Responses to 60 and 30-day FRN Public Comments
OMB-49 – Extension
OMB Control Number: 1615-0107

86 FR 52167 (Docket #: USCIS-2009-0015)
Comment Period: 09/20/2021 - 11/19/2021
86 FR 74098 (Docket #: USCIS-2009-0015
Comment Period: 12/29/2021-01/28/2022

USCIS Response
USCIS has created a consolidated comment response matrix for both the 60-Day and 30-Day comment periods.

Commenter TLRA submitted the same substantive comments on the 60-day and 30-day notices. Those comment summaries and responses are being consolidated. TLRA's comment regarding USCIS' compliance with the Paperwork Reduction Act was only included in the comment on the 30-day notice and is being addressed first.

Commenter and comment #	Comment	USCIS Response
Texas RioGrande Legal Aid, Inc. (**TLRA)**	This commenter urged OMB not to approve USCIS' request for the extension of this information collection because the commenter asserted USCIS did not comply with the Paperwork Reduction Act (PRA) regulations which require the agency submitting a request for approval to OMB to provide a summary of public comments on the 60-day notice as well as a list of actions/response in reaction to such comments. The commenter asserted that USCIS failed to do so but only acknowledged receiving two comments in the 30-day notice.	USCIS thanks the commenter for these comments. USCIS believes that the commenter misunderstood how USCIS complies with the Paperwork Reduction Act (PRA). With respect to information collections contained in current rules USCIS complies with the PRA requirement related to public comments by addressing comments on the 60-day and 30-day notices in the Supporting Statement and/or comment matrix that is submitted to Office of Information and Regulatory Affairs (OIRA), and posted on reginfo.gov when USCIS seeks approval of an information collection. Generally, these documents are transmitted to OIRA along with the information collection instrument for which approval is being sought in compliance with the PRA and implementing regulations, as applicable, after the publication of the 30-day notice. The same substantive issues were raised in the two comments received by TRLA on the 60- and 30-day notices, and USCIS is providing consolidated responses in this matrix. USCIS agrees with the commenter that it is required by 5 CFR 1320.5(a)(iii)(F) to provide a summary of public comments received on the 60-day notice and its response/actions in response, but as indicated above, this

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		information is only made public after the information collection is submitted to OIRA for approval. The summaries required are contained in this matrix document.
Texas RioGrande Legal Aid, Inc. (**TLRA)**	This comment is addressed to what the comment request refers to as "employment-related notifications," i.e., the requirements in 8 C.F.R. § 214.2(h)(5)(vi)(B)(1) and (h)(6)(i)(F) that H-2 employers notify DHS if H-2 workers do not arrive for work or abscond from their jobs, or if their work ends early. As is discussed further below, the notification requirements fail to accomplish USCIS's goal of preventing H-2 workers from engaging in unauthorized work, while creating significant potential for abuse. At a minimum, the information collection process should be revised 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.	Thank you for your comment. USCIS is revising the instructions for this reporting to advise employers that the reporting process should not be used to intimidate workers.
Texas RioGrande Legal Aid, Inc. (**TLRA)**	One commenter noted that USCIS underestimates the burden and overestimates the benefit of this information collection. The commenter called into question the necessity of the reporting requirement and its utility noting that there are legitimate reasons why workers may leave employment that would not have negative consequences on H-2 workers' immigration status (such as when workers depart the United States after their employment ends), or if workers leave abusive work situations. The commenter also noted that the reporting requirement is taxes DHS resources to follow up on reports, and sort through over 1,500 (estimated) reports. The commenter noted that USCIS	Thank you for your comment. USCIS's request for comments on the burden estimate are limited to the burden associated with the collection of information on form OMB-49 pursuant to the PRA, however the suggestions received also address potential broader asserted burdens associated with the underlying regulatory requirement that would require notice and comment rulemaking to change. That noted, USCIS appreciates your suggestions as to ways to improve the employer reporting requirement. That said, USCIS is always interested in exploring ways to improve the H-2 (and other) immigration programs, and may consider these suggestions as part of future regulatory reforms.

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	has no way of verifying the veracity of the reports. The commenter also noted that even if workers remain in the United States and engage in unauthorized work for a few months, they would represent enforcement priorities for DHS. The commenter also noted that USCIS statistics used to derive the burden estimate date back to 2009 and have not been updated since but the programs have expanded since that time, and actual reports have been received.	With respect to the portion of the commenter's comment addressing the estimate for the number of reports received in the H-2A and H-2B programs, USCIS has updated a portion of the data regarding the number of respondents based on more recent data regarding employment-related notices. Additionally, USCIS has started the process of developing a new comprehensive estimate based on information about the number of reports received overall going forward. USCIS plans to update these estimates during the next revision and/or extension of this information collection.
Texas RioGrande Legal Aid, Inc. (**TLRA)**	The commenter stated that employment-related reports received on Form OMB-49 are used as a tool to threaten, retaliate against, and coerce workers, in violation of the Trafficking Victims Protection Reauthorization Act (TVPRA) and other labor laws, and noted concerns that the information collection does not acknowledge the possibility of misuse of employment-related notifications nor take steps to minimize that risk. The commenter also provided examples of common program violations, such as forced labor, substandard wages and working conditions, work in physically isolated areas. The commenter noted that employers argue that when they inform workers of the reporting requirements as a consequence for leaving, they are merely restating the regulations. The commenter also noted the consequences to workers if they are determined to have absconded. The commenter specifically suggested that USCIS (a) make clear to employers that they may not use the notification requirement to intimidate, chill, or harass workers and	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

