

**SUPPORTING STATEMENT
EMPLOYMENT INFORMATION
FORMS WH-3 AND WH-3 SP**

This Information Collection Request (ICR) was most recently submitted to the Office of Management and Budget (OMB) on July 1, 2020 in conjunction with an interim final rule (IFR), High-Wage Components of the Labor Value Content Requirements under the United States-Mexico-Canada Agreement Implementation Act (85 FR 39782). The ICR was submitted as a nonsubstantive change request to add the reference for the new requirements under the IFR. The ICR is now being submitted in conjunction with the publication of a notice of proposed rulemaking (NPRM) related to Executive Order 14026. On April 27, 2021, President Joseph R. Biden Jr. signed Executive Order 14026, "Increasing the Minimum Wage for Federal Contractors." 86 FR 22835. The Department is also adding the reference to the proposed rule allowing complaints to be taken for the regulations administering this E.O. under 29 CFR part 23.

This ICR is also being submitted for revision to the ICR to delete the burdens associated with the Payroll Audit Independent Determination (PAID). The U.S. Department of Labor's (Department) Wage and Hour Division (WHD) has discontinued the program.

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

This information collection provides a method for WHD to obtain information from complainants regarding alleged violations of the labor standards the agency administers and enforces. The law of most general application regarding wages and hours of work is the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et. seq.* FLSA section 11(a) provides that the Secretary of Labor may investigate and gather data regarding the wages, hours, or other conditions and practices of employment in any industry subject to the FLSA, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters deemed necessary or appropriate to determine whether any person has violated any provision of the FLSA. 29 U.S.C. § 211(a).

Other federal laws the WHD administers provide similar authority. These Acts include the Walsh-Healey Public Contracts Act (41 U.S.C. § 38); McNamara-O'Hara Service Contract Act (41 U.S.C. § 353(a)); Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*, pursuant to Reorganization Plan No. 14 of 1950, and Related Acts); Consumer Credit Protection Act (15 U.S.C. § 1676); Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. § 1862(a)); Employee Polygraph Protection Act (29 U.S.C. § 2004(a)(3)); Family and Medical Leave Act (29 U.S.C. § 2616(a)); Immigration and Nationality Act H-2A program (8 U.S.C. § 1188(g)); the Immigration and Nationality Act H-2B program (8 U.S.C. 1184(c)(14)(B) and the Immigration and Nationality Act H-1C program (8 U.S.C.

§ 1182(m)(2)(E)(ii)). The regulatory provisions authorizing the filing of complaints under these laws and how the agency acts upon the concerns can be found at 29 CFR 4.191, 5.6, 10.41, 500.1(e), 501.1(c), 501.5, 801.7(a)(3), 825.401; 41 CFR 50-201.1202; and 20 CFR 655.1200(b). The Department also takes complaints and enforces regulations promulgated in relation to Executive Order 13658, Establishing a Minimum Wage for Contractors (see 29 CFR part 10) and Executive Order 13706, Paid Sick Leave for Establishing Paid Sick Leave for Federal Contractors (see 29 CFR part 13).

On April 27, 2021, President Joseph R. Biden Jr. signed Executive Order 14026, “Increasing the Minimum Wage for Federal Contractors.” 86 FR 22835. Executive Order 14206 states that the Federal Government’s procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. Id. Executive Order 14026 therefore seeks to promote economy and efficiency in federal procurement by raising the hourly minimum wage paid by those contractors to workers performing work on or in connection with covered federal contracts to (i) \$15.00 per hour, beginning January 30, 2022; and (ii) beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary in accordance with the Executive Order. Id. The Department also will take complaints and enforce regulations promulgated in relation to Executive Order 14026, (See 29 CFR part 23).

The Department takes complaints as part of conducting an administrative action or investigation specific to individuals or entities as part of its enforcement mission with respect to the laws cited. Such actions meet the Paperwork Reduction Act (PRA) exemption found in 5 CFR 1320.4. However, the Department submits this collection in response to circumstances similar to Hurricane Katrina, when cell phone service and computer connections were disrupted. A paper WH-3 form allows the agency to perform its mission without respect to power outages and/or disruptions in a particular part of the United States.

