

**SUPPORTING STATEMENT FOR  
H-2 Petitioner's Employment-Related or Fee-Related Notification  
OMB Control No.: 1615-0107  
COLLECTION INSTRUMENT(S): No Form**

**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.**

(a) Employment-related Notification:

USCIS requires H-2 petitioners to notify USCIS when (1) a worker fails to report to work within 5 workdays of the employment start date listed on the petition; (2) the labor or services for which H-2 workers were hired is completed more than 30 days early; (3) a worker absconds from the worksite (leaves without notice); or (4) a worker is terminated prior to the completion of the labor or services for which he or she was hired. The notification requirement is necessary to ensure that H-2 workers maintain their nonimmigrant status and helps prevent H-2 workers from engaging in unauthorized employment.

**Authority:** Section 214(c)(1) of the Immigration and Nationality Act (Act) (8 U.S.C. 1184(c)(1)), 8 CFR 214.2(h)(5)(vi), 8 CFR 214.2(h)(6)(i)(F).

(a) Fee-related Notification:

USCIS will deny or revoke (on notice) an H-2 petition if it is determined that the petitioner has collected, or entered into an agreement to collect, a fee or compensation from a noncitizen H-2 worker in connection with obtaining the H-2 employment, or that the petitioner knew or reasonably should have known that the beneficiary paid or agreed to pay any facilitator, recruiter, or similar employment service in connection with obtaining the H-2 employment. However, a petitioner who discovers, after filing a petition for an H-2 worker, that the worker paid or agreed to pay a prohibited fee can avoid denial or revocation by notifying USCIS within 2 work days of discovering this information, in addition to other requirements. USCIS will not deny or revoke an H-2 petition if the petitioner demonstrates that the petitioner or agent, facilitator, recruiter or similar employment service reimbursed the beneficiary in full, or if the petitioner demonstrates that the parties terminated any agreement to pay before the beneficiary paid the fees or compensation.

**Authority:** Section 214(c)(1) of Act (8 U.S.C. 1184(c)(1)) 8 CFR 214.2(h)(5)(xi)(A)(4), 8 CFR 214.2(h)(6)(i)(B)(4).

- 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.**

(a) Employment-related Notification:

The information collected in employment-related notification submitted by H-2 petitioners is used by USCIS, U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). USCIS may forward relevant information to both ICE and CBP. ICE uses the information for future adjudicative purposes and CBP uses it to collect all liquidated damage payments from H-2 petitioners. Establishing compliance with this notification requirement is also a condition of H-2A petitioners being able to request substitutions for H-2A workers who have been admitted to the U.S according to 8 CFR 214.2(h)(5)(ix).

(a) Fee-related Notification:

The information collected in fee-related notifications submitted by H-2 petitioners is used by USCIS for its own future adjudicative purposes. Information from fee-related notifications is not shared with ICE or CBP.

There is no form for this information collection. However, USCIS does require certain information to be submitted with a notification. The unique information required for each type of notification is posted to the USCIS website on the H-2A Temporary Agricultural Workers webpage and the H-2B Temporary Non-Agricultural Workers webpage.

- 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.**

Respondents may submit notifications by postal mail or by email to the addresses designated by USCIS for this purpose.

- 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.**

A review of USCIS inventory revealed no duplication of effort, and there is no other similar information collection currently available which can be used for this purpose.

- 5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

This collection of information has an impact on small businesses or other small entities. . . . . To minimize the burden on impacted small businesses or entities, USCIS provides the option of submitting a notification by either postal mail or email. The

information collection requests the minimum data needed to determine the type of notification being made, the reason for the notification, and the petitioners, employers, and beneficiary/ies to whom the notification pertains. . . .

**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 the information is not collected, USCIS, ICE, and CBP will not be able to uphold the statutory conditions of the H-2 visa classifications. The employment-related notification process helps identify H-2 workers who may be subject to visa overstays and unauthorized employment. The fee-related notification process helps protect H-2 workers and the integrity of the H-2 programs from abuse by employers and the foreign labor recruiters working on their behalf.

