employers for other purposes.

The Department has considered the memorandum issued to all heads of departments and agencies by the Office of Management and Budget on June 22, 2012 about Reducing Reporting and Paperwork Burdens. The Department has determined that it cannot make any exemptions for small entities (including small businesses) or streamline these forms, because the statute and regulations require employers of foreign athletes and NIW workers to provide the necessary information and make the required attestations. The collection of information is not disproportionately burdensome for small entities as compared to large ones as the forms are easy to understand and provide all of the necessary attestation, so that the public does not need to find

the appropriate information to know how to obtain permanent employment labor certification. The forms collect only the minimum information that is required by law to process the applications and gather the necessary information for administration of the program. The option of an electronically filed form is also not feasible in this program because only a small percentage of applications using these forms are submitted each year, making it economically prohibitive to spend taxpayer money to enable electronic filing. The forms collect email addresses to enhance electronic communication, which reduce the burdens on respondents and increase efficiency.

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.

DOL would be unable to meet its statutory and regulatory mandates if this information were not collected. DOL must collect this information to be able to determine whether a foreign professional athlete meets the criteria to be issued a labor certification and whether the employment of the foreign professional athlete will adversely affect the wages or working conditions of U.S. workers. DHS needs the information on Form ETA-750, part B, to determine the qualifications of an applicant for an NIW.

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.

- * Requiring respondents to report information to the agency more often than quarterly;***
- * Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;***
- * Requiring respondents to submit more than an original and two copies of any document;***
- * Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;***
- * In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;***
- * Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;***
- * That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or***
- * Requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.***

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 Department provided the public with 60 days to comment on the extension of this information collection through a notice published in the *Federal Register* on April 2, 2020. See 85 FR 18589. The Department received one non substantive comment. The commenter called for the Department to “shut down” this program for reasons ranging from the program resulting in “slave” labor to creating an even richer class. Additionally, the commenter requested the government “shut down” this program because allegedly the program allows for foreign labor to lower American wages, displace American workers, and create a culture by which corporations can underpay workers while making large profits. This comment is beyond the scope of this form collection. See *id.* Also, the public will be allowed an additional 30 days to comment in response to a *Federal Register* Notice.

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.

The information collected is not confidential. This information collection is covered under the following System of Records Notice (SORN): DOL-ETA-7, Employer Application and Attestation File for Permanent and Temporary Alien Workers (67 FR 16897).

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.

- * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- * Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under “Annual Cost to Federal Government.”**

DOL is reporting that approximately 9,558 submissions/responses will be submitted, on an annual-basis, to DOL and to DHS, combined—specifically, approximately 86.6 applications to ETA and approximately 6,643 to DHS for the National Interest Waiver program.¹

The public reporting burden for the collection of information, which includes the supporting documentation such as press clippings of the athletes, sports team contracts, off-season employment letter, and notice of filing, is estimated to average: (1) athlete applications filed with DOL (both parts A and B)—2.8 hours per response where part A consists of 1.0 reporting hour and part B consists of 1.8 reporting hours; and (2) NIW applications filed with USCIS (part B only)—1.8 hours per response. These estimates include the time for reviewing instructions, searching existing information/data sources, gathering and maintaining information, completing and reviewing the application, and providing notice of the filing.

The overall hours needed for each respondent to provide the required information:

Permanent, Athletes	87	x	2.8 hours	=	\$16,221.12
Permanent, NIW	9,558	x	1.8 hours	=	\$1,143,748.51
				=====	
Total Annual Respondent Hourly Reporting Costs					\$1,159,969.63

¹ The number of filings with DOL for Form ETA-750 parts A and B has steadily increased. In Fiscal Year (FY) 2017, 53 Form ETA-750, parts A and B, were filed with ETA; in FY 2018, 96 applications were filed with ETA; and in FY 2019, 102 applications were filed with ETA. For purposes of Form ETA-750 filings with ETA, an “application” refers to the filing of parts A and B together. In FY 2017, 7,810 –Form ETA-750, part B, applications were filed with DHS; in FY 2018, 8,343 applications were filed with DHS; in FY 2019, 12,522 applications were filed with DHS. For purposes of DHS, an “application” refers to the filing of part B, and some applications or petitions approved or denied may have been received in previous reporting periods.

The Department of Labor receives ETA-750 forms (parts A and B) filed by employers. DHS receives only part B, and those are filed by foreign nationals, sponsoring employers, or appropriate third parties. For purposes of calculating the cost of completing the form, the Department is using the same hourly estimate for employers and foreign nationals.

Each individual employer that files an application may have a salary range that could be from several hundred dollars to several hundred thousand dollars for a Chief Executive Officer of a business. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required under this OMB Control Number may vary, but the Department believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, the Department used the national cross-industry mean hourly wage rate for a Human Resources Manager (\$46.49), based on the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics survey wage data and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of \$66.48. This figure was multiplied by the total hourly annual burden for the information collections under this OMB Control Number to arrive at total annual respondent hourly costs for all information collections under this request. The total annual respondent hourly costs are estimated as follows:

Total annual respondent hourly reporting costs for the Form ETA-750, parts A and B are 17,448 hours x \$66.48 = \$1,159,969.63.

Forms	Number of Respondents	Frequency	Total Annual Responses	Time Per Response (Hours)	Total Annual Burden (Hours)	Hourly Rate*	Monetized Value of Respondent Time
ETA Form 750, part A	87	1	87	2.8	244	\$66.48	\$16,221.12
ETA Form 750, part B	9,558	1	9,558	1.8	17,204	\$66.48	\$1,143,748.51
Unduplicated Totals	9,645		9,645		17,448		\$1,159,969.63

* Bureau of Labor Statistics. U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics_May 2017, *Financial Analysts*: <https://www.bls.gov/oes/current/oes113121.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).

*** The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and**

start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- * If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- * Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

1. Start-up/capital costs: There are no start-up costs.
2. Annual costs: There are no annual costs to respondents.

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.

OFLC estimates that its staff spend the following time each year reviewing applications filed on Form ETA-750 to ensure compliance with the regulations. OFLC relies on the same wage hourly rate to estimate DHS’s staffing annual costs. OFLC currently estimates the annual Federal government costs, associated with this information collection, to be \$3,337,468.56. The estimated costs have been calculated as follows:

Activity	Position-Location	Hrs. Per Application	² Hourly Rate ²	³ Factor for Benefits & Overhead ³	Cost Per Application
Reviewing Form ETA-750:	GS-12/3	2.5	\$40.09	1.63	\$163.37
	Clerical Contractor	1.0	\$29.67***	N/A	\$29.67
Total Cost per Application:					\$193.04

*** Data obtained using 2019 clerical GS level rate as an example of clerical contractor located at: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/ATL_h.pdf.

Cost per Application	Annual Applications	Estimated Annual Costs
\$193.04	17,289	\$3,337,468.56

²

³ Hourly rates are based on the FY 2019 GS pay schedule for Atlanta, Georgia, where the pertinent OFLC staff are located.

³ The hourly rate is multiplied by a factor of 1.63 to account for employee benefits and proportional operating costs.

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

Although the time to complete Form ETA-750, parts A and B, remained the same, the annual burden for these information collection tools increased from 12,103 annual burden hours, as it was last reported in December 2017 (date of previous ICR approval) to 17,448 annual burden hours; an increase of 5,343.88 annual burden hours over ETA's previous estimate. The increase can be attributed to a steady increase of Form ETA-750, part B applications submitted to DHS.

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 on Form ETA-750, parts A and B will not be published.

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 will display 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.

B. Collection of Information Employing Statistical Methods

This information collection does not employ statistical methods.