From April 2018 to January 2021, WHD administered an enforcement program known as Payroll Audit Independent Determination (PAID). Under the PAID program, employers were encouraged to conduct self-audits and, if they discovered practices that resulted in a failure to pay minimum wage or overtime correctly, to self-report, correct the non-compliant practice, and pay back wages owed to employees. WHD discontinued the PAID program on January 29, 2021.

- 2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. For revisions, extensions, and reinstatements of a currently approved collection, indicate the actual use the agency has made of the information received from the current collection.**

WHD staff use Form WH-3 as a guide for obtaining optional information from complainants (e.g., current and former employees, unions, and competitor employers) about alleged employer violations of the labor standards provisions of the above-cited

Acts. Complainants generally provide the optional information requested on the form to WHD staff over the telephone or in-person. Where the information provided does not support a potential WHD enforcement action, complainants are advised and referred to the appropriate agency, if any, for further assistance. When WHD schedules a complaint-based investigation, the agency makes the completed Form WH-3 part of the investigation case file. The form is printed in both English and Spanish.

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.

The Department has considered developing an automated complaint system or making Form WH-3 available on the Internet and determined it would have a negative effect on the ability of WHD to provide quality, timely service to potential complainants and be impractical to implement. The ability to screen complaints during the intake process is critical to effectively meeting the potential complainants' needs. Experience shows that well over half of the potential complainants contacting the WHD complain of problems that the WHD cannot resolve for a variety of reasons. These reasons include lack of a federal Wage Hour law covering the complaint, an employer not covered by federal Wage Hour laws, an employee exempt from otherwise applicable Wage Hour law provisions, violation(s) past the statute of limitations for WHD action, or the issues involved are better serviced by another federal or state agency.

Making the Form WH-3 available on the Internet and allowing submission of forms completed without WHD consultation would generate tens of thousands of complaints filed in the erroneous belief that WHD can help with a problem outside of WHD jurisdiction. These non-actionable complaints will require extensive WHD follow-up to secure additional information, or notification of complainants that they should have contacted another federal or state agency, or that WHD is unable to assist them with their problem. These individuals are better and more timely served through an initial, personal (by phone or in-person) consultation with the WHD. Potential complainants are encouraged to call WHD using a toll-free number, visit the nearest WHD office, or consult virtually all WHD compliance assistance materials, web site programs, and guides.

Implementation of an automated complaint system using the WH-3 would be impractical given available technology and agency resources. An automated system would greatly decrease the quality of customer service provided to potential complainants while increasing the burden on the public (i.e., providing information when the WHD can provide no assistance).

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

This information collection does not duplicate existing WHD requirements. No similar information is available from any other source, since the WHD has enforcement authority over the various labor standards laws previously identified. A separate statutorily mandated information collection, OMB Control No. 1205-0310, covers the filing of complaints under the H-1B program of the Immigration and Nationality Act, and this information collection does not duplicate that data.

5. If the collection of information has a significant impact on a substantial number of small businesses or other small entities describe the methods used to minimize burden.

While this information collection does not have a significant economic impact on a substantial number of small entities, it infrequently involves small businesses, as in the case of competitor complaints. Form WH-3 provides an easy way for the WHD to obtain the information necessary to determine whether it is likely that a violation of the law has occurred and to schedule an investigation.

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.

Respondents are asked to provide information relevant to this information collection only when they seek WHD assistance in addressing one or more alleged violation(s) of labor standards. Consequently, there is no way to request the information less frequently and still collect it. Complaints provide the basis for the overwhelming majority of WHD compliance actions, and the agency would lose an efficient and reliable tool for assessing violations were there no means to obtain information from complainants.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **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.**

There are no special circumstances involved in this information collection with respect to the Employment Information Form, WH-3.

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 record-keeping, disclosure, or reporting format (of 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.

The Department intends to publish in the Federal Register a notice to invite public comments about the NPRM implementing Executive Order 14026 and its associated paperwork requirements. The NPRM concurrently seeks comments about the rulemaking's effect on information collections and invites comments to both the OMB and to the Department. The Department will address any comments on the information collections in an ICR associated with the final rule.

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

The Department offers no payments or gifts to respondents.

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

The Department gives an assurance of confidentiality on the form, which provides that the agency will keep the respondent's identity confidential to the maximum extent possible under existing law. Information gathered during the course of an investigation of a complaint is disclosed only 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 attendant regulations, 29 CFR parts 70 and 71. The FOIA provides an exception from its disclosure requirements for records or information compiled for law enforcement purposes to the extent that release of the information could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis. 5 U.S.C. § 552(b)(7)(D).