**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 secret, 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.**

This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

- 8. If applicable, provide a copy and identify the data 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.**

On September 20, 2021, USCIS published a 60-day notice in the Federal Register at 86 FR 52167. USCIS received two comments after publishing that notice. USCIS published the subject notice to request public comments on the extension of the current approval without any changes to the information being collected. USCIS did not propose to revise the H-2 notification system in this change. One commenter expressed an opinion on immigration issues generally. USCIS is making no changes to the form or instructions as a result of this comment. The second commenter made recommendations that USCIS planned to consider in a future action to revise this information collection. The comments did not result in changes to the information collection for the 60-day notice. The commenter submitted the recommendations again during the 30-day notice comment period and after further review, as noted below, a recommendation was adopted.

On December 29, 2021, USCIS published a 30-day notice in the Federal Register at 86 FR 74098. USCIS received two comments after publishing that notice. USCIS published the subject notice to request public comments on the extension of the current approval without any changes to the information being collected. USCIS did not propose to revise the H-2 notification system in this change. One commenter expressed an opinion on immigration issues generally. USCIS is making no changes to the form or instructions as a result of this comment.

The second commenter reiterated comments made at the 60-day notice stage, and made recommendations that USCIS should revise the notification requirements "to minimize the chances that H-2 employment-related reports will be used to retaliate against workers who have exercised their rights or to coerce them into remaining in an abusive or

exploitative working environment.” The commenter also challenged the utility of the reporting requirement and asserted that the USCIS has underestimated the burden associated with this reporting requirement. The commenter also suggested that workers should have an opportunity to respond to the reports. Many of the suggestions made by this commenter go to the existing regulatory requirement and touch upon broader costs and benefits of same and suggest broader reforms that go beyond this information collection and may require notice and comment rulemaking to accomplish. The statements about the burden associated with the notification requirement go beyond the paperwork burden USCIS is required to assess under the Paperwork Reduction Act including downstream impacts of the regulatory reporting requirements.

In addition, the second commenter recommended that USCIS create a standardized form for this information collection to address, among other things, concerns that some employers would misrepresent to their workers the scope and intent of the existing reporting requirement. USCIS acknowledges this concern and while USCIS will not create a standardized form, it has added the following note to two sections of the USCIS notification instructions webpage. “H-2B Temporary Non-Agricultural Workers Employment-Related Notifications to USCIS” found at <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers> and “H-2A Temporary Agricultural Workers” found at <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers>:

“Employers are reminded of their responsibility to ensure compliance with all laws and regulations, including those prohibiting unfair labor practices and harassment. In this regard, DHS regulations provide specific bases for reporting, and do not constitute a *per se* basis for a finding of fault on the part of the worker(s), and employers should not imply otherwise to their workers.”

The above statement will not result in any data collection or other burdens on petitioners, but is merely a clarification necessary to address the commenter’s valid concern that certain H-2A employers are using the reporting requirement to directly or coerce their workers to endure workplace abuse by intentionally misleading their workers into believing that such regulatorily mandated reporting to DHS will *per se* result – contrary to DHS regulations – in adverse immigration consequences for the abused workers. This additional language is both necessary and consistent with carrying out the Secretary of Homeland Security’s priority, as set forth in his memorandum of October 12, 2021, to provide protection to H-2 workers from abuse. See [https://www.dhs.gov/sites/default/files/publications/memo\\_from\\_secretary\\_mayorkas\\_on\\_worksite\\_enforcement.pdf](https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf).

USCIS also made adjustments to the burden estimate for this information collection in response to one of the comments. USCIS plans to consider other suggestions made by the commenter that pertain to the revision of this information collection in connection with a future revision action.

USCIS has also prepared a combined 60 and 30-day comment matrix where it summarizes various recommendations made by commenters and responds to comments in more detail.

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

USCIS does not provide any payment for benefit sought.