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	that, if they choose to inform workers of the notification requirement, they must do so by explaining the only three circumstances in which this requirement is triggered (i.e., the worker does not arrive, the worker disappears for five days, or work ends early); and/or (b) develop a simple know-your-contract flyer for employers to provide to workers upon arrival that explains the scope of the notification requirement, the options to depart the country promptly or obtain sponsorship from another employer after leaving a job without incurring immigration-related consequences, and the pathway for workers to communicate their side of termination facts to USCIS to avoid immigration bars.	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. The commenter's recommendation regarding developing a "know-your-contract" flyer is beyond the scope of this information collection extension but USCIS may consider this suggestion as part of other program reforms, as we move forward in implementing the Secretary of Homeland Security's priorities.
Texas RioGrande Legal Aid, Inc. (**TLRA)**	This commenter suggested that USCIS provide workers reported as absconders or no-shows with an opportunity to respond by creating a simple pathway akin to OMB-49 used by employers to submit these reports. The commenter also suggested that the workers be able to provide an explanation in the workers' preferred language, and recommended the response be coupled with the report and maintained in DHS files.	USCIS appreciates your comment and believes your comment raises some valid concerns, however those concerns go beyond the limited scope of the current form extension. While DHS's reporting regulation does not address the reasons for a no-show or abscondment nor does it assign fault on the part of either employer or employee, we recognize that certain employers, in the course of reporting absconders or no-shows, might attempt to assign blame to the workers in question. At present, USCIS does not have a process for workers to respond to, or rebut the information contained in the report; and since workers are no longer at the H-2 worksite, they may not even be aware that their former employer has filed a report, let alone alleged fault on their

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		part for the no-show or abscondment. However, the receipt of an abscondment report alone is not sufficient for USCIS to conclude that a worker has or has not violated their nonimmigrant status. Such a determination can only be made based on the totality of the circumstances. While DHS is not able to adopt your suggestions as part of this form extension, since such reforms entail substantive changes to DHS regulations, DHS may consider these recommendations as part of future rulemaking efforts.
Texas RioGrande Legal Aid, Inc. (**TLRA)**	The commenter recommended that USCIS issue clear and affirmative instructions to employers explaining the scope of the duty to report and warning them against using reports to force workers to remain in their employ or to retaliate against them for exercising their rights. Specifically the commenter requested that USCIS clarify the following points: • Employers should make every reasonable attempt to ensure the employment-related reports that they submit to USCIS are accurate. This includes updating USCIS if submitted information is later learned to be incorrect. • The duty to report workers is not triggered if workers are leaving their H-2 employment for lawful reasons or with the consent of the employer. Lawful reasons include, but aren't limited to, (a) returning to their home country, (b) lawfully transferring to other H-2 employment, or (c) obtaining lawful status on a different visa.	**Please see our comment in response above**. As indicated in our response above, USCIS has added a statement to the instructions advising employers that the notification requirement should not be used to threaten or harass workers. Some of the other recommendations require regulatory changes such as an additional obligation to submit corrections to previously submitted reports. Similarly, DHS would need to amend its regulations to exempt the reporting of workers leaving when the worker believes it is leaving for lawful reasons. DHS regulations already exclude from the definition of abscondment the worker leaving with the consent of the employer. DHS is also not adopting the suggestion that rests on DOL, rather than DHS regulations. With respect to suggestions that do not require regulatory changes, USCIS will consider providing additional guidance in the future. As the notification requirements are codified in DHS regulations, USCIS agrees that employers must make every reasonable attempt to ensure accuracy. You may rest assured that USCIS, takes these, as all other DHS regulations, seriously, and continuously works together with other Federal agencies, within and outside of DHS, to ensure compliance with existing regulations concerning the