- 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.**

These information collections ask no sensitive questions.

- 12. Provide estimates of hour burden of the collection. The statement should:**

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 in Item 13.

The currently approved collection indicates that WHD estimates it annually receives about 38,075 complaints via the WH-3 form.

As a consequence of this NPRM, the Department estimates that WHD may receive an additional 165 complaints per year via the WH-3 form. Consistent with prior assumptions used to calculate information collection burdens in this ICR, this figure was calculated by multiplying the total number of affected workers in the NPRM's Regulatory Impact Analysis (330,200) by 0.05 percent.

38,075 currently approved + 165 estimated new complaints from NPRM = 38,240 Respondents.

Each respondent files a complaint one time for 38,240 responses.

The estimated time for filing a complaint with WHD is 20 minutes.

$38,240 \times 20 \text{ min per} = 764,800 \text{ minutes}$

$764,800 \text{ minutes} \div 60 \text{ min per hour} = 12,747 \text{ burden hours.}$

Of this amount, the 165 complaints would add approximately 55 hours of additional burden (165 complaints \times 20 minutes = 3,300 minutes/60 min per hour = 55 burden hours). This is the new burden associated with the NPRM.

Total Respondents and Responses 38,240

Total burden hours 12,747

The Department has used the April 2021 average hourly rate for production or nonsupervisory workers on nonfarm payrolls of \$25.45 to determine respondent costs. (See The Employment Situation, April 2021, Table B-8, (loaded into ROCIS as a supplementary document.)

The Department adds 46% benefits cost (\$11.70) and 17% overhead cost (\$4.32) to the base rate. This makes total loaded wage rate of \$41.47. The Department estimates total monetized value of the burden hours to be \$528,619 (rounded) ($\$41.47 \times 12,747 \text{ hours}$).

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 shown in Items 12 and 14).**
- **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.**

Because the WHD orally obtains the relevant information from the complainant and fills out the Form WH-3, complainants incur no costs, other than the value of their time, in filing a complaint. *See* Item 12.

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.

The information collected to file a complaint is almost always taken via phone and entered directly into the WHISARD case tracking system that WHD uses. However, on occasion, a paper form is used when the e-system is unavailable or in the case of emergency, such as during Natural Disasters, where investigators would be in the field collecting the data.

A GS-11, step 4 Investigator needs approximately 20 minutes to complete a Form WH-3 for the initial screening of the complaint, incurring a cost of \$434,418 (rounded). 38,240 forms (online and paper) × 20 minutes × \$34.08 per hour (GS-11, step 4, Rest of U.S). *See Salary Table 2021*, Office of Personnel Management. This is uploaded into ROCIS as a supplementary document.

38,240 forms × 20 minutes = 12,747 hours

12,747 hours × \$34.08 per hour = \$434,418 (rounded).

Approximately 25,000 responses require additional evaluation. In those cases, a GS-13, step 4 supervisor needs about 15 minutes to analyze each to determine whether a potential violation of the law exists, producing a cost of \$303,563 (rounded).

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25,000 forms × 15 minutes = 375,000 minutes
375,000 minutes ÷ 60 min per hour = 6,250 hours

6,250 hours × \$48.57 = \$303,563
6,250 × \$48.57 per hour (GS-13, step 4, Rest of U.S). *Id.*

Total Estimated Annualized Federal Costs (WH-3) = \$737,981 (\$434,418 + \$303,563).

15. Reasons for Program Changes or Adjustments Affecting Public Burdens the reasons for any program changes or adjustments reported in Items 13 or 14.

The Department estimates a slight increase in burden, as the number of affected workers from the NPRM will potentially increase the number of complaints that the Department will receive.

16. For collections of information whose results are planned to 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 Department does not publish the results of this information collection.

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

The Department does not seek an exception to the requirement to display the expiration date on this information collection.

18.Explain each exception to the certification statement, “Certification for Paperwork Reduction Act Submissions.”

The Department is not requesting an exception to any of the certification requirements for this information collection. This request complies with 5 CFR 1320.9.

B. Employing Statistical Methods

Not applicable.