**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 for this collection of information.

**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. 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 of OMB Form 83-I.**
- **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 in Item 14.**

		A	B	C (=AxB)	D	E (=CxD)	F	(=ExF)
Type of Respondent	Form Name / Form Number	#. of Respondents*	#. of Responses per Respondent	# of Responses	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate*	Total Annual Respondent Cost
Business or other for-profit	H-2 Petitioner's <b>Employment Related</b> Notification / No Form	3,557	1	3,557	0.5	1,779	\$58.09	\$103,313
Business or other for-profit	H-2 Petitioner's <b>Fee Related</b> Notification / No Form	200	1	200	0.5	100	\$58.09	\$5,809
Total				3,757		1,879		\$109,122

\* The above Average Hourly Wage Rate is the May 2020 Bureau of Labor Statistics average wage for Business and Financial Operations Occupations of \$39.79 times the wage rate benefit multiplier of 1.46 (to account for benefits provided) equaling \$58.09.

\*\* To determine the H-2 Petitioner's Employment Related Notification respondent estimate, USCIS took an average of most recent three years' worth of data available. No new data is available for the H-2 Petitioner's Fee Related Notification.

**13. Provide an estimate of 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 collection 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.**

USCIS estimates a cost of \$5 per respondent to mail the information to USCIS. The total estimated cost to respondents is therefore \$5 postage multiplied by 3,757 responses, which equals \$18,785.

- 14. Provide estimates of annualized cost 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 also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The estimated annual Government cost is  $3,757 \times 1 \times 1 \times \$71.41 = \$268,302$ . The estimated cost of the program to the Government is calculated by multiplying the estimated total number of respondents (3,757) by the number of responses per respondent (1) by one hour (amount of time for a USCIS officer to review and process a notification) by \$71.41 ( $\$51.01 \times 1.4$  multiplier) (the hourly wage of a GS-12, Step 6, federal government employee in Los Angeles, California).

- 15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.**

The increase to the estimated annual hour burden and the estimated annual cost burden to respondents are a result of new agency estimates for the number of H-2 Petitioner's Employment Related Notification respondents for this collection of information. The total estimated number respondents increased from 1,700 to 3,757.



<b>Data collection Activity/Instrument (in hours)</b>	<b>Program Change (hours currently on OMB Inventory)</b>	<b>Program Change (New)</b>	<b>Difference</b>	<b>Adjustment (hours currently on OMB Inventory)</b>	<b>Adjustment (New) [new minus current]</b>	<b>Difference</b>
H-2 Petitioner's <b>Employment Related</b> Notification / No Form				750	1,779	1,029
H-2 Petitioner's <b>Fee Related</b> Notification / No Form				100	100	0
<b>Total(s)</b>				<b>850</b>	<b>1,879</b>	<b>1,029</b>

The increase to the estimated annual hour burden on respondents is a result of new agency estimates for the number of H-2 Petitioner's Employment Related Notification respondents for this collection of information. The total estimated number respondents increased from 1,700 to 3,757, thus increasing the annual hour burden by 1,029 hours. There was no change to the average burden per response estimate.

<b>Data collection Activity/Instrument (in dollars)</b>	<b>Program Change (cost currently on OMB Inventory)</b>	<b>Program Change (New)</b>	<b>Difference</b>	<b>Adjustment (cost currently on OMB Inventory)</b>	<b>Adjustment (New) [new minus current]</b>	<b>Difference</b>
H-2 Petitioner's <b>Employment Related</b> Notification / No Form				\$7,500	\$17,875	\$10,375
H-2 Petitioner's <b>Fee Related</b> Notification / No Form				\$1,000	\$1,000	0
<b>Total(s)</b>				<b>\$8500</b>	<b>\$18,875</b>	<b>\$10,375</b>

The increase to the estimated annual cost burden to respondents is a result of new agency estimates for the number of H-2 Petitioner's Employment Related Notification respondents for this collection of information. The total estimated number respondents increased from 1,700 to 3,757, thus increasing the annual cost burden by \$10,375. There

was no change to the cost per response estimate.

- 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.**

This information collection will not be published for statistical purposes.

- 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.**

USCIS will display the expiration date for OMB approval of this information collection.

- 18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.**

USCIS does not request an exception to the certification of this information collection.

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

There is no statistical methodology involved with this collection.