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	• Though employers may report workers who are terminated for cause pursuant to 20 C.F.R. § 655.122(n), employers may not report workers whom they fire, with or without cause, as "absconders." • Employers may not use their duty to report as a threat to workers who wish to leave their employment or to retaliate against workers exercising their legal rights.	duty to report and whether it is triggered. USCIS agrees that the duty to report is not triggered if workers leave their H-2 employment for lawful reasons. Lawful reasons include, but are not limited to, (a) returning to their home country or country of last residence, (b) lawfully porting to other H-2 employment, or (c) the worker is otherwise granted lawful immigration status. DHS also works closely with other Federal agencies as needed when employers terminate H-2 workers.
Texas RioGrande Legal Aid, Inc. (**TLRA)**	The commenter recommended that USCIS create a form for submitting employment-related notifications about H-2 workers designed to capture information more accurately. The commenter specifically recommended that the form provide checkboxes for the different types of reporting triggers, include instructions containing regulatory definition for abscondment, and include a free-text field where employers would be required to explain the circumstances necessitating the reporting, and steps taken by the employer to confirm the accuracy of the report. The commenter also requested that USCIS include an affirmative obligation to attest that the employer is aware that it may not use the reporting requirement to make immigration-related threats, and requested that USCIS require that the report be submitted under penalty of perjury.	USCIS appreciates your comment but notes that it goes beyond the scope of this form extension. USCIS plans to consider this and other suggestions made by you that pertain to the revision of this information collection in connection with a future revision action, with respect to additional requirements that are not contemplated by the current regulations (such as a requirement to explain why the reporting is necessary and describe steps taken to confirm accuracy of the report), DHS may consider these suggestions in future regulatory efforts. If DHS creates a form in the future for this reporting requirement, such form would include standard attestations applicable to USCIS forms. DHS appreciates your recommendation of making the reporting requirement subject to the penalty of perjury. Even without an affirmative obligation to attest under the penalty of perjury, petitioners who submit false reports to USCIS regarding workers absconding would be subject to 18 U.S.C. 1001(a)(2) and could be fined or imprisoned for knowingly or willfully making false statements to the executive branch of the U.S. government.

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Texas RioGrande Legal Aid, Inc. (**TLRA)**	The commenter suggested that USCIS should enforce notification requirements regarding early termination in the same way it enforces notification requirements related to absconders. The commenter noted that it had never seen such notifications over decades representing H-2 workers and receiving responses to FOIA requests, and noted that early termination is a common practice in the H-2 industries and that employers generally request workers for longer than their actual need. The commenter noted that too many growers send the bulk of workers home early after the season's peak and then report them as absconders or fail to pay the three-quarters guarantee. The commenter suggested that such reports should be used by USCIS and DOL to reduce the employer's period of need based on evidence of actual need.	Thank you for your suggestion. As the notification requirements are codified in DHS regulations, USCIS agrees that employers must adhere to them. The question of enforcement, however, is outside the scope of the current form extension. You may rest assured that USCIS, takes these, as all other DHS regulations, seriously, and continuously works together with other Federal agencies, within and outside of DHS, to ensure compliance with existing regulations.

Commenter and comment #	Comment	USCIS Response
Jean Publieee USCIS-2009-0015-0020	this allowance of foreign workers into the usa so that they can take jobs away from american workers and drive down the cost of labor is absolutely disgusting. itis an anti labor move b y our govt agencies. it is anti labor so that the average working person has not been able to get much of a raise for his labor in the usa for quite some time now. wages in l950 were good for americans. they are down to poverty level for alot of americna workers right now with the billionaires making out on cheap labor. meanwhile americans pay high taxes, while these foreigner claim 8 babies and pay no tax at all to our govt. the entire scheme is rotten robbery and thievery fro mteh american citizens. shut down immigation so that american woerks have a chance at a job at a decent wage in their own country. our own govt is working against us. this is an anti labor action letting in these foreign leaches. they want free everything, free med care, free rent, free food, free schools. they pay for nothing. deport them all	Thank you for your comment. Your comment does not seem to include thoughts or suggestions related to this information collection. USCIS will not make any changes to the information collection.
Jean publiee USCIS-2009-0015-0016	certainly the $8500 related as the cost of htis program doesnot include the costs of all the employees that are involved in this project because each federal employee represents at least $150,000 of taxpayer fundsplus probably alot more. so the costs of this program are not correctly stated imo. we have many foreign employees who come into this country at teh behest of many traitorous american employers who want to pay less money and put an american woreker out of a job. i find that traitorous to american workers	Thank you for your comment. $8,500 was the estimated annual cost to respondents based on estimated postage. USCIS has updated a portion of the data regarding the number of respondents based on more recent data regarding employment-related notices. The revised estimated annual cost to respondents is $18,875. The estimated annual Government cost is $260,202 for this information collection. The estimated cost of the program to the Government is calculated by multiplying the estimated total

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	and it shoudl be looked upon as triatorous to all ameicans. we need much more information as to why employeers are bringing in so many millions of foreingers to change america into something it never was. American workers produced for this country. i see no reason why we have to bring in afghans and brazilians to do this work nowadays.	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 $69.26 ($49.47 x 1.4 multiplier) (the hourly wage of a GS-12, Step 6, federal government employee in Los Angeles, California). It is unclear from the content of this comment what costs are being referenced or how they relate to this information collection or the burden estimate therefor. DHS is not proposing any changes to its fee schedule as a part of this extension action. USCIS is not making any changes to the information collection as a result of this